

Federal Court



Cour fédérale

Date: 20160512

Docket: IMM-4276-15

Citation: 2016 FC 533

Montréal, Quebec, May 12, 2016

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

IQBAL, MEHREEN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision rendered by an Officer at the High Commission of Canada in London [the Officer] denying the applicant a permanent resident visa as part of the Skilled Worker Program and finding her inadmissible to Canada for a period of five years for misrepresentation.

I. Facts

[2] The applicant is a citizen of Pakistan. In 2013, she applied to become a permanent resident of Canada under the Skilled Worker Program, citing her occupation as 'Civil Engineer'.

[3] In March 2015, the Anti-Fraud Unit [AFU] conducted a surprise investigation at the applicant's most recent employer, Tamizuddin Enterprises.

[4] On March 31, 2015, the applicant received a procedural fairness letter from the Officer, stating that he had concerns that her declared work experience at her Tamizuddin Enterprises may be fraudulent and that, as a result, she may be found inadmissible under s 40(1) of the Act for misrepresentation. The Officer gave the applicant thirty days to respond to his concerns.

[5] The applicant submitted additional documents, including a letter from her direct supervisor at her last employer, explaining that he had not been present when the AFU visited and could not provide them with the accurate details of the applicant's employment.

[6] The Officer found that the documents submitted did not alleviate his concerns and rejected the applicant's application on July 23, 2015.

[7] The Officer noted that the applicant had received a procedural fairness letter expressing concerns about her employment at Tamizuddin Enterprises and that the information provided by her employer was inconsistent with the information included in her application. He found that

her response to the procedural fairness letter did not alleviate his concerns with regards to her work experience at Tamizuddin Enterprises. The Officer also observed that her experience at two other employers, namely Zishan Engineers and Kamil Associates, were also of concern. The Officer nevertheless concluded that the applicant had worked for a short period of time at Tamizuddin Enterprises and awarded her points for one year of experience.

[8] The Officer concluded that the reference letters the applicant submitted in support of her employment at Tamizuddin Enterprises had been found to be fraudulent and that this was a misrepresentation material to the disposition of her application. Therefore he found that she was inadmissible to Canada for a period of five years.

I. Issues

[9] This matter raises the following issues:

1. What is the applicable standard of review?
2. Did the Officer err in concluding that the applicant had misrepresented her work experience at her employer?
3. Did the Officer breach the rules of procedural fairness?

II. Submissions of the Parties

(a) *Applicant's Submissions*

[10] The applicant argues that the decision was unreasonable because the Officer simultaneously held the reference letter from Tamizuddin Enterprises to be fraudulent, and yet awarded her one year of experience for it; the decision was the result of a superficial

investigation; and the decision did not address the documents submitted in response to the procedural fairness letter.

[11] The Applicant further submits that the Officer breached the rules of procedural fairness in two ways. First, the conduct of the investigation into her employment at Tamizuddin Enterprises was superficial and insufficient to support conclusions of misrepresentation. Secondly, he did not allow the applicant to respond to his concerns regarding her employment at Zishan Engineers and Kamil Associates by failing to raise them in the procedural fairness letter.

(b) *Respondent's Submissions*

[12] The Respondent argues that a visa officer's decision on a skilled worker application is a discretionary exercise, which warrants a high degree of deference from the Court. The applicant ultimately bears the burden of demonstrating that she meets the requirements of the Act and has an obligation to provide true, correct and complete information to the Officer. The Officer was entitled to give little weight to the documents submitted in response to the procedural fairness letter. Furthermore, collusion to concoct evidence robs that evidence of any probative value, and it would thus be unreasonable to rely on it. The applicant failed to put her best evidence forward to address the Officer's concerns.

[13] An applicant cannot impose an investigative burden on a visa officer and the requirement of a high degree of fairness does not mean that an officer must accept blindly the evidence that is sent in response to a procedural fairness letter.

III. Analysis

(a) *Standard of Review*

[14] The assessment of whether an applicant can become economically established in Canada and of whether a material misrepresentation has been made are questions of facts, reviewable under the standard of reasonableness (*He v Canada (MCI)*, 2012 FC 33, para 19). The Court will not intervene if the Officer's decision is justified, transparent, and intelligible and falls within the range of possible, acceptable outcomes with respect to the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9, para 47). It is now well-established that questions of procedural fairness are reviewable under the standard of correctness (*Khosa v Canada*, 2009 SCC 12, para 43).

(b) *Did the Officer err in concluding that the Applicant had misrepresented her work experience at her employer?*

[15] First, contrary to the applicant's submissions, I am satisfied that the Officer could find the letter from Tamizuddin Enterprises to be fraudulent as it attested to three or four years of experience as she declared, and yet conclude, based on the other evidence, that the applicant had still worked for a shorter period of time and award points for only one year of experience.

[16] Therefore, the real point of contention on this issue is whether the Officer disregarded or capriciously assessed the evidence submitted in response to the procedural fairness letter. While the applicant submits that the Officer could not disregard the evidence only because it could not be produced at the time of the surprise visit, it is clear upon reading the GCMS notes, that the

Officer found many discrepancies between the answers given by the CEO and what was attested to in the reference letters.

[17] For instance, during the site visit the CEO said that the applicant had left the company between three to five years ago. This is inconsistent with the information found in the original reference letter which stated that the applicant left the company in July 2014. As for the letter of appointment provided by the applicant in response to the fairness letter, the Officer noted that the company could not produce that document during the site visit. In the letters from her employer produced subsequent to the site visit, it is mentioned that only her direct line-manager and the HR manager could have given that information but that they were absent the day of the visit. However, this is inconsistent with the statement made by the CEO during the site visit that only the accountant had access to the computer for this information.

[18] Moreover, these letters from her employer did not by themselves attest to the fact that she had worked from 2011 to 2014. The Officer was therefore entitled to give them low probative value.

[19] Because the weighing of the evidence is a question of fact at the core of an Officer's discretion, it is well understood that the Court can only intervene if the decision is not within the range of possible, acceptable outcomes. In this case, it was well within the range of acceptable outcomes to find five years of experience as a civil engineer could not be demonstrated on the basis of three reference letters, two of which were suspected of being fraudulent, and nothing else.

[20] The applicant had a responsibility to provide the Officer with independent evidence in response to his concerns that her letters of reference had been fabricated. She did not send pay slips or working statements which would have been the best evidence that she had worked there the entire period.

[21] In *Rong v Canada (MCI)*, 2013 FC 364, the applicant had provided the Officer with several pieces of independent evidence which he could not ignore, namely a notarized letter signed by the company's legal representative, original legal representative, and the person in charge of finance and marketing, corroborating the information in the above-mentioned personal statement; a letter from the company's original legal representative; the company's business license, the company's payroll records from December 2011 to March 2012, all of which listed the applicant's name.

[22] In contrast, the applicant submitted only a personal statement explaining the inconsistencies discovered by the AFU, to which she attached copies of emails from the managers suspected in colluding with her to misrepresent her work experience and a photocopy of a letter of appointment. When a fairness letter explicitly mentioned that certain documents are believed to be fraudulent, an applicant has the obligation to present the strongest possible corroborating evidence (*Hui v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1098 [*Hui*]). In the present case, the evidence submitted could not reasonably serve to alleviate the Officer's concerns regarding her work experience.

[23] The Officer therefore did not err in holding that the applicant had not demonstrated sufficient years of experience as a civil engineer for the purpose of establishing herself in Canada and that she was inadmissible to Canada for materially misrepresenting her work experience.

(c) *Did the Officer breach the rules of procedural fairness?*

[24] Both parties agree that a finding of inadmissibility requires a high degree of procedural fairness on the part of the Officer (*Menon v Canada (MCI)*, 2005 FC 1273, para 15 [*Menon*]). It means that applicants must always be given a chance to respond to an officer's concerns, and officers should be aware and sensitive to the fact that human errors happened when filling out forms, and that often misrepresentation arose from embarrassment. This however does not shift the duty to produce good, reliable evidence (*Hui v Canada (MCI)*, supra, para 7; *Heer v Canada (MCI)*, 2001 FCT 1357, para 19).

[25] The applicant was advised of the Officer's concerns about her employment at Tamizuddin Enterprises and was allowed a chance to respond. She was afforded the degree of procedural fairness to which she was entitled in this regard and it was her responsibility to provide the Officer with the best possible evidence to support her declared work experience. The Officer committed no reviewable error in not investigating further. The applicant had no legal right to impose an investigative burden on the Officer who cannot be faulted for declining the invitation to do so (*Hui*, supra).

[26] The applicant further argues that the Officer had a duty to allow her to respond to his concerns regarding her experience at Zishan Engineers and Kamil Associates.

[27] If the issue was only one of assessment of the applicant's work experience for the award of points, I would agree with the applicant that the Officer's failure to notify her of his concerns regarding her experience at Zishan Engineers and Kamil Associates could have constituted a reviewable error. However, in the circumstances, it is not an error that is material to the issue of the case. The Officer reasonably found that the applicant had submitted fraudulent documents and misrepresented her work experience at Tamizuddin Enterprises. Even if her experience at Zishan Engineers and Kamil Associates had been genuine, it would not have changed the Officer's decision on her admissibility to Canada. The applicant was given a chance to respond to the Officer's main concerns regarding her application and did not succeed in demonstrating that her experience was genuine. There was no breach of procedural fairness in this case.

[28] For these reasons, this application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question to be certified.

“Danièle Tremblay-Lamer”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4276-15

STYLE OF CAUSE: IQBAL MEHREEN v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MAY 9, 2016

JUDGMENT AND REASONS: TREMBLAY-LAMER J.

DATED: MAY 12, 2016

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