Federal Court  Cour fédérale

Date: 20170307

Docket: IMM-3497-16

Citation: 2017 FC 266

Toronto, Ontario, March 7, 2017

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

HARJOT SINGH

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of an immigration officer of Immigration, Refugees and Citizenship Canada ("Officer"), dated August 10, 2016, refusing the Applicant's application for permanent residence, made pursuant to the Federal Skilled Worker Program, on the basis that the Applicant failed to meet the requirements of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("IRP Regulations") as he did not provide a qualifying offer of permanent employment.

[2] For the reasons that follow, this application for judicial review is dismissed.

Background

[3] The Applicant is a citizen of India. Upon completing certificates of study in Canada, he obtained a post-graduate work permit ("PGWP") and began working at Horizon Travel Magazine ("Horizon") as a web designer in October 2014. His PGWP was subsequently renewed to July 2016. In June 2015, Horizon applied for a Labour Market Impact Assessment ("LMIA") on the Applicant's behalf, which was approved on October 27, 2015.

[4] The Applicant submitted his profile to the Citizenship and Immigration Canada Express Entry intake system in September 2015, indicating that he had a qualifying offer of arranged employment. On November 27, 2015, the Applicant received an invitation to apply for permanent residency as a Federal Skilled Worker. The invitation indicated that the Applicant qualified for 971 points, including 600 for having arranged employment. The Applicant made an application for permanent residency on January 22, 2016, and included his LMIA confirmation number in the application. This application was returned as incomplete on January 28, 2016 as the Applicant had not provided the required medical report and proof of education documents. He resubmitted his profile and received a second invitation to apply for permanent residency on February 10, 2016. When submitting the required supporting documentation, the Applicant included the LMIA approval letter and a January 18, 2015 letter from Horizon confirming his employment as of October 2014. He uploaded his documents and finalised his submission in February 2016. On August 10, 2016, his application was refused.

Decision Under Review

[5] In the refusal letter of August 10, 2016 the Officer stated that, pursuant to s 11.2 of the *Immigration Refugee and Protection Act*, SC 2001, c 27 ("IRPA"), an officer may not issue a visa in respect of an application for permanent residence if the applicant who had been issued an invitation to make such an application does not have the qualifications on the basis of which they were ranked under an instruction given under s 10.3(1)(h) and consequently issued the invitation. The Officer noted that in his Express Entry profile the Applicant had indicated that he had a qualifying offer of arranged employment. The Officer referenced the Ministerial Instructions Respecting the Express Entry System, as to what is meant by a qualifying offer of arranged employment, as well as s 82(2)(c) of the IRP Regulations. The Officer stated that he or she was not satisfied that the Applicant met the requirements of the IRP Regulations because he did not provide an offer of employment offering him a permanent position in Canada. The Officer was therefore not satisfied that the Applicant had a qualifying offer of arranged employment. In accordance with s 11.2 of the IRPA and s 82(1) of the IRP Regulations, the Officer refused the application because he or she found that the Applicant did not possess the qualification on the basis of which he was ranked. The change in his qualification resulted in a loss of points that brought his rank below the lowest ranking person invited to apply under the Express Entry Comprehensive Ranking System.

[6] The Global Case Management System notes ("GCMS Notes") form a part of the reasons for the decision (*De Hoedt Daniel v Canada (Citizenship and Immigration)*, 2012 FC 1391 at para 51; *Afridi v Canada (Citizenship and Immigration)*, 2014 FC 193 at para 20; *Muthui v*

Canada (Citizenship and Immigration), 2014 FC 105 at para 3 ("*Muthui*")). The relevant entry states:

> … PA awarded CRS pts for qualifying job offer at ITA with Horizon Travel Magazine as a Web Developer NOC 2175 based on a positive LMIA. GCMS/FOSS search indicate that PA has a LMIA 815681 valid from 2015/07/06 until 2016/04/26 with the employer he declared in his profile; however, PA did not submit an offer of employment. The letter dated 2015/01/18 provides information about PA's employment starting date, position and annual salary; duties are not listed. I am not satisfied that PA has a qualifying offer of employment. This results in a drop in points that falls below the minimum score for the round. CRS SCORE AT ITA: 971 REVISED CRS SCORE: 371 MINIMUM CRS SCORE FOR THIS ROUND: 459. Based on evidence provided, I am therefore not satisfied that PA has a qualifying job offer according to R82(1) or that PA meets A11.2 - refused.

Issues and Standard of Review

[7] The Applicant raises two issues. The first is whether the Officer breached the duty of procedural fairness. The second is whether the Officer's decision is reasonable.

[8] Whether a visa officer erred by failing to bring his or her concerns to the attention of an applicant and offering the applicant an opportunity to address them is a question of procedural fairness which is reviewable on the correctness standard (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 79 and 87 ("*Dunsmuir*"); *Muthui* at para 12; *Ramezanpour v Canada (Citizenship and Immigration)*, 2016 FC 751 at para 15).

[9] The standard of review that applies to an officer's assessment of an application for permanent residence under the Federal Skilled Worker Program, including the officer's assessment of the evidence submitted in support of that application, is reasonableness (*Hamza v*

Canada (Citizenship and Immigration), 2013 FC 264 at para 14 ("*Hamza*"); *Roberts v Canada (Citizenship and Immigration)*, 2009 FC 518 at para 15; *Bazaid v Canada (Citizenship and Immigration)*, 2013 FC 17 at para 36; *Khowaja v Canada (Citizenship and Immigration)*, 2013 FC 823 at para 7; *Muthui* at para 10). An officer's assessment in that regard is entitled to a high degree of deference (*Pathirannahelage v Canada (Citizenship and Immigration)*, 2015 FC 811 at para 25 ("*Pathirannahelage*")).

[10] Reasonableness is concerned with the existence of justification, transparency and intelligibility within the decision-making process but also with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at para 47).

Statutory Framework

IRPA

10.3 (1) The Minister may give instructions governing any matter relating to the application of this Division, including instructions respecting	10.3 (1) Le ministre peut donner des instructions régissant l'application de la présente section, notamment des instructions portant sur :
(a) the classes in respect of which subsection 10.1(1) applies;	a) les catégories auxquelles ce paragraphe s'applique;
(b) the electronic system referred to in subsections 10.1(3) and 10.2(3);	b) le système électronique visé aux paragraphes 10.1(3) et 10.2(3);
…	…
(h) the basis on which an eligible foreign national may be ranked relative to other	h) les motifs de classement des étrangers, les uns par rapport aux autres, qui peuvent être invités à présenter une

eligible foreign nationals;	demande;
…	…
(4) Instructions given under subsection (1) must be published on the Department of Citizenship and Immigration's Internet site. Instructions given under any of paragraphs (1)(a), (d) to (g), (k) and (l) must also be published in the Canada Gazette.	(4) Les instructions données en vertu du paragraphe (1) sont publiées sur le site Internet du ministère de la Citoyenneté et de l'Immigration et celles données en vertu de l'un des alinéas (1)a), d) à g), k) et l) le sont également dans la Gazette du Canada.
…	…
(5) For greater certainty, an instruction given under subsection (1) may provide for criteria that are more stringent than the criteria or requirements provided for in or under any other Division of this Act regarding applications for permanent residence.	(5) Il est entendu que les instructions données en vertu du paragraphe (1) peuvent prévoir des critères plus sévères que les critères ou exigences prévus sous le régime de toute autre section de la présente loi relativement aux demandes de résidence permanente.
…	…
11.2 An officer may not issue a visa or other document in respect of an application for permanent residence to a foreign national who was issued an invitation under Division 0.1 to make that application if - at the time the invitation was issued or at the time the officer received their application - the foreign national did not meet the criteria set out in an instruction given under paragraph 10.3(1)(e) or did not have the qualifications on the basis of which they were ranked under	11.2 Ne peut être délivré à l'étranger à qui une invitation à présenter une demande de résidence permanente a été formulée en vertu de la section 0.1 un visa ou autre document à l'égard de la demande si, lorsque l'invitation a été formulée ou que la demande a été reçue par l'agent, il ne répondait pas aux critères prévus dans une instruction donnée en vertu de l'alinéa 10.3(1)e) ou ne satisfaisait pas aux motifs de classement prévus dans une instruction donnée en vertu de l'alinéa

an instruction given under paragraph 10.3(1)(h) and were issued the invitation.	10.3(1)h) sur la base desquels cette invitation a été formulée.

IRP Regulations

Definition of *arranged employment*	**Définition de *emploi réservé***
82 (1) In this section, arranged employment means an offer of employment that is made by a single employer other than an embassy, high commission or consulate in Canada or an employer who is referred to in any of subparagraphs 200(3)(h)(i) to (iii), that is for continuous full-time work in Canada having a duration of at least one year after the date on which a permanent resident visa is issued, and that is in an occupation that is listed in Skill Type 0 Management Occupations or Skill Level A or B of the National Occupational Classification matrix.	82 (1) Pour l'application du présent article, emploi réservé s'entend de toute offre d'emploi au Canada pour un travail à temps plein continu - d'une durée d'au moins un an à partir de la date de délivrance du visa de résident permanent - appartenant au genre de compétence 0 Gestion ou aux niveaux de compétence A ou B de la matrice de la Classification nationale des professions présentée par un seul employeur autre qu'une ambassade, un haut-commissariat ou un consulat au Canada ou qu'un employeur visé à l'un des sous-alinéas 200(3)h)(i) à (iii).
(2) Ten points shall be awarded to a skilled worker for arranged employment if they are able to perform and are likely to accept and carry out the employment and	(2) Dix points sont attribués au travailleur qualifié pour un emploi réservé, s'il est en mesure d'exercer les fonctions de l'emploi, s'il est vraisemblable qu'il acceptera de les exercer et que :
(c) the skilled worker does not hold a valid work permit, is not authorized to work in Canada under section 186 on the date on which their application for a permanent resident visa is made and	c) le travailleur qualifié n'est pas titulaire d'un permis de travail valide, n'est pas autorisé à travailler au Canada au titre de l'article 186 au moment de la présentation de sa demande de visa de résident permanent et les conditions

	suivantes sont réunies :
(i) an employer has offered arranged employment to the skilled worker, and	(i) un employeur a offert un emploi réservé au travailleur qualifié,
(ii) an officer has approved the offer of employment based on a valid assessment - provided to the officer by the Department of Employment and Social Development, on the same basis as an assessment provided for the issuance of a work permit, at the request of the employer or an officer - that the requirements set out in subsection 203(1) with respect to the offer have been met; or	(ii) un agent a approuvé cette offre d'emploi sur le fondement d'une évaluation valide - fournie par le ministère de l'Emploi et du Développement social à la demande de l'employeur ou d'un agent, au même titre qu'une évaluation fournie pour la délivrance d'un permis de travail - qui atteste que les exigences prévues au paragraphe 203(1) sont remplies à l'égard de l'offre;
…	…

Ministerial Instructions Respecting the Express Entry System

Definitions

1. The following definitions apply in these Instructions.

…

"qualifying offer of arranged employment" means

(a) an offer of employment, in an occupation listed in Skill Type 0 Management Occupations or Skill Level A or B of the *National Occupational Classification* matrix, that is made to a foreign national by an employer other than an embassy, high commission or consulate in Canada or an employer that appears on the list referred to in subsection 209.91(3) of the Regulations, for full-time work in Canada that is non-seasonal and indeterminate and that is supported by an opinion referred to in subparagraph 82(2)(*c*)(ii) of the Regulations that was provided by the Department of Employment and Social Development;

...

> **Points for offer of arranged employment**
>
> 29. (1) Six hundred points may be assigned to a foreign national if they have a qualifying offer of arranged employment.

Issue 1: Did the Officer breach the duty of procedural fairness?

Notice to the Applicant

[11] The Applicant makes two submissions in this regard. The first is that the LMIA approval letter was sufficient evidence that he had a qualifying and permanent offer of arranged employment. The duty of fairness requires officers to ask appropriate questions of applicants when they have concerns about the credibility, accuracy, or genuine nature of information that otherwise would be sufficient, if believed. Thus, any concerns about the existence or genuineness of the offer, or the ability of the Applicant to carry out the employment, should have been put to the Applicant.

[12] The Respondent says that, barring credibility or authenticity concerns, the Officer was under no duty to assist the Applicant in his application for permanent residence. There is no duty to advise an applicant of concerns which arise from the applicant having failed to submit sufficient evidence meeting regulatory requirements. Here, the Officer did not question the credibility of the Applicant's evidence, but was not satisfied that the Applicant had a qualifying offer of employment.

[13] In my view, this matter is really a question of the sufficiency of the evidence and, in that regard, the reasonableness of the Officer's conclusion that the Applicant had not demonstrated

that he had a qualifying offer of employment. As set out below, I do not believe that finding was unreasonable.

[14] In any event, as stated by Justice Gascon in *Pathirannahelage*, at paras 28-29, there is no obligation on a visa officer to provide an applicant with an opportunity to address concerns of the officer when the supporting documents are incomplete, unclear or insufficient to satisfy the officer that the applicant meets all the requirements that stem from the IRP Regulations (see also *Hamza* at paras 24-25; *Gharialia v Canada (Citizenship and Immigration)*, 2013 FC 745 at paras 16-17; *Veryamani v Canada (Citizenship and Immigration)*, 2010 FC 1268 at paras 34-36; *Rezvani v Canada (Citizenship and Immigration)*, 2015 FC 951 at paras 19-21).

[15] And, as noted by Justice Manson in *Gedara v Canada (Citizenship and Immigration)*, 2016 FC 209 at para 29, visa officers are not obligated to convey concerns that arise from the requirements of the IRP Regulations or deal with sufficiency of evidence. In *Virk v Canada (Citizenship and Immigration)*, 2014 FC 150, Justice Barnes noted that the Document Checklist for a temporary work permit clearly stated that an applicant must provide "proof indicating you meet the requirements of the job being offered," which, in that case, included basic oral and written English. There the officer there found that the applicant had failed to provide satisfactory evidence of an ability to communicate in English and the applicant argued that the officer had an obligation to seek out the missing evidence. In rejecting this argument, Justice Barnes stated that:

> [6] Mr. Virk provided nothing to the Officer to verify his English language skills. I do not accept Mr. Gautam's argument that an English language application and cover letter is any evidence of language proficiency but, even if it was, it was not

> unreasonable for the Officer to require something more. I also do not accept Mr. Gautam's argument that the Officer had an obligation to seek out the missing evidence. Mr. Virk was informed about the requirement and ignored it, perhaps for the reason that he could not read the instructions. This is the type of evidence that the Applicant is required to submit without being prompted or reminded. There is no breach of procedural fairness in these circumstances and the Officer's finding that an essential aspect of the proposed employment was missing was reasonable…

[16] While it is correct that pursuant to the jurisprudence of this Court the duty of procedural fairness requires an officer to alert an applicant of any concerns the officer may have about credibility, veracity or authenticity of the documents, in this case there is nothing in the record suggesting that the Officer had any concerns about the genuineness of the application. There is a distinction between disregarding evidence due to doubts as to its genuineness or reliability and finding that evidence is insufficient to prove a fact on a balance of probabilities. In this matter the Officer found that the documents submitted were insufficient to prove that the Applicant had a qualifying offer of employment for an indeterminate period. The Officer reviewed the January 18, 2015 offer of employment which the Applicant submitted and found it to be insufficient. There was no duty on the Officer to advise the Applicant of his or her concerns regarding the insufficiency of the evidence submitted.

Legitimate Expectations

[17] In the alternative, the Applicant submits that the decision was procedurally unfair because his application was refused rather than returned to him as incomplete, contrary to his legitimate expectations. Thus, although the Applicant maintains that he provided complete and accurate information with his application, including evidence of a job offer, if this was not the

case then his application should have been returned as incomplete. The Applicant submits he had a legitimate expectation that if his application did not include sufficient information, evidence or documents then it would be returned. This expectation is allegedly based on the FSW Processing Manual and ss 10(1)(c) and 12 of the IRP Regulations and because his initial application was returned as incomplete when he did not provide a medical report or proof of education documents with the application.

[18] The Respondent submits that by resorting to the doctrine of legitimate expectations the Applicant is seeking to obtain a substantive right - to not be refused for failing to meet a regulatory requirement at the second stage of the review process - but that the doctrine confers only procedural rights. The Respondent submits that passing the initial check for document completeness cannot shield an applicant from being found, at the second stage, to have insufficient or no evidence to meet a regulatory requirement.

[19] Here it appears that the Applicant did submit documents for all required categories, including the offer of employment category, and, in this sense, the application was “complete.” The Officer found, however, that the documents provided were insufficient to establish that the Applicant met the regulatory requirements, i.e. that he had a qualifying offer of arranged employment for a permanent position. This is distinguishable from the Applicant’s prior submission when his application was returned as incomplete because he did not provide documents under the required categories of medical report or proof of education with the application submission. Here, he provided what he believed to be proof of an offer of

employment, but the Officer found it to be insufficient. The doctrine of legitimate expectations has no application in these circumstances.

Issue 2: Was the Officer's decision reasonable?

Applicant's Position

[20] While the Applicant does not address this matter through a reasonableness lens, as he framed the judicial review in procedural fairness terms, in that regard he submitted that the LMIA approval letter was sufficient evidence that he had a qualifying and permanent offer of arranged employment. The Applicant submits the presence of an LMIA clearly supports that an offer of employment existed, as the purpose of an LMIA application is to validate an offer of employment made to a skilled worker as reflected in ss 82(2), 203 and 315.2 of the IRP Regulations. Further, the approval letter itself clearly listed Horizon as the employer, the Applicant's name, the nature of the position, and that the Applicant was being offered continuous, full-time employment of permanent/indeterminate length. Although the Applicant agrees that an LMIA is not determinative of whether a visa should be issued, and that visa officers can deny an application for permanent residence despite the issuance of an LMIA where there are concerns that an applicant is not able to perform the position or are not likely to accept and carry out the employment, he submits that no such concerns were raised in this matter.

[21] When appearing before me the Applicant also submitted that there is no legislative basis upon which an offer of employment is required. This is simply a policy requirement and therefore, failure to provide an offer of employment cannot disqualify him. Further, he submits

that because he had already been awarded 971 points, 600 of which were awarded for having arranged employment, the Officer had accepted that the Applicant had an offer of permanent employment in Canada, otherwise those points would not have been awarded. His LMIA post-dated his invitation and was valid when the points were awarded; providing an offer of employment was therefore backwards looking. The Applicant submits that the January 18, 2015 letter of employment only served to prove that he had employment, while the LMIA proved he had an offer of permanent employment which the Officer failed to appreciate.

Respondent's Position

[22] The Respondent agrees that visa officers are not bound by LMIA checks produced by Employment and Social Development Canada. Further, it submits that the Applicant was advised in his Express Entry document checklist to include a job offer signed by him and his employer. Such a job offer cannot be considered superfluous, nor can it be considered unreasonable for an immigration officer to look for an offer stating that the position is permanent or to note that the letter that was uploaded, dated January 18, 2015, did not contain this information.

[23] The LMIA is not a rubber stamp for permanent residency. It allows qualifying points to be assessed and, if the points are sufficient, an invitation to apply for permanent residency may be issued. While it is true that the Express Entry document checklist is prescribed by policy, the content of the letter of offer from an employer is clearly described. The Applicant simply failed to submit a document that met the requirements.

Analysis

[24] In my view, it is clear that the Applicant was required to satisfy the Officer that the criteria in s 82 of the IRP Regulations were met (*Ghazeleh v Canada (Citizenship and Immigration)*, 2012 FC 1521 at para 20), being that an employer had offered arranged employment to him as a skilled worker. In s 82(1) "arranged employment" is defined as an offer of employment "for continuous full-time work in Canada having a duration of at least one year after the date on which a permanent resident visa is issued". On plain reading, this required the submission of an offer of employment.

[25] In addition, the LMIA approval letter included the following:

> The foreign worker requires a copy of this LMIA letter and Annex A to apply to Citizenship and Immigration Canada (CIC) for their work permit or permanent resident visa, and must apply prior to the LMIA expiry date stated in the annex. **CIC will also need the foreign worker to submit a copy of the employment contract or job offer letter (if applicable to the program stream), signed by the employer and the foreign worker, prior to issuing a work permit or permanent resident visa.** The LMIA does not authorize the foreign worker(s) to enter, remain or work in Canada; it is only one of CIC's requirements to determine whether or not to issue a work permit or permanent resident visa.
>
> [Emphasis added]

[26] The online instructions for permanent residence programs subject to the Express Entry completeness check indicate that a personalized document checklist is produced for each applicant when they submit the application through their online account, which identifies the specific supporting documents required. In describing the required letter of offer from the employer, the instructions state that the purpose of the letter is to confirm an applicant's

qualifying offer of arranged employment to validate that the applicant meets the program requirements and to screen for concerns of fraud. It states that the document is required only if, as in this case, the applicant claims to have a qualifying offer of arranged employment. The instructions also state that a letter from the employer offering the job in Canada is required, it must be printed on company letterhead and, include the specified information. It must also include the following specified details: the expected start date; commitment that the applicant will be employed on a continuous, paid, full-time work basis, for work that is for at least one year after issuance of a permanent resident visa; job title; duties and responsibilities; current job status (if current job); number of work hours per week and annual salary plus benefits. If there is an associated LMIA to the offer of employment, the LMIA number is requested as a part of the application. A scanned copy of the LMIA is not required when submitting the application but may be requested at a later date.

[27] The difficulty in this matter arises because the Applicant provided the LMIA approval letter as his offer of employment and the January 18, 2015 letter from Horizon as his letter of employment. The Officer noted that the Applicant had a valid LMIA and considered the January 18, 2015 letter, but was not satisfied the Applicant had a qualifying offer of employment because the Applicant did not provide an offer of employment confirming a permanent position in Canada. The January 18, 2015 letter states that Horizon confirms that the Applicant has been employed with Horizon since October 2014 and currently holds the position of web developer and sets out his salary for that position. Thus, the January 18, 2015 does not demonstrate that Applicant had a forward-looking offer of employment for continuous, full-time work signed by both the Applicant and the employer.

[28] In his affidavit filed in support of this application for judicial review the Applicant included as an exhibit his LMIA application, including a June 19, 2015 offer of employment letter from Horizon offering him a permanent full-time position as a web developer and setting out his duties. The letter was signed by Horizon and the Applicant. However, that letter was not provided with his application for permanent residence and was not before the Officer when he or she made their decision to reject his application. As a general rule, the evidentiary record before this Court on judicial review is restricted to the evidentiary record that was before the decision-maker. Thus, evidence that was not before the decision-maker and that goes to the merits of the matter before it is not admissible in an application for judicial review. Although there are certain limited exceptions to the general rule, I am not persuaded that they apply in this matter (see *Assn of Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22 at paras 19-20). Accordingly the June 19, 2015 letter is not admissible.

[29] And while the Officer does not expressly refer to the LMIA approval letter, a decision-maker is presumed to have considered all of the evidence before him or her (*Kotanyan v Canada (Citizenship and Immigration)*, 2014 FC 507 at para 24). Further, the Officer does note in the GCMS Notes that the Applicant had a valid LMIA with Horizon. In any event, the LMIA approval letter was not an offer of employment.

[30] I do not accept the assertion that there is no legislative basis upon which an offer of employment is required to satisfy the requirements of the IRP Regulations. The Officer expressly relied on s 82 of the IRP Regulations and s 11.2 of the IRPA in refusing the application and did not - as asserted by the Applicant - rely only on policy. As above, s 82 of the

IRP Regulations requires that an employer has offered arranged employment to the applicant, which is defined as an offer of employment "for continuous full-time work in Canada having a duration of at least one year after the date on which a permanent resident visa is issued". In order to be satisfied that an arranged offer of employment existed, it was reasonable for the Officer to require a letter of offer be provided. There was no undue reliance on any non-binding policy considerations, as the Officer's refusal under s 11.2 arose directly from the requirements of the IRP Regulations.

[31] In addition, this Court has previously accepted that an applicant is required to submit the documents requested under a document checklist in the form described, and the failure to do so may result in an application for permanent residency being reasonably denied (*Khan v Canada (Citizenship and Immigration)*, 2013 FC 891; *Singh v Canada (Citizenship and Immigration)*, 2012 FC 855; *Senadheera v Canada (Citizenship and Immigration)*, 2012 FC 704). Here, the LMIA approval letter, document checklist, and online instructions all informed the Applicant of the type of document that was required in order to satisfy the Officer that he had an arranged offer of employment under s 82. The fact that the LMIA post-dated the invitation is not relevant. As stated in the online instructions, the purpose of requiring the submission of an offer of employment, in the form described, as a part of the application for permanent residence was to confirm the Applicant's qualifying offer of arranged employment and to validate that the Applicant met the program requirements. Because the letter containing the relevant information was not provided, the Officer found that the Applicant did not have the qualifications on the basis upon which he was ranked (and qualifying points awarded) and the invitation was issued. Accordingly, pursuant to s 11.2 of the IRPA, permanent residence was denied.

[32] While I agree that, based on the supporting information contained in the LMIA, it was open to the Officer to have requested that the Applicant provide an offer of employment that met the necessary criteria for the reasons set out above, as the duty of procedural fairness owed in the circumstances did not compel the Officer to do so. Given the documentation that the Applicant did provide, it was not unreasonable for the Officer to find that this was not sufficient to demonstrate that the Applicant had a qualifying job offer, which determination falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

Certified Question

[33] The Applicant has submitted the following questions for certification:

> A. Can an immigration officer revoke 600 points, as awarded under the Comprehensive Ranking System (CRS) for a "qualifying offer of arranged employment" ("AEO"), without legal reliance on subsection 29(2) of the *Ministerial Instructions for the Express Entry Application Management System …* (*MI*), of their own volition and without providing an applicant the opportunity to respond when a foreign national has a valid Labour Market Impact Assessment (LMIA) both at the time of the invitation to apply (ITA) for permanent residence, and at the time the immigration officer received the application in satisfaction of section 11.2 of the [IRPA] if the foreign national did not include a Letter of Offer from the employer which is neither defined in nor required by the *Act*, *Regulations* or *MI*?
>
> B. Can an immigration officer justify revoking 600 points as described in Question 1 based only on policy - in this case the Federal Skilled Worker (FSW) processing manual, absent any legal authority in the *Act*, *Regulations* or *MI*, and without providing an applicant the opportunity to respond?
>
> C. On an application for permanent residence, if the foreign national uploads an LMIA as proof of an AEO, can the immigration officer look to other evidence uploaded/filed by the Applicant to satisfy other requirements under the *Act*, *Regulations* and *MI* to ground an insufficiency of evidence finding without notice or an opportunity for the applicant to respond. In other

> words, is the use of the evidence filed contrary to the Applicant's intended use or detrimental to their application trigger a duty of fairness?
>
> D. If an Applicant claims 600 CRA points for an AEO, is invited to apply for permanent residence on the basis of their CRS points, and submits a complete application for permanent residence as a FSW which is accepted into processing, can an officer then refuse the application for not having an AEO even if the foreign national scores the requisite 67 points on the FSW points grid?

[34] The test for certifying a question is that it "must (i) be dispositive of the appeal and (ii) transcend the interests of the immediate parties to the litigation, as well as contemplate issues of broad significance or general importance" (see *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 at para 9 ("*Zhang*")). The question must also have been raised and dealt with by the Federal Court judge (*Zhang* at para 9).

[35] In my view, none of the proposed questions meet the test for certification as set out in *Zhang*. No issues of broad significance or general importance are engaged, nor do the issues proposed by the Applicant transcend the interests of the immediate parties. Moreover, given my findings above, they are not dispositive.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There shall be no order as to costs.

3. The questions proposed by the Applicant are not certified.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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