

Federal Court



Cour fédérale

**Date: 20170602**

**Docket: IMM-2227-16**

**Citation: 2017 FC 546**

**Ottawa, Ontario, June 2, 2017**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**TAVORA SEA PRODUCTS CO. LTD.**

**Applicant**

**and**

**THE MINISTER OF EMPLOYMENT AND  
SOCIAL DEVELOPMENT CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] Tavora Sea Products Co. Ltd. (the “Applicant”) seeks judicial review of the decision of a Foreign Worker Officer (the “Officer”), a delegate of the Minister of Employment and Social Development Canada (the “Respondent”), to issue a negative Labour Market Impact Assessment (“LMIA”).

[2] The Applicant is a seafood manufacturer and distributor. It sought a LMIA for the position of fishmonger. The Applicant submitted an application form for the LMIA and that application included information about the efforts made to find an employee to fill the position.

[3] In determining the application, the Officer sought the opinion of Mr. Barber, a former supervisor for Loblaws Toronto Area in the Fish Department. The Officer relied on this opinion without disclosing its existence to the Applicant and without giving the Applicant **an** opportunity to respond to it.

[4] Among other arguments, the Applicant pleads that the reliance of the Officer upon the evidence of Mr. Barber without giving it the opportunity to address it resulted in a breach of procedural fairness.

[5] Shortly before the hearing of this application, the decision in *Kozul v. Canada (Minister of Employment and Social Development)*, 2016 FC 1316, was released. In that decision, Mr. Justice Boswell found that similar facts gave rise to a breach of procedural fairness and allowed the application for judicial review.

[6] Upon the hearing of the within application, Counsel for the Respondent conceded that the Officer's reliance upon the evidence of Mr. Barber, without allowing the Applicant to comment on that evidence, was a breach of procedural fairness.

[7] In spite of this concession, the Respondent argues that the Officer reasonably found that the Applicant failed to make reasonable efforts to hire or train Canadians. He submits that the ultimate decision is reasonable, as per the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47. In that decision, the Supreme Court of Canada said **that** the standard of reasonableness requires that the decision be justifiable, intelligible and transparent, and fall within a range of acceptable outcomes.

[8] In these circumstances, I am satisfied that the decision of the Officer cannot withstand the standard of correctness that applies to issues of procedural fairness.

[9] I am not persuaded by the Respondent's submissions that I should exercise my discretion to effectively waive the breach of procedural fairness. The Applicant is entitled to a fair assessment of its application. It did not receive that fairness.

[10] In the result, the application for judicial review is allowed, the decision of the Officer is set aside and the matter **is** remitted to another Officer for **re**-determination. There is no question for certification arising.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed, the decision of the Officer is set aside and the matter remitted to another Officer for re-determination. There is no question for certification arising.

"E. Heneghan"  
\_\_\_\_\_  
Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2227-16

**STYLE OF CAUSE:** TAVORA SEA PRODUCTS CO. LTD. v. MESDC

**PLACE OF HEARING:** TORONTO

**DATE OF HEARING:** NOVEMBER 30, 2016

**JUDGMENT AND REASONS:** HENEGHAN J.

**DATED:** JUNE 2, 2017

**APPEARANCES:**

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FOR THE APPLICANT

Wendy Wright

FOR THE RESPONDENT

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FOR THE RESPONDENT