

Federal Court



Cour fédérale

Date: 20170614

Docket: IMM-3846-16

Citation: 2017 FC 588

Ottawa, Ontario, June 14, 2017

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MUDASSAR FARRUKH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Farrukh seeks judicial review of a decision of a visa officer at the Canadian High Commission in London, United Kingdom [the Officer], dated September 2, 2016, refusing her application for a permanent resident visa.

[2] The background facts are quite extraordinary, and recited here as they go to explain some of the actions of the Respondent's officials.

[3] Ms. Farrukh is a citizen of Pakistan. On April 20, 2012, she submitted an application for an immigrant visa as a Federal Skilled Worker under the National Occupation Category [NOC] 4151 (Psychologist).

[4] In her application, she claimed to have work experience as a clinical psychologist from 2009-2012 with Dr. Iftikhar Ahmad and from 2003-2009 with Tariq Diagnostic & Medical Centre [TDMC]. One letter of reference was submitted from Dr. Ahmad on letterhead of Maroof International Hospital. Two letters from TDMC were submitted in support of her application.

[5] On May 7, 2012, an officer from the Federal Skilled Worker Centralized Intake Office gave the application “a positive final determination on eligibility for processing on the basis of work experience in an occupation specified in the Instructions issued by the Minister of Citizenship, Immigration and Multiculturalism and published in the Canada Gazette on June 25, 2011.”

[6] Following this positive determination on eligibility Ms. Farrukh underwent several changes with respect to her marital status. On or about July 18, 2014, she divorced her first husband, and on or about September 15, 2014, married a second man. Accordingly, the first husband was removed from her application and the second was added.

[7] On or about January 15, 2015, Ms. Farrukh divorced her second husband and re-married the first some 14 days later. Accordingly, the second husband was removed from her application and the first was re-added.

[8] On or about October 28, 2015, the Immigration Officer assigned to process the application requested that the Anti-Fraud Unit of Canada Border Services Agency attend Maroof International Hospital to conduct a site visit. The Anti-Fraud Unit conducted a site visit on February 2, 2016, and found that while Dr. Ahmad had been an employee of the hospital previously, Ms. Farrukh had not.

[9] On June 2, 2016, the Immigration Officer informed Ms. Farrukh by letter that the Anti-Fraud Unit found that she had not worked at the Maroof International Hospital. The Officer provided her with 30 days to respond to this information. In response, Ms. Farrukh provided a letter from Dr. Ahmad dated June 13, 2016, verifying that she worked with him from 2009 to 2014 as a personal employee of his and not of Maroof International Hospital.

[10] On September 2, 2016, the Immigration Officer sent a letter to Ms. Farrukh refusing her application. In coming to a negative decision, the Officer found that there was insufficient evidence to satisfy him that Ms. Farrukh had been employed as a clinical psychologist as she alleged and zero points were assigned for employment. As a result, the applicant did not obtain the required 67 points for a positive selection decision.

[11] Specifically, the Officer stated that Ms. Farrukh had been awarded 0 points for employment due to “insufficiency of evidence to satisfy me that you have worked as a (clinical) psychologist (NOC 4151).” He outlined the evidence provided by Ms. Farrukh: 2 letters from Dr. Ahmad and 2 from TDMC. He stated that “[n]o objective evidence of employment, such as salary deposits into a bank account, pay slips, contracts or taxation documents” was provided.

He then outlined the issues he identified with respect to the letters from Dr. Ahmad, resulting in them being given little weight.

[12] In this application, Ms. Farrukh does not challenge the findings regarding the letters from Dr. Ahmad, nor does she challenge the Officer giving the July 13, 2009 letter from TDMC no weight; she accepts that it is basically a character reference letter and is devoid of any description of the duties she performed. She does rely on the July 14, 2009 TDMC letter which states that “she ably handled major responsibilities as a clinical psychologist” and goes on to say:

Her major responsibilities included assessment, diagnosis, case studies and follow-up. She has

- An extensive knowledge of the principles and the methods involved in the research and diagnosis in this field.
- Treated a lot of patients having mental disorders and problems.
- Worked in a rehabilitation program.

[13] The sole issue in this application is whether it was reasonable for the Officer to find there was insufficient evidence that Ms. Farrukh worked as a clinical psychologist at TDMC.

[14] Ms. Farrukh submits that it was unreasonable for the Officer to award zero points for her work experience given the letter from TDMC referenced above. She says that the Officer’s reasons for awarding zero points for the employment at TDMC are unclear and lack transparency and submits that the Officer cannot base the decision on an insufficiency of evidence unless he or she rejected the employment letter out of hand as not being credible or trustworthy, which the Officer did not do.

[15] Moreover, she points out that the Officer has given no explanation as to why it was previously determined that there was sufficient evidence that she had performed a substantial number of the main duties such that she was given a positive selection decision, but now the same evidence is found to be insufficient. She submits that the Officer has improperly couched credibility findings in the language of sufficiency of evidence and ought to have given the Applicant an opportunity to respond to the credibility concerns.

[16] I agree with the submission of the Respondent on this latter point; namely, that there is no obligation to blindly follow the positive decision on eligibility. The Officer writing the decision did not have the obligation to address this positive decision on eligibility, the preliminary decision was made by a different officer, the employment experience had not been verified, and the landscape of the Ms. Farrukh's application had changed over time (specifically in regard to Dr. Ahmad's letter).

[17] An applicant bears the burden of proof to establish that he or she meets the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 and *Regulations*, SOR/2002-227: *Li v Canada (Minister of Citizenship and Immigration)* (1999), 173 FTR 110 (FCTD) at paras 22-23; *Abdul-Karim v Canada (Minister of Citizenship and Immigration)* (2000), 191 FTR 115 (FCTD) at para 12.

[18] In *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067 at para 26, I discussed the differences between credibility assessments and assigning of weight to evidence:

If the trier of fact finds that the evidence is credible, then an assessment must be made as to the weight that is to be given to it. It is not only evidence that has passed the test of reliability that may be assessed for weight. It is open to the trier of fact, in considering the evidence, to move immediately to an assessment of weight or probative value without considering whether it is credible. Invariably this occurs when the trier of fact is of the view that the answer to the first question is irrelevant because the evidence is to be given little or no weight, even if it is found to be reliable evidence. For example, evidence of third parties who have no means of independently verifying the facts to which they testify is likely to be ascribed little weight, whether it is credible or not. [emphasis added]

[19] In the matter before the Court, the Officer concluded that the letter from TDMC was not of sufficient probative value, to establish on a balance of probabilities that Ms. Farrukh has worked as a clinical psychologist. It was open to the Officer to require more evidence to satisfy the legal burden, and indeed, he stated in his decision letter that no such additional evidence was provided.

[20] In my view, the brief statements in the letter at issue when compared to the description of duties in NOC 4151, supports the Officer's decision that there was simply insufficient evidence that Ms. Farrukh performed the duties required. The description of duties in NOC 4151 is as follows:

Psychologists perform some or all of the following duties:

- Examine and assess behaviour, diagnose behavioural, emotional and cognitive disorders, counsel clients and provide therapy
- Help clients manage physical illness and disorders
- Counsel individuals and groups to achieve more effective personal, social and vocational development and adjustment, and offer mediation services

- Use standard psychological tests for assessment
- Plan intervention programs and conduct program evaluation
- Apply psychological theory and principles regarding behaviour and mental processes such as learning, language development, memory and perception to develop treatment programs
- Formulate hypotheses and experimental designs, review literature, conduct studies and publish research papers, educational texts and articles
- Deliver presentations at conferences, workshops or symposia
- Provide consultation services to government and other organizations.

[21] It may be that a different officer would have been satisfied with the brief description in the letter; this Officer was not. I am unable to find that the decision was unreasonable or a veiled credibility finding. The reasons offered were transparent and justified on the basis of the materials before the Officer. It was a decision supported by the evidence offered by Ms. Farrukh and cannot be set aside.

[22] No question was posed for certification.

JUDGMENT

THIS COURT'S JUDGMENT IS that the application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3846-16

STYLE OF CAUSE: MUDASSAR FARRUKH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 9, 2017

JUDGMENT AND REASONS: ZINN J.

DATED: JUNE 14, 2017

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