

Federal Court



Cour fédérale

Date: 20171106

Docket: IMM-5081-16

Citation: 2017 FC 1002

Ottawa, Ontario, November 6, 2017

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

NILIMA KAPOOR

Applicant

and

**CANADA (MINISTER OF CITIZENSHIP AND
IMMIGRATION)**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Nilima Kapoor, is a 34-year-old citizen of India who first came to Canada in 2010 on a study permit. After she received an accounting diploma from Humber College in December 2012, the Applicant continued to reside in Canada with a post-graduate work permit and, from July 2013 to December 2014, worked for Malke Enterprises Ltd. Malke is a family-owned company located in Brampton, Ontario, which engages independent contractors for its freight hauling business. When the Applicant worked at Malke, the business operated with four

employees: the owner, Jagdip Sidhu; his wife, Rajinder Sidhu; a dispatch supervisor, Sinderpal Gill; and the Applicant. Despite having no prior experience in Malke's area of business, the Applicant was hired as a "logistics coordinator" at Malke.

[2] In September 2014, the Applicant applied for a permanent residence visa under the Canadian Experience Class [CEC], requesting in her application that she be assessed as a Logistics Coordinator, National Occupation Classification [NOC] Code 1215. The lead statement for the NOC 1215 states that supervisors in this unit group supervise and co-ordinate the activities of various workers such as shippers and receivers, production logistics coordinators, dispatchers, and transportation route and crew schedulers. An immigration Officer at Immigration, Refugees and Citizenship Canada refused the Applicant's application for permanent residence in a letter dated December 1, 2016, on the basis that the Applicant had not performed the duties of the lead statement for NOC 1215. The Applicant has now applied, under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27, for judicial review of the Officer's decision.

I. Background

[3] In a letter to the Applicant dated April 15, 2016, an immigration officer raised concerns that Malke was not operational during the time period when the Applicant claimed to have worked there. These concerns arose because of information from the Innovation, Science and Economic Development Canada website that showed Malke had been dissolved on December 8, 2013, and revived on January 25, 2016. In response to this procedural fairness letter, the Applicant submitted a letter from Mr. Sidhu dated May 10, 2016, stating that he had

inadvertently allowed the company's incorporation to lapse during this time period, and including tax and financial documents showing that Malke had remained operational throughout that time period.

[4] The Applicant received a second procedural fairness letter dated September 27, 2016, which raised several issues:

- That the Applicant had not met the work requirements of NOC 1215, but had in fact worked as a Dispatcher (NOC 1525). The Officer noted that employment as a Logistics Coordinator normally requires several years' experience working in related occupations.
- That Ms. Gill had previously declared to have performed the duties of NOC 1215, and the Officer found it unreasonable that a small family-owned business with four employees would require two employees to perform the duties of NOC 1215.
- That the Applicant had not demonstrated that she supervised and coordinated the activities of workers as listed in the NOC 1215 requirements.
- That the job duties in her letter of employment used the wording of NOC 1215 verbatim.
- That she had provided evidence that she worked as an office manager for a company called Race Carriers Ltd. since September 1, 2015, despite the Applicant's temporary resident visa stating that she had worked at Malke until May 2016.

- That Mr. Sidhu's signature on Ms. Gill's letter of employment differed noticeably from his signature on the Applicant's letter of employment and on Mr. Sidhu's response to the first procedural fairness letter.

[5] Following receipt of the second procedural fairness letter, the Applicant retained legal counsel to provide a response. The letter from the Applicant's counsel dated October 28, 2016, included statutory declarations from Mr. Sidhu and from the Applicant which addressed the issues raised in the second procedural fairness letter:

- Mr. Sidhu said he had hired the Applicant based on her communication skills, personality, and a positive reference from a previous employer, and that she had been trained for three weeks and performed her duties successfully.
- Mr. Sidhu stated that his company had a heavy volume of clients during the Applicant's time at Malke and, accordingly, it was necessary for the company to have two logistics coordinators, especially since Mr. Sidhu was out of the country for part of that time. Mr. Sidhu submitted documents attesting to the number of clients Malke served.
- Mr. Sidhu provided a more detailed job description showing how the Applicant's duties corresponded to the requirements of NOC 1215. In particular, Mr. Sidhu noted that the Applicant had trained Ms. Sidhu to work as a dispatcher for Malke.
- The Applicant stated that her representative had inadvertently listed the wrong date for completion of her employment with Malke.
- Mr. Sidhu stated that when he signed his response to the first procedural fairness letter his wrist was injured.

II. Decision

[6] In the refusal letter dated December 1, 2016, the Officer stated that:

I am not satisfied that you meet the skilled work experience requirement. Following a review of your submissions and your application in its entirety, I am not satisfied, on a balance of probabilities, that you have performed the duties of the lead statement of the declared NOC and acquired one year of skilled work experience as set out in the requirements of R87.1.

[7] The refusal letter further stated that the Officer also was “not satisfied” that the Applicant had supervised and coordinated the activities of workers as listed in the lead statement for NOC 1215. The Officer found it was “unreasonable that your employer would need two supervisors in the office, and that you trained and supervised the owner’s wife in the family business.” In the Global Case Management System [GCMS] notes pertaining to the Officer’s review of the Applicant’s procedural fairness response, the Officer found that the Applicant’s job title “was inflated to satisfy immigration requirements.”

III. Issues

[8] The Applicant frames the main issue as being whether the Officer made unreasonable findings of fact with respect to the Applicant’s work experience. In my view, characterizing the issue in this manner overly narrows the primary issue which is: was the Officer’s decision to refuse the Applicant’s application for a permanent residence visa under the CEC reasonable?

[9] Although the Applicant notes that the question of whether she was provided a meaningful opportunity to respond to the Officer's concerns is a question of procedural fairness assessed on a standard of correctness, she did not pursue this issue in her written or oral submissions.

IV. Analysis

A. *Standard of Review*

[10] As noted by the Federal Court of Appeal in *Qin v Canada (Citizenship and Immigration)*, 2013 FCA 263 at para 25, [2015] 1 FCR 313: "A visa officer's refusal of an application for permanent residence on the ground that an applicant's employment was not consistent with an occupation in an NOC code of the required skill level is a question of mixed fact and law at the factual end of the spectrum. Accordingly, it is reviewable on the standard of reasonableness."

[11] Under the reasonableness standard, the Court is tasked with reviewing a decision for "the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190. Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708.

[12] Additionally, “as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome”; and it is also not “the function of the reviewing court to reweigh the evidence”: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61, [2009] 1 SCR 339. The decision under review must be considered as an organic whole and the Court should not embark upon “a line-by-line treasure hunt for error” (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper Ltd.*, 2013 SCC 34 at para 54, [2013] 2 SCR 458).

B. *Was the Officer’s decision to refuse the Applicant’s application for a permanent residence visa under the CEC reasonable?*

[13] The Applicant argues that she responded to the Officer’s concerns in a sworn statement, and it was unreasonable for the Officer to reject this evidence in the absence of evidence to the contrary. In the Applicant’s view, the Officer’s reasons summarily rejected or ignored the Applicant’s sworn statement and are thus unreasonable. The Applicant says the Officer dismissed the possibility that she could have trained and supervised Ms. Sidhu, without providing any justification and in the absence of contrary evidence. The Applicant contends that the Officer relied on stereotypes about family businesses instead of the submitted evidence.

[14] The Applicant further argues that the Officer ignored Mr. Sidhu’s explanation for why his company required two logistical coordinators, without providing any explanation as to why. According to the Applicant, this evidence was either ignored or rejected without explanation, thus rendering the decision unintelligible, not transparent, and unjustified. Moreover, the

Applicant says that, because the Officer's reasons do not engage at all with Mr. Sidhu's statement detailing how the Applicant performed each of the duties listed for NOC 1215, the reasons are insufficient and therefore unreasonable. According to the Applicant, the Respondent's position that the NOC 1215 lead statement contemplates individuals who supervise more than one employee is an overly narrow reading of the lead statement. The Applicant notes that she supervised the independent contractors engaged by Malke in its freight hauling business.

[15] The Respondent defends the Officer's decision, noting that the Officer believed the Applicant may have performed the responsibilities of a Dispatcher (NOC 1525), and that the onus was on the Applicant to satisfy the Officer that she performed the requisite duties for NOC 1215. The Respondent highlights the requirement in the lead statement for NOC 1215 for supervision of workers in specified unit groups, and notes that the Applicant supervised only a single worker, Ms. Sidhu. According to the Respondent, the Officer's decision was not based on a finding that it was unreasonable that the Applicant would have trained Ms. Sidhu but, rather, that the evidence did not demonstrate that the Applicant had performed the duties outlined in the lead statement of NOC 1215.

[16] The Respondent notes that the GMCS notes specify that the Officer undertook "a review of the submissions and the application in its entirety," and that a decision-maker is presumed to have considered all of the evidence. A tribunal's decisions are not, the Respondent says, to be read hypercritically, and to require that the reasons for a decision reference every piece of evidence would be an onerous requirement on an already overburdened system. In the Respondent's view, the Officer reasonably weighed and assessed the Applicant's evidence and it

was not a reviewable error that the Officer did not refer to the Applicant's evidence concerning how her responsibilities aligned with those set out in the NOC 1215 description. As to the Applicant's arguments concerning the sufficiency of reasons, this is not an independent basis for judicial review and, according to the Respondent, the Officer's reasons in this case were sufficient for the Applicant to know why her application was rejected, particularly in view of the second procedural letter sent to her detailing the Officer's concerns.

[17] In *Lazar v. Canada (Citizenship and Immigration)*, 2017 FC 16, 275 ACWS (3d) 843, the Court recently summarized the principles applicable to applications for permanent residence from within Canada under the CEC:

[20] The jurisprudence establishes that in the visa context: (1) an applicant has the onus of providing sufficient evidence to support the application; (2) the degree of procedural fairness owed to an applicant is at the low end of the spectrum; (3) there is no obligation on an Officer to notify an applicant of deficiencies in the application or supporting documentation; and (4) there is no obligation on the Officer to provide the applicant with an opportunity to address any concerns of the Officer when the supporting documents are incomplete, unclear or insufficient to satisfy the Officer that the applicant meets the requirements. (*Ansari v Canada (Minister of Citizenship and Immigration)*, 2013 FC 849 at para 23 referring to *Hamza v Canada (Minister of Citizenship and Immigration)*, 2013 FC 264).

[21] Concerns relating to credibility, the accuracy or the genuine nature of information submitted with an application often require that an applicant be given an opportunity to address these concerns (*Madadi v Canada (Citizenship and Immigration)*, 2013 FC 716 at para 6 citing *Perez Enriquez v Canada (Citizenship and Immigration)*, 2012 FC 1091 at para 26)....

[18] In this case, it cannot be said that the Applicant was not afforded an opportunity to disabuse any concerns the Officer had. On the contrary, the Applicant was afforded two

opportunities to respond to the concerns about her application for permanent residence. The Applicant had the onus to provide sufficient evidence and supporting documents to support her application and to satisfy the Officer that she had performed the duties of NOC 1215. This she failed to do.

[19] I agree with the Respondent that the Officer reasonably weighed and assessed the Applicant's evidence, and it was not unreasonable for the Officer not to refer explicitly to the Applicant's evidence about how her responsibilities aligned with those set out in the NOC 1215 description. A visa officer does not need to mention every piece of evidence in his or her reasons for a decision; and, moreover, it is assumed that an officer weighed and considered all of the evidence before him or her, unless the contrary is shown (see: *Akram v Canada (Minister of Citizenship and Immigration)*, 2004 FC 629 at para 15, 130 ACWS (3d) 1004; *D'Souza v. Canada (Minister of Employment and Immigration)*, [1983] 1 FC 343 at para 8, 16 ACWS (2d) 324 (CA); and *Florea v. Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 at para 1, [1993] ACF No 598 (CA). The Applicant has not shown how the Officer's consideration of the evidence concerning the Applicant's job duties *vis-à-vis* those set out in the NOC 1215 description was unreasonable.

V. Conclusion

[20] The Officer's decision in this case was justifiable, transparent and intelligible, and it falls within a range of possible, acceptable outcomes defensible in respect of the facts and law. The Applicant's application for judicial review will be dismissed.

[21] Neither party raised a serious question of general importance; so, no such question is certified.

JUDGMENT in IMM-5081-16

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed;
and no question of general importance is certified.

"Keith M. Boswell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5081-16

STYLE OF CAUSE: NILIMA KAPOOR v CANADA (MINISTER OF
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