

Federal Court



Cour fédérale

**Date: 20171102**

**Docket: IMM-2231-17**

**Citation: 2017 FC 991**

**Vancouver, British Columbia, November 2, 2017**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**AHMAD HUSSAIN CHAUDHRY**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**ORDER AND REASONS**

[1] The Applicant has applied for judicial review of a decision [the Decision] of an immigration officer [the Officer] dated March 20, 2017, refusing the Applicant's application for permanent residence [PR] as a member of the Federal Skilled Trades [FST] class. This application is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

I. BACKGROUND

[2] The Applicant is a 54 year old citizen of Pakistan. He is married with four children. The Applicant has been residing and working in Saudi Arabia since 2004. He holds an Associate Diploma in Civil Engineering.

[3] From May 2010 until March 2013, the Applicant worked as a construction supervisor with Life Connection Contracting Company Ltd. [Life Connection]. From April 2013 until March 20, 2017, the Applicant worked as a civil engineer with Huta Hegerfeld Saudia Ltd. [Huta].

[4] The Applicant was offered and accepted a position as a construction supervisor with a Canadian employer. It received a positive Labour Market Impact Assessment [LMIA] on July 13, 2016. Based on the job offer and the positive LMIA, the Applicant was issued an invitation to make an application for PR as a member of the FST class. The Applicant applied for PR on December 8, 2016. In his FST application, the Applicant specified he was applying as a construction supervisor under the National Occupational Criteria (NOC) 7302. As part of his application, the Applicant provided a letter from Huta dated October 10, 2016 [the Huta Letter]. It provided a description of his employment.

[5] NOC 7302 reads in part as follows:

7302 Contractors and supervisors, heavy equipment operator crews

Lead statement

This unit group includes excavating, grading, paving, drilling and blasting contractors who own and operate their own business. This

unit group also includes supervisors who supervise and co-ordinate the activities of workers classified in the following unit groups: Crane Operators (7371), Drillers and Blasters - Surface Mining, Quarrying and Construction (7372), Water Well Drillers (7373), Longshore Workers (7451), Material Handlers (7452), Heavy Equipment Operators (Except Crane) (7521), Public Works *Maintenance Equipment Operators and Related Workers* (7522), *Railway Yard and Track*

#### Main duties

Contractors and supervisors in this unit group perform some or all of the following duties:

Supervise, co-ordinate and schedule the activities of workers who operate cranes and construction, paving, drilling, railway maintenance and other similar heavy equipment

- Establish methods to meet work schedules and co-ordinate work activities with other project supervisors or managers
- Requisition materials and supplies
- Resolve work problems and recommend measures to improve productivity
- Train or arrange for training of workers
- Recommend personnel actions such as hirings and promotions
- Prepare production and other reports
- May manage the operations of own company
- May also supervise, co-ordinate and schedule the activities of related apprentices, helpers and labourers.

## II. The Decision

[6] The Officer refused the Applicant's application on the basis that he did not meet the criteria set out in section 87.2(3)(b) of the IRPR for the FST class. It provides that a foreign national is a member of the FST class if they have, during the five years before the date on which their PR application is made, acquired at least two years of full-time work experience, or the

equivalent of part-time work, in the skilled trade occupation specified in the application. The Officer determined the relevant five-year period ran from December 8, 2011 until December 8, 2016 [the Relevant Period].

[7] The Officer accepted that the Applicant's 17 months of employment with Life Connection met the requirements of NOC 7302. However, the Officer concluded that the Applicant's 7 months of work as a civil engineer with Huta did not match the duties of construction supervisor found in NOC 7302. As a result, the Applicant had failed to acquire the required 24 months of full-time employment in the Relevant Period.

[8] The Officer's refusal letter is a form letter which sets out the legislative requirements. The portion that deals with the evidence reads as follows:

I am not satisfied that the employment letter you submitted in support of this application lists the duties or the lead statement of NOC 7302. You have declared that you worked as Civil Engineer (NOC7302) at Huta Hegerfeld Saudia Ltd from April 2013 until present. According to the letter of employment form Huta Hegerfeld Saudia Ltd, you appear to have experience under NOC 2131. Civil Engineers, which is not a skilled trade pursuant to sub-section 87.2(1) of the Regulations.

[9] The Officer's reasons in the GCMS notes state:

PA has specified NOC 7302 for his current position. However, it appears that his position from 2013/04 until present, and duties with Huta match NOC 2131. Therefore, PA has accumulated 17 months of full-time experience in primary NOC during the five years before the date on which is permanent residence application was made. I am not satisfied that PA meets minimum FST requirements as per 87.2(3)(b). Application is refused.

III. The Issue

[10] The issue is the reasonableness of the finding that the Applicant's employment at Huta does not fall under NOC 7302.

IV. Discussion

[11] The Officer does not specify why she reached her conclusion. She makes no direct reference to the contents of the Huta Letter, which describes the Applicant's duties while in its employ. The Huta Letter is written in two sections. There is a narrative of several paragraphs [the Narrative], followed by a list of 29 duties [the List], assigned to the Applicant.

[12] In the Narrative, the Huta Letter states, *inter alia*, that on "countless construction projects" the Applicant:

- supervised each member of our construction team
- oversaw the actual construction on the ground

[13] What is missing in both the Narrative and in the List is any direct reference to supervision or co-ordination of the work of the heavy equipment operators and the other types of operators referred to in the Lead Statement.

[14] However, the Applicant says it is reasonable to conclude that such supervision and co-ordination occurred because of the statements in the Narrative. As well, the List shows that the Applicant can deal effectively and communicate with sub-contractors [points #6 and 22], and

manages change [point #8]. The Applicant submits that sub-contractors would include the operators listed in the Lead Statement and that managing change is a matter of coordinating the activities of the workers referred to in the Lead Statement.

[15] The Respondent says that the onus is on the Applicant and that the Huta Letter fails to clearly demonstrate that his employment met the requirements of NOC 7302.

V. Conclusion

[16] In my view, it was unreasonable of the Officer to fail to refer to the statements in the Narrative portion of the Huta Letter. This is not a case in which I can supplement the Decision by considering the Record. I can only speculate about why the Officer apparently rejected the comments in the Narrative. Accordingly, this application will be allowed.

**ORDER**

**UPON** the Applicant's application for judicial review of a decision dated March 20, 2017;

**AND UPON** reading the material filed and hearing the submissions of counsel for both parties in Vancouver on November 1, 2017;

**THIS COURT ORDERS that** the Decision is set aside and the Applicant's application for permanent residence as a member of the Federal Skilled Trades class is to be reconsidered by a different officer.

"Sandra J. Simpson"

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Judge

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

**DOCKET:** IMM-2231-17

**STYLE OF CAUSE:** AHMAD HUSSAIN CHAUDHRY v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** NOVEMBER 1, 2017

**ORDER AND REASONS:** SIMPSON J.

**DATED:** NOVEMBER 2, 2017

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