

Federal Court



Cour fédérale

Date: 20181016

Docket: IMM-4669-17

Citation: 2018 FC 1037

Ottawa, Ontario, October 16, 2018

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

ADEL SAATCHI

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Adel Saatchi, is a citizen of Iran. He seeks judicial review of a visa officer's [Officer] decision dated October 23, 2017, refusing his permanent residence application under the Canadian Experience Class.

[2] The Officer refused Mr. Saatchi's application on the basis that his experience was not that of a Technical Sales Specialist – Wholesale Trade as required by subparagraphs 87.1(2)(a),(b) and (c) of the *Immigration and Refugee Protection Regulations*. Technical Sales Specialist – Wholesale Trade refers to a specific skill set as defined in the National Occupation Classification ["NOC"].

[3] The Applicant challenged the decision on the basis that it is unreasonable and procedurally unfair. The application for judicial review is dismissed.

II. Background

[4] Mr. Adel Saatchi is a citizen of Iran. He currently resides in Toronto and holds a Canadian study permit valid until July 31, 2019.

A. *Canadian Experience Class Application*

[5] On November 23, 2016, Mr. Saatchi submitted an application for the Canadian Experience Class ["CEC"] under the National Occupational Classification 6221 – Technical Sales Specialist – Wholesale Trade. Technical Sales Specialist – Wholesale Trade is a skill level B occupation, and skill level B is the minimum level required for acceptance under the Canadian Experience Class.

[6] The lead statement for NOC 6221 Technical Sales Specialist is as follows:

6221 Technical sales specialists – wholesale trade

Technical sales specialists, wholesale trade, sell a range of technical goods and services, such as scientific, agricultural and industrial products, electricity, telecommunications services and computer services, to governments and to commercial and industrial establishments in domestic and international localities. They are employed by establishments that produce or provide technical goods and services, such as pharmaceutical companies, industrial equipment manufacturing companies, grain elevators, computer services firms, engineering firms and hydroelectric companies, or they may be self-employed technical sales specialists/agents who contract their services to other companies. Technical sales specialists who are supervisors are included in this unit group.

[7] The description of NOC 6221 explicitly excludes NOC 6421 – Retail Salesperson from its ambit. The lead statement for NOC 6421 – Retail salesperson provides:

Retail salespersons sell, rent or lease a range of technical and non-technical goods and services directly to consumers. They are employed by stores and other retail businesses, as well as wholesale businesses that sell on a retail basis to the public.

B. *Evidence Submitted in Support of his Application*

[8] In support of his CEC application, Mr. Saatchi submitted a letter from the sales manager at Scarborough Chrysler Dodge Jeep Ram Ltd [Scarborough]. The letter attested to the fact that from May 2014 to October 2015 Mr. Saatchi worked at Scarborough in the capacity of a Technical Sales Representative – Wholesale Trade Specialist in Heavy-Duty Trucks and Cargo Vans. The letter dated June 22, 2017, also listed several duties and responsibilities, the relevant portions being: “close and grow sales through professional communication with existing and potential clients; manage and interpret customer requirements – speaking with clients to

understand, anticipate and meet their needs; communicate sales or services opportunities and customer concerns or suggestions, identify and resolve client concerns...”

[9] Mr. Saatchi also submitted a letter dated April 17, 2017, from his employer at North York Chrysler Jeep Dodge Ram Fiat [North York] where he worked from May 2016 to September 2016. In that letter, the general manager states that Mr. Saatchi held the position of Technical Sales Representative – Wholesale Trade Specialist in Heavy-Duty Trucks and Cargo Vans and detailed his hours, remuneration, and job duties. The relevant portions of the letter provides that Mr. Saatchi’s job duties included: “Prospect for, identify, and solicit potential new clients; Perform account management reviews with existing clients to prospect for additional sales; Gather client needs, understand client budgets and means, to recommend appropriate goods and services...; Prepare and executive Sales Contracts...”.

C. *Education*

[10] Mr. Saatchi also provided information regarding his academic background. Mr. Saatchi holds an Ontario high school diploma, an advanced diploma in business administration and management from Seneca College, and a certification in automotive law and ethics through the Ontario Motor Vehicle Industry Council. He is currently pursuing a bachelor’s degree in business management at Seneca College.

III. Decision under Review

[11] In a decision letter dated October 23, 2017, an immigration officer informed Mr. Saatchi that his application for the Canadian Experience Class was refused since his experience was more in line with that of a Retail Salesperson (NOC 6421) than that of a Technical Sales Specialist (NOC 6221). After reviewing Mr. Saatchi's letter of employment, the Officer concluded that he had not established that he met the criteria for Technical Sales Specialist – Wholesale Trade. The letter provided:

I am not satisfied that you meet the skilled work experience requirement because based on the letter of employment you submitted from Scarborough Chrysler Dodge Jeep Ram Ltd. (dated: June 22, 2017), you do not meet R87.1(2)(a), (b), and (c). I am not satisfied that during your period of employment at Scarborough Chrysler Dodge Jeep Ram Ltd. you performed the actions described in the lead statement for the occupation of Technical Sales Specialists – Wholesale Trade as set out in the *NOC 6221*. In addition, based on the evidence you have provided, I am not satisfied that you have performed a substantial number of the main duties of Technical Sales Specialists – Wholesale Trade as set out in the *NOC 6221*. Therefore, I am not satisfied that you have performed at least one year of your declared full-time work experience within Canada under Skill Level B of the *NOC 6221* as stated in your Express Entry Profile.

I have reviewed all information available, and upon review, I am not satisfied that you are a member of the Canadian Experience Class as per R87.1(2) for the reasons indicated above.

[12] In addition, the officer noted in the Global Case Management System that:

...After a review of PA's employment letter from Scarborough Chrysler Dodge Jeep Ram Ltd. dated June 22, 2017, it is my assessment that PA actions fall more in line with NOC 6421 – Retail salesperson. More specifically, it is my assessment that PA falls under the example title "automobile salesperson," which is a NOC level C. In addition, under PA's UCI – Background Info – Education/Personal History, PA has openly declared "AUTO

SALES” from 2014/05 until 2015/10 at SCARBOROTOWN CHRYSLER. As a result, on a balance of probabilities, I am not satisfied that PA meets the skilled work experience as set out in NOC 6221.

IV. Issues

[13] The Applicant submits the following issues for determination:

1. What is the standard of review?
2. Was the decision reasonable?
3. Was the decision reached in a manner that was procedurally unfair?

V. Arguments and Analysis

A. *What is the standard of review?*

[14] The parties agree that an officer’s determination of whether an applicant satisfies the skilled work requirement under the Canadian Experience Class regulations is a question of fact and law reviewable on the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 50, 60; *Liu v Canada (Citizenship and Immigration)*, 2017 FC 968 at para 5; *Parssian v Canada (Citizenship and Immigration)*, 2016 FC 304 at para 17).

[15] In a comprehensive decision released after the initial submissions were filed in this application, the Federal Court of Appeal clarified the standard of review governing procedural fairness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 37 [“Canadian Railway”]). When reviewing for procedural fairness, a court must ask

whether the procedure was fair having regard to all of the circumstances, an exercise best reflected in the correctness standard (*Canadian Railway* at para 54). As stated by Justice Rennie:

[34] Procedural fairness is a matter for the reviewing court to determine and, in so doing, “the standard for determining whether the decision maker complied with the duty of procedural fairness will continue to be ‘correctness’” (*Mission Institution v. Khela*, 2014 SCC 24 at para. 79, [2014] 1 S.C.R. 502 (*Khela*)).

[...]

[54] A court assessing a procedural fairness argument is required to ask whether the procedure was fair having regard to all of the circumstances, including the *Baker* factors. A reviewing court does that which reviewing courts have done since *Nicholson*; it asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed. I agree with Caldwell J.A.’s observation in *Eagle’s Nest* (at para. 21) that, even though there is awkwardness in the use of the terminology, this reviewing exercise is “best reflected in the correctness standard” even though, strictly speaking, no standard of review is being applied.

B. *Was the decision reasonable?*

(1) Applicant’s Argument

[16] The Applicant submits that the Officer erred in interpreting the phrase “substantial number” in paragraph 87.1 (2)(c) of the *IRPR*. The Applicant submits that Federal Court jurisprudence establishes that “substantial number” is to be interpreted as “some or all” or simply “more than one” (*A’Bed v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1027 at para 15).

[17] The Applicant submits that Mr. Saatchi clearly met the “more than one” threshold. Several of the duties described in Mr. Saatchi’s employment letter from Scarborough were

listed under NOC 6221. The Applicant submits that a review of the employment letter makes clear that Mr. Saatchi's experience corresponds more closely with NOC 6221 than NOC 6421.

(2) Respondent's Argument

[18] The Respondent submits that the Officer's decision was reasonable based upon the following facts:

- (a) Mr. Saatchi declared his work at Scarborough Chrysler to be "auto sales"
- (b) "Automobile salesperson" is a job title under Retail Salespersons (NOC 6421) not Technical Sales Specialists – Wholesale Trade (NOC 6221)
- (c) Scarborough Chrysler and North York Chrysler appear to be ordinary retail dealerships and the Applicant provided no evidence to the contrary
- (d) The job descriptions provided by the Applicant's employers were very general and provided no details that confirmed that his work involved specialist wholesale service related to heavy-duty trucks or cargo vans (other than his job title)
- (e) The NOC description for technical sales specialists-wholesale trade indicates that a university degree or college diploma in a program related to the product or service is usually required and there is no evidence that the Applicant had such training

[19] The Respondent asserts that the Officer provided a global assessment of the evidence before concluding that Mr. Saatchi's experience was more in line with an automobile salesperson than a technical sales specialist in heavy-duty trucks and/or cargo vans. This Respondent submits that in light of the evidence in the record this was a reasonable determination.

[20] The Respondent underscores that in the present case the onus was on Mr. Saatchi to satisfy the Officer that he met the requirements for permanent residence under the Canadian Experience Class (*Dhillon v Canada (Minister of Citizenship and Immigration)*, 2009 FC 614 at paras 9, 41). There was no obligation on the visa officer to provide additional opportunities for submissions before refusing his application (*Oladipo v Canada (Minister of Citizenship and Immigration)*, 2008 FC 366 at para 24; *Pacheco Silva v Canada (Minister of Citizenship and Immigration)*, 2007 FC 733 at para 20; *Liao v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16440 at paras 24-25).

(3) Applicant Reply

[21] The Applicant challenges the Respondent's assertion that Scarborough appeared to be an ordinary retail dealership and that the Applicant provided no evidence to the contrary. The Applicant asserts that he submitted evidence on this very point – a letter from his employer. Further, the Officer's reasons did not question whether Scarborough sells heavy-duty trucks and cargo vans.

[22] The Applicant further notes that the Respondent's comment that Mr. Saatchi provided no evidence of related university or college training is misplaced. NOC 6221 states that such training "is usually required" but that it is not mandatory. Further, this issue was only raised by the Respondent – not the visa officer. The Applicant points out that Mr. Saatchi did in fact attend an automotive certification course at Georgian College in conjunction with the Automotive Business School of Canada.

(4) Analysis

[23] This case turns on the question of whether it is reasonable for an immigration officer, in reviewing an application for the Canada Experience Program, to look beyond formal job titles and carry out their own evaluation of whether an applicant meets the requirement of a specific NOC based upon a global assessment of the information provided by an applicant.

[24] Federal Court jurisprudence establishes that the answer to this question is “yes”.

[25] In *Katebi v Canada (Citizenship and Immigration)*, 2014 FC 813 at paras 53-55 Justice LeBlanc held that:

[53] This Court has established, in unequivocal terms, that a job title and relevant education is not sufficient for someone to establish that he or she is a Skilled Worker within the meaning of the Regulations (*Tabanag v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1293, at para 22; *Mollajafari v Canada (Ministry of Citizenship and Immigration)*, 2013 FC 906; at paras 15-19; *Moradi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1186 at para 35.).

[54] In *Tabanag*, Mr. Justice Richard Mosley has articulated this rule as follows:

Here, there was no evidence before the agent to establish that the applicant had performed any of the duties required to satisfy the occupational classification. It is not sufficient for an applicant to provide evidence that he or she has the academic qualifications, bears a job title and is addressed by that title in correspondence. They must provide evidence that they have actually performed "a substantial number of the main duties of the occupation". Here, the applicant did not provide that evidence either through the employer's certificate or alternate documentation. The information submitted fell short of establishing a prima facie case, as the

applicant contends (*Tabanag*, at para 22). (my emphasis)

[55] The Regulations clearly indicate that a foreign national is only a skilled worker if he can show one year of full-time employment where he performed the actions in the lead statement of the NOC and a substantial number of the main duties.

[26] In short, officers must examine whether the “pith and substance” of an applicant’s experience are in line with the relevant NOC. In *Rodrigues v Canada (Minister of Citizenship and Immigration)*, 2009 FC 111 at para 10 [*Rodrigues*] Justice Phelan held:

The real function of the visa officer is to determine what is the pith and substance of the work performed by an applicant. Tangential performance of one or more functions under one or more job categories does not convert the job or the functions from one NOC category to another.

[27] I note that within this context, the Applicant correctly points out that Federal Court jurisprudence establishes that a “substantial number” should be interpreted as “more than one” (*Tabañag v Canada (Citizenship and Immigration)*, 2011 FC 1293 at para 18).

[28] An officer considering an application for NOC 6421 must review the information submitted by the applicant to determine whether their experience and qualifications satisfy the NOC. In reviewing the lead statements for Retail Salesperson (NOC 6421) and Technical Sales Specialist (NOC 6221), there are several important differences, one of which is that the former sells directly to consumers, whereas the latter sells to “governments and to commercial and industrial establishments in domestic and international localities.” Another way this could be explained is a difference in scale. The Technical Sales Specialist sells technical goods and

services to institutional clients whereas a Retail Salesperson may typically sell a specific good or service to an individual customer.

[29] As is made clear from the 2016 NOC, Retail Salespersons are explicitly excluded from the ambit of Technical Sales Specialist. An officer assessing NOC 6421 would therefore have an obligation to ensure that an applicant's experience was truly that of a Technical Sales Specialist and not that of a Retail Salesperson, and hence, excluded.

[30] The onus was on Mr. Saatchi to satisfy the Officer that he met the requirements of Technical Sales Specialist – NOC 6221. In support of his application, Mr. Saatchi submitted two employment letters. While it is true that both letters stated that his job title was Technical Sales Representative – Wholesale Trade Specialist in Heavy-Duty Trucks and Cargo Vans, his employers appeared to be car dealerships. Further, none of the duties listed in his employment letters provided any particulars regarding Mr. Saatchi's experience in the wholesale trade of heavy-duty trucks and cargo vans. Mr. Saatchi listed in his CEC application that during his time at Scarborough he was engaged in "auto sales."

[31] The Respondent also correctly points out that the Applicant did not inform the Officer – anywhere in his application – that his customers were mostly farmers and construction companies. The Applicant only introduced these details in his further affidavit in the present application for judicial review. This information was not before the Officer and is therefore inadmissible on judicial review, as no exceptions arise that justify derogating from this general

rule (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20).

[32] In light of this evidence, it was reasonable for the Officer to conclude that Mr. Saatchi had not established that he had “performed the actions described in the lead statement for the occupation of Technical Sales Specialists – Wholesale Trade as set out in the NOC 6221.” The Court finds that the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir* above, para 47).

C. *Was the decision reached in manner that was procedurally unfair?*

(1) Applicant’s Argument

[33] Mr. Saatchi submits that the duty of fairness owed to visa applicants, while low, nonetheless requires officers to inform applicants of concerns related to the credibility, accuracy or genuine nature of information submitted so that they may have an opportunity to disabuse officers of their concerns (*Hassan v Canada (Citizenship and Immigration)*, 2006 FC 1283 at para 24; *Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264 at paras 25-28) [*Hamza*].

[34] Where an applicant provides sufficient evidence to establish that they meet the legislative or statutory requirements and yet the officer wishes to deny the application on the basis of the credibility, accuracy or genuine nature of the information provided, the duty of fairness is engaged (*Madadi v Canada (Citizenship and Immigration)*, 2013 FC 716 at para 6; *Perez*

Enriquez v Canada (Citizenship and Immigration), 2012 FC 1091 at paras 26-27) [*Perez Enriquez*].

[35] Mr. Saatchi submits that the Officer's evaluation of the evidence was an indirect credibility finding. Mr. Saatchi presented letters from two past employers for whom he had worked as a Technical Trade Specialist in heavy-duty trucks and cargo vans, a position falling under NOC 6221. Despite this evidence, the Officer concluded that the Applicant had worked as an automobile salesperson – NOC 6421. As a result, Mr. Saatchi should have been given an opportunity to respond to the Officer's concerns before rendering the decision (*Hamza*, above, at para 39; *Perez Enriquez*, above, at paras 26-27).

(2) Respondent's Argument

[36] The Respondent submits that Mr. Saatchi's right to procedural fairness was not breached. First, the content of the duty of procedural fairness is at the low end of the spectrum in skilled-worker applications (*Faroq v Canada (Minister of Citizenship and Immigration)*, 2013 FC 164 at para 10; *Deol v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 271 at para 44; *Katebi v Canada (Minister of Citizenship and Immigration)*, 2014 FC 813 at para 37).

[37] Second, a visa officer has no obligation to notify an applicant of the deficiencies in their supporting material or provide an opportunity to address concerns the officer may have unless they relate to the credibility, accuracy or genuine nature of the information submitted (*Singh v Canada (Minister of Citizenship and Immigration)*, 2016 FC 509 at paras 26-28).

[38] The Respondent asserts that the procedural fairness issue in this case turns on whether the Officer's concern related to the *sufficiency* or the *credibility* of the evidence. The Respondent submits that the Officer made no mention of credibility but rather concluded that he or she was "not satisfied" that Mr. Saatchi worked as a Technical Sales Specialist – Wholesale Trade. As a result, the decision was indeed based on the *sufficiency* rather than the *credibility* of the evidence and the Officer was not obliged to provide Mr. Saatchi with an opportunity to address these concerns. The Respondent submits that Mr. Saatchi simply failed to meet his evidentiary burden.

[39] The Officer simply concluded that a formal job title was not sufficient to establish that Mr. Saatchi met the NOC requirements, particularly in light of the Applicant's own statement that he worked in "auto sales."

[40] Where a visa officer's concerns arise directly from the requirements of the legislation or regulations – such as relevant work experience – a duty to notify the applicant does not arise (*Kamchibekov v Canada (Citizenship and Immigration)*, 2011 FC 1411 at para 26).

[41] As a result, the Court finds that Mr. Saatchi's right to procedural fairness was not violated. As discussed above, the Officer's concerns were not about the credibility, accuracy or genuine nature of the employment letters submitted by Mr. Saatchi but rather an analysis of form versus substance. The Officer looked beyond the job title and into the list of skills and responsibilities listed in the letter and surrounding information in the file. The Officer did not derogate from his or her mandate in so doing.

VI. Conclusion

[42] The application for judicial review is dismissed. There is no question of general importance for certification.

JUDGMENT in IMM-4669-17

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question of general importance to be certified and no order as to costs.

“Paul Favel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4669-17

STYLE OF CAUSE: ADEL SAATCHI v MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 31, 2018

JUDGMENT AND REASONS: FAVEL J.

DATED: OCTOBER 16, 2018

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