

Federal Court



Cour fédérale

Date: 20200124

Docket: IMM-2754-19

Citation: 2020 FC 122

Ottawa, Ontario, January 24, 2020

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

UGOCHUKWU ONYENATURUCHI NWACHUKWU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Ugochukwu Onyenaturuchi Nwachukwu (the “Applicant”) seeks judicial review of the decision of a Visa Officer (the “Officer”), refusing his application for permanent residence as a member of the Federal Skilled Workers Class, pursuant to subsections 75(2) and (3) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”).

[2] The Applicant is a citizen of Nigeria. He sought admission to Canada under the Saskatchewan Immigrant Nominee Program as a manufacturing manager, described in code 0911 of the National Occupational Classification (“NOC”).

[3] The Officer refused the application on the grounds that the Applicant failed to submit sufficient evidence that he performed all actions described in the lead statement and a substantial number of main duties identified in code 0911 of the NOC, pursuant to paragraphs 75(2)(b) and (c) of the Regulations.

[4] The Applicant argues the decision was unreasonable because it was made without regard to all of the evidence.

[5] He also submits his procedural fairness rights were breached when the Officer did not seek clarification or provide an opportunity to submit further documentation.

[6] He further argues that the Officer erred by failing to consult with officials from the Saskatchewan Immigrant Nominee Program prior to refusing his application, as required by subsections 87(3) and (4) of the Regulations and section 4.10 of the Canada-Saskatchewan Immigration Agreement, 2005 (the “Agreement”).

[7] The Minister of Citizenship and Immigration (the “Respondent”) submits the decision was reasonable, and there was no breach of procedural fairness.

[8] The Respondent also argues that he has the authority to determine the admissibility of provincial nominees, and that the Officer did not act contrary to section 4.10 of the Agreement and subsections 87(3) and (4) of the Regulations.

[9] The Officer's decision to refuse the application for permanent residence is reviewable on the standard of reasonableness; see the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190.

[10] In its recent decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the Supreme Court of Canada revisited the standard of review of administrative decisions. It said that, presumptively, such decisions are reviewable on the standard of reasonableness, with two exceptions: where legislative intent or the rule of law requires otherwise. Neither exception applies in this case.

[11] The Supreme Court of Canada confirmed the content of the standard of reasonableness, as set out in *Dunsmuir, supra*.

[12] According to the decision in *Dunsmuir, supra*, the standard of reasonableness requires that a decision be justifiable, transparent and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[13] *Vavilov, supra* has not changed the approach to be taken on questions of procedural fairness, including a breach of natural justice, which are reviewable on a standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339.

[14] I am not persuaded that the Officer committed any breach of procedural fairness.

[15] The Applicant carries the burden of submitting the evidence necessary to support a positive outcome. The Employment letter submitted by the Applicant is brief and provides as follows:

We write to introduce **Ugochukwu Onyenaturuchi Nwachukwu** to you as an employee of LAZER EXPOSURES LTD

He joined this company in July 2007 as a Production Assistant and was in January 2012 promoted to the position of **Print Production Manager**, a position he holds till date.

Please accord him all the necessary assistance he requires from you.

For further enquiries you can contact the undersigned on ...

[Emphasis in original.]

[16] The Applicant provided no evidence about his actual duties in his present job or how he could satisfy the main elements of the position for which he applied.

[17] The Applicant's arguments about the breach of subsections 87(3) and (4) of the Regulations and section 4.10 of the Agreement are not persuasive. These provisions apply where there has been a determination on the ability of an applicant to become economically established in Canada.

[18] Subsection 4.8(a) of the Agreement preserves Canada's authority to determine the admissibility of a provincial nominee with respect to all legislative requirements. The Officer refused the Applicant's application because there was insufficient evidence that the Applicant met the requirements under paragraphs 75(2) (b) and (c) of the Regulations; there was no determination of economic establishment.

[19] The authorities relied on by the Applicant, that is the decisions in *Kikeshian v. Canada (Citizenship and Immigration)*, 2011 FC 658 and *Hassan v. Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1096, do not assist the Applicant.

[20] The facts in this case are distinguishable from both *Kikeshian, supra* and *Hassan, supra*, where the decisions under review involved a determination by a visa officer of the likelihood of an applicant becoming economically established in Canada.

[21] The decision of the Officer meets the applicable standard of review and there is no basis for judicial intervention.

[22] In the result, the application for judicial review is dismissed, there is no question for certification arising.

JUDGMENT in IMM-2754-19

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

There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2754-19

STYLE OF CAUSE: UGOCHUKWU ONYENATURUCHI NWACHUKWU v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

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