

Federal Court



Cour fédérale

Date: 20210712

Docket: IMM-7575-19

Citation: 2021 FC 736

Ottawa, Ontario, July 12, 2021

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

KIT AYODEJI ODUFODUNRIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Kit Ayodeji Odufodunrin is a Nigerian citizen who applied for permanent residency as a skilled worker at the invitation of the Canadian government, following his acceptance into the express entry pool of candidates. An Immigration Officer at the High Commission of Canada in Accra, Ghana rejected his application because the Officer was not satisfied the Applicant had at least one year of continuous full-time paid work experience, or the equivalent in continuous paid

part-time work experience, in the National Occupation Classification [NOC] identified in his application – NOC 5241: Graphic Designers and Illustrators. Having regard to the job duties and responsibilities described in the letter of employment provided by the Applicant’s employer, Guaranty Trust Bank, the Officer doubted, on a balance of probabilities, that the Applicant had the work experience he declared in his application.

[2] The Applicant seeks judicial review of the Officer’s decision. Because of the insufficiency of the evidence the Applicant submitted with his skilled worker application, I am not persuaded that the Officer’s decision was unreasonable, or that there was a breach of natural justice because the Officer did not issue a procedural fairness letter, as argued by the Applicant. For the more detailed reasons that follow, I therefore dismiss the Applicant’s judicial review application.

II. Relevant Provisions

[3] See Annex “A” below for relevant legislative provisions.

III. Standard of Review

[4] The parties agree, as do I, that reasonableness is the presumptive standard of review that applies to the merits of the Officer’s decision: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10. A reasonable decision must be “based on an internally coherent and rational chain of analysis” and it must be justified in relation to the factual and legal constraints applicable in the circumstances: *Vavilov*, above at para 85. Courts

should intervene only where necessary. To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility: *Vavilov*, above at para 99. The party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Vavilov*, above at para 100.

[5] Breaches of procedural fairness in administrative contexts have been considered subject to a “reviewing exercise ... ‘best reflected in the correctness standard’ even though, strictly speaking, no standard of review is being applied”: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54. The duty of procedural fairness is context-specific, flexible and variable: *Vavilov*, above at para 77. In sum, the focus of the reviewing court is whether the process was fair and just.

IV. Analysis

A. *Preliminary Issue – Admissibility of Applicant’s Evidence*

[6] I agree with the Respondent, as argued in written and oral submissions, that the Applicant has filed materials that were not before the decision-maker in this matter and, thus, are inadmissible.

[7] In support of his skilled worker application, the Applicant submitted a letter from his employer dated February 14, 2019 that described his job level and job title as Assistant Banking Officer – In-House Creative. The applicable duties were listed as:

- Interpretation of product briefs in visual form for press and online platforms;
- Working with Human Resources, Legal, Compliance and other internal stakeholders to create engaging content for internal communication;
- Content and visual strategy for social media platforms;
- Physical product design;
- Ensuring strict adherence to brand guidelines as well as providing support where necessary.

[8] The Applicant also submitted a March 4, 2019 letter from his employer confirming certain investments. Both the February 14, 2019 employment letter and March 4, 2019 investment letter are contained in the certified tribunal record [CTR] sent to the Court by Immigration, Refugees and Citizenship Canada in compliance with Rule 17 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*. Although the Officer referred, in the decision, to the employment letter as being dated March 4, 2019, instead of February 14, 2019, in my view nothing turns on what appears to be simply a clerical error. Considering the decision holistically in the context of the CTR, I am able to infer that the Officer meant the February 14, 2019 employment letter.

[9] In his affidavit sworn on February 4, 2020, and filed with the Court as part of his application record, the Applicant deposes that in support of his application for a permanent resident [PR] visa, he submitted several documents that are attached as Exhibit “A” including a copy of employment and promotion letters issued by his employer, Guaranty Trust Bank. These include a letter dated March 5, 2013 describing the Applicant’s admission into a trainee program at the bank for possible promotion, and a second letter dated May 28, 2015 describing the

Applicant's promotion to the level of Assistant Banking Officer, effective June 1, 2015, based on his performance.

[10] The March 5, 2013 and May 28, 2015 letters, however, are not contained in the CTR. Because the parties agree, as do I, that these letters "go to no issue," I, therefore, assign them no weight.

[11] In addition, the Applicant filed a further affidavit sworn on April 28, 2021. I agree with the Respondent that paragraphs 9-12 and 14-17 of the further affidavit contain either evidence that was not before the decision-maker, or arguments and, therefore, cannot be considered: *Dhaliwal v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 157 at para 40. I also find that none of the evidence or arguments contained in these paragraphs falls within the admissibility exceptions described in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20. I thus find paragraphs 9-12 and 14-17 of the Applicant's further affidavit sworn on April 28, 2021 inadmissible.

B. *The Officer's Decision is Reasonable*

[12] I am not persuaded that the Officer's decision regarding the Applicant's work experience is unreasonable, nor is it the role of the Court, in the context of judicial review, to reweigh the evidence that was before the decision-maker: *Vavilov*, above at para 125.

[13] The Officer's decision turned on sufficiency of evidence: "I am not satisfied that you meet the requirement(s) under paragraph a) [of subsection 75(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-27] because you have not submitted sufficient evidence... ; [b]ased on the duties and responsibilities in the provided LOE [letter of employment], I am not satisfied on a balance of probabilities that you have work experience in your declared primary NOC."

[14] The letter of employment dated February 14, 2019 was the only piece of evidence before the Officer to assess whether the Applicant had at least one year of continuous full-time (30 hours/week) work experience or the equivalent in continuous part-time work in the declared NOC 5241 – Graphic Designers and Illustrators. This also is the only relevant letter of employment before the Court.

[15] The Applicant argues that the duties applicable to NOC 5241 can be reconciled with those listed in the letter of employment and provides, in his written submissions before the Court, a comparative chart. See Annex "B" below for the main duties of graphic designers and illustrators, according to NOC 5241. The employment letter duties are set out in one column, and those that, in the Applicant's view, are the corresponding NOC 5241 duties are set out in the second column in the chart. The Applicant contends that his employer, Guaranty Trust Bank, worded his job description differently from NOC 5241. The Officer's focus, therefore, should have been on the similarities in both sets of duties, as set out in the chart, rather than the differences in the wordings of the duties. The Applicant invites the Court to come to a different

conclusion. In my view, the Court must decline to do so to avoid engaging in an exercise best characterized as reweighing the evidence.

[16] Although the Officer's reasons are brief, nonetheless they are sufficient to enable the Court to understand the basis for the conclusion, having regard to the evidence submitted with his application, that the Applicant has not met the applicable regulatory requirements for permanent residency as a skilled worker. Further, the onus was on the Applicant to put together a convincing application to satisfy the Officer that he met these requirements and anticipate possible adverse inferences inherent in the evidence: *Singh v Canada (Citizenship and Immigration)*, 2012 FC 526 [*Singh*] at para 52. There is no evidence whether the Applicant had any control or influence over the wording used by his employer to describe his duties in the letter of employment. Nonetheless, the Applicant was responsible for the content of his application and other supporting documentation.

C. *There are no Breaches of Procedural Fairness or Natural Justice*

[17] I also am not persuaded that there has been any breach of procedural fairness or natural justice, in the circumstances of the case before me.

[18] The Applicant argues that his job duties fit substantially in the chosen NOC category, although not completely, and the grey area of functions should have resulted in a procedural fairness letter so that he could respond to the Officer's concerns. The Officer was not obligated, however, to seek clarification from the Applicant or his employer: *Ekama v Canada (Citizenship*

and Immigration), 2020 FC 105 [*Ekama*] at para 43; *Sharma v Canada (Citizenship and Immigration)*, 2009 FC 786 at para 8.

[19] Further, “[w]hat applicants can reasonably anticipate is that officers will bring their own experience and expertise to bear upon the application and will draw inferences and conclusions from the evidence that is placed before them without necessarily alerting applicants on these matters”: *Singh*, above at para 52. I find this principle commensurate with the onus on the Applicant to have put his best case forward in his skilled worker application.

[20] In addition, the Applicant’s credibility is not in issue. Again, it is a matter of sufficiency of the Applicant’s evidence. The Officer looks to the information that only the employer can supply to assess the Applicant’s evidence in the context of the mandated requirements: *Ekama*, above at para 44.

V. Conclusion

[21] For the above reasons, I therefore dismiss the Applicant’s judicial review application.

[22] Neither party proposed a serious question of general importance for certification and I find that none arises in the circumstances.

JUDGMENT in IMM-7575-19

THIS COURT'S JUDGMENT is that the Applicant's application for judicial review is dismissed; and there is no question for certification.

"Janet M. Fuhrer"

Judge

Annex “A”: Relevant Provisions***Immigration and Refugee Protection Act (S.C. 2001, c. 27)***

<p>Immigration to Canada</p> <p>Instructions</p> <p>10.3 (1) The Minister may give instructions governing any matter relating to the application of this Division, including instructions respecting</p> <p>...</p> <p>(e) the criteria that a foreign national must meet to be eligible to be invited to make an application;</p> <p>...</p> <p>(h) the basis on which an eligible foreign national may be ranked relative to other eligible foreign nationals;</p> <p>...</p> <p>Requirements</p> <p>Application before entering Canada</p> <p>11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.</p> <p>Visa or other document not to be issued</p> <p>11.2 (1) An officer may not issue a visa or other document in respect of an application for permanent residence to a foreign national who was issued an invitation under</p>	<p>Immigration au Canada</p> <p>Instructions</p> <p>10.3 (1) Le ministre peut donner des instructions régissant l’application de la présente section, notamment des instructions portant sur :</p> <p>...</p> <p>e) les critères que l’étranger est tenu de remplir pour pouvoir être invité à présenter une demande;</p> <p>...</p> <p>h) la base sur laquelle peuvent être classés les uns par rapport aux autres les étrangers qui peuvent être invités à présenter une demande;</p> <p>...</p> <p>Formalités</p> <p>Visa et documents</p> <p>11 (1) L’étranger doit, préalablement à son entrée au Canada, demander à l’agent les visa et autres documents requis par règlement. L’agent peut les délivrer sur preuve, à la suite d’un contrôle, que l’étranger n’est pas interdit de territoire et se conforme à la présente loi.</p> <p>Visa ou autre document ne pouvant être délivré</p> <p>11.2 (1) Ne peut être délivré à l’étranger à qui une invitation à présenter une demande de résidence permanente a été formulée en vertu de la section 0.1 un visa ou autre</p>
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<p>Division 0.1 to make that application if — at the time the invitation was issued or at the time the officer received their application — the foreign national did not meet the criteria set out in an instruction given under paragraph 10.3(1)(e) or did not have the qualifications on the basis of which they were ranked under an instruction given under paragraph 10.3(1)(h) and were issued the invitation.</p>	<p>document à l'égard de la demande si, lorsque l'invitation a été formulée ou que la demande a été reçue par l'agent, il ne répondait pas aux critères prévus dans une instruction donnée en vertu de l'alinéa 10.3(1)e) ou il n'avait pas les attributs sur la base desquels il a été classé au titre d'une instruction donnée en vertu de l'alinéa 10.3(1)h) et sur la base desquels cette invitation a été formulée.</p>
<p>Selection of Permanent Residents</p>	<p>Sélection des résidents permanents</p>
<p>Economic immigration</p>	<p>Immigration économique</p>
<p>12 (2) A foreign national may be selected as a member of the economic class on the basis of their ability to become economically established in Canada.</p>	<p>12 (2) La sélection des étrangers de la catégorie « immigration économique » se fait en fonction de leur capacité à réussir leur établissement économique au Canada.</p>

Immigration and Refugee Protection Regulations, SOR/2002-27

<p>Federal Skilled Worker Class</p>	<p>Travailleurs qualifiés (fédéral)</p>
<p>Skilled workers</p>	<p>Qualité</p>
<p>75 (2) A foreign national is a skilled worker if</p> <p>(a) within the 10 years before the date on which their application for a permanent resident visa is made, they have accumulated, over a continuous period, at least one year of full-time work experience, or the equivalent in part-time work, in the occupation identified by the foreign national in their application as their primary occupation, other than a restricted occupation, that is listed in Skill Type 0 Management Occupations or Skill Level A or B</p>	<p>75 (2) Est un travailleur qualifié l'étranger qui satisfait aux exigences suivantes :</p> <p>a) il a accumulé, de façon continue, au moins une année d'expérience de travail à temps plein ou l'équivalent temps plein pour un travail à temps partiel, au cours des dix années qui ont précédé la date de présentation de sa demande de visa de résident permanent, dans la profession principale visée par sa demande appartenant au genre de compétence 0 Gestion ou aux niveaux de compétence A ou B de la matrice de la <i>Classification nationale des professions</i>,</p>

<p>of the <i>National Occupational Classification</i> matrix</p> <p>Minimal requirements</p> <p>(3) If the foreign national fails to meet the requirements of subsection (2), the application for a permanent resident visa shall be refused and no further assessment is required.</p>	<p>exception faite des professions d'accès limité</p> <p>Exigences</p> <p>(3) Si l'étranger ne satisfait pas aux exigences prévues au paragraphe (2), l'agent met fin à l'examen de la demande de visa de résident permanent et la refuse.</p>
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Annex “B”: NOC 5241 - Main Duties of Graphic Designers and Illustrators

Graphic designers

- Consult with clients to establish the overall look, graphic elements and content of communications materials in order to meet their needs
- Determine the medium best suited to produce the desired visual effect and the most appropriate vehicle for communication
- Develop the graphic elements that meet the clients' objectives
- Prepare sketches, layouts and graphic elements of the subjects to be rendered using traditional tools, multimedia software and image processing, layout and design software
- Estimate cost of materials and time to complete graphic design
- Use existing photo and illustration banks and typography guides or hire an illustrator or photographer to produce images that meet clients' communications needs
- Establish guidelines for illustrators or photographers
- Co-ordinate all aspects of production for print, audio-visual or electronic materials, such as Web sites, CDs and interactive terminals
- Co-ordinate sub-contracting
- Work in a multidisciplinary environment
- Supervise other graphic designers or graphic arts technicians.

Illustrators

- Consult with clients to determine the nature and content of illustrations in order to meet their communications needs
- Develop and produce realistic or representational sketches and final illustrations, by hand or using computer-assisted design (CAD) software, for printed materials such as books, magazines, packaging, greeting cards and stationery
- Assist in developing storyboards for electronic productions such as multimedia, interactive and digital products and television advertising and productions
- Produce 2-D and 3-D animated drawings or computer illustrations
- May adapt existing illustrations.

FEDERAL COURT
SOLICITORS OF RECORD

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