

Federal Court



Cour fédérale

Date: 20220912

Docket: IMM-1012-21

Citation: 2022 FC 1283

Toronto, Ontario, September 12, 2022

PRESENT: Madam Justice Go

BETWEEN:

RAKIB MAHMUD JAMAL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is a judicial review of a decision of an Immigration Officer [Officer] of the High Commission of Canada in Singapore denying Mr. Rakib Mahmud Jamal [Applicant] his Federal Skilled Workers [FSW] permanent resident visa application on May 10, 2016 [Decision]. The Officer was not satisfied that the Applicant has performed all of the essential duties listed under National Occupation Classification [NOC] 1114 – Other financial officers.

[2] The Applicant is a citizen and resident of Bangladesh. In 2008, he started working as an officer at Standard Chartered Bank [SCB] in Bangladesh and then as an assistant manager. In 2012, the Applicant started working with HSBC Bank in Bangladesh as a trade mid office associate and then as an assistant manager trade mid office.

[3] In December 2014, the Applicant submitted his application for permanent residence under the FSW program, claiming work experience under NOC 1114.

[4] On March 23, 2015, a case processing agent from Citizenship and Immigration Canada confirmed that his application received a positive determination of eligibility to be processed.

[5] A year later, in the Decision, the Officer stated they were not satisfied that the Applicant met the requirements for a skilled worker under s. 75(2) of the *Immigration and Refugee Protection Regulations* (SOR /2002-227) [IRPR] and that his application has been refused.

[6] By an order dated May 19, 2022, this Court granted the Applicant an extension of time to file his Application for Leave and for Judicial Review. However, due to the passage of time, the Applicant's physical file was destroyed by the Tribunal. The Certified Tribunal Record does not contain many of the documents submitted by the Applicant in support of his FSW application. The parties agree to rely on the Application Record to make their submissions on the merits of this matter.

[7] The Applicant argues that the Decision was procedurally unfair because the Officer made a credibility finding, to which he was given no opportunity to respond. The Applicant also submits that the Decision was unreasonable because he performed several duties described in NOC 1114 and because material evidence demonstrating the Applicant met the requirements was either ignored or misapprehended.

[8] For the reasons set out below, I find the Decision unreasonable and I grant the application.

II. Issues and Standard of Review

[9] The Applicant argues that (1) the decision was procedurally unfair and that no standard of review applies to questions of procedural fairness; and (2) the decision is unreasonable as material evidence demonstrating that the Applicant met the requirements were either ignored or misapprehended.

[10] The Respondent disputes the Applicant's claims but makes no submissions on the standard of review.

[11] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 85). The onus is on the Applicant to demonstrate that the decision is unreasonable (*Vavilov* at para 100).

III. Analysis

[12] The Applicant raises two arguments; I am persuaded by one of them, namely, the Officer unreasonably concluded that *none* of the duties that the Applicant performed in his employment history “is anywhere mentioned in the main duties for NOC 1114.”

[13] I am mindful, as the Respondent points out, that it is not the role of the Court to reweigh the evidence: *Vavilov* at para 125 and *Odufodunrin v Canada (Citizenship and Immigration)*, 2021 FC 736 at para 15. Further, deference must be afforded to the assessment of an Applicant’s job experience and its comparison to the NOC job description: *Kumar v Canada (Citizenship and Immigration)*, 2019 FC 367 at para 20. However, in this case, having reviewed the Decision and the Global Case Management System [GCMS] notes that accompanied it, I agree with the Applicant that the Officer’s conclusion that none of the Applicant’s responsibilities matched those in NOC 1114 was unintelligible and lacked transparency.

[14] Other than listing the relevant provisions under the *IRPR* and the *Immigration and Refugee Protection Act* (S.C. 2001, c. 27), the Decision provided no insight into how the Officer came to their conclusion. The GCMS notes offered only slightly more details. The relevant portion of the GCMS notes is reproduced below:

[The Applicant] provides information to show that he is working as an assistant manager mid office, Trade for HSBC. He earlier worked in the same office but as an associate and earlier still was an officer and assistant Manager with Standard Chartered Bank. In his schedule 3 he indicates that in all of his work his duties were those set out, in part, in NOC1114, Other Financial Officer. Taking his most recent job first, his position duties are not described in the NOC in either the lead description or under main duties. Instead, it appears

to be more like NOC0122 – Banking manager. The same would hold true with his second job at Standard Chartered. His first banking job with Standard Chartered clearly states that he worked in Trade Services and his work in HSBC was also initially in Global Trade and Receivables. None of this work is anywhere mentioned in the main duties for NOC1114 and may more logically fall under the above mentioned managerial title or NOC 1434, banking and other financial clerk in the case of his earliest financial services position. On a balance of probabilities, I cannot be satisfied on the basis of the information before me that PA has performed the lead statement and a substantial number of the main duties, including all of the essential duties, of NOC 1114. I cannot be satisfied that PA has the required work experience to have met the MI reqs.

[15] The Decision and GCMS notes do not explain how and why the Officer concluded the Applicant’s duties “are not described in the NOC”, or why they match NOC 0122 or NOC 1434. As such, both the Decision and GCMS notes contained conclusory statements with little reference to the evidence.

[16] As part of his FSW application, the Applicant submitted employment letters from SCB as well from as HSBC. These letters described the Applicant’s job duties while employed with each of these financial institutions.

[17] The Respondent argues that the HSBC letter clearly underscores that the Applicant was employed in a role that was in no way related to the job descriptions in NOC 1114. The Respondent argues that the Applicant tries to argue that he fits under the description of “financial planner” while the evidence does not demonstrate that conclusion.

[18] Given the lack of analysis provided in the Decision and the GCMS notes, I am unable to discern whether the Respondent’s submission was in fact the basis of the Officer’s conclusion.

[19] The Respondent further argues the Officer went into individual job duties in providing the reasons for their assessment. With respect, I disagree. The Officer's minimal analysis as set out in the GCMS notes does not indicate which individual job duties, if any, they assessed.

[20] In his written submission to this Court, the Applicant compared his duties at SCB and HSBC, respectively, to some of the duties outlined in NOC1114. The Applicant points to at least two duties under NOC 1114 that he had performed in his position at SCB and at least five duties in his HSBC position, and argues that it was unreasonable for the Officer to conclude, "[n]one of this work is anywhere mentioned in the main duties for NOC1114."

[21] These comparisons include the Applicant's duties at SCB of ensuring "processing payments, credit, and other trade finance related transactions", and "issuance of documentary credits in accordance with the local regulations/policies" which the Applicant submits correspond to the NOC 1114 duties of "[arranging] for the purchase and sale of financial products and investments depending on the licence held, and monitor[ing] the portfolio to ensure its quality and profitability." Similarly, while at HSBC, the Applicant's duties included "[providing] advisory services on critical trade issues, trade products, trade finance, regulatory framework & trade structures to clients", matching that of "[developing] personal financial plans for clients..." under NOC 1114.

[22] It is not the role of this Court to assess whether the Applicant's duties at his previous positions match those in NOC 1114. The Applicant's submission underscores, however, the lack

of transparency and justification of the Officer's conclusion that none of the work the Applicant performed in his employment history "is anywhere mentioned in the main duties for NOC 1114."

[23] This is particularly problematic because, as the Applicant points out, the NOC 1114 category that was in place at the time was wide-ranging and included "professional occupations in finance not elsewhere classified" that are "employed by banks, trust companies, investment firms and governments...." The Applicant submits, and I agree, that nowhere in the Decision did the Officer acknowledge the unique and wide-ranging nature of NOC 1114 and, that with little justification, the Officer unreasonably and categorically concluded that the Applicant's years of experience in the banking industry did not meet the requirements.

[24] As the Officer found that the Applicant did not meet any of the NOC 1114 requirements, I need not consider *A'Bed v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1027, and other cases that interpreted what constitutes "substantial number" found in s.75(2)(c) of the *IRPR*.

[25] In conclusion, I agree with the Applicant that the refusal of his FSW application was unreasonable and the Decision should be set aside on this basis.

IV. Conclusion

[26] The application for judicial review is granted.

[27] There is no question for certification.

JUDGMENT in IMM-1012-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1012-21

STYLE OF CAUSE: RAKIB MAHMUD JAMAL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

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JUDGMENT AND REASONS: GO J.

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