



IMM-1128-96

BETWEEN:                   DINAH CHEPKWONY,  
  
Applicant,  
  
AND:                        MINISTER OF CITIZENSHIP and IMMIGRATION  
CANADA,  
  
Respondent.

REASONS FOR ORDER and ORDER

DENAULT J.:

The applicant is seeking judicial review of a decision of a visa officer in Buffalo, N.Y., dated March 12, 1996, refusing her application for permanent residence on the ground that she did not meet the requirements for the occupation she stated on her application, Cook, Institution (6121-122). The visa officer also did not approve the applicant's application for permanent residence under a heading that would have been more favourable to her, the occupation of Cook, Third (6121-134).

The visa officer refused the applicant's application because she did not have enough units of assessment, as required by the *Immigration Regulations, 1978* (the Regulations) and was therefore a member of an inadmissible class of persons within the meaning of paragraph 19(2)(d) of the *Immigration Act* (the Act).

In support of the application, counsel for the applicant made two arguments: (a) the visa officer erred in assessing the applicant's Specific Vocational Preparation (SVP) as a Cook, Institution, by failing to take into account the experience she had acquired in institutions before submitting her application for permanent residence; (b) the visa officer erred by assessing the applicant in the alternative as a Cook, Third, an occupation which counsel says was not on the Occupational Demand List - 1993.

The facts in this case, which are quite simple, are set out in the affidavits of the applicant and the visa officer. It appears from the decision that the applicant was first assessed as a Cook, Institution; however, her application was refused on that basis since when she was examined it was apparent that she had completed only one nutrition course, which lasted several months, in 1969, and that she therefore did not have enough vocational training to be classified in this occupation. Since her training had lasted only for a period of between 30 days and three months, according to Appendix B for Specific Vocational Preparation (SVP), she was not eligible under this heading.

The standard for judicial review that applies in a case like this was stated in *Hajariwala v. Canada*, [1989] 2 F.C. 79. In order for his or her application for judicial review to be successful, what an applicant must satisfy the judge of is not that a different decision from the one reached by the visa officer could have been made; rather, "[t]here must be either an error of law apparent on the face of the record, or a breach of the duty of fairness appropriate to this essentially administrative assessment".

In order to determine whether an immigrant will be able to become successfully established in Canada, a visa officer must assess each of the factors listed in Column I of Schedule I, as provided in paragraph 8(1)(a) of the *Immigration Regulations, 1978* (SOR/92-133). Thus an immigrant who submits an application for an immigrant visa must obtain 70 units of assessment (subparagraph 9(1)(b)(i) of the Regulations). Schedule I contains 9 assessment factors, one of which is Specific Vocational Preparation (SVP). The criteria for assessing this factor are measured by the amount of formal professional, vocational, apprenticeship, in-plant or on-the-job training specified in the *Canadian Classification and Dictionary of Occupations* (CCDO). Given that the CCDO assigns a value of 7 for the SVP factor for the occupation of Cook, Institution (6121-122), the period of training needed for this occupation must be at least two to four years. If an applicant meets this requirement, he or she is then given 15 units of assessment for SVP.

In the instant case, the evidence establishes that the applicant took only one 3 month training course in nutrition in 1969. The visa officer therefore determined that she had insufficient specific vocational preparation and refused her application on that basis. According to counsel for the applicant, the visa officer thereby committed an error by failing to take into account the experience she had acquired in Kenya where she was an instructor in home economics from 1977 to 1983 and where she had worked as an institutional cook in a hospital institution

in Eldoret, Kenya. In addition, she has apparently worked in the same capacity in a residence in Montreal since July 1994.

It is important to note that when a visa officer examines an applicant's Specific Vocational Preparation, he or she must take into account the training acquired through professional, vocational, apprenticeship, in-plant or on-the-job training, as set out in Appendix B, and not simply work experience. Given that the onus is on the applicant to submit the information that is pertinent to her application and to establish that she meets the requirements of the Canadian legislation, where she has failed to establish that she was in training during the period of work on which she relied, there is nothing that would suggest, on this point, that the visa officer committed any error that would justify this Court in intervening.

The second argument made by counsel for the applicant raises a problem in that it appears *prima facie* to be contrary to the interests of the applicant. I shall explain.

No doubt the visa officer was correct in examining the applicant's application under a heading that would have been more favourable to her and for which she had the qualifications.<sup>1</sup> In the instant case, after refusing the application as a Cook, Institution, the visa officer assessed it under the heading Cook, Third (6121-134). Under that heading, she awarded her the maximum of 10 points for the Occupational Demand factor. Counsel for the applicant contends that this was an error: she should have awarded her no points (0), given that this occupation does not appear on the Occupational Demand List - 1993.

The occupation of Cook, Third, does not in fact appear on that list. In her affidavit, the visa officer explained why she awarded the applicant 10 points for this factor:

7.2 With respect to occupational demand, as there were ten units for demand for the occupation Cook, Third, at the time the application was received and having remained the same at the time of the interview, I awarded ten (10) units of assessment.

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<sup>1</sup> *Saggu v. Canada (Minister of Citizenship and Immigration)*, [1994] 87 F.T.R. 137


The assessment criteria for that factor provide: "Units of assessment shall be awarded on the basis of employment opportunities available in Canada in the occupation that the applicant is qualified for and is prepared to follow in Canada, such opportunities being determined by taking into account labour market demand on both an area and national basis".

The Occupational Demand List sets out the occupations that are in demand in Canada. Given that the occupation Cook, Third (6121-134) does not appear on that list, I find that the visa officer erred in awarding the applicant ten units of assessment. In short, instead of being awarded 55 units of assessment, the applicant should have received only 45 points. Having regard to that error, counsel for the applicant believes that the decision should be set aside and the matter referred back to a visa officer for reassessment.

I am not of that opinion. I find that the application to set aside the decision should not be allowed. What is involved in such an application is the exercise of discretion by the Court. In the instant case, it is not in either the interests of justice or the applicant's interest to reduce the number of units of assessment awarded to her, when it is apparent that she did not have the number of units required to be entitled to a visa, which a new examination would only confirm.

For these reasons, the application for judicial review is dismissed.

OTTAWA, le 20 mai 1987

  
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J.F.C.C.

Certified true translation

  
Christiane Delon