

Date: 20070807

Docket: IMM-2647-06

Citation: 2007 FC 818

Ottawa, Ontario, August 7, 2007

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

SAIRABEGUM DHANJI NATHOO

Applicant

and

**THE MINISTER OF
CITIZENSHIP & IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Ms. Sairabegum Dhanji Nathoo is an assistant manager at the Morogogo Hotel in Tanzania. She has been offered a similar job at the Holiday Inn Express in Calgary, Alberta. When she applied for permanent residence in Canada as a skilled worker, a visa officer in Nairobi, Kenya turned her down. The officer was not persuaded that Ms. Nathoo could perform the job she had been offered.

[2] Ms. Nathoo argues that the officer's conclusion was unsupported by the evidence before him. I agree and, therefore, must allow this application for judicial review.

I. Issue

1. Was the officer's decision supported by the evidence?

II. Analysis

[3] Ms. Nathoo's work experience as Assistant Food and Beverage Manager at the Morogogo Hotel lines up with the responsibilities of two categories of skilled workers under Canada's National Occupation Classification (NOC) – Restaurant and Food Service Managers (0631) and Food Service Supervisors (6212). Her experience also corresponds with the expectations of a Food Service Supervisor at the Holiday Inn Express, according to the letter of offer from the President of the hotel (which was confirmed by Human Resources and Skills Development Canada).

[4] However, the officer was not satisfied that Ms. Nathoo could do the job offered to her. He noted that she had not had direct contact with the putative employer, knew little about the Holiday Inn Express, (e.g. its client base, number of restaurants, type of food, or the number of employees she would supervise), and knew nothing about the hotel industry in Canada. As a result, the officer gave Ms. Nathoo no credit for arranged employment and scored her application at 63 points out of 100. Had her arranged employment been recognized, Ms. Nathoo would have scored 73, and surpassed the threshold of success (67 points).

[5] In my view, the officer took into account extraneous factors. There was nothing in the NOC, or in the description of the job Ms. Nathoo was being offered, that required her to know in advance all of the various things cited by the officer. She was to manage a restaurant, not to run or to market

the hotel as a whole. As for contact with the hotel, she had indirect contact through her immigration agent, her brother, a staffing consultant, and her mother, who resides in Calgary and is acquainted with the President of the hotel. This degree of contact does not strike me as being so inadequate as to deny Ms. Nathoo credit for the position she was offered.

[6] I will allow this application for judicial review and order a reconsideration of Ms. Nathoo's application for judicial review by another officer. Neither party proposed a question for certification and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT IS THAT:

1. The application for judicial review is allowed. The matter is referred back to another officer for reconsideration;
2. No questions of general importance are stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2647-06

STYLE OF CAUSE: SAIRABEGUM DHANJI NATHOO v. THE
MINSITER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: June 12, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: August 7, 2007

APPEARANCES:

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Marina Stefanovic FOR THE RESPONDENT

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