

Date: 20080414

Docket: IMM-856-07

Citation: 2008 FC 472

Ottawa, Ontario, April 14, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**SURESHKUMAR RAJARATNAM and
USHAYINI SHANMUGARAJAH**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This is an application for judicial review of a decision by a Visa Officer (Officer) refusing the Applicant's application for permanent resident visa as a member of the transitional federal skilled worker class. The decision was based on a conclusion that the Applicant had not met the requirements under the *Immigration Regulations 1978*, SOR/78-172 (the Former Regulations) or

the requirements under the current *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations).

II. FACTS

[2] The Applicant is a citizen of Sri Lanka who filed his first application for permanent residence visa in September 2001, which was followed up in July of 2003 with a new application in which the Applicant sought a visa on the basis of the economic class “Federal Skilled Workers”. He requested assessment under the categories of Financial Analyst, Credit Manager, Financial Manager/Financial Controller and Accountant.

[3] The Applicant had studied basic accounting for one year and passed a preliminary examination with the Institute of Chartered Accountants. He had completed the next level to obtain a certificate or licence but had not obtained a bachelor’s degree in accounting.

[4] The selection interview was held in April 2004 in Jamaica and, following the interview, the Officer advised the Applicant that he did not pass the selection. The Officer permitted the Applicant to submit additional evidence and the Applicant was subsequently advised that his application had been refused.

[5] This judicial review concerns only a challenge to the Officer’s finding in respect of the position of Financial Analyst, the employment requirements for which are described as follows:

- (a) A bachelor’s degree in commerce, business administration or economics.

- (b) On-the-job training and industry courses and programs are usually required.
- (c) The Chartered Financial Analyst (CFA) designation, available through a program conducted by the Institute of Chartered Financial Analysts in the United States, may be required by some employers.

[6] The issue in this judicial review is whether the Officer properly considered the employment requirements in respect of the position of Financial Analyst.

III. ANALYSIS

[7] In accordance with the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, there are only two standards of review, correctness and reasonableness. The principal issue before the Court is one of interpretation of the *National Occupational Classification*, which is not a statutory instrument but an internal working guideline of the Respondent. As such, subject to issues of procedural fairness, legitimate expectation and other principles of public law, the *National Occupational Classification* is not legally binding. Therefore, the task of the Court is not to give an interpretation of law but to assess the reasonableness of the Officer's decision in light of the evidence and rationale stated.

[8] The Applicant's argument turns on the phrase "are usually required" as found in the above-quoted provision from the *National Occupational Classification* – Financial Analyst. It was the Applicant's position that the words "are usually required" modifies both the requirement for a bachelor's degree as well as training and courses and that the employment requirements for

Financial Analyst are a bachelor's degree and/or on-the-job training, and industry courses and programs.

[9] It is apparent from the Officer's notes that he considered, in respect of the position of Financial Analyst, that an applicant was required to have a bachelor's degree and training, and courses may be an additional component or requirement, in order to satisfy the employment requirements. The Applicant would therefore fail under the Officer's interpretation because he did not possess a bachelor's degree.

[10] With respect to this issue of interpretation, as the *National Occupational Classification* is a matter of policy and the Officer's interpretation is one which is reasonably open to him to make, I can find no error in his conclusion.

[11] In my view, a *National Occupational Classification* provision can be read as the Officer has done. Comparing the accompanying provisions in respect of accountants, chartered accountants require a university degree and completion of training programs, as well as several years of on-the-job training. This is to be contrasted with the position of a Financial Analyst who, according to the Officer's interpretation, requires a degree but would not necessarily require on-the-job training and university courses. This is a reasonable interpretation and basis for the decision. Therefore, on this issue, I can find no reason for judicial intervention.

[12] The Applicant had limited this judicial review to the assessment performed under the former Regulations and did not dispute that he would otherwise not have qualified for a visa under the current Regulations. The Applicant's application was assessed under both regimes and the Officer found that the Applicant would not qualify under either. The Court need only consider the decision in respect of the earlier regime.

IV. CONCLUSION

[13] In my view, this application for judicial review must be dismissed. There is no question for certification, and the parties concur with that conclusion.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-856-07

STYLE OF CAUSE: SURESHKUMAR RAJARATNAM and USHAYINI SHANMUGARAJAH

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 8, 2008

REASONS FOR JUDGMENT AND JUDGMENT: Phelan J.

DATED: April 14, 2008

APPEARANCES:

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