

**Date: 20081006**

**Docket: IMM-2969-07**

**Citation: 2008 FC 1124**

**Ottawa, Ontario, October 6, 2008**

**PRESENT: The Honourable Madam Justice Dawson**

**BETWEEN:**

**MINALBEN BHATT**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] A visa officer rejected Ms. Bhatt's application for permanent residence as a member of the federal skilled workers class. This application for judicial review of that decision is dismissed because the officer's assessment of Ms. Bhatt's work experience and occupational factor is not unreasonable, and there is no appearance of bias or unfairness.

[2] Ms. Bhatt's application for permanent residence was assessed under the *Immigration Act*, R.S.C. 1985, c. I-2 (former Act) and its associated regulations, the *Immigration Regulations, 1978*,

SOR/78-172 (former Regulations). It was also assessed under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) and its associated regulations, the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations).

[3] When assessing Ms. Bhatt's application under the former Act and former Regulations, the officer awarded Ms. Bhatt zero units of assessment in the category of work experience. This was fatal to her application because subsection 11(1) of the former Regulations required an applicant to receive at least one unit of assessment for experience (unless the applicant had arranged employment, which Ms. Bhatt did not).

[4] When assessing the application under the current legislation, the visa officer found that Ms. Bhatt had failed to satisfy him that she had performed a substantial number of the main duties of her claimed occupation of paralegal (NOC 4211), including the essential duties. This was fatal to her application as a result of the application of subsections 75(2) and (3) of the Regulations. Section 75 of the Regulations is set out in the appendix to these reasons.

[5] Ms. Bhatt asserts that both assessments are unreasonable because the officer ignored documents she provided that established her work experience. Ms. Bhatt had provided letters from two law offices where she says she has worked, and which set out the duties she says she performed over the period from June 1999 to May 2007.

[6] Ms. Bhatt was required to attend an interview in order to verify her employment and experience because the letters she provided from her employers did not appear to be reliable. The

Computer Assisted Immigration Processing System (CAIPS) notes record the following in respect of the interview:

PA states that she is responsible for maintaining drafts and dealing with clients. I asked PA to explain her duties in detail. PA has not responded to my question. Do you understand my question? Yes. Do you need an interpreter? No. What do you do at work? No answer. Please explain your job duties to me? No answer. I explained to PA that if she did not answer my questions, I was going to have to refuse her application. PA states that she understands. Please explain your job duties to me? No answer. Please tell me what you do at work? No answer. I stopped the interview and requested an interpreter as I am not sure that PA understands my questions. Interview resumed in Hindi. PA states that she understands the interpreter.

Please explain your job duties? I work 10-5 and I joined in 1999. I'm working for Mr. Shah since 2006 as my previous employer went to Canada. I give legal advice to my clients. I work in civil matters pertaining to different types of contracts. I noticed that PA had a copy of the NOC 4211 (legal assistant) and appeared to be reading from it. I asked PA for the NOC document. What type of contracts do you prepare? No answer. PA now states that she provides advice regarding property contracts. What type of advice do you provide? Pause. I work with my seniors learning and working. Why are you having so much difficulty answering questions about your work? No answer. PA then states that she is nervous. Why? No answer.

[7] The visa officer filed an affidavit in this proceeding in which he swore that the CAIPS notes accurately reflect the questions posed to Ms. Bhatt and her answers. The officer was not cross-examined on that affidavit. I accept, therefore, that the CAIPS notes are evidence of the facts to which they refer. See: *Tajgardoon v. Canada (Minister of Citizenship and Immigration)*, [2001] 1 F.C. 591 (T.D.). To the extent the visa officer's evidence conflicts with Ms. Bhatt's, I prefer the evidence of the visa officer because it is consistent with, and confirmed by, the CAIPS notes.

[8] The visa officer was not bound to accept the truth of the content of the letters provided by Ms. Bhatt. The deficiency in the form of the letter identified by the officer, together with Ms. Bhatt's inability to answer questions relating to her work experience and the fact that during her interview she appeared to be reading from the NOC statement of employment duties for a paralegal, fully support the officer's conclusion.

[9] I am satisfied that the decision is reviewable on the standard of reasonableness. See: *Choi v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 734 at paragraph 12. The officer's reasons are justified, transparent and intelligible. The decision falls within the range of acceptable outcomes that are defensible in fact and law. The decision is, therefore, reasonable.

[10] There is no appearance of unfairness or bias.

[11] The application for judicial review will be dismissed.

[12] Counsel posed no question for certification, and I agree that no question arises on this record.

### **JUDGMENT**

#### **THIS COURT ORDERS AND ADJUDGES that:**

1. The application for judicial review is dismissed.

“Eleanor R. Dawson”

---

Judge

**APPENDIX**

Section 75 of the Regulations reads as follows:

75(1) For the purposes of subsection 12(2) of the Act, the federal skilled worker class is hereby prescribed as a class of

75(1) Pour l’application du paragraphe 12(2) de la Loi, la catégorie des travailleurs qualifiés (fédéral) est une

persons who are skilled workers and who may become permanent residents on the basis of their ability to become economically established in Canada and who intend to reside in a province other than the Province of Quebec.

catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada, qui sont des travailleurs qualifiés et qui cherchent à s'établir dans une province autre que le Québec.

(2) A foreign national is a skilled worker if

(2) Est un travailleur qualifié l'étranger qui satisfait aux exigences suivantes :

(a) within the 10 years preceding the date of their application for a permanent resident visa, they have at least one year of continuous full-time employment experience, as described in subsection 80(7), or the equivalent in continuous part-time employment in one or more occupations, other than a restricted occupation, that are listed in Skill Type 0 Management Occupations or Skill Level A or B of the National Occupational Classification matrix;

(b) during that period of employment they performed the actions described in the lead statement for the occupation as set out in the occupational descriptions of the National Occupational Classification;

and

(c) during that period of employment they performed a substantial number of the main duties of the occupation as set out in the occupational descriptions of the National Occupational Classification, including all of the essential duties.

a) il a accumulé au moins une année continue d'expérience de travail à temps plein au sens du paragraphe 80(7), ou l'équivalent s'il travaille à temps partiel de façon continue, au cours des dix années qui ont précédé la date de présentation de la demande de visa de résident permanent, dans au moins une des professions appartenant aux genre de compétence 0 Gestion ou niveaux de compétences A ou B de la matrice de la Classification nationale des professions — exception faite des professions d'accès limité;

b) pendant cette période d'emploi, il a accompli l'ensemble des tâches figurant dans l'énoncé principal établi pour la profession dans les descriptions des professions de cette classification;

c) pendant cette période d'emploi, il a exercé une partie appréciable des fonctions principales de la profession figurant dans les descriptions des professions de cette classification, notamment toutes les fonctions essentielles.

(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.

(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.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2969-07

**STYLE OF CAUSE:** MINALBEN BHATT, Applicant

and

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION, Respondent

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 30, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** DAWSON, J.

**DATED:** OCTOBER 6, 2008

**APPEARANCES:**

STEPHEN L. WINCHIE FOR THE APPLICANT

ROBERT BAFARO FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

STEPHEN L. WINCHIE FOR THE APPLICANT  
BARRISTER & SOLICITOR  
MISSISSAUGA, ONTARIO

JOHN H. SIMS, Q.C. FOR THE RESPONDENT  
DEPUTY ATTORNEY GENERAL OF CANADA