

Date: 20090202

Docket: IMM-37-08

Citation: 2009 FC 111

Ottawa, Ontario, February 2, 2009

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

CALVERN XAVIER RODRIGUES

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This is a judicial review of the decision of a visa officer (Officer) to reject the Applicant's application for permanent residence as a member of the skilled worker class. The only issue argued in this matter was with respect to the Officer's evaluation of the Applicant's experience under job category NOC 1221 Administrative Officers.

II. BACKGROUND

[2] The Applicant is a citizen of India and a resident of the United Arab Emirates. He is married, with a three-year old son, and his wife's sister is a Canadian resident.

[3] For three years, the Applicant worked as an Air Exports/Imports Customer Service and Operations Executive in which he supervised and coordinated cargo movement and rates, and provided sales support and customer service. Following that, for approximately the next three years, the Applicant worked as a Customer Service/Logistics Executive doing essentially the same work as earlier but with the addition of some element of financial management. In the final period from April 2007 to the time of application, the Applicant worked at the supervision of trans-shipments, imports and exports, as well as of flights and cargo.

[4] The Applicant applied under a number of different NOC codes, however the only one relevant to this case is that of NOC 1221 Administrative Officers. The lead description of NOC 1221 is that "administrative officers oversee and implement administrative procedures, establish work priorities and co-ordinate the acquisition of administrative services such as office space, supplies and security services." The main duties of an administrative officer are described as being to:

- a. Oversee and co-ordinate office administrative procedures and review, evaluate and implement new procedures
- b. Establish work priorities, delegate work to office support staff, and ensure deadlines are met and procedures are followed

- c. Carry out administrative activities associated with admissions to post-secondary educational institutes
- d. Administer policies and procedures related to the release of records in processing requests under government access to information and privacy legislation
- e. Co-ordinate and plan for office services, such as accommodation, relocations, equipment, supplies, forms, disposal of assets, parking, maintenance and security services
- f. Assist in preparation of operating budget and maintain inventory and budgetary controls
- g. Assemble data and prepare periodic and special reports, manuals and correspondence.

[5] The Officer noted that the Applicant's principal duties included the preparation of reports for jobs performed which were sent to management and the collection of data, procedures, and suggestions. The Officer also noted that the Applicant evaluated other people's jobs to ensure that their jobs matched the description.

[6] The Officer concluded that as regards an "Administrative Officer," the Applicant's evidence was that he worked "in customer service and logistics (not as a supervisor)." The Officer found that the Applicant's real functions were the coordination of cargo and some financial management.

III. ANALYSIS

[7] The visa officer's function in this matter is to make a largely factual determination, which is informed by particular experience in this area. Given this, the standard of review is reasonableness with appropriate deference owed to the findings of fact. As such, there is a wide range of possible reasonable outcomes (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 49).

[8] The best that can be said in respect of the Applicant's qualifications under NOC 1221 is that he performs some element of oversight in an indirect manner. The function of oversight is only one element in the NOC 1221 main duties requirement.

[9] In the Federal Court of Appeal's decision in *Noman v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1169, while the Court outlined that an applicant was not required to perform all of the main duties in a NOC job category; they did require that an applicant perform a few – meaning more than one.

[10] The real function of the visa officer is to determine what is the pith and substance of the work performed by an applicant. Tangential performance of one or more functions under one or more job categories does not convert the job or the functions from one NOC category to another.

[11] In this case, there is ample evidence that the real function of the Applicant was the coordination of logistics, transportation of goods, and dealing with some aspects of finances. On the evidence, it was open to the Officer to reach the conclusion that the Applicant did not have sufficient experience to match the requirements of NOC 1221 for this skilled worker application.

IV. CONCLUSION

[12] I therefore find that the Officer's decision is reasonable. This application for judicial review will be dismissed. There is no question for certification.

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-37-08

STYLE OF CAUSE: CALVERN XAVIER RODRIGUES

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 28, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** Phelan J.

DATED: February 2, 2009

APPEARANCES:

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Ms. Margherita Braccio FOR THE RESPONDENT

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