

Date: 20110627

Docket: IMM-4136-10

Citation: 2011 FC 783

Ottawa, Ontario, June 27, 2011

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

RIMA NASR

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act), for judicial review of a decision of a service delivery specialist of the Immigration Section, Case Processing Centre, Sydney, Nova Scotia (the service delivery specialist or specialist), dated July 6, 2010, wherein the service delivery specialist found that the application for permanent residence was not eligible for processing.

[2] The applicant requests an order quashing the decision and remitting the matter back for redetermination by a different decision maker in accordance with the law.

Background

[3] Rima Nasr (the applicant) applied for permanent residence in Canada under the Federal Skilled Worker Class on March 23, 2010.

Service Delivery Specialist's Decision

[4] The service delivery specialist assessed the applicant's application on the basis of whether she had the necessary work experience under the NOC 4131 – College and Other Vocational Instructors.

[5] The service delivery specialist was not satisfied that the applicant's experience corresponds to the NOC 4131. The specialist found that the applicant did not indicate that she performed a substantial number of the main duties listed under the NOC description.

[6] The specialist determined that the application did not meet the requirements of the Ministerial Instructions on Federal Skilled Worker Class applications issued in November 29, 2008 and therefore was not eligible for processing.

Issues

[7] The applicant submitted the following issues for consideration:

1. What is the appropriate standard of review?
2. Did the service delivery specialist act without jurisdiction?
3. Did the service delivery specialist err in finding that the applicant lacked the requisite experience?

Applicant's Written Submissions

[8] The applicant submits that the service delivery specialist acted without jurisdiction in making the decision that the application was not eligible for processing. The specialist should only have reviewed the file for an initial screening to ensure the required forms and supporting documents were present and that an immigration officer should have made the final determination based on a complete application. The applicant argues that the service delivery specialist was not authorized by the Minister of Citizenship and Immigration (the Minister) under subsection 6(1) of the Act to make such a decision.

[9] The applicant further argues that the service delivery specialist erred in the assessment of her experience. The applicant submits that she listed in IMM0008 Schedule 3, six out of seven of the main duties in the NOC description, contrary to the specialist's finding that she did not provide evidence of experience.

Respondent's Written Submissions

[10] The respondent submits that the service delivery specialist acted within his or her jurisdiction in finding that the applicant was not eligible for processing under the Federal Skilled Worker Class category. The “Instrument of Designation and Delegation” executed by the Minister clearly provides that service delivery agents or specialists at Citizenship and Immigration Canada Centralized Processing Region have that delegated authority. Further, the *Budget Implementation Act*, SC 2008, c 28, amended the Act to permit Ministerial Instructions to establish orders. The Minister issued instructions on November 29, 2008 that Federal Skilled Worker Class applications will be sent to the Centralized Intake Office (CIO) in Sydney, Nova Scotia, to assess whether the applications should be processed at a visa office. If an application does not correspond with the instructions, the CIO will send a letter informing the applicant that he or she is not eligible for processing.

[11] The respondent also submits that the applicant failed to meet the required experience for the NOC 4131. The applicant was required to show that she had at least one year of continuous full time or equivalent paid work experience in the last ten years in the NOC. Schedule 3, completed by the applicant, showed that in the past ten years, she worked on one occasion for a continuous period of one year as an English teacher. Under main duties, the applicant merely indicated that she taught “IELTS academic & general, English preparatory program, general English”. She did not include a description of duties that would satisfy the criteria for NOC 4131.

Analysis and Decision

[12] **Issue 1**

What is the appropriate standard of review?

As a visa officer's determination of eligibility for permanent residence under the Federal Skilled Worker Class involves findings of fact and law, so too does that of a service delivery specialist, and as such, the decision is reviewable on a standard of reasonableness (see *Malik v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1283 at paragraph 22). This Court will not intervene on judicial review unless the decision maker came to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 47).

[13] However, the question of whether the service delivery specialist acted without jurisdiction in finding the applicant ineligible for processing is subject to review on the correctness standard (see *Dunsmuir* above, at paragraph 50).

[14] **Issue 2**

Did the service delivery specialist act without jurisdiction?

At the hearing of this matter, this issue was not advanced to any great degree, with the exception that the officer's title was not exactly the same as it was in the "Instrument of Designation and Delegation." I am satisfied that the service delivery specialist did not act without jurisdiction.

[15] **Issue 3**

Did the service delivery specialist err in finding that the applicant lacked the requisite experience?

The applicant applied for permanent residence as a Federal Skilled Worker under the NOC – 4131.

[16] The Ministerial Instructions of November 29, 2008, published in the *Canada Gazette* and relied on by the applicant, state that:

Federal Skilled Worker applications ...meeting the following criteria shall be placed into processing immediately upon receipt:

[...]

Applications from skilled workers with evidence of experience under one or more of the following National Occupation Classification (NOC) categories:

[...]

4131 College and Other Vocational Instructors

[17] The Ministerial Instructions define experience as: “[a]t least one year of continuous full-time or equivalent paid work experience in the last ten years.”

[18] In Schedule 3 of Form IMM0008, the applicant was required to list her full or equivalent part time occupations of the past ten years and a description of the main duties.

[19] The three occupations and the main duties that the applicant listed that were over one year were:

English Teacher – Taught IELTS academic & general. English preparatory program, general English

Teacher – Taught English to Latin American doctors to be able to write the medical exam boards, & other freelance work

English teacher – Taught general English, taught ECCE & ECPE certificates English 102, 301, 401 & 402

[20] The service delivery specialist determined that the applicant was not eligible for processing because she did not indicate that she performed a substantial number of the main duties listed under the NOC 4131 description.

[21] The main duties of the NOC 4131 are:

- Teach students using a systematic plan of lectures, demonstrations, discussion groups, laboratory work, shop sessions, seminars, case studies, field assignments and independent or group projects
- Develop curriculum and prepare teaching materials and outlines for courses
- Prepare, administer and mark tests and papers to evaluate students' progress
- Advise students on program curricula and career decisions
- Provide individualized tutorial/remedial instructions
- Supervise independent or group projects, field placements, laboratory work or hands-on training
- Supervise teaching assistants
- May provide consultation services to government, business and other organizations
- May serve on committees concerned with matters such as budgets, curriculum revision, and course and diploma requirements.
- These instructors specialize in particular fields or areas of study such as visual arts, dental hygiene, welding, engineering technology, policing, computer software, management and early childhood education.

[22] I agree with the respondent that it appears that the applicant's experience has consisted primarily of preparing students for international English language testing. It was not outside the range of reasonable acceptable outcomes for the service delivery specialist to determine that the applicant had not demonstrated that she had one year of continuous full time or equivalent experience in the occupation of NOC 4131.

[23] As a result, I would dismiss the application for judicial review.

[24] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

[25] **IT IS ORDERED that** the application for judicial review is dismissed.

“John A. O’Keefe”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4136-10

STYLE OF CAUSE: RIMA NASR
- and -
MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 2, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT OF:** O'KEEFE J.

DATED: June 27, 2011

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