

Federal Court



Cour fédérale

Date: 20120528

Docket: IMM-6136-11

Citation: 2012 FC 652

Ottawa, Ontario, May 28, 2012

**PRESENT:** The Honourable Madam Justice Heneghan

**BETWEEN:**

NA YE

**Applicant**

and

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Ms. Na Ye (the “Applicant”) seeks judicial review pursuant to subsection 72(1) of the *Immigration Refugee Protection Act* SC 2001, c 27 (the “Act”) of the decision made by Immigration Officer Oprean (“Officer”) on August 16, 2011. In that decision, the Officer refused the Applicant’s application for permanent residence as a member of the Canadian Experience Class.

[2] The Applicant is a Chinese national. She entered Canada in April 2002 under a valid student visa and pursued university studies at Simon Fraser University in British Columbia. She completed

a Bachelor of Arts degree in Business Administration in 2009 (check that). She was employed full time by Bell Mobility as a sales consultant from February 17, 2009 until February 27, 2010. She submitted her application for permanent residence as a Member of the Canadian Experience Class on November 18, 2010. She identified her job title as Sales Consultant, with reference to National Occupational Classification (“NOC”) code 6221. The full title of NOC 6221 is “Technical sales specialist – wholesale trade”. As part of her application, the Applicant submitted a letter from her employer Bell Mobility. The letter confirmed that the Applicant worked as a sales consultant and described her duties as customer service and sales of telecommunications and satellite TV. Her responsibilities were described as similar to a “telecommunication sales specialist”.

[3] In the negative decision, the Officer advised that the Applicant did not meet the requirement of the skilled work experience. No issue was taken with her educational qualifications. The Officer was not satisfied that the Applicant’s employment fit within the NOC 6221 description for “Technical sales specialist – wholesale trade” but found that the Applicant was working in retail trade, as described in NOC 6421 entitled “Retail salespersons”.

[4] The assessment of job duties in light of the NOC descriptions is a fact-driven exercise; accordingly, the applicable standard of review is reasonableness; see *Dunsmuir v New Brunswick*, [2008] 1 SCR 190.

[5] The Officer reviewed the Applicant’s work experience and concluded that she did not perform “the duties in the lead statement of NOC 6221 or a substantial number of the main duties in this occupation.” She determined that the Applicant was working in retail, not wholesale, trade.

[6] NOC 6221 includes the following example titles that may describe a position within that category: “technical support specialist”, “telecommunications sales representative” and “telecommunications salesperson”.

[7] In my opinion, the Officer erred by failing to address the evidence before her that the Applicant’s responsibilities and work experience were described in terms of one of the example titles in the NOC 6221 category.

[8] In the result, the application for judicial review is allowed and the matter remitted for re-determination. There is no question for certification arising.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed and the matter remitted for re-determination. There is no question for certification arising.

“E. Heneghan”

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Judge

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

**DOCKET:** IMM-6136-11

**STYLE OF CAUSE:** NA YE v THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 18, 2012

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

**DATED:** May 28, 2012

**APPEARANCES:**

Lisa Winter-Card FOR THE APPLICANT

Margherita Braccio FOR THE RESPONDENT

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