

Federal Court



Cour fédérale

Date: 20130225

Docket: IMM-3833-12

Citation: 2013 FC 188

Ottawa, Ontario, February 25, 2013

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

FARAH NAUMAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application by Ms. Farah Nauman (the Applicant), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for judicial review of a Visa Officer's (the Officer) decision, rendered May 4, 2012, denying the Applicant's application for

permanent residence as a member of the Federal Skilled Worker [FSW] class under subsections 87.3 (2) and (3) of *IRPA*.

[2] For the reasons that follow this application is dismissed.

II. Facts

[3] The Applicant is a 38 year old citizen of Pakistan.

[4] Around December 12, 2009, the Applicant submitted an application for permanent residence in Canada under the FSW class. The Applicant indicated that she had seven years work experience falling under the National Occupation Classification (NOC) code, NOC-4131 (now 4021) - College and other vocational instructors.

[5] The Applicant included letters of recommendation from the three most recent schools at which she had taught. The Applicant taught chemistry at the Pakistan Community School and College in Tripoli, Libya; the Convent of Jesus & Mary School, in Lahore, Pakistan; and the Lahore Grammar College for Women.

[6] The Applicant's resume specified that she had a master's degree in chemistry from the University of The Punjab and had taught chemistry to "college level students of Pre-engineering /Pre-medical (Part 1 & 2)" at the Pakistan Community School and College in Tripoli and the Lahore Grammar College for Women (Application Record, pages 122-123). Other forms the Applicant

included indicated that she had worked as a college teacher at the Pakistan Community School and College in Tripoli and the Lahore Grammar College for Women; and as a school teacher at the Convent of Jesus & Mary.

[7] On May 4, 2012, the Officer rejected the Applicant's application on grounds that she failed to provide satisfactory evidence that she had, over the last ten years, at least one year of continuous full-time or equivalent part-time experience as a college instructor as required by paragraph 75(2)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[8] The Officer noted that the Applicant's letters from past employers indicated that she had been employed as either a secondary or higher secondary level instructor rather than as a college level instructor. As a result, the Officer decided that the Applicant did not have the required work experience in an occupation listed under NOC-4021-College and other vocational instructors.

III. Legislation

[9] The applicable legislation is appended to this judgment.

IV. Issues and standard of review

A. Issues

1. Was the Applicant denied procedural fairness?

2. ***Was the Officer's conclusion that the Applicant's work experience did not fall under NOC-4021 - College and other vocational instructors' reasonable?***

B. Standard of review

[10] It is now firmly established in the case law that the standard of review to be applied to potential breaches of a rule of natural justice or procedural fairness is that of correctness (see *Canadian Union of Public Employees (C.U.P.E.) v Ontario (Minister of Labour)*, 2003 SCC 29 at para 100, [2003] 1 SCR 539; *Kuhathasan v Canada (Minister of Citizenship and Immigration)*, 2008 FC 457 at para 18 [*Kuhathasan*]; *Jin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1129, at para 13).

[11] With regards to the second issue, the Officer's decision involved assessing the Applicant's work experience against legislative requirements. The decision was based on findings of mixed fact and law and is therefore reviewable on the standard of reasonableness (see *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]; *Gulati v Canada (Minister of Citizenship and Immigration)*, 2010 FC 451 at para 19).

[12] When reviewing a decision on a standard of reasonableness, the Court must be concerned "with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (see *Dunsmuir*, cited above, at para 47).

V. Analysis

1. *Was the Applicant denied procedural fairness?*

A. Applicant's submissions

[13] The Applicant submits that she was denied procedural fairness when the Officer refused her application without first notifying her of his doubts regarding her teaching experience. The Applicant argues that while “officers [generally] do not have a duty to apprise applicants of a concern which arises directly out of the requirements of the Act [...] where the applicant is aware of their onus to provide evidence, and provides such evidence, an officer may have a duty to apprise the applicant of concerns with this evidence” (Applicant’s Memorandum of Fact and Law, at para 24). Such was the conclusion, the Applicant contends, that the Honourable Justice Mosley arrived at in *Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284, [Rukmangathan], where at paragraph 38 he wrote:

“ . . . The applicant was aware that evidence of his educational background was required in order to satisfy his onus of proof. He provided such evidence. The visa officer's problems with two of his diplomas . . . could have easily been addressed if the applicant had been apprised of it, however, I am persuaded that he was not afforded such opportunity.”

[14] The Applicant next cites three decisions supporting the view that where an application appears to meet all of the requisite elements, a Visa Officer has a duty to notify an Applicant of any other concern before refusing it (see *Kumar v Canada (Minister of Citizenship and Immigration)*,

2010 FC 1072 at para 29 [*Kumar*]; *Sandhu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 759 [*Sandhu*]; *Gedeon v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1245 at paras 99-100 [*Gedeon*]).

[15] The Applicant submits that she knew what the eligibility requirements were and filed appropriate documentation to demonstrate that she met them. The Officer had a duty to alert the Applicant of his doubts as to whether her experience of teaching at the higher secondary level met the NOC-4021 college level requirement.

[16] Finally, the Applicant argues that the Officer's refusal necessarily implies that he made a negative credibility finding regarding the other documents included in the application. As noted above, the Applicant's resume indicated that she had taught chemistry to pre-engineering and pre-medical college level students. The Applicant concludes that because her application was, on its face, adequate and that the veracity of the Applicant's documents was at issue, the Officer had a duty to provide her with the opportunity to clarify what level she had taught at.

B. Respondent's submissions

[17] The Respondent submits that it is now well-established in the case law that procedural fairness does not require a Visa Officer to alert an Applicant of deficiencies in his application that are related to requirements arising entirely out of *IRPA* or the *IRPR* (see *Kamchibekov v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1411 at para 26 [*Kamchibekov*]; *Kaur v Canada (Minister of Citizenship and Immigration)*, 2010 FC 442 at para 12 [*Kaur*]).

[18] Given that relevant work experience in the context of a FSW application is a concern that arises out of the *IRPA* or the *IRPR*, the Respondent concludes that the Officer had no duty to inform the Applicant of his doubts regarding the level at which she had taught (see *Kamchibekov* cited above, at para 26; *Kaur* cited above, at para 12).

[19] The onus was on the Applicant to ensure that her application clearly demonstrated that she met the requirements for NOC-4021 and to anticipate any possible ambiguities contained in it (see *Singh v Canada (Minister of Citizenship and Immigration)*, 2012 FC 526 at para 52). The Respondent argues that the Applicant's application was not convincing enough and should have contained information explaining the equivalence between higher secondary level schooling in Pakistan and Libya and CEGEP/college level schooling in Canada.

[20] The Respondent notes that the decisions cited by the Applicant are distinguishable from the case at hand because they relate to concerns of credibility of evidence as opposed to concerns arising directly out of the legislation.

[21] Relying on *Obeta v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1542, the Respondent argues that the onus is on the Applicant to adduce adequate evidence of his work experience.

C. Analysis

[22] This Court must decide whether procedural fairness required the Officer to notify the Applicant of his concerns regarding her work experience prior to denying her application. For the reasons that follow, the Court finds that the Officer had no such duty.

[23] As the Respondent noted in his submissions, it is well settled in the case law that a Visa Officer does not have a duty to inform an Applicant of his concerns that arise directly from the requirements of the *IRPA* or its regulations. In *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24 [*Hassani*], Justice Mosley articulated the principle in the following manner:

“Having reviewed the factual context of the cases cited above, it is clear that where a concern arises directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns. Where however the issue is not one that arises in this context, such a duty may arise. This is often the case where the credibility, accuracy or genuine nature of information submitted by the applicant in support of their application is the basis of the visa officer’s concern, as was the case in *Rukmangathan . . .*”

[24] In *Kaur*, cited above, at para 12, the Honourable Justice Tremblay-Lamer noted that:

The question whether an applicant has the relevant experience as required by the regulations and is thus qualified for the trade or profession in which he or she claims to be a skilled worker is “based directly on the requirements of the legislation and regulations” (*Hassani*, above, at par. 26). Therefore it was up to the Applicant to submit sufficient evidence on this question, and the visa officer was not under a duty to apprise her of his concerns.

[25] Finally, in *Lam v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1239 at para 4, the Honourable Justice Rothstein, then of the Federal Court, had the following to say regarding the quality of applications that is expected from applicants:

“ . . . The onus is on an applicant to file a clear application together with such supporting documentation as he or she considers advisable. The onus does not shift to the visa officer and there is no entitlement to a personal interview if the application is ambiguous or supporting material is not included.”

[26] The Court agrees with the Respondent that the Officer’s concern in the present case (i.e. whether the Applicant had the required college level teaching experience) arose directly from the requirements of paragraph 75(2)(a) of the *IRPR* and that the Officer had no duty to alert her of his concerns. The onus was on the Applicant to provide an application which clearly indicated that she met the NOC-4021 requirements.

[27] The Court disagrees with the Applicant’s interpretation of *Rukmangathan*, cited above. It was clearly indicated, at paragraph 24 of that decision, that the visa officer’s concerns “[could not] be said to have emanated directly from the requirements of the legislation”. In *Rukmangathan*, cited above, the Applicant was required to provide proof of his education in the field of computer science and did so by submitting his diplomas in that field. The officer had issues with the form rather than the substance of the evidence. In the present case, the Applicant was required to provide evidence of her experience teaching at the college level but provided letters which seemingly indicated that she had taught at the secondary level instead. The two cases are clearly distinguishable.

[28] The Court also disagrees with the Applicant’s comparison of the present case with *Kumar*, *Sandhu* and *Gedeon*, all cited above. As the Respondent noted, all three of those cases involved

situations where the Applicants' applications, if believed, fulfilled the requirements of the legislation and its regulations. In the case at bar, the Officer found that the application did not, on its face, meet the requirements of NOC-4021. The Applicant failed to adduce satisfactory evidence of relevant teaching experience.

[29] Finally, the Court rejects the Applicant's submission that the Officer's refusal involved credibility or accuracy issues. If the Court accepts that this case involves credibility issues because the Applicant claimed to have taught college level students in her resume, it would essentially be accepting that every application denied due to insufficient or unsatisfactory evidence involves a credibility issue. Such a proposition cannot stand. A credibility issue, as this Court understands it, only arises when all the documents submitted make a *prima facie* case that an Applicant has met all the eligibility requirements (as was the case in *Kumar, Sandhu and Gedeon*, cited above). There is no need to question the veracity of documents unless they serve as evidence of an applicant's eligibility. In the case at bar, the Applicant did not provide satisfactory evidence that she had teaching experience at the college level.

2. *Was the Officer's conclusion that the Applicant's work experience did not fall under NOC-4021-College and other vocational instructors' reasonable?*

A. Applicant's submissions

[30] The Applicant contends that the Officer's decision to refuse her application on the basis that she failed to provide adequate proof of having taught at the college level was unreasonable.

[31] The Applicant argues that given the following considerations:

- The Applicant holds a master's degree in chemistry;
- She taught pre-engineering and pre-medical students;
- Her duties included all of those described in the NOC-4021 code;

the Officer was required to provide adequate reasons as to why he did not believe the Applicant had college level teaching experience. The Applicant contends that the Officer's reason did not indicate why he believed higher secondary or FSc I and II did not constitute college level and concludes that in failing to do so, "the [O]fficer failed to meet the standard of justification and transparency set in *Dunsmuir v New Brunswick*" (Applicant's Memorandum of Fact and Law, at para 39).

B. Respondent's submissions

[32] The Respondent submits that the Applicant's letters did not provide clear evidence that she had teaching experience at the college level. On the contrary, the letters submitted by the Applicant clearly indicated that she had taught at the secondary level. The Officer's decision was, as a result, reasonable and fell "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, cited above, at para 47).

C. Analysis

[33] For the following reasons, the Court finds that the Officer's decision was reasonable.

[34] The May 4, 2012 decision clearly indicated that the Officer rejected the Applicant's application because the letters she included indicated that she had taught at the secondary or higher secondary level rather than at the college level. The Officer's interpretation of the term senior or higher secondary as nevertheless implying a secondary level was reasonable and was obviously related to the plain meaning of the terms. His reasons were sufficiently justified and transparent. The Court is satisfied that such a decision was reasonable and a possible outcome as it reviewed the contents of the letters presented by the Applicant.

V. Conclusion

[35] In conclusion, the Officer did not have a duty to advise the Applicant in this instance since his concerns arose from the requirements of the legislation or related regulations as to the evidence adduced and his decision to reject her application was reasonable.

ORDER

THIS COURT ORDERS that the application be dismissed and no question is certified.

"André F.J. Scott"

Judge

Appendix

<i>Immigration and Refugee Protection Act, SC 2001, c 27</i>	<i>Loi sur l'immigration et la protection des réfugiés, LC 2001, c 27</i>
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Attainment of immigration goals

Atteinte des objectifs d'immigration

87.3(2) The processing of applications and requests is to be conducted in a manner that, in the opinion of the Minister, will best support the attainment of the immigration goals established by the Government of Canada.

87.3(2) Le traitement des demandes se fait de la manière qui, selon le ministre, est la plus susceptible d'aider l'atteinte des objectifs fixés pour l'immigration par le gouvernement fédéral.

Instructions

Instructions

(3) For the purposes of subsection (2), the Minister may give instructions with respect to the processing of applications and requests, including instructions

(3) Pour l'application du paragraphe (2), le ministre peut donner des instructions sur le traitement des demandes, notamment des instructions :

(a) establishing categories of applications or requests to which the instructions apply;

a) prévoyant les groupes de demandes à l'égard desquels s'appliquent les instructions;

(a.1) establishing conditions, by category or otherwise, that must be met before or during the processing of an application or request;

a.1) prévoyant des conditions, notamment par groupe, à remplir en vue du traitement des demandes ou lors de celui-ci;

(b) establishing an order, by category or otherwise, for the processing of applications or requests;

b) prévoyant l'ordre de traitement des demandes, notamment par groupe;

(c) setting the number of applications or requests, by category or otherwise, to be processed in any year; and

c) précisant le nombre de demandes à traiter par an, notamment par groupe;

(d) providing for the disposition of applications and requests, including those made subsequent to the first application or request.

d) régissant la disposition des demandes dont celles faites de nouveau.

Immigration and Refugee Protection Regulations, SOR/2002-227

Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227

Skilled workers

Qualité

75(2) A foreign national is a skilled worker if

75(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;

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) 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

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) 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.

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.

Minimal requirements

Exigences

(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.

National Occupational Classification (NOC)

Unit Group

4021 College and other vocational instructors
This unit group includes instructors who teach applied arts, academic, technical and vocational subjects to students at community colleges, CEGEPs, agricultural colleges, technical and vocational institutes, language schools and other college level schools. This unit group also includes trainers who are employed by private training establishments, companies, community agencies and governments to deliver internal training or development courses. College teachers who are heads of departments are included in this group.

Example Titles

CEGEP teacher
college teacher
commercial art instructor
community college teacher
company trainer
computer training instructor
department chairperson – college
department head – CEGEP
firefighting instructor
instructor – technology institute
language school instructor
lecturer – college
teacher – institute of technology
teacher, legal assistant program
training officer – company
vocational institute teacher

Classification nationale des professions

Groupe de base

4021 Enseignants/enseignantes au niveau collégial et autres instructeurs/institutrices en formation professionnelle
Les enseignants au niveau collégial et les autres instructeurs en formation professionnelle de ce groupe enseignent les matières scolaires, les arts appliqués, les matières de formation professionnelle et les techniques dans des cégeps, des collèges communautaires, des collèges d'agriculture, des instituts techniques et professionnels, des écoles de langue et d'autres établissements de niveau collégial. Ce groupe de base comprend aussi les formateurs qui travaillent au sein d'établissements d'enseignement privés, d'entreprises, d'organismes communautaires et des gouvernements pour donner des cours internes de formation ou de perfectionnement. Les enseignants au niveau collégial qui sont chefs de département sont compris dans ce groupe.

Exemples d'appellations d'emploi

agent/agent de formation – compagnie
chargé/chargée de cours au niveau collégial
chef de département – cégep
directeur/directrice de département au niveau collégial
enseignant/enseignante de cégep
formateur/formatrice – institut technologique
formateur/formatrice en dessin commercial
formateur/formatrice en entreprise
formateur/formatrice en informatique
formateur/formatrice en lutte contre l'incendie
professeur/professeure au niveau collégial
professeur/professeure au programme d'assistance juridique
professeur/professeure d'institut professionnel
professeur/professeure d'institut technologique
professeur/professeure de collègue

	communautaire professeur/professeure de langues – école de langues
View all titles	Consulter toutes les appellations d'emploi
Main duties	Fonctions principales
College and other vocational instructors perform some or all of the following duties:	Les enseignants au niveau collégial et autres instructeurs en formation professionnelle exercent une partie ou l'ensemble des fonctions suivantes :
<ul style="list-style-type: none"> •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 	<ul style="list-style-type: none"> •enseigner aux étudiants selon une démarche systématique comprenant des exposés, des démonstrations, des discussions en groupe, des travaux en laboratoire, des ateliers, des séminaires, des études de cas, des travaux sur le terrain et des projets individuels ou en groupe;
<ul style="list-style-type: none"> •Develop curriculum and prepare teaching materials and outlines for courses 	<ul style="list-style-type: none"> •préparer le programme ainsi que les plans de cours et le matériel d'enseignement;
<ul style="list-style-type: none"> •Prepare, administer and mark tests and papers to evaluate students' progress 	<ul style="list-style-type: none"> •préparer, administrer et noter les examens et les travaux afin d'évaluer les progrès des étudiants;
<ul style="list-style-type: none"> •Advise students on program curricula and career decisions 	<ul style="list-style-type: none"> •renseigner les étudiants sur les programmes d'études et les choix de carrière;
<ul style="list-style-type: none"> •Provide individualized tutorial or remedial instruction to students who require it 	<ul style="list-style-type: none"> •donner un enseignement individualisé, de type tutoriel ou correctif aux étudiants qui en ont besoin;
<ul style="list-style-type: none"> •Supervise independent or group projects, field placements, laboratory work or hands-on training 	<ul style="list-style-type: none"> •superviser les projets individuels ou de groupes, les stages de formation pratique, les travaux pratiques et la formation en cours d'emploi;
<ul style="list-style-type: none"> •Supervise teaching assistants 	<ul style="list-style-type: none"> •superviser les adjoints à l'enseignement;
<ul style="list-style-type: none"> •May provide consultation services to government, business and other organizations 	<ul style="list-style-type: none"> •fournir, s'il y a lieu, des services de consultation aux organismes gouvernementaux, aux entreprises ou autres;

- May serve on committees concerned with matters such as budgets, curriculum revision, and course and diploma requirements.

- faire partie, s'il y a lieu, de comités traitant de questions telles que les budgets, la révision des programmes, les exigences des cours et les conditions d'obtention des diplômes.

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.

Les enseignants au niveau collégial et autres instructeurs en formation professionnelle sont spécialisés dans des domaines ou champs d'études en particulier comme les arts visuels, l'hygiène dentaire, la soudure, les techniques de génie, les techniques policières, l'informatique, la gestion et les techniques d'éducation de la petite enfance.

Employment requirements

Conditions d'accès à la profession

- A bachelor's degree, a college diploma or demonstrated expertise in the field of instruction is required.

- Un baccalauréat, un diplôme d'études collégiales ou des compétences marquées dans la discipline d'enseignement sont exigés.

- A master's degree in the field of instruction may be required.

- Une maîtrise dans la discipline d'enseignement peut être exigée.

- A certificate, diploma or degree in adult education may be required.

- Un certificat, un diplôme ou un grade en éducation des adultes peut être exigé.

- For instructors of trades, completion of apprenticeship training and industry or trade certification are required. Additional courses in teaching or a provincial teaching certificate may be required.

- Un programme d'apprentissage et un certificat de qualification ou un certificat de l'industrie sont exigés des professeurs de métiers. Des cours complémentaires en enseignement ou un brevet d'enseignement provincial peuvent également être exigés.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3833-12

STYLE OF CAUSE: FARAH NAUMAN
v
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 11, 2013

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

DATED: February 25, 2013

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FOR THE APPLICANT

Me Sally Thomas

FOR THE RESPONDENT

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