

Federal Court



Cour fédérale

Date: 20130222

Docket: IMM-3657-12

Citation: 2013 FC 185

Toronto, Ontario, February 22, 2013

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

JANNA MALIKA BENOIT

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The officer's decision rejecting Ms. Benoit's application for permanent residence in Canada in the "Canadian experience class" for not meeting the work experience described in National Occupational Classification (NOC) 6211 is unreasonable because the test set out in the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*] was not applied.

[2] Paragraph 87.1(2)(c) of the *Regulations* required that Ms. Benoit "[have] performed a substantial number of the main duties [...] including all of the essential duties" listed in the NOC under which she listed her experience. In NOC 6211, under which she applied, there are no

“essential” duties, only “main” duties. Accordingly, Ms. Benoit was required to have performed a “substantial number” of these main duties in her job with the Granite Club, the job she listed as qualifying experience.

[3] The officer was therefore required to determine if Ms. Benoit “performed a substantial number of the main duties.” However, the officer’s decision as disclosed by the CAIPS notes is merely the following: “Duties listed in job letter do not match duties in NOC description; ordering and scheduling is done by manager with PA’s assistance.” “Ordering” and “scheduling” are no more than mere *components* of the main duties listed in NOC 6211. Thus, it is not clear if the officer at any point turned his or her mind to the real question, which was whether – on the whole – the duties were a substantial match.

[4] Further, as counsel for the respondent rightly concedes, it is clear that Ms. Benoit did perform “some” of the duties listed in NOC 6211. I am not prepared to accept, as was submitted, that the officer found that she did not at all “supervise and coordinate the activities of workers in unit groups” as described in the preamble to NOC 6211.

[5] In my view, no amount of “supplement[ing],” to quote *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 12, salvages the officer’s decision. The *Regulations* clearly require that only a “substantial” number of the duties be performed. That is the test. The officer in this case singled out only parts of two of the eight main duties from NOC 6211 and on that basis concluded that Ms. Benoit’s experience at the Granite Club did not qualify. While I cannot positively conclude that there was “substantial” overlap between

Ms. Benoit's experience at the Granite Club and NOC 6211 – that assessment must be done by the officer – I am satisfied that her responsibilities at the Granite Club were far from being such a total mismatch that her application for permanent residence has no chance of success. Indeed, at a glance, the duties are a substantial match.

[6] Accordingly, this application is granted and Ms. Benoit's application for permanent residence is remitted back for decision by a different officer to decide whether Ms. Benoit "performed a substantial number of the main duties" listed in NOC 6211 in her position at the Granite Club. No question was proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is allowed and the applicant's application is remitted back for decision by a different officer in accordance with these reasons.

"Russel W. Zinn"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3657-12

STYLE OF CAUSE: JANNA MALIKA BENOIT v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 21, 2013

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

DATED: February 22, 2013

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