

Federal Court



Cour fédérale

Date: 20130312

Docket: IMM-3693-12

Citation: 2013 FC 264

Ottawa, Ontario, March 12, 2013

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

ABU ASIM HAMZA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr Hamza (the applicant or Mr Hamza) is a citizen of Pakistan. He submitted an application for permanent residence in Canada in the Federal Skilled Worker class as a family physician. On January 27, 2012, his application was refused at the screening stage by the Canadian High Commission in London because the visa officer (the Officer) found that the applicant had not provided sufficient independent documentation demonstrating his experience as a general practitioner or family physician.

[2] This application seeks judicial review of that decision pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. For the following reasons the application is allowed.

I. Background

[3] On June 22, 2009, the applicant submitted an application for permanent residence in Canada as a member of the Federal Skilled Worker class. He included his wife and three children in his application.

[4] The requirements that foreign nationals applying for permanent residence as Federal Skilled Workers must satisfy are set out in the Act and in the *Immigration and Refugee Protection Regulations*, SOR\2002-227 [the Regulations]. Subsection 12(2) of the Act states that foreign nationals may be selected as members of the economic class “on the basis of their ability to become economically established in Canada.” Subsection 75(1) of the Regulations specifies that the Federal Skilled Worker class refers to a class of persons who are skilled, and who have the ability to become economically established in Canada. Subsection 75(2) of the Regulations defines the skilled worker as a person who has at least one year of continuous full-time employment experience in one of the listed occupations of the National Occupational Classification (NOC) within the last 10 years. In order to be recognized as a skilled worker, a person must establish that during that period of employment, he or she performed the actions described in the lead statement of the NOC for the relevant position and a substantial number of the main duties as set out in the NOC, including all of

the essential duties (paragraphs 75(2)(b) and (c)). The occupation of “general practitioner and family physician” is described in NOC 3112.

[5] In schedule 1 of his application form, the applicant indicated that he has been working as a family physician, both at his privately owned clinic and at the Sindh Governmental Hospital in Karachi since 1988. To establish his work experience, he provided a self-declared certificate, attesting that he had been practicing as a family physician at his clinic since 1988 and setting out his main duties and responsibilities. He also filed a letter, dated November 14, 2009, from Dr Imtiaz Haroon, Medical Superintendent of the Sindh Government Hospital of Liaquatabad in Karachi (the employment letter), attesting that the applicant has been working in their organization as a family physician since 1988. Dr Haroon also listed the applicant’s major responsibilities, which mirror several duties listed in the NOC 3112. The employment letter ends with a comment from the Superintendent stating that the applicant is “very co-operative, hard working and a dedicated doctor”. In addition, the Superintendent noted that the certificate was being issued at the applicant’s request.

II. Decision under review

[6] The Officer determined that Mr Hamza’s application was not eligible for processing. In her letter refusing eligibility, the Officer indicated that she was not satisfied that the applicant was a general practitioner or family physician because he failed to provide sufficient independent documentation demonstrating his experience. The refusal letter further states as follows:

You have indicated that you have work experience in (an) occupation(s) with the following NOC (National Occupational Classification) code(s) 3112: General Practitioners and Family Physicians.

Although the NOC code(s) correspond(s) to the occupations specified in the Instructions, the main duties that you listed do not indicate that you performed the actions described in the lead statement for the occupation, as set out in the occupational descriptions of the NOC, or that you performed all of the essential duties and a substantial number of the main duties, as set out in the occupational descriptions of the NOC.

You have not provided sufficient independent documentation to demonstrate your experience in NOC code 3112. I am therefore not satisfied that you are a General Practitioner or Family Physician.

Since you did not provide satisfactory evidence that you have work experience in any of the listed occupations, you do not meet the requirements of the Ministerial Instructions and your application is not eligible for processing.

[Emphasis added]

[7] The Officer's Computerized Assisted Immigration Processing System (CAIPS) notes, which form part of the Officer's decision (*Taleb v Canada (Minister of Citizenship and Immigration)*, 2012 FC 384 at para 25, 407 FTR 185), capture in more detail the reasoning that led the Officer to reject Mr Hamza's application at the selection stage:

Applicant has provided only two references to demonstrate his experience. One is prepared by himself and the other is prepared by the office of the medical Sup. Karachi dated 14/11/9 which is covering experience from June 1988 to date and **the Job duties mirror NOC description. This reference appears to be prepared for this application and therefore is self serving. There are no other supporting documents** to demonstrate his employment as a physician and **therefore** his application is refused at screening.

[Emphasis added]

III. The issues

[8] This application raises two issues.

[9] The first issue relates to procedural fairness: Did the Officer breach her duty of procedural fairness by not providing the applicant with an opportunity to address her concerns regarding the applicant's employment letter?

[10] This issue requires the Court to determine, first, if the Officer's concerns were related to the credibility of the employment letter provided by the applicant, or to the sufficiency of the evidence provided. Second, if the Court is satisfied that the Officer's concerns were related to the veracity of the employment letter, it must determine whether, in the circumstances of this case, the Officer should have provided the applicant with an opportunity to address her concerns.

[11] The second issue raised by this application is whether it was reasonably open for the Officer to conclude, on the basis of the evidence submitted by the applicant, that he had not satisfactorily established his work experience as a family physician.

IV. The standards of review

[12] The parties are in agreement as to the appropriate standards of review.

[13] No deference is accorded to the Officer's decision regarding issues of procedural fairness and, therefore, the first issue is reviewable on a correctness standard of review (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43, [2009] 1 SCR 339; *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 53, [2006] 3 FCR 392; *Zhu v Canada (Minister of Citizenship and Immigration)*, 2013 FC 155 at para 22 (available on CanLII) [*Zhu*]; *Enriquez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1091 at para 6 (available on

CanLII)[*Enriquez*]; *Sandhu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 759 at para 23, 371 FTR 239 [*Sandhu*]; *Singh v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1306 at para 36, 95 Imm. L.R. (3d) 83; *Talpur v Canada (Minister of Citizenship and Immigration)*, 2012 FC 25 at para 20, 210 ACWS (3d) 765 [*Talpur*]).

[14] However, the Officer's analysis of the applicant's eligibility for permanent residence as a Federal Skilled Worker involves an assessment of the evidence and the exercise of discretion and is reviewable on the reasonableness standard of review (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190; *Zhu*, above at para 23; *Rashed v Canada (Minister of Citizenship and Immigration)*, 2013 FC 175 at para 44 (available on CanLII); *Enriquez*, above at para 4; *Ismaili v Canada (Minister of Citizenship and Immigration)*, 2012 FC 351 at para 10 (available on CanLII)[*Ismaili*]; *Torres v Canada (Minister of Citizenship and Immigration)*, 2011 FC 818 at para 26, 2 Imm. L.R. (4th) 57 [*Torres*]).

V. Arguments of the parties

A. *The applicant's submissions*

[15] In his written representations, the applicant attacked the Officer's decision on different fronts. It included an allegation that the Officer had blindly and unreasonably relied on a check-list to reject the applicant's certificate where he listed his duties when working at his own clinic because it was not corroborated by third-party documentation. However, at the hearing, counsel for the applicant informed me that the applicant was no longer pursuing this argument and was relying solely on the remaining arguments presented in his written submissions relating to the employment letter.

[16] Essentially, the applicant argues that it was unreasonable and an abuse of process for the Officer not to give any weight to the employment letter from the applicant's supervisor for the simple fact that it mirrors the NOC description.

[17] Further, the applicant contends that the CAIPS notes reveal that the Officer's concerns were related to the credibility and veracity of the employment letter, as opposed to the sufficiency of the documentation that he provided. In this regard, the applicant insists that it is normal that the employment letter was "prepared for this application" and was "self-serving" since it was specifically provided to comply with the requirements set out in the check-list. He also insists that the letter is both independent and objective, as it was prepared by a government officer. In addition, the applicant contends that the CAIPS notes clearly suggest that the Officer was not questioning the sufficiency of the evidence provided, but rather, its credibility. Therefore, the applicant argues that the Officer should have provided him with an opportunity to address her concerns. By failing to do so, the Officer breached her duty of procedural fairness. The applicant contends that this principle has been recognized in the jurisprudence and he relies mainly on *Patel v Canada (Minister of Citizenship and Immigration)*, 2011 FC 571 at paras 20-27 (available on CanLII) [*Patel*] and on *Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 at paras 23-24, [2007] 3 FCR 501 [*Hassani*]. At the hearing, counsel for the applicant stated that he acknowledged that in *Obeta v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1542 (available on CanLII) [*Obeta*], Justice Boivin departed from this principle, but he insisted that the circumstances in *Obeta* were totally different from those in this case.

B. *The respondent's submissions*

[18] The respondent argues that the Officer's decision is reasonable, and that the Officer did not breach the applicant's right to procedural fairness. The respondent contends that the Officer did not question the credibility of the evidence provided by the applicant, but was concerned with the sufficiency of that evidence. The respondent submits that one could not infer from the indication that the employment letter was "self-serving", that the Officer thought that the letter was fraudulent. In the respondent's view, the employment letter was clearly insufficient and should have contained a detailed description of the applicant's duties and responsibilities.

[19] Further, the respondent submits that the letter is not disinterested evidence as it advocates for a particular position by copying elements from the NOC, instead of providing a detailed description of the applicant's tasks. The respondent argues that it was reasonable, in the circumstances, for the Officer to give little weight to a letter merely mirroring the NOC. Further, the respondent submits that when the evidence provided in support of an application is insufficient, a visa officer is not required to inform the applicant of his or her concerns before making a negative determination. The respondent suggests that the circumstances in *Patel*, above, are distinguishable as it was clear in that case that the officer's concerns were related to the authenticity of the evidence, which is not the case here.

[20] In the alternative, the respondent relies on *Obeta*, above, to establish that even if the Court is of the view that the Officer's concerns were related to the credibility of the employment letter, it does not establish that the Officer had an obligation to provide the applicant with an opportunity to

address these concerns. The respondent also relied on *Kamchibekov v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1411 (available on CanLII) [*Kamchibekov*].

VI. Analysis

Did the Officer breach her duty of procedural fairness by not providing the applicant with an opportunity to address her concerns regarding the applicant's employment letter?

[21] This Court has had numerous occasions to discuss the issue of the sufficiency of evidence that applicants for permanent residence must provide in support of their applications. The following principles have been reiterated on several occasions.

[22] First, the onus clearly falls on the applicant to establish that he or she meets the requirements of the Regulations by providing sufficient evidence in support of his or her application (*El Sherbiny v Canada (Minister of Citizenship and Immigration)*, 2013 FC 69 at para 6 (available on CanLII) [*El Sherbiny*]; *Enriquez*, above at para 8; *Torres*, above at paras 37-40; *Kaur v Canada (Minister of Citizenship and Immigration)*, 2010 FC 758 at para 30 (available on CanLII) [*Kaur*]; *Oladipo v Canada (Minister of Citizenship and Immigration)*, 2008 FC 366 at para 24, 166 ACWS (3d) 355; *Ismaili*, above, at para 18.

[23] Second, the duty of procedural fairness owed by visa officers is on the low end of the spectrum (*Farooq v Canada (Minister of Citizenship and Immigration)*, 2013 FC 164 at para 10 (available on CanLII) [*Farooq*]; *Sandhu*, above at para 25; *Trivedi v Canada (Minister of Citizenship and Immigration)*, 2010 FC 422 at para 39 (available on CanLII) [*Trivedi*]; *Khan v*

Canada (Minister of Citizenship and Immigration), 2001 FCA 345 at paras 30-32, [2002] 2 FC 413;
Patel v Canada (Minister of Citizenship and Immigration), 2002 FCA 55 at para 10, 288 NR 48;
Chiau v Canada (Minister of Citizenship and Immigration) (2000), [2001] 2 FC 297 at para 41
(available on CanLII) (CA), leave to appeal to SCC refused, 28418 (August 16, 2001).

[24] Third, a visa officer has neither an obligation to notify an applicant of inadequacies in his or her application nor in the material provided in support of the application. Furthermore, a visa officer has no obligation to seek clarification or additional documentation, or to provide an applicant with an opportunity to address his or her concerns, when the material provided in support of an application is unclear, incomplete or insufficient to convince the officer that the applicant meets all the requirements that stem from the Regulations (*Hassani*, above at paras 23-24; *Patel*, above at para 21; *El Sherbiny*, above at para 6; *Sandhu*, above at para, 25; *Luongo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 618 at para 18 (available on CanLII); *Ismaili*, above at para 18; *Triveldi*, above at para 42; *Singh*, above at para 40; *Sharma v Canada (Minister of Citizenship and Immigration)*, 2009 FC 786 at para 8, 179 ACWS (3d) 912 [*Sharma*]).

[25] Nevertheless, a duty to provide an applicant with the opportunity to respond to an officer's concerns may arise when the officer is concerned with the credibility, the veracity, or the authenticity of the documentation provided by an applicant as opposed to the sufficiency of the evidence provided.

[26] The judgments rendered by Justice Mosley in *Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284, 247 FTR 147 [*Rukmangathan*] and *Hassani*, above,

are often cited as being authoritative on this issue. In *Rukmangathan*, Justice Mosley enunciated the principle and its limits:

[22] It is well established that in the context of visa officer decisions procedural fairness requires that an applicant be given an opportunity to respond to extrinsic evidence relied upon by the visa officer and to be apprised of the officer's concerns arising therefrom: *Muliadi*, supra. In my view, the Federal Court of Appeal's endorsement in *Muliadi*, supra, of Lord Parker's comments in *In re H.K. (An Infant)*, [1967] 2 Q.B. 617, indicates that the duty of fairness may require immigration officials to inform applicants of their concerns with applications so that an applicant may have a chance to "disabuse" an officer of such concerns, even where such concerns arise from evidence tendered by the applicant. Other decisions of this court support this interpretation of *Muliadi*, supra. See, for example, *Fong v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 705 (T.D.), *John v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 350 (T.D.)(QL) and *Cornea v. Canada (Minister of Citizenship and Immigration)* (2003), 30 Imm. L.R. (3d) 38 (F.C.T.D.), where it had been held that a visa officer should apprise an applicant at an interview of her negative impressions of evidence tendered by the applicant.

[23] However, this principle of procedural fairness does not stretch to the point of requiring that a visa officer has an obligation to provide an applicant with a "running score" of the weaknesses in their application: *Asghar v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1091 (T.D.)(QL) at para. 21 and *Liao v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1926 (T.D.)(QL) at para. 23. And there is no obligation on the part of a visa officer to apprise an applicant of her concerns that arise directly from the requirements of the former Act or Regulations: *Yu v. Canada (Minister of Employment and Immigration)* (1990), 36 F.T.R. 296, *Ali v. Canada (Minister of Citizenship and Immigration)* (1998), 151 F.T.R. 1 and *Bakhtiania v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1023 (T.D.)(QL).

[27] Two years later, he reiterated the principle in *Hassani*, in the following terms:

[24] 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*, and in *John and Cornea* cited by the Court in *Rukmangathan*, above.

[28] Justice Snider provided a good summary of the applicable principles in *Enriquez*, above, and insisted that to trigger a duty to provide an opportunity to respond to an officer's concerns, the applicant must first provide an application that is complete:

[26] The first duty raised by the Applicant is the duty to seek clarification. When an Applicant puts his or her best foot forward by submitting complete evidence and a visa officer doubts that evidence, the officer has a duty to seek clarification (*Sandhu*, above at paras 32-33). Although this duty is not triggered in situations where an applicant simply presents insufficient evidence, it will arise if the officer entertains concerns regarding the veracity of evidence; for example, if the officer questions the credibility, accuracy or genuine nature of the information provided (*Olorunshola*, above at paras 32-35). On the facts of this case, a duty to clarify may have arisen but was discharged by the Officer's questions to the Applicant during the interview. There was no breach of fairness.

[27] The second duty raised by the Applicant is a duty to provide an opportunity to respond. When an applicant submits information that, if accepted, supports the application, he or she should be given an opportunity to respond to the officer's concerns if the officer wishes to make a decision based on those concerns (*Kumar*, above at paras 30-31). Procedural fairness may require an interview; for example, if a visa officer believes an applicant's documents may be fraudulent (*Patel*, above at paras 24-27). (...)

[See also *Sandhu*, above, at paras 27-32; *Farooq*, above, at para 12; *Patel*, above, at paras 22-26, *Singh*, above, at paras 41-42; *Talpur*, above, at para 21; *Baybazarov c Canada (Minister of Citizenship and Immigration)*, 2010 FC 665 at para 12 (available on CanLII); *Kumar v Canada (Minister of Citizenship)*, 2010 FC 306 at paras 29-30 (available on CanLII) [*Kumar*]; *Nabin v*

Canada (Minister of Citizenship and Immigration), 2008 FC 200 at para 8, 165 ACWS (3d) 341]

[29] In this case, the first issue to be determined is whether the Officer's concerns were related to the sufficiency or to the credibility of the evidence submitted by the applicant to establish his work experience.

[30] A visa officer may have raised concerns about the credibility of an applicant's documentary evidence even though he or she did not express an explicit credibility finding. Visa officers' decisions must be analysed as a whole and in the context of the specific facts of each case. As stated by Justice Mosley in *Adeoye v Canada (Minister of Citizenship and Immigration)*, 2012 FC 680 at para 8, 216 ACWS (3d) 191: "Although the officer did not make any explicit credibility findings, his scepticism about the applicant's claim and supporting documents is apparent from the decision." The same may apply in this case,

[31] The context of the case at bar is somewhat similar to that in *Patel*, above, where the applicant provided only a single employment document in which the job duties were largely copied from the NOC. This situation concerned the visa officer. Justice O'Keefe found that the officer's concerns were related to the veracity of the employment letter and that the officer should have offered the applicant an opportunity to address his concerns. In this regard, Justice O'Keefe expressed the following:

[23] The onus is always on the principal applicant to satisfy the visa officer of all parts of his application. The officer is under no obligation to ask for additional information where the principal applicant's material is insufficient (*see Madan v. Canada (Minister of Citizenship and Immigration)* (1999), 172 FTR 262, [1999] F.C.J. No. 1198 (FCTD) (QL) at paragraph 6).

[24] Regulation 75 clearly indicates that a foreign national is only a skilled worker if he can show one year of full time employment where he performed the actions in the lead statement of the NOC and a substantial number of the main duties.

[25] As such, if the visa officer were concerned only that the employment letter was insufficient proof that the principal [sic] applicant met the requirements of Regulation 75, then she would not have been required to conduct an interview.

[26] **However, the officer states that her concern is that the duties in the employment letter have been copied directly from the NOC description and that the duties in the experience letter are identical to the letter of employment. I agree with the principal applicant that the officer's reasons are inadequate to explain why this was problematic. I find that the implication from these concerns is that the officer considered the experience letter to be fraudulent.**

[27] Consequently, by viewing the letter as fraudulent, the officer ought to have convoked an interview of the principal applicant based on the jurisprudence above. As such, the officer denied the principal applicant procedural fairness and the judicial review must be allowed.

[Emphasis added]

[32] In *Talpur*, above, the visa officer also expressed concerns about an employment attestation that mirrored the duties set out in the NOC. The officer's concerns were clearly stated as relating to the credibility of the letter, but the applicant had been invited to reply to the officer's concerns during an interview. Therefore, the Court concluded that the officer had not breached the principles of natural justice given that the applicant was "afforded a reasonable opportunity to make her case or to demonstrate the genuineness of her application" (at para 22).

[33] In the case at bar, the applicant provided two documents to establish his work experience: a self-declared certificate describing the duties that he performs when he works at his own clinic and an employment letter from Dr Harroon, the Medical Superintendent of the hospital. As previously stated, the certificate was not corroborated by third-party evidence as requested in the check-list and the applicant has abandoned his argument regarding that certificate. Therefore, the only evidence left in support of the applicant's allegation that he performed the responsibilities and duties of a family physician, is the employment letter signed by the hospital's Medical Superintendent.

[34] The NOC for general practitioners and family physicians (3112) contains the following description:

General practitioners and family physicians diagnose and treat the diseases, physiological disorders and injuries of patients. They provide primary contact and continuous care toward the management of patients' health. They usually work in private practice, including group or team practices, hospitals and clinics. Residents in training to be general practitioners and family physicians are included in this unit group.

(...)

Main duties

General practitioners and family physicians perform some or all of the following duties:

- Examine patients and take their histories, order laboratory tests, X-rays and other diagnostic procedures and consult with other medical practitioners to evaluate patients' physical and mental health
- Prescribe and administer medications and treatments
- Perform and assist in routine surgery
- Provide emergency care
- Provide acute care management
- Vaccinate patients to prevent and treat diseases
- Deliver babies and provide pre-natal and post-natal care
- Advise patients and their families on health care including health promotion, disease, illness and accident prevention

- Provide counselling and support to patients and their families on a wide range of health and lifestyle issues
- Perform patient advocacy role
- Co-ordinate or manage primary patient care
- Provide continuous care to patients
- Supervise home care services
- Report births, deaths, and contagious and other diseases to governmental authorities.

[35] The employment letter states that the applicant has been performing the following duties:

- Prescribe and administer medications and treatments.
- Provide emergency care.
- Inoculate and vaccinate patients.
- Provide acute care management.
- Provide emergency care.
- Advise patients and their families on health care including health promotion, disease, illness and accident prevention.
- Examine patients and take their histories, order laboratory tests, X-rays and other diagnostic procedures and consult with other medical practitioners to evaluate patients' physical and mental health.

[36] It is worth quoting again the Officer's notes in the CAIPS:

Applicant has provided only two references to demonstrate his experience. One is prepared by himself and the other is prepared by the office of the medical Sup. Karachi dated 14/11/9 which is covering experience from June 1988 to date and **the Job duties mirror NOC description. This reference appears to be prepared for this application and therefore is self serving. There are no other supporting documents** to demonstrate his employment as a physician and **therefore** his application is refused at screening.

[Emphasis added]

[37] There is no doubt that the letter of reference lists duties performed by the applicant that are identical to several of the duties set out in NOC 3112. However, it is also clear from the letter that the Medical Superintendent is attesting that the applicant has been performing these duties.

[38] I find it difficult to conclude that the Officer's concerns did not relate to the credibility of the employment letter. My understanding of her reasoning is as follows: (1) the letter mirrors the NOC description; (2) the letter appears to have been prepared for the purpose of the applicant's application and, therefore, because it also mirrors the NOC description, it is self-serving. In my view, by stating that the employment letter is self-serving, the Officer is saying that she doubts the veracity of its content. I fail to see what other interpretation can be given to this finding that the letter is self-serving on the facts of this case.

[39] In the employment letter, the Medical Superintendent unequivocally indicated that the applicant has been working at the Government Hospital of Karachi as a family physician, and that he has been performing the duties listed in the letter. By saying that this letter is self-serving and by finding this letter to be insufficient in the absence of other supporting documents to establish the applicant's work experience, the Officer questions the independence of Dr Haroon and the veracity of his account of the applicant's duties. Had the Officer been satisfied that the duties listed in the employment letter were actually the duties performed by the applicant, then, there would be no reason, considering that these duties correspond to the main duties set out in the NOC, for the Officer to find this evidence to be insufficient. There is no rule that requires an applicant to provide more than one employment letter to establish sufficient work experience. An application can be deemed complete even if the work experience is supported by a single employment letter, as long as the employment letter accurately and completely lists the main duties performed by the applicant. I cannot say that it was unreasonable for the Officer to wonder whether the employment letter accurately reflected the applicant's duties and responsibilities. However, in my view, she should have allowed the applicant an opportunity to address her concerns before rendering her decision.

[40] This case is distinguishable from the case in *Kaur v Canada (Minister of Citizenship and Immigration)*, 2010 FC 442 (available on CanLII), where the employment letter failed to include any information regarding the duties performed by the applicant and was limited to stating that the applicant was “a good worker and had learned to cook many types of Indian meals” (at para 3). In that case, the Court found that the applicant failed to provide sufficient evidence in support of her application and that, in light of this insufficient evidence, the visa officer was not required to advise her of the inadequacy of her material. In this case, the employment letter did list the duties performed by the applicant.

[41] In *Kamchibekov*, above, Justice Pinard found that there was no duty on the visa officer to offer the applicant an opportunity to disabuse him of his concerns because the employment letter mirrored the duties set out in the NOC. Justice Pinard was of the view that the evidence provided by the applicant was ambiguous and insufficient. One must keep in mind that every case is fact-driven. In *Kamchibekov*, the applicant had applied to be accepted in the category of Restaurant and Food Service Manager. The NOC for that position provided very generic duties and the letter of employment mirrored those generic duties. Furthermore, there was no indication in the officer’s letter that his concerns were related to the veracity of the letter and the decision was limited to stating that the applicant had not provided satisfactory evidence of his work experience. In this case, the Officer was not satisfied with the employment letter because she found it to be self-serving and the job duties described mirrored the NOC description.

[42] This case can also be distinguished from *Obeta*, above. In that case, the Court concluded that there was no absolute obligation on the officer to allow the applicant an opportunity to respond to credibility concerns that he had in a context where the application was, on its face, void of credibility because the employment letter was likely fabricated. This is not the case here. It cannot be said that the employment letter is, on its face, fabricated or otherwise void of any credibility.

[43] Therefore, for the reasons set out above, I am of the view that the Officer had a duty to provide the applicant with an opportunity to address her concerns and that, by failing to do so, she breached the applicant's right to procedural fairness.

[44] This conclusion is sufficient to dispose of the application, and there is no need for me to determine whether the Officer's decision is reasonable.

[45] The parties did not submit questions for certification, and this case does not raise serious questions of general importance.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed. The Officer's decision is overturned and the application is returned for re-determination (*de novo*) before a different visa officer.

“Marie-Josée Bédard”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3693-12

STYLE OF CAUSE: ABU ASIM HAMZA v THE MINISTER OF
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PLACE OF HEARING: Montreal, Quebec

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REASONS FOR JUDGMENT: BÉDARD J.

DATED: March 12, 2013

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