

Federal Court



Cour fédérale

Date: 20130318

Docket: IMM-4320-12

Citation: 2013 FC 278

Ottawa, Ontario, March 18, 2013

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

**TAHIR MUHAMMAD ABBASI
SAMBREEN TAHIR
ZAINAB ABBASI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Abbasi, his wife and dependent child (the Applicants) are citizens of Pakistan who wish to come to Canada as permanent residents. To this end, Mr. Abbasi filed an application for permanent residence as a Federal Skilled Worker. Mr. Abbasi requested that he be assessed within National Occupational Category (NOC) 0631 as a Restaurant and Food Service Manager.

[2] In support of his application, Mr. Abbasi submitted evidence of more than three years of experience in the food service industry as an employee of McDonald's Pakistan. His supporting documentation included a letter from his employer setting out Mr. Abbasi's position as "2nd Assistant Manager" and a list of his duties.

[3] In a decision dated March 2012, a visa officer (Officer) refused his application, apparently on the basis that Mr. Abbasi did not meet the requirements set out for NOC 0631. The following, almost incomprehensible sentence is the sum total of the reasons set out in the decision letter:

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 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.

[4] As recognized by the parties, the Officer's Computer Assisted Immigration Processing System (CAIPS) notes also form part of the reasons for the refusal. A review of the CAIPS notes discloses that the entirety of the reasons consists of the following:

The job duties as outlined in his reference from McDonalds do not indicate that they meet the lead statement for NOC 0631 nor do they indicate that he has performed the main duties as outlined in NOC 0631.

Based on documentary evidence, I am not satisfied that the applicant has performed the main duties as set out in the occupational description in the NOC.

[5] To succeed in his application for permanent residence as a Federal Skilled Worker, Mr. Abbasi had to first establish that he met the test for "skilled worker" set out in s. 75(2) of the

Immigration and Refugee Protection Regulations, SOR/2002-227 [the *Regulations*]. Specifically, he had to satisfy the Officer that he performed the actions described in the lead statement and a “substantial number of the main duties” of NOC 0631. Stated in different terms, the obligation of the Officer was to evaluate the duties described in Mr. Abbasi’s letter against the lead statement and the main duties of NOC 0631. If Mr Abbasi performed the actions of the lead statement and a substantial number of the main duties, he would qualify to be assessed as a permanent resident.

[6] The problem with the decision is that we have no idea whether the Officer actually carried out any evaluation. The simple statement that Mr. Abbasi had not performed the main duties does not provide any guidance as to why the application was refused. The *Regulations* clearly require that only a “substantial” number of the main duties be performed. From the reasons, I conclude that either: (a) the Officer did not assess Mr. Abbasi’s duties at McDonald’s; or (b) the Officer required that Mr. Abbasi carry out all of the duties rather than a substantial number of the main duties of NOC 0631. Either way, it is not clear that the Officer turned his mind to the question of whether the test set out in the *Regulations* had been met.

[7] The Respondent suggests that I look to the record and compare the employer’s letter with the duties of NOC 0631. On the basis of the guidance of the Supreme Court of Canada in *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 [*NL Nurses*], the Respondent argues I can supplement the reasons with such a review of the record. Frankly, in this case, if I were to compare the job duties in the employer’s letter with those set out in NOC 0631, I would see a great number of similarities.

[8] In my view, the principles espoused in *NL Nurses* do not extend to rectifying a failure of the Officer to carry out his duty.

[9] The Officer's reasons did not need to be extensive. However, to be reasonable, the reasons must demonstrate that the Officer had performed his duty. In this regard, I note the words of Justice Mosley in *Gulati v Canada (Minister of Citizenship and Immigration)*, 2010 FC 451 at paras 41-42, 89 Imm LR (3d) 238:

It is impossible to assess the officer's conclusion, that the applicant had not performed a substantial number of the main duties of NOC 6212, without knowing which duties the officer thought had not been performed and why.

According to *Dunsmuir*, above, at paragraph 47, the transparency and intelligibility of a decision are important elements of a reasonableness analysis. I conclude that their absence in the present decision render it unreasonable.

[10] The application for judicial review will be allowed. Neither party proposes a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for judicial review is allowed, the decision of the Officer is quashed and the matter sent back for re-determination by a different visa officer;
and

2. no question of general importance is certified.

“Judith A. Snider”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4320-12

STYLE OF CAUSE: TAHIR MUHAMMAD ABBASI ET AL
v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 6, 2013

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

DATED: MARCH 18, 2013

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