Federal Court  Cour fédérale

Date: 20130328

Docket: IMM-3673-12

Citation: 2013 FC 317

[UNREVISED ENGLISH CERTIFIED TRANSLATION]
Ottawa, Ontario, March 28, 2013

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

IHAB ABDEL BAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review brought under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act), of a decision by a visa officer at the Canadian Embassy in Cairo to reject the application for permanent residence of Ihab Abdel Bar (the applicant).

Facts

[2] The applicant is an Egyptian citizen. He is a dentist, and it is common ground that he also has training in computer science.

[3] On December 9, 2009, he filed an application for permanent residence as a skilled worker. This application was to be considered in relation to the occupation "Computer and Information Systems Manager", identification number 0213 of the National Occupational Classification and the occupation at issue in this case [NOC 0213].

[4] In support of his application, the applicant provided two letters from an Egyptian-government-sponsored organization called CULTNAT (Centre for Documentation of Cultural and Natural Heritage). These two letters were included in the initial application. They constituted the documentary evidence provided to allow a determination of whether the applicant's qualifications satisfied the NOC 0213 criteria.

[5] The applicant's permanent residence application was processed at the Federal Skilled Worker Centralized Intake Office in Sydney, Nova Scotia. A letter dated February 10, 2010, informed the applicant that his application for permanent residence would be processed by the Canadian Embassy in Cairo.

[6] The decision being challenged by the applicant was rendered on March 6, 2012. The visa officer rejected the permanent residence application in the following terms:

> Although the NOC code corresponds to the occupation specified in the Ministerial Instructions, you did not provide satisfactory

> evidence that you performed the actions described in the lead statement for the occupation, as set out in the occupational descriptions of the NOC. I am therefore not satisfied that you are a Computer & Information System Manager NOC 0213. 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.

[7] In his notes, which are included in the record, the officer acknowledged that the applicant had worked for CULTNAT twice. As mentioned above, two letters were provided in support of the application. The first letter covered the period from October 2003 to October 2005 and contained specific details about the projects in which the applicant had been involved. However, the officer noted that the second letter, covering the period from August 2008 to September 2009, contained only vague generalizations regarding the tasks performed by the applicant. The paragraph to which the applicant is objecting reads as follows:

> PI is a graduate dentist who has had some extra education in it (*sic*) field. He has worked on two occasions for CULTNAT - a government sponsored organisation which is a centre charged with the documentation of the cultural and natural heritage. It appears to be a project based entity with ongoing documentation of specialised topics associated with Egypt's past. PI has worked for them on two occasions. The first occasion from 2003 - 2005 the description of his work is clear and precise – giving details of the projects he worked on. The second letter (written by the same person) covers August 2008 - September 2009. This letter notes that he worked at "managerial level" with vague generalisations as to work content. It appears that the letter, for work just over a year, may have been written to satisfy our requirements.

Applicant's submissions

[8] The applicant submits that his qualifications were amply demonstrated. His counsel argues that the visa officer botched the decision, which she characterizes as incomprehensible. What could he possibly have meant, she asks, by the words, "may have been written to satisfy our

requirements"? Relying on *Dunsmuir v New Brunswick*, [2008] 1 SCR 190 [*Dunsmuir*], she submits that the decision rendered is unintelligible. The applicant provided evidence of his professional qualifications, and the two letters sent in December 2009 should have sufficed. If the visa officer had doubts about the authenticity of either of these letters, he should have asked the applicant to provide him with additional explanations, which could then have been sought. Therefore, he violated his duties relating to natural justice.

[9] During the hearing, the applicant's position revolved around two distinct issues that his counsel submits to the Court. First, she argues that her client's application was sufficient and that the visa officer should have selected him as a permanent resident. She also argues that the rules of natural justice have been breached if the visa officer believed that the second letter had been written to "satisfy our requirements".

Respondent's submissions

[10] The respondent very helpfully set out the legal framework applicable to such cases. Section 11 of the Act establishes the principle that a foreign national wishing to come to Canada must "apply to an officer for a visa or for any other document required by the regulations". Applicants such as the one in this case apply under the category of economic immigration, which means they have the ability to become economically established in Canada.

[11] Section 87.3 of the Act applies here, as it enables the Minister to give instructions with respect to the processing of applications and requests. Subsection 87.3(2) reads as follows:

(2) The processing of applications and requests is to be conducted in a manner that, in	(2) Le traitement des demandes se fait de la manière qui, selon le ministre, est la plus

the opinion of the Minister, will best support the attainment of the immigration goals established by the Government of Canada.

susceptible d'aider l'atteinte des objectifs fixés pour l'immigration par le gouvernement fédéral.

[12] The instructions in question took the form of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations). It is worth reproducing section 75 of the Regulations in full:

75. (1) For the purposes of subsection 12(2) of the Act, the federal skilled worker class is hereby prescribed as a class of persons who are skilled workers and who may become permanent residents on the basis of their ability to become economically established in Canada and who intend to reside in a province other than the Province of Quebec.

75. (1) Pour l'application du paragraphe 12(2) de la Loi, la catégorie des travailleurs qualifiés (fédéral) est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada, qui sont des travailleurs qualifiés et qui cherchent à s'établir dans une province autre que le Québec.

(2) A foreign national is a skilled worker if

(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

c) pendant cette période d'emploi, il a exercé une partie appréciable des fonctions principales de la profession figurant dans les descriptions

occupational descriptions of the *National Occupational Classification*, including all of the essential duties.	des professions de cette classification, notamment toutes les fonctions essentielles.
(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.

[13] The respondent submits that the visa officer's decision was perfectly reasonable if one compares the application submitted, particularly the two letters from CULTNAT, to the criteria listed in NOC 0213. The first letter, which goes into much more detail about the applicant's activities, does not demonstrate a good fit with the occupation of "Computer and Information Systems Manager". In the second letter, there has clearly been an attempt to stick more closely to the criteria, but it is too vague to be of any real use. Ultimately, the visa officer had no choice but to reject the application because it contained insufficient information.

Analysis

[14] To the extent that the applicant is challenging the visa officer's assessment of his application, he appears to be arguing that his application fully met the criteria. There is no doubt that the standard of reasonableness applies to this type of argument (*Dunsmuir*, above). The recent decision in *Ismaili v Canada (Minister of Citizenship and Immigration)*, 2012 FC 351, and all the authorities cited in that judgment summarize the state of the law in this area.

[15] The standard of correctness applies to the second argument, according to which the applicant was entitled to have the decision maker provide him with the opportunity to answer any questions arising from the decision maker's doubts about the authenticity of a document or

the credibility of a witness or document. In *Obeta v Canada (Minister of Citizenship and Immigration*), 2012 FC 1542 [*Obeta*], Boivin J. presented the issue as follows:

> [14] The issue of whether or not the Officer should have brought his concerns to the attention of the applicant and offered him an opportunity to address them is a question of procedural fairness, and is reviewable on a standard of correctness. However, the Officer's concerns themselves, namely his assessment of the evidence and subsequent conclusion that the application was ineligible for processing, are reviewable on the standard of reasonableness.

[16] With respect to the first issue, whether the visa officer acted unreasonably in rejecting the application for permanent residence, I see nothing in the record that leads me to find in the applicant's favour. The onus was on the latter to demonstrate that he met the criteria of NOC 0213. On its face, the first letter, which the visa officer described as detailed, did not satisfy the management aspect of NOC 0213.

[17] The standard of reasonableness calls for considerable deference to the decision maker. The Court states at paragraph 47 of *Dunsmuir*, above:

> Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly 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.

[18] Similarly, in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708, the Supreme Court of Canada notes that reviewing courts do not need to look for extensive reasons:

> [16] Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. . . . In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[19] In my view, a review of the visa officer's notes reveals that he was dissatisfied with the adequacy of the evidence in support of the application for permanent residence. He concluded that NOC 0213, which in this case represents the standard to be met, required more than what the applicant had provided. In light of the level of deference required, this assessment fully satisfies the standard of reasonableness.

[20] NOC 0213 describes the main duties sought to meet the standard:

> Computer and information systems managers perform some or all of the following duties:
>
> - Plan, organize, direct, control and evaluate the operations of information systems and electronic data processing (EDP) departments and companies
> - Develop and implement policies and procedures for electronic data processing and computer systems development and operations
> - Meet with clients to discuss system requirements, technical specifications, costs and timelines

- Assemble and manage teams of information systems personnel to design, develop, implement, operate and administer computer and telecommunications software, networks and information systems
- Control the budget and expenditures of the department, company or project
- Recruit and supervise computer analysts, engineers, programmers, technicians and other personnel and oversee their professional development and training.

The emphasis is on the management of computer and information systems. The first letter in support of the application described the activities of someone who develops computer and information systems. It is difficult to understand how a finding that this letter fails to satisfy the requirements could be unreasonable.

[21] The second letter gave the applicant a better chance of meeting the criteria, as it referred to aspects of system management. However, the letter contains no basis on which the decision maker could determine that the requirements had indeed been met. It is nothing but a collection of vague statements.

[22] With respect, when the visa officer writes, "[i]t appears that the letter, for work just over a year, may have been written to satisfy our requirements", he is simply noting that the second letter merely reproduces some of the NOC 0213 requirements. He therefore states that the second letter is insufficient. The second letter was meant to corroborate the first. In fact, it was necessary because the first did not suffice. However, to the extent that the second letter was necessary, it had to contain sufficient information.

[23] It is not enough to declare in an application for permanent residence that one satisfies the requirements of the appropriate NOC, but that is exactly what the second letter does in this case. It is not enough to call oneself a "manager"; one has to demonstrate this to meet the NOC requirements. The applicant did provide enough detail in the first letter. However, what was missing was the "management" aspect, which the applicant attempted to rectify with the second letter. I would therefore find that it was not unreasonable for the visa officer to decide that the application contained insufficient information.

[24] Have the principles of natural justice been violated in this case? The applicant attempted to interpret some of the words used by the visa officer as expressing doubts regarding the applicant's credibility. I disagree. The decision maker in no way questioned the credibility or authenticity of the documents and evidence provided by the applicant. He merely commented on their insufficiency.

[25] When the words pointed to by the applicant ("may have been written to satisfy our requirements") are read in context, the decision maker is explaining that the second letter was written to satisfy the classification standards applicable in this case. Having found that the letter contained only vague generalizations, the visa officer is merely stating the obvious. He addresses neither the applicant's credibility nor the document's authenticity. He simply notes that the letter contains insufficient information.

[26] As this Court has held on several occasions, there is no legal duty to speak with an applicant or let him know how he might make his application compliant. The following recent

cases, *inter alia*, are relevant: *Kamchikbekov v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1411, *Anabtawi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 856, and *Chadha v Canada (Minister of Citizenship and Immigration)*, 2013 FC 105.

[27] It should be noted that the onus is on applicants to provide the relevant documentation to demonstrate that they meet the criteria of the particular category in which they are applying for status in Canada (*Shetty v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1321).

[28] In *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283, [2007] 3 FCR 501 [*Hassani*], the Court wrote the following at paragraph 24:

> . . . 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* [*John v. Canada (Minister of Citizenship and Immigration)* (2003), 2003 FCT 257, 26 Imm. L.R. (3d) 221 (F.C.T.D.)] and *Cornea* [*Cornea v. Canada (Minister of Citizenship and Immigration)* (2003), 2003 FC 972, 30 Imm. L.R. (3d) 38] cited by the Court in *Rukmangathan*, above.

[29] In other words, the rules of natural justice may require that additional questions be asked in cases where the evidence would have been sufficient had it not been for doubts regarding the credibility, accuracy or genuine nature of information submitted by the applicant in support of his or her application. However, if the application itself is insufficient, there is no duty to contact the applicant to ask him or her to bolster the application. To borrow the words of *Hassani*, above,

where a concern arises directly from the requirements of the legislation or related regulations, there is no duty to attempt to provide the applicant with the possibility of addressing this concern. The applicant is responsible for providing documentation that meets the requirements of the Canadian legislation.

[30] Accordingly, the application for judicial review is dismissed. It was reasonable for the visa officer to find that the application was insufficient; the visa officer never raised any doubts as to the accuracy, genuine nature or credibility of the information provided. He simply noted that repeating the NOC requirements, with nothing further, did not satisfy the requirements. Therefore, there is no issue as to whether he respected the rules of natural justice.

[31] I agree with counsel for the parties that no question for certification arises pursuant to section 74 of the Act.

JUDGMENT

The application for judicial review of the decision by a visa officer rendered on March 6, 2012, is dismissed.

"Yvan Roy"
Judge

Certified true translation
Francie Gow, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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