

Federal Court



Cour fédérale

**Date: 20131223**

**Docket: IMM-11690-12**

**Citation: 2013 FC 1285**

**Ottawa, Ontario, December 23, 2013**

**PRESENT: The Honourable Mr. Justice Annis**

**BETWEEN:**

**MOHAMMAD SHABIR QURESHI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**INTRODUCTION**

[1] This is an application, pursuant to s 72.1 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for judicial review of a decision of a visa officer (“the Officer”) dated May 24, 2012, and received October 5, 2012, refusing the applicant’s application for permanent residence in Canada as a federal skilled worker. The applicant asks that the decision be set aside and remitted for reconsideration.

[2] For the following reasons, the application is denied.

## **BACKGROUND**

[3] The applicant, Mr Mohammad Shabir Qureshi, made an application for permanent residence in Canada from Pakistan under the Federal Skilled Worker Class [FSWC] in 2010 stating that he had at least one year of continuous full-time or equivalent paid work experience in the 10 years prior to his application under NOC 4131 (College and Other Vocational Instructors).

[4] NOC 4131 did not contain any essential duties. It described the main duties of College and Other Vocational Instructors as follows:

College and other vocational instructors perform some or all of the following duties:

- 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
- Develop curriculum and prepare teaching materials and outlines for courses
- Prepare, administer and mark tests and papers to evaluate students' progress
- Advise students on program curricula and career decisions
- Provide individualized tutorial/remedial instructions
- Supervise independent or group projects, field placements, laboratory work or hands-on training
- Supervise teaching assistants
- May provide consultation services to government, business and other organizations
- May serve on committees concerned with matters such as budgets, curriculum revision and course and diploma requirements.

*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.*

[Emphasis in original]

[5] Attached to his application on the Schedule 3, Economic Classes - Federal Skilled Workers form, the applicant indicated for the NOC 4131 requirement that he had more than one year but less than two years of experience. He described the main duties of his experience as follows: “Worked as a Lecturer with Government Post Graduate College, Kohat, Pakistan & taught Political Science to Bachelor of Arts degree students according to University syllabus using lectures, discussion& [sic] seminars.”

[6] The applicant submitted with his application a Service Certificate from the Government Post Graduate College, Kohat. The Certificate indicated that the applicant was a lecturer in Political Science for the 2007-2008 session and that he was “delivering lectures of Political Science to inter and Degree classes respectively”.

[7] The Officer’s notes on the applicant’s application are recorded in the Global Case Management System [GCMS] as follows:

Although the NOC Code 4131 corresponds to an occupation specified in the instructions, I am not satisfied that client actually has experience in this occupation: none of the reference letters on file satisfied me that client performed the main duties for this occupation. Subj stated he had 1 yr of experience in NOC4131 on Schedule 3. Work reference letter from post grad college Kohat states that client worked as lecturer, however no other duties provided. I am therefore, not satisfied that he is a college teacher as per the national occupation classification’s definition. Application refused.

[Emphasis added]

[8] The letter sent to the applicant denying his application stated the following:

Although the NOC code corresponds to the occupations specified in the Instructions, the main duties that you listed do not indicate 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.

[Emphasis added]

## ISSUES

[9] The issues that arise are the following:

- a. Is the decision of the Officer that the applicant failed to demonstrate that he met the requirements of NOC 4131 for performance of the main duties reasonable?
- b. Should the applicant have received a fairness letter?

## STANDARD OF REVIEW

[10] The respondent submits that factual determinations by an officer and findings of fact are reviewable on a standard of reasonableness. I agree. See, for example, *Kniazeva v Canada (Minister of Citizenship and Immigration)*, 2006 FC 268 at para 15.

## ANALYSIS

*Issue #1: Is the decision of the Officer that the applicant failed to demonstrate that he met the requirements of NOC 4131 for performance of the main duties reasonable?*

[11] The applicant raised the issue that the Officer changed the criteria applicable to him midstream and without notice. First, he submitted that the refusal letter applied the wrong test because the Officer stated that he did not perform “all of the essential duties,” while the NOC

only speaks of indications that “some or all of the main duties” be performed. I find this to be an error of inadvertence in the letter, which misstated the Officer’s decision by referring to “essential duties,” and not “main duties.” Moreover, NOC 4131 does not contain any essential duties.

[12] The applicant further argues that the Officer also applied the wrong test for main duties when stating in his refusal letter that the applicant had not indicated that he had performed a “substantial number of the main duties”. As described above, the NOC only refers to the requirement that the applicant perform “some or all of the main duties”.

[13] The Officer appears to rely upon Regulation 80(3)(b) of the *Immigration and Refugee Protection Regulations [IRPR]*, SOR/93-22 which states that a skilled worker is considered to have experience if he or she performed at least a substantial number of the main duties of the occupation as set out in the NOC:

80. (3) For the purposes of subsection (1), a skilled worker is considered to have experience in an occupation, regardless of whether they meet the employment requirements of the occupation as set out in the occupational descriptions of the *National Occupational Classification*, if they performed

(b) at least a substantial number of the main duties of the occupation as set out in the occupational descriptions of the *National Occupational Classification*, including all

80. (3) Pour l’application du paragraphe (1), le travailleur qualifié, indépendamment du fait qu’il satisfait ou non aux conditions d’accès établies à l’égard d’une profession ou d’un métier figurant dans les descriptions des professions de la *Classification nationale des professions*, est considéré comme ayant acquis de l’expérience dans la profession ou le métier :

b) s’il a exercé une partie appréciable des fonctions principales de la profession ou du métier figurant dans les descriptions des professions de cette classification,

the essential duties.

notamment toutes les  
fonctions essentielles.

[Emphasis added]

[Nous soulignons]

[14] Jurisprudence of this Court has interpreted “some or all of the main duties” of the NOC as a minimum threshold of “some”. This has been further interpreted to mean more than one duty, i.e. two main duties. See, for example *A’Bed v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1027 and the cases cited therein (*Chen v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 422 (TD); *Bhutto v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 1411 (TD); and *Agrawal v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 930)). It does not appear that these cases considered whether the requirement of Regulation 80(3)(b) described above of performing a “substantial number” of the main duties of the occupation should have priority over the NOC requirement of “some or all”.

[15] However, it is worth noting the relationship between the *IRPR* and the NOC requirements. NOC descriptions are developed by the Department of Human Resources and Skills Development Canada [HRSDC] pursuant to the *IRPR*. Section 2 of the *IRPR* states:

“*National Occupational Classification*” means the *National Occupational Classification* developed by the Department of Human Resources and Skills Development and Statistics Canada, as amended from time to time.

« *Classification nationale des professions* » Le document intitulé *Classification nationale des professions* élaboré par le ministère des Ressources humaines et du Développement des compétences et Statistique Canada, avec ses modifications successives.

As a result, while the language of the NOC descriptions provides guidance to officers selecting qualified candidates, the *IRPR* would normally be thought to take precedence over the descriptions. If the Regulations use the language of “substantial number” while the NOC description uses the language of “some or all,” one would think that the Regulations would supersede the NOC description.

[16] *Sullivan on the Constructions of Statutes*, 5<sup>th</sup> ed (Ottawa: LexisNexis Canada Inc, 2008) at 623-624 has stated:

When an authority to make interpretive guidelines is conferred by statute, the resulting directives are not necessarily legislation. In *Canada (Minister of Citizenship and Immigration v. Thamore*, for example, the Federal Court of Appeal ruled that directives made under s. 159 of the *Immigration and Refugee Protection Act*, providing that the Chairperson of the Immigration and Refugee Board “may issue guidelines in writing to the members of the Board...to assist members in carrying out their duties,” were merely administrative in character and lacked the status of law. In his majority judgment, Evans J.A. pointed out the advantages achieved through reliance on guidelines and other “soft law.”

[17] In any case, the applicant raised the issue of the “substantial number” requirement as described in the Officer’s refusal letter for the first time at the hearing over the objections of the respondent. Were I not satisfied that the applicant failed in his application to provide information that he had performed two of the main duties listed, I would have adjourned the matter to permit submissions on the point of whether the requirement in the NOC should have priority over that stated in the Regulation. As mentioned, it does not seem to have come up in the previous jurisprudence and it is not clear that given the normal hierarchy in legislative schemes the substantial number requirement in the Regulation should not prevail.

[18] However, I agree with the respondent that the only reference contained in the materials before the Officer (the Service Certificate from the Government Post Graduate College, Kohat) identifies that the applicant performed only the one duty of lecturing, and none of the other main duties described in the NOC.

[19] Additionally, while not determinative, but contributing to the reasonableness of the decision, I note that the statement at the end of the list of main duties indicates that instructors targeted by the NOC should teach vocational skills “such as visual arts, dental hygiene, welding, engineering technology, policing, computer software, management and early childhood education.” The employment information provided by the applicant was that he taught general academic knowledge courses such as political science.

[20] I conclude therefore that the decision of the Officer that the applicant failed to demonstrate that he met the requirements of NOC 4131 for performance of some or all of the main duties was reasonable.

*Issue #2: Should the Applicant have received a fairness letter?*

[21] The applicant also argues that he should have received a “fairness letter.”

[22] I disagree. There is no requirement to issue a fairness letter or otherwise advise an applicant of the deficiencies in his application before rejecting it on the grounds of mere insufficiency of evidence (see *Kamchibekov v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1411). A duty of fairness may require officials to inform applicants of their concerns where a visa officer



forms a negative impression of evidence tendered by the applicant (see, for example, *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283, [2007] 3 FCR 501 and *Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284 at paras 22-23).

Those are not the facts herein.

## **CONCLUSION**

[23] For the reasons given above, this application for judicial review is denied.

[24] There is no question requiring certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is denied.

“Peter Annis”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-11690-12

**STYLE OF CAUSE:** MOHAMMAD SHABIR QURESHI v  
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

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AND JUDGMENT:** ANNIS J.

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