Federal Court  Cour fédérale

Date: 20140918

Docket: IMM-880-14

Citation: 2014 FC 897

Ottawa, Ontario, September 18, 2014

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

LUCINDA GABRIELLE MORGAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant seeks to set aside the decision of a visa officer refusing her application for permanent residency as a member of the Canadian Experience Class (CEC) of skilled workers. She alleges that the visa officer assessed her application unreasonably and that he offered inadequate reasons in support of his decision. For the reasons that follow, I have concluded that the officer's decision should be upheld. The application for judicial review is dismissed.

I. **BACKGROUND**

[2] Ms Morgan is a citizen of the United Kingdom. She entered Canada on May 11, 2011, with a work permit under the International Experience Class.

[3] Ms Morgan worked at the Healthcare of Ontario Pension Plan (HOOPP) as a financial planning assistant from June 2011 to December 2012. In March 2013, she began working as an office assistant at Crowe Soberman LLP.

[4] On April 25, 2013, Ms Morgan applied for permanent residency under the CEC. She identified two categories as matching her skilled work experience: NOC 1241 (administrative assistant) and NOC 1221 (office assistant). While she provided a reference letter from HOOPP in support of her application, she did not submit any documents relating to her work at Crowe Soberman LLP.

[5] A visa officer rejected Ms Morgan's application on August 27, 2013. One month later, she requested that the respondent Minister of Citizenship and Immigration reconsider her application.

[6] Ms Morgan applied for leave and judicial review of the negative decision on February 13, 2014. Six days later, the respondent refused her request for reconsideration. Ms Morgan then sought an extension of time and leave for judicial review of the August 27, 2013 decision. Leave and an extension of time were granted on June 6, 2014.

II. **DECISION UNDER REVIEW**

[7] The visa officer's decision has two components: a letter dated August 27, 2013 and entries in the Computer Assisted Immigration Processing System (CAIPS).

[8] In his letter, the officer indicated that he had refused the application for the following reasons:

> I am not satisfied that you meet the requirement(s) because After taking into consideration the work experience supporting documentation on file, I am not satisfied that you have performed the actions described in the lead statement for the occupation or that you performed a substantial number of the main duties of NOC 1241 (Administrative assistants). The main duties of your work experience that are listed in your employment letter from HOOPP do not correspond to the main duties of NOC 1241 (Administrative assistants). As well, you have not provided an employment letter listing main duties of your work experience from your current employer (Crowe Soberman).

[9] The CAIPS notes read as follows:

> CEC FILE REVIEWED BY PROGRAM SUPPORT OFFICER PA's file has been reviewed under Canadian Experience Class category. Although PA has indicated work experience at an 0, A or B NOC level, I am not satisfied that PA has performed a substantial number of the main duties and/or that duties performed by PA do not correspond to lead statement for the NOC codes 1241 (Financial Planning Assistant). As well, PA did not provide an employment letter listing main duties from her current employer (NOC 1221 – Office Assistant with Crowe Soberman). It appears PA has not met all requirements to submit an application under the CEC category. Letter emailed to address(es) on file informing PA that s/he is [sic] application is refused. […]

III. **ISSUE**

[10] The issue is whether the visa officer rendered a reasonable decision. Since Ms Morgan disputes his application of the relevant regulations to her case and the sufficiency of the officer's reasons, I will examine the decision in light of both these factors.

[11] In addition, the applicant's written submissions alleged that the decision gave rise to a reasonable apprehension of bias. Her counsel did not press this issue at the hearing. In my view, there is nothing in the record to support the allegation.

IV. **ANALYSIS**

A. *Standard of review*

[12] Visa officers render discretionary decisions which are reviewable on the standard of reasonableness: *Wang v Canada (Minister of Citizenship and Immigration)*, 2008 FC 798 at paras 10-11.

[13] An analysis on the reasonableness standard examines both the process and outcome of decision-making. The Supreme Court has stated that reasonableness requires both "justification, transparency and intelligibility within the decision-making process" and a decision which falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47.

[14] Importantly, the insufficiency of reasons is not "a stand-alone basis for quashing a decision": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14 [*Newfoundland Nurses*]; see also *Ayanru v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1017 at para 7. I will examine the adequacy of the officer's reasons when inquiring whether his decision, taken as a whole, is reasonable.

(1) *Did the visa officer render a reasonable decision?*

[15] The visa officer assessed Ms Morgan's application against subsection 87.1(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations], which sets out cumulative criteria for obtaining permanent residency under the CEC. Three are relevant to this case. First, an applicant must have acquired, during the three years preceding her application, at least one year of full-time work experience (or the equivalent in part-time experience) in occupations listed in Skill Type 0 Management Occupations or Skill Level A or B of the *National Occupational Classification* (NOC) matrix: paragraph 87.1(2)(a). Second, the applicant must have performed the actions described in the lead statement for the occupation as set out in its NOC description: paragraph 87.1(2)(b). Third, the applicant must have performed a substantial number of the main duties of that occupation: paragraph 87.1(2)(c). The applicant bears the onus of proving that her application meets the requisite criteria.

[16] In the case at bar, the officer evaluated a reference letter detailing Ms Morgan's work experience at HOOPP. He determined that she had performed neither the actions described in the lead statement for NOC 1241 (administrative assistant) nor a substantial number of the main duties of that occupation. The officer also found that Ms Morgan could not rely on NOC 1221

(office assistant) because she had not submitted a letter listing her main duties while working at Crowe Soberman LLP.

[17] In *Qin v Canada (Minister of Citizenship and Immigration)*, 2013 FC 147 at paras 28 and 30, Justice Gleason commented on the task of a visa officer considering a CEC application:

> [Section] 87.1 of the Regulations requires an officer to evaluate whether a candidate has experience in one of the listed NOC occupations, but provides no guidance as to how such experience is to be evaluated, other than by reference to the listing of duties contained in the NOC matrix.
>
> […]
>
> In evaluating whether or not an applicant's experience falls within a permissible NOC Code, an officer is required to understand the nature of the work performed and the degree of complexity of the tasks undertaken, to determine whether or not they fall within the duties listed in the relevant NOC Code descriptors. The requisite analysis necessitates much more than a rote comparison of the duties listed in the NOC Code with those described in a letter of reference or job description. Rather, what is required is a qualitative assessment of the nature of the work done and comparison of it with the NOC Code descriptor. Indeed, there is a line of authority which indicates that, in the context of Federal Skilled Workers (where an officer is similarly required to assess duties performed against the NOC Code descriptors), the officer may legitimately question whether the applicant possesses the relevant experience if all that he or she does is repeat the duties from the NOC descriptor in a letter of reference. In such cases, this Court has sometimes held that an officer is required to hold an interview or pose additional questions in writing to an applicant, in order to obtain more detail about the actual nature of the work performed (see e.g. *Talpur* and *Patel v Canada (Minister of Citizenship & Immigration)*, 2011 FC 571). Thus, it is beyond debate that the officer must undertake a substantive analysis of the work actually done by an applicant. [emphasis added]

[18] Ms Morgan contends that the visa officer did not undertake a substantive analysis of her application. Rather, he followed a check-off approach that gave no regard to the substance of her

employment at HOOPP. It is for this reason, Ms Morgan argues, that his refusal was unreasonable.

[19] As I noted previously, subsection 87.1(2) of the Regulations establishes a cumulative test. The applicant must therefore prove that the officer erred in concluding that her employment did not match the lead statement *and* that she did not perform a substantial amount of the duties of NOC 1241. If either one of the officer's findings is reasonable, his decision must stand.

[20] The lead statement for NOC 1241 reads as follows:

> Administrative assistants perform a variety of administrative duties in support of managerial and professional employers. They are employed throughout the private and public sectors.

[21] The applicant's evidence indicates that she reconciled financial data, processed journal entries, performed data entry and supported planning and performance teams. Ms Morgan submits that these tasks qualify as administrative duties in support of a public sector employer. On the other hand, the respondent advances that the applicant's primary role at HOOPP involved the entry and reconciliation of financial data. He draws particular attention to her reference letter's qualification that her responsibility to provide support to the planning and performance teams arose only "as required".

[22] In my view, the officer could reasonably characterize the applicant's employment as a clerical or bookkeeping role which does not match the lead statement for NOC 1241. However, even if the applicant had succeeded in casting doubt on this finding, paragraph 87.1(2)(c) of the Regulations would still doom her application for judicial review.

[23] Indeed, the evidence tendered by the applicant reveals a discrepancy between the duties she performed at HOOPP and those listed under NOC 1241. The visa officer's conclusion that Ms Morgan did not perform a substantial number of the main duties of NOC 1241 withstands scrutiny on the standard of reasonableness. It clearly falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir*, above, at para 47.

[24] In my view, this is not a case such as *Gao v Canada (Minister of Citizenship and Immigration)* 2014 FC 821, where the officer had unreasonably excluded evidence of three of the eight duties and erroneously considered some of them to be essential.

[25] I now turn to the applicant's argument that the visa officer provided inadequate reasons. The case law is clear that sparse reasons do not impair an administrative decision if the outcome is reasonable in light of the record. As the Supreme Court stated in *Newfoundland Nurses*, above, at para 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. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion [.] 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.

[26] *Newfoundland Nurses* does not provide a license to the Court to fill in the gaps in a decision or to speculate as to what the decision-maker was thinking: *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431, at paragraph 11. However here, the officer's brief

reasons adequately identify the grounds for which he rejected Ms Morgan's application. They refer the applicant – and a potential reviewing court – to the lead statement and listed duties of NOC 1241. The officer reasonably concluded that the applicant did not meet the burden of proving that her work experience matched these requirements. Consequently, his failure to compose more elaborate reasons does not render his decision unreasonable.

[27] To conclude, I see no basis for interfering with the visa officer's decision. As neither party proposed a serious question of general importance, none will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Richard G. Mosley"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-880-14
STYLE OF CAUSE:	LUCINDA GABRIELLE MORGAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 4, 2014
JUDGMENT AND REASONS:	MOSLEY J.
DATED:	SEPTEMBER 18, 2014

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