Federal Court  Cour fédérale

Date: 20150122

Docket: IMM-3773-13

Citation: 2015 FC 82

Ottawa, Ontario, January 22, 2015

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

AMIRA LOTFY FARWIZ MILLIK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter and Background

[1] Pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], Ms. Amira Lotfy Farwiz Millik [Applicant] seeks judicial review of the decision of a visa officer [Officer] to deny her application for permanent residence in Canada under the Federal Skilled Worker class. The Officer was not satisfied that the Applicant had met the

requirements set forth in subsection 75(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations].

[2] The Applicant is a 44 year old citizen of Egypt who received a job offer as an administrative secretary at the Queen's Medical Centre, in Oakville, Ontario, from her sister, Dr Bebawy. Following the issuance of a positive arranged employment opinion from Service Canada dated February 7, 2012, the Applicant applied for permanent residence status in Canada under the Skilled Worker Program in September, 2010. This application was rejected by the Officer in a letter dated April 18, 2013.

II. Decision

[3] The Officer was not satisfied that the Applicant had met the requirements set forth in subsection 75(2) of the Regulations. The Officer's decision letter stated, in part, that:

> [T]he letter you provided from your employer does not list your hours of work and your letter of employment provides insufficient information about your duties to satisfy me that you have performed the actions described in the lead statement or a substantial number of the main duties of the occupations in which you have requested assessment: NOC [National Occupational Classification code] 1243: Medical administrative assistants, and NOC 4031: Secondary school teachers. I have also considered NOC 1241: Administrative assistants.

[4] In the Global Case Management System [the GCMS] notes, the Officer found, amongst other things, that:

- The duties described in the letter from the Applicant's employer were very vague and referred to "participating in" activities and, thus, were insufficient to assess the Applicant's specific duties;
- The duties that the Applicant said that she had as an administrative assistant did not match the main duties of NOC codes 1241 or 1243;
- The duties that the Applicant said that she had as a teacher did not match the main duties of NOC code 4031;
- The original Arabic copy of the letter from her employer was not supplied and the copy on file had been translated in Ontario;
- The employment letter did not list the Applicant's hours of work or confirm that she worked full time;
- The employment letter did not state the Applicant's salary and no pay stubs or employment contract were provided in support of the application;
- The employment letter did not provide any contact information for the school where the Applicant worked; and
- The "[d]uties listed [in the employment letter] do not match any of the NOCs in which assessment is required".

[5] The Officer thus concluded that the Applicant had not proven that she performed the duties of any of the occupations for which assessment had been requested. Accordingly, the Officer refused the application and did not complete a selection assessment.

III. The Parties' Submissions

A. *The Applicant's Arguments*

[6] The Applicant submits that the Officer's decision is unreasonable. Not only is there a clear factual error concerning the letter from the Applicant's employer, but the Officer misapplied the NOC codes. According to the Applicant, the Officer's decision is not intelligible and lacks transparency.

[7] The Applicant criticizes the Officer's statement that the letter from the Applicant's employer did not disclose her hours of work or confirm that she worked full time. The Applicant states that is erroneous as the letter clearly says: "[t]he school certifies that she has excellent organization skills, as she works full time (40 hours per week), and takes full responsibility for her work." The Applicant argues that this failure to register such readily apparent and important information in the letter casts doubt on the Officer's diligence in reviewing that letter as well as on the subsequent analysis. In addition, the Applicant submits that a statement of the salary for the position is not required by the Regulations.

[8] The Officer, according to the Applicant, unduly and unreasonably focused upon the words "participating in" in the employer's letter, especially given that it was a translation. Citing the decisions in *Rodrigues v Canada (Citizenship and Immigration)*, 2009 FC 111 at paragraphs 9-10 (available on CanLII), and in *Noman v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1169 at paragraphs 29, 32-33, 24 Imm LR (3d) 131, the Applicant submits that an applicant does not need to perform all of the duties listed in a NOC and a visa officer needs to

assess the "pith and substance" of an applicant's previous employment. The Applicant says there is an element of common sense that needs to be applied in the circumstances of this case, since she clearly is a teacher, an occupation common across the world.

[9] Citing the decision in *Taleb v Canada (Citizenship and Immigration)*, 2012 FC 384 at paragraph 36, 407 FTR 185, the Applicant argues that the employer's letter sufficiently lists the Applicant's job duties. She argues that the NOC requirements are broad, and it was not reasonable for the Officer to focus upon the duties in minute detail. The decision in *Zeeshan v Canada (Citizenship and Immigration)*, 2013 FC 248 (available on CanLII), is distinguishable from the circumstances here, the Applicant says, since in that case there was no list of duties in the employer's letter.

[10] The Applicant further argues that the Officer's reasons were not intelligible, as the Officer did not sufficiently explain how the decision was reached. Citing *Abbasi v Canada (Citizenship and Immigration)*, 2013 FC 278 at paragraphs 6-9, 16 Imm LR (4th) 323 [*Abbasi*], and *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at paragraphs 8-11, 16 Imm LR (4th) 267 [*Komolafe*], the Applicant says that the reasons are simply not transparent enough.

[11] As for the decision in *Khowaja v Canada (Citizenship and Immigration)*, 2013 FC 823, 437 FTR 219 [*Khowaja*] upon which the Respondent relies, the Applicant submits that that case is distinguishable since the officer's notes in that case were more extensive and better reasoned than is the case here.

B. *The Respondent's Arguments*

[12] The Respondent states that the onus was upon the Applicant to put her best case forward and to submit an application that was "relevant, convincing and unambiguous" (see: *Obeta v Canada (Citizenship and Immigration)*, 2012 FC 1542 at paragraph 25, 424 FTR 191; *Pan v Canada (Citizenship and Immigration)*, 2010 FC 838 at paragraph 27, 90 Imm LR (3d) 309).

[13] The Respondent concedes that the Officer erred in finding that the letter from the Applicant's employer did not confirm her work schedule or full-time status. However, this error, the Respondent says, was a minor one that does not make the decision as a whole unreasonable.

[14] The Respondent submits that the Officer's analysis was based on the uncertainty of the duties performed by the Applicant. The employer's letter only refers to the Applicant as a "teacher," not a "secondary school teacher," which was the relevant occupation in respect of which the Applicant had requested assessment. Further, although we can assume what a teacher does in respect of some things, the Applicant also said that she performed a number of administrative duties, which implies a somewhat different role than a teacher in Canada. In the Respondent's view, her role was ambiguous, and the Officer was entitled to expect more detail.

[15] The Respondent also states that the NOC comparison made by the Officer was clear. The Respondent argues that there is a presumption of deference to the decision of the Officer and this case is no different than that in *Khowaja* at paragraph 38.

[16] The Respondent concludes that the Officer's decision was a reasonable one.

IV. Issues and Analysis

[17] This application for judicial review raises only one central issue for determination by the Court: was the Officer's decision that the Applicant did not meet the requirements set out in subsection 75(2) of the Regulations reasonable?

[18] 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 paragraphs 10-11 (available on CanLII). The Supreme Court has stated that reasonableness requires "justification, transparency and intelligibility within the decision-making process" as well as 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 paragraph 47, [2008] 1 SCR 190.

[19] 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 paragraph 14, [2011] 3 SCR 708 [*Newfoundland Nurses*]; see also *Ayanru v Canada (Citizenship and Immigration)*, 2013 FC 1017 at paragraph 7 (available on CanLII). However, reasons must "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": *Newfoundland Nurses* at paragraph 16. The Court does not have a licence to fill in the gaps in a decision or to speculate as to what the decision-maker was thinking: see *Komolafe*

at paragraph 11; *Lemus v Canada (Citizenship and Immigration)*, 2014 FCA 114 at paragraphs 37-38, 372 DLR (4th) 567.

[20] I agree with the Applicant's submission that the Officer's erroneous finding of fact as to her full-time work status, which error the Respondent concedes, casts doubt on the Officer's entire review of the Applicant's application. In my view, this factual error clouded and confused the Officer's analysis of the Applicant's job duties as a teacher. This case is not like that in *Khowaja*, upon which the Respondent relies, since there was no blatant factual error in the officer's notes in that case.

[21] This factual error, in and of itself, does not render the Officer's decision unreasonable. However, it was incumbent upon the Officer here to assess and analyze the "pith and substance" of the Applicant's duties at the Manarat Alexandria Private School and consider those duties with the NOCs being assessed, something which the Officer did not do in the reasons. On the contrary, the Officer simply stated in the GCMS notes that he or she found the description of the duties in the letter from the Applicant's employer "very vague" because they referred merely to "participating in" certain activities. In my view, it was not reasonable for the Officer to microscopically examine the employer's letter in this manner and then to conclude with reference to the duties listed in the letter: "Insufficient for me to assess her specific duties".

[22] This Court's decision in *Komolafe* is instructive in this regard, where my colleague Mr. Justice Donald Rennie stated:

> [8] ... It is not for this Court to determine whether the applicant has in fact performed the actions described in the lead statement

> and a substantial number of the main duties. The agent must do so, with some line of reasoning which provides a basis for review. As Justice Richard Mosley found in *Gulati v Canada (Citizenship and Immigration)*, 2010 FC 451, it is impossible to assess the reasonableness of the officer's conclusions without knowing which duties had not been performed.
>
> [9] The decision provides no insight into the agent's reasoning process. The agent merely stated her conclusion, without explanation. It is entirely unclear why the decision was reached.

[23] The Officer's conclusion that the "duties listed [in the employment letter] do not match any of the NOCs in which assessment is required" was made without any apparent evaluation or assessment of the Applicant's duties at the Manarat Alexandria Private School. The Regulations require in paragraph 75(2)(c) that only a "substantial" number of the main duties be performed with respect to the NOC being assessed. It is not clear in this case that the Officer turned or directed his or her mind to the question of whether subsection 75(2) of the Regulations had been met.

[24] As to the adequacy or sufficiency of the Officer's reasons in this case, this Court's decision in *Abbasi* deserves note. In *Abbasi,* Madam Justice Judith Snider stated as follows:

> [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.

[25] As in *Abbasi*, the Officer's decision in this case offers no insight into his or her reasoning process and it is entirely unclear why the decision was reached. The Officer's decision does not provide sufficient grounds for this Court to understand the Officer's reasoning and, thus, is neither intelligible nor transparent.

V. Conclusion

[26] In the result, therefore, I find that the Officer's decision is not reasonable as it is not defensible in respect of the facts and law.

[27] Accordingly, 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. Neither party raised a question of general importance, and so none is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. the application for judicial review is allowed;

2. the decision of the Officer is quashed and the matter sent back for re-determination by a different visa officer; and

3. no question of general importance is certified.

"Keith M. Boswell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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