

Federal Court



Cour fédérale

**Date: 20150707**

**Docket: IMM-5993-14**

**Citation: 2015 FC 826**

**Calgary, Alberta, July 7, 2015**

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

**BETWEEN:**

**WILMA VILLANUEVA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant asks the court to set aside the decision of an officer at the Embassy in London, U.K., denying her a work permit for a live-in caregiver position for an elderly man. For the reasons that follow, her application must be dismissed.

## **Background**

[2] The applicant, Wilma Villanueva, is a British citizen, originally from the Philippines. She has a degree in Midwifery from the Philippines, which she obtained in 1972.

[3] While in London, the applicant worked as a health care assistant at the University College London Hospital [UCLH] Neonatal Unit from April 1991 to January 2011. She subsequently worked as a Ward Housekeeper in UCLH from January 2011 to March 2013.

[4] Between June 1991 and December 1996, the applicant worked part-time as a nursing auxiliary and senior care assistant for St. Mary's Convent and Nursing Home.

[5] On October 1, 2013, the applicant was offered a position to care for Gregorio Tupas, her uncle. In February 2014, after submitting an application for a work permit as a live-in caregiver, the officer informed the applicant that proof was required of one year full-time paid employment experience related to care of elderly persons. The applicant provided documentation.

[6] The application was rejected by letter dated May 15, 2014. The officer was not satisfied that the applicant met section 112 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. In particular the officer was not satisfied that the applicant had successfully completed six months of full-time training in a classroom setting, in a field or occupation related to the employment sought or had completed one year of full-time paid employment, including at least six months of continuous employment with one employer, in a field or occupation related to the employment sought.

[7] The Global Case Management Notes [GCMS notes] indicate that the officer was unable to consider the applicant's elder care experience at St. Mary's as it was outside the three year period specified to be the relevant period in the *IRPR*. The applicant does not take issue with that finding.

[8] The officer noted that her employment duties as a Ward Housekeeper at UCLH "do not appear to be ... related to direct patient care, or related to employment in Canada as care of an elderly person." Moreover, it was found that her training as a midwife "is not related to employment in Canada, care of an elderly person."

### **Issues**

[9] There are two issues raised in this application: the standard of review and whether the officer erred in his decision or whether it was unreasonable.

### **Analysis**

[10] The applicant submits both her education and experience met the requirements of paragraph 112(c) of the *IRPR*, which reads as follows:

A work permit shall not be issued to a foreign national who seeks to enter Canada as a live-in caregiver unless they

...

(c) have the following training or experience, in a field or occupation related to the employment for which the work permit is sought, namely,

(i) successful completion of six months of full-time training in a classroom setting, or

(ii) completion of one year of full-time paid employment, including at least six months of continuous employment with one employer, in such

a field or occupation within the three years immediately before the day on which they submit an application for a work permit;

[11] She submits that the officer erred in his or her interpretation and application of paragraph 112(c) of *IRPR*. Her submission is that the officer made the same error that was made in *Singh v Canada (Minister of Citizenship and Immigration)*, 2006 FC 684 [*Singh*] in that the officer interpreted section 112 of the *IRPR* as requiring that the applicant have specific employment experience or education in the field of elder care, whereas her experience and education was in the field of child care.

[12] The applicant cites several cases for the proposition that where the interpretation of regulations is required, the standard of review is correctness; see for example, *Singh*. The respondent cites *Mayorga v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1180 for the proposition that cases like these are to be reviewed on a reasonableness standard.

[13] I agree with the respondent that the standard of review finding in *Singh* is suspect in light of the decisions of the Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 54, *Smith v Alliance Pipeline Ltd*, 2011 SCC 7 at para 28, and *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 30. These decisions indicate that with limited exceptions that are not present here, when the decision-maker is interpreting his or her home statute, the standard of review is reasonableness.

[14] In any event, I do not accept the applicant's submission that the officer here was looking specifically for elder care and discounting care in other fields. In my view, although the choice

of words may suggest that was what was being done, it was shorthand and the decision as a whole, and particularly the GCMS notes indicate that the concern was that the applicant had no experience or education that was related to direct care of the sort required here. This was an assessment of the facts in the applicant's application and not one of statutory interpretation.

[15] The job offer for the applicant's elder care position lists the responsibilities and duties as:

Prepare and serve nutritious meals, shop for food and household supplies, wash, iron and press clothing and household linens, perform light housekeeping and cleaning duties, companionship.

[16] The purpose of the Ward Housekeeper position in the Neonatal Unit held by the applicant was stated to be the following:

The Housekeeper is a member of the nursing support team, which provides a 7 day a week service for the Unit including Intensive, High Dependency, Special care and Transitional Care, working under the direct supervision of the trained nursing staff. The contribution of the housekeeper support team enables the nurses to spend more time caring for the babies and their families, and helps to provide a suitable environment for this care to take place.

[17] The officer noted that the housekeeper position did not deal directly with providing care. It is not unreasonable to conclude that her relevant experience is not "in a field or occupation related to the employment for which the work permit is sought" as is required by the *IRPR*.

[18] Similarly, it is not unreasonable to conclude that the applicant's education as a midwife was not "in a field or occupation related to the employment for which the work permit is sought" as is required by the *IRPR*. I do not accept the submission of the applicant that courses such as nutrition and hygiene, meet the requirement. In my view, absent evidence to the contrary, it is

reasonable to conclude there is a significant difference in nutrition, first aid and hygiene required by women prior to childbirth and postpartum and that required for the elderly.

[19] Neither party proposed a question for certification, nor is there one on these facts.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is dismissed and no question is certified.

"Russel W. Zinn"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5993-14

**STYLE OF CAUSE:** WILMA VILLANUEVA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 30, 2015

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** JULY 7, 2015

**APPEARANCES:**

Dov Maierovitz

FOR THE APPLICANT

John Doncar

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Dov Maierovitz  
Barrister and Solicitor  
Toronto, Ontario

FOR THE APPLICANT

William F. Pentney  
Deputy Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT