

Federal Court



Cour fédérale

Date: 20160307

Docket: IMM-3123-15

Citation: 2016 FC 285

Ottawa, Ontario, March 7, 2016

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**MIAN AAMIR QADEER
NABILA SHAMIN
ROOHMA AAMIR
MAARIJ AAMIR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision dated June 3, 2015, made by a Visa Officer [the Officer] of the Immigration and Medical Services Division of the High Commission of Canada in London, UK [High Commission], refusing the Applicants' application for permanent residence as members of the provincial nominee class.

[2] For the reasons that follow, this application is allowed.

I. Background

[3] The Principal Applicant, Mian Aamir Qadeer, and his family applied for permanent residence following nomination of the Principal Applicant by the Province of Saskatchewan [the Province] under the Saskatchewan Immigrant Nominee Program in July 2013. The application was forwarded to the High Commission for processing.

[4] On August 22, 2014, the Officer wrote to the Applicants and the Province, advising them of the possible refusal of their application. The Officer was not satisfied that the Principal Applicant had the English language proficiency to be able to perform the tasks of the occupation in which he had been nominated and therefore was not satisfied that he would be able to become employed in Canada or, if employed, to become economically established. The Officer afforded the Applicants and the Province an opportunity to provide further information before the decision was made.

[5] The Province responded to the High Commission, advising that it continued to support the application. The Applicants also responded by providing information concerning the Principal Applicant's plan to become economically established together with supporting evidence. This included:

- A. A written offer from Universal Trading Inc [Universal], a cell phone and electronics company in Saskatoon, to employ the Principal Applicant as a cashier/front desk assistant;

- B. A letter from the owner of Universal, explaining how he knew the Principal Applicant and stating that he would not have offered him the job if he was not satisfied with the Principal Applicant's English language abilities;
- C. A letter from the Principal Applicant's current employer confirming his employment as an administrative assistant;
- D. A letter from his Canadian relative stating that he would assist the Applicants in Canada; and
- E. Evidence of the Principal Applicant's savings and assets.

[6] On April 9, 2015, the Officer reviewed the submissions and was not satisfied that they addressed the concerns that had been raised. Following concurrence by another officer at the High Commission, the Officer wrote to the Principal Applicant on June 3, 2015, refusing the application for permanent residence.

II. Impugned Decision

[7] The Officer was not satisfied that the fact the Principal Applicant was nominated by the Province was a sufficient indicator that he was likely to become economically established in Canada, because the Officer was not satisfied that the Principal Applicant had the requisite language skills. The Global Case Management System Notes indicate the analysis in arriving at the decision to refuse the application to have included the following:

- A. The Province continued to support the application;

- B. The Officer was not satisfied that a job offer itself demonstrated ability to perform the duties of a particular job;
- C. The Principal Applicant knew the prospective employer in Canada through his current employment in Pakistan;
- D. The Principal Applicant currently worked in a different industry and had never worked as a cashier;
- E. Neither the Principal Applicant nor his prospective employer had explained how the Principal Applicant would accomplish the tasks of the offered employment given his level of English language proficiency and experience;
- F. The Officer stated it appeared likely that the job offer may have been made to the Principal Applicant for the purposes of facilitating his application for permanent residence because of personal connections with the prospective employer, not because there was actually a job vacancy to fill or because the Principal Applicant had the skills or experience related to a possible job opening;
- G. The level of the Principal Applicant's English did not demonstrate that he would be able to perform the full level of tasks associated with his intended occupation;

- H. The Applicant was found not to provide a clear or concise plan to demonstrate his intention to become economically established through an alternative long-term plan;
- I. The availability of many jobs and a strong economy in Saskatchewan were not indicative in themselves of the Principal Applicant's individual ability to become economically established; and
- J. The Principal Applicant's long term plan – perhaps to open a small business such as a fast food restaurant – did not satisfy the Officer of his ability to become economically established.

III. Issues and Standard of Review

[8] The Applicants submit the following issues for the Court's consideration:

- A. Does the Officer breach the duty of procedural fairness by failing to put his credibility concerns to the Applicants in order to provide them an opportunity to respond?
- B. Is the Officer's finding that the Principal Applicant cannot become economically established in Canada reasonable?

[9] The parties agree, and I concur, that the standard of review applicable to the procedural fairness issue is correctness and the standard applicable to the Officer's finding that the Principal

Applicant cannot become economically established is reasonableness (*Rani v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1414 [*Rani*]).

IV. Submissions of the Parties

A. *The Applicants' Position*

[10] The Applicants argue that the Officer breached procedural fairness by failing to put to them the credibility concern surrounding the job offer, in order to provide an opportunity to disabuse the Officer of this concern. The personal relationship between the employers caused the Officer to doubt the authenticity of the job offer. The Applicants submit that this raised an issue of credibility because, if the Officer had accepted the job letter as true, there would be no reason for the Officer to find the information provided by the Applicants to be insufficient.

[11] The Applicants rely on jurisprudence of this Court to the effect that, where an officer rejects an application based on concerns as to the credibility or accuracy of information submitted by the Applicant, those concerns must first be squarely put to the Applicant for a response (*Madadi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 716 [*Madadi*] at para 6; *Talpur v Canada (Minister of Citizenship and Immigration)*, 2012 FC 25 at para 21). They refer in particular to recent decisions where procedural fairness requirements were addressed in the context of concerns about the credibility of job offers (*Rani*; *Dar v Canada (Minister of Citizenship and Immigration)*, IMM-2669-25 (unreported) [*Dar*]).

[12] Turning to the reasonableness of the decision, the Applicants submit that the Officer's decision that the Principal Applicant lacked the language skills to become economically established in Canada was unreasonable because: (1) the Officer's suspicion of the job offer based on personal connection is without justification; (2) the finding that the Principal Applicant does not have relevant experience is made without regard to the evidence; and (3) the finding that he does not have the English skills to perform the job duties is made without regard to the requirement to assess whether he could become economically established.

[13] Specifically, the Applicants argue that the mere presence of a personal relationship between a potential employer and an employee's current employer cannot be grounds for suspicion. Many employment opportunities begin with and may even require personal referrals. The evidence states that the relationship allowed the prospective employer to assess more fully the Principal Applicant's qualifications. The Principal Applicant was not known to the prospective employer through family and friends.

[14] The Applicants also argue that the Officer erred by focusing on the items that the prospective employer sold and a single duty that would be addressed through worksite training, rather than the substance of the duties and the evidence of relevant work experience. The evidence was that working as a cashier was only one of seven duties and that the Principal Applicant's current experience included handling cash transactions.

[15] Finally, the Applicants submit that the Officer focuses not on the Principal Applicant's mechanism of economic establishment, being his job offer, but on his ability to perform the full

range of tasks that are performed by the majority of workers in his intended occupation, thus relying too heavily on the Employment and Social Development Canada (ESDC) description for that occupation.

B. *The Respondent's Position*

[16] The Respondent submits that the basis for the Officer's decision was not that the Principal Applicant's job offer was not credible, but rather that the Officer was not persuaded that the Principal Applicant would be able to become economically established in Canada given his limited experience and communication skills. The Officer did not develop concerns about the Principal Applicant's language skills because of suspicion that the offer may have been made due to personal connections with the prospective employer. Rather, that suspicion resulted from the Officer's analysis of the Principal Applicant's skills.

[17] The Respondent emphasizes that the onus is on the Applicants to submit sufficient evidence of economic establishment, and there is no duty on the Officer to inform the Applicant of any concerns that arise directly from the statutory requirements (*Parveen v Canada (Citizenship and Immigration)*, 2015 FC 473 at para 16).

[18] The Respondent would distinguish *Rani* on the basis that Justice Strickland found in that case that, viewed as a whole, the officer's decision was based on his skepticism as to the genuineness of the employment offer. In the present case, the Applicant's language ability was a separate and dispositive ground for the refusal of the application.

[19] On the reasonableness of the decision, the Respondent argues that, even accepting the Principal Applicant had a genuine job offer, this did not prove that he had the skills and experience to carry out the job successfully, remain employed, and become economically established over the long-term. The Respondent also notes that the prospective employer's letter refers to him and the Principal Applicant both speaking Urdu, which facilitates communication, and argues this makes it unclear how the employer could assess the Principal Applicant's proficiency in English.

V. Analysis

[20] My decision to allow this application for judicial review turns on the procedural fairness issue raised by the Applicants. As noted by the Applicants, at paragraphs 6 to 7 of *Madadi*, Justice Zinn succinctly summarized the jurisprudence surrounding procedural fairness obligations in the context of applications for permanent residence as follows:

6 The jurisprudence of this Court on procedural fairness in this area is clear: Where an applicant provides evidence sufficient to establish that they meet the requirements of the Act or regulations, as the case may be, and the officer doubts the "credibility, accuracy or genuine nature of the information provided" and wishes to deny the application based on those concerns, the duty of fairness is invoked: *Perez Enriquez v Canada (Citizenship and Immigration)*, 2012 FC 1091 at para 26; See also among many decisions *Patel v Canada (Citizenship and Immigration)*, 2011 FC 571; *Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264; *Farooq v Canada (Minister of Citizenship and Immigration)*, 2013 FC 164; and *Ghannadi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 515.

7 In line with the authorities cited above, because the officer erred in failing to put his or her concerns to the Applicant, the Applicant was denied fairness, and the decision must be set aside.

[21] In *Rani*, this principle was applied in circumstances very similar to the case at hand, involving concerns about the credibility or genuineness of a job offer that was provided by the applicant after the visa officer had questioned the applicant's language skills. After canvassing jurisprudence relevant to the applicable procedural fairness obligations, and noting that a visa officer's credibility findings may be implicit rather than explicit, Justice Strickland found as follows at paragraphs 21 to 25:

21 In this case, in response to the pre-refusal letter, the Principal Applicant provided information intended to support her submission that she could become economically established in Saskatchewan. The Officer found that the TFI job offer was "self-serving" because it "may have been offered only in response to concerns" and because the Principal Applicant "is related to the prospective employer". In my view, this speaks to the Officer's assessment of the genuineness of the TFI job offer. This is also supported by the Officer's further comment "even if the job offer reflects an actual employment opportunity...". Based on his reasons, it is clear that the Officer had concerns that the TFI offer was not an "actual employment opportunity" and, therefore, that the credibility of the Principal Applicant's evidence was in issue.

22 The Officer's credibility concern arises, in part, from the timing of the TFI job offer which was dated and submitted only after the Officer notified the Principal Applicant of his concerns regarding her language skills. A similar concern arose in *Ransanz v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1109. In that case, the visa officer was concerned that the applicant did not intend to live in Quebec as required by the Quebec immigrant nomination program and the IRPA Regulations. The officer informed the applicant of his concerns and scheduled an interview with the applicant. After being informed of the concerns, but prior to the interview, the applicant's wife traveled to Montreal to research real estate and schools, which the applicant raised as evidence of their intention to move. On judicial review, the respondent suggested that the applicant's research into real estate and schools in Montreal was only undertaken in anticipation of the interview with the visa officer. Justice Martineau held that if the officer had suspected that the trip to Montreal had only taken place because the applicant was aware of his upcoming interview, the officer should have raised this concern and given the applicant an opportunity to respond as this issue went directly to the applicant's

credibility (*Moradi v Canada (Citizenship and Immigration)*, 2013 FC 1186 at paras 17-18).

23 And, although in this case the Officer goes on to assess the TFI job offer, finding that there was insufficient evidence to demonstrate that the Principal Applicant's language skills would be sufficient for the position with TFI, in my view this conclusion was tainted by his concern with the genuineness of the Principal Applicant's evidence. This is evident in the Officer's statement that "evidence of her involvement with spouse's business comes only from her own statements and that of her supporting relative in Canada. It is therefore not clear to what extent the context of English language use...could be considered familiar". Yet, in his supporting letter Ahmed had stated that the Principal Applicant's English was sufficient for the position at TFI and that her familiarity with the business would be helpful. The Principal Applicant's letter stated that she had been working full time for her husband.

24 Thus, the Principal Applicant had provided sufficient information which, if believed, could ground a finding that she was able to obtain employment and, thereby, potentially become economically established (*Bar v Canada (Citizenship and Immigration)*, 2013 FC 317 at para 29). However, the Officer was unconvinced because he doubted the genuineness or accuracy of the evidence due to his concerns about its source.

25 In my view, this case is not defined by conclusions as to the weight or sufficiency of the evidence. Viewed as a whole, the Officer's decision was based on his skepticism as to the genuineness of the Principal Applicant's employment offer, which, in my view amounts to a finding regarding the credibility of the Principal Applicant's evidence. Therefore, the Officer should have provided the Principal Applicant with an opportunity to address those concerns before making his decision.

[22] Similarly in the case at hand, it is clear to me that the Officer was concerned about the genuineness or credibility of the job offer and letter from the prospective employer provided by the Principal Applicant. The relevant portion of the decision reads as follows:

In a statement responding to concerns regarding PA's ability to establish economically on account of PA's demonstrated lack of Eng. language proficiency, rep first refers to PA's job offer. Rep

submits that PA being offered the job demonstrates that PA's level of English is sufficient to perform the work of the job. I am not satisfied that a job offer, in itself, demonstrates PA's ability to perform the duties of a particular job. While I note the assurances provided by the prospective employer, I also note that the applicant is known personally to the prospective employer through his employer in Pakistan. PA's empl history appears related to water purification/filtration products, and PA has not demonstrated any formal training or experience as a cashier or in an industry related to mobile phones (the indicated industry of the prosp. employer). Neither the PA or prospective employer have explained how the applicant will accomplish the tasks of the offered employment considering his demonstrated level of English language proficiency and experience. It appears likely therefore that the job offer may have been made to PA for the purposes of facilitating his application for permanent residence because of personal connections with the prospective employer and not because there is actually a job vacancy to fill or because the PA has skills and experience related to a possible job opening. (emphasis added)

[23] The underlined passages in this portion of the decision demonstrate the Officer's skepticism as to the legitimacy of the job offer, concluding that it had likely been made to facilitate the Principal Applicant's immigration objectives because of a personal connection with the employer.

[24] I have considered the Respondent's argument that this skepticism did not cause the Officer to reject the prospective employer's evidence that the Principal Applicant's language proficiency was sufficient to perform the job, but rather resulted from the Officer's concerns about such proficiency. I have also considered the Respondent's argument that, following the consideration of the job offer, the Officer proceeds to conduct further analysis of the Principal Applicant's language skills and independently finds them lacking. However, in my view, the Officer's skepticism as to the job offer is intertwined with the findings as to the Principal Applicant's language proficiency and his resulting ability to become economically established.

[25] Similar to the situation addressed by Justice Strickland in *Rani*, the analysis of the language skills in the present case was tainted by the concern about the genuineness of the offer. In the absence of this concern, the evidence of the job offer and the letter provided by the prospective employer could have been sufficient to support a finding that the Principal Applicant was able to obtain employment and potentially become economically established. It was therefore a breach of procedural fairness for the Officer not to put those concerns to the Principal Applicant before reaching the decision to reject his application.

[26] As argued by the Applicants, this conclusion is also supported by other recent decisions of this Court (see *Dar; Sardar v Canada (Citizenship and Immigration)*, 2015 FC 1373; *Meraj v Canada (Citizenship and Immigration)*, 2016 FC 210 [*Meraj*]). *Meraj* is a particularly relevant authority, as the visa officer's decision recited in that case specifically impugned the impartiality of a prospective employer's assessment of the applicant's language skills, on the basis that the employer was a family friend. The Court found the officer's suspicion resulted in a duty of fairness to make further inquiries. Similarly, in the present case, it was not only the Officer's concern about the genuineness of the job offer, but the concern about the impartiality of the prospective employer's assessment of the Principal Applicant's English language ability, which engaged the obligation to follow up on those concerns.

[27] As the breach of procedural fairness represents a basis for the Officer's decision to be set aside and referred to another visa officer for re-determination, I decline to make findings as to the reasonableness of the Officer's decision. The Principal Applicant's arguments in support of

his ability to become economically established are best considered by the officer who will be re-determining the application for permanent residence.

[28] The parties confirmed that neither proposes any question of general importance for certification for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed and the matter is referred to another visa officer for re-determination. No question is certified for appeal.

“Richard F. Southcott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: MIAN AAMIR QADEER, NABILA SHAMIN,
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