

Federal Court



Cour fédérale

**Date: 20160601**

**Docket: IMM-2409-15**

**Citation: 2016 FC 611**

**Toronto, Ontario, June 1, 2016**

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

**BETWEEN:**

**JIAN CHEN**

**Applicant**

**And**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [Act] of a decision dated May 14, 2015 and rendered by an Immigration Officer [Officer] rejecting the Applicant's application for permanent residence under the Canadian Experience Class [CEC]. The Officer found that the Applicant did not qualify as a member of this class since he had not acquired a year's worth of relevant work

experience under National Operation Classification [NOC] unit group 6313, or “Accommodation, travel, tourism and related services supervisors”. As such, the Officer found that the Applicant had not satisfied the requirements of subsection 87.1(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations].

## II. Facts

[2] The Applicant is a 26-year old citizen of China. He moved to Canada in November 2007 to study and eventually, in May 2011, earned a two-year business diploma from Cambrian College in Sudbury, Ontario.

[3] After graduation, the Applicant obtained a work permit and found a job with East Link Travel Ltd. [East Link], a company that arranges visits to Canada for a mostly Chinese clientele.

[4] Initially, the Applicant worked as a ‘Reservation Operator’, but in 2013 was promoted to ‘Reservation Supervisor’. The Applicant also states that he is certified by the Travel Industry Council of Ontario as a “Combined Travel Counsellor and Supervisor/Manager” (Application Record at 15 [AR]).

[5] In 2014, the Applicant decided to apply for permanent resident status as a member of the CEC. When individuals apply for permanent residence as a member of the CEC, they are evaluated according to the criteria identified in subsection 87.1(2) of the Regulations.

[6] Paragraphs 87.1(2)(a), (b), and (c) establish three underlying requirements, namely that an applicant: (1) has at least one year of full-time experience in one of the appropriate NOC codes (within Skill Type 0 or Levels A or B); (2) has performed the actions described in the ‘lead statement’ of the associated NOC; and (3) has performed a substantial number of the ‘main duties’ as set out in the NOC.

[7] The Applicant applied under NOC 6313 (“Accommodation, travel, tourism and related services supervisors”) one of the unit groups that qualify under subsection 87.1(2) of the Regulations and under which ‘reservations supervisor’ is listed as an “Example Title”. The lead statement of NOC 6313 is as follows:

Supervisors in this unit group supervise and co-ordinate the activities of hotel accommodation service clerks, casino workers, reservation clerks and other travel and accommodations workers not elsewhere classified. They are employed by service establishments throughout the public and private sectors.

(AR at 48)

[8] The main duties section of NOC 6313 provides additional detail:

Accommodation, travel, tourism and related services supervisors perform some or all of the following duties:

- Co-ordinate, assign and review the work of hotel, motel and other accommodation services clerks, casino workers, reservation clerks and other travel and accommodations workers not elsewhere classified
- Establish work schedules and procedures and co-ordinate activities with other work units or departments
- Resolve work-related problems and prepare and submit progress and other reports

- Hire and train staff in job duties, safety procedures and company policies
- Requisition supplies and materials
- Ensure smooth operation of computer systems, equipment and machinery, and arrange for maintenance and repair work
- May perform the same duties as workers supervised

(AR at 48)

[9] Along with his application for permanent residence, the Applicant submitted a letter from the President of East Link, who outlined some of the Applicant's professional experience:

From January 28, 2013 until now [January 27, 2014], [the Applicant's] position was Reservation Supervisor with the following job descriptions:

- In charge of reservation work of hotels, transportation vehicles and restaurants
- Designing schedules and procedures for each group of visitors with director
- Negotiating with business partners;
- Training reservation operators and agents
- Analyzing all reservations and reporting to director
- Working with director to control costs in all reservations

(AR at 19)

[10] In rejecting the Applicant's application, the Officer stated that the Applicant was being assessed on the basis of NOC 6313 but that the job description provided in his letter of reference made no mention of "assigning and reviewing the work of clerks" under his charge, as outlined in the lead statement of the NOC (AR at 8). As such, the Officer found that the Applicant was

actually working under NOC 6521, “Travel counselors”, a NOC which does not qualify for CEC status.

### III. Analysis

[11] The only issue in this judicial review is whether the Officer erred in concluding that the Applicant had not acquired a year of supervisory work experience. There is no dispute as to the fact that the Applicant must meet all of the duties contained in the lead statement of the NOC.

[12] This Court has previously found that an officer’s assessment of whether an applicant is a member of the CEC involves questions of mixed fact and law and is reviewed on a standard of reasonableness (*Song v Canada (Citizenship and Immigration)*, 2015 FC 141 at para 11 [*Song*]; *Anabtawi v Canada (Citizenship and Immigration)*, 2012 FC 856 at para 28). Under a reasonableness review, this Court should only intervene if the officer’s assessment lacks “justification, transparency and intelligibility” and falls outside “a range of possible, acceptable outcomes defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). In other words, deference is owed to the Officer’s findings of fact as applied to the law.

[13] The Applicant submits that as the primary evidence (his employer’s reference letter) stated that he was in “in charge of” reservation work, he was, by definition, in a supervisory role. As the NOC does not define the word “supervise” and/or “supervisors” (nor do the Act or the Regulations), the Applicant turns to the online Merriam-Webster dictionary. There, the definition of supervise is “to be in charge of (someone or something)”. The Applicant was

responsible for all of the reservation work regarding hotels, transportation vehicles and restaurants, according to his Employer's letter. He contends that since this, along with designing work schedules and training new agents, is an inherently supervisory task; he meets the NOC requirements, despite the fact that his employer's letter does not specifically use the word "supervise". To find otherwise, according to the Applicant, ignores the substance of his position in favour of the strict language of the NOC. This is particularly true since his job title, "Reservations Supervisor", is listed in NOC 6313 amongst the "Example Titles". As such, the Officer was unreasonably fixated on the NOC's exact language, rather than the substance of his experience.

[14] The Respondent takes the position that nothing in the application or the employment letter suggested that the Applicant "supervised staff". The Officer considered all the available evidence and found no proof of any supervisory work. Since the obligation was on the Applicant to provide the necessary documentation to assist the Officer in determining whether the Applicant adhered to the lead statement of NOC 6313 and he did not, the Officer's decision was reasonable. As noted in *Madan v Canada (Minister of Citizenship and Immigration)* (1999), 172 FTR 262 at para 24, "visa officers should be afforded considerable discretion in determining whether an applicant satisfies the requirements for a given occupation, including their interpretation of the provisions of the NOC. They have a familiarity with an understanding of this document that is at least equal to, and will often exceed, that of a reviewing court."

[15] In *Qin v Canada (Minister of Citizenship and Immigration)*, 2013 FC 147 at para 30, Justice Gleason set out the process by which an officer must assess an applicant's claim to belong to a NOC:

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... Thus, it is beyond debate that the officer must undertake a substantive analysis of the work actually done by an applicant.

(Emphasis added)

[16] In other words, an officer must look to the substance of the work done and avoid a superficial analysis of the language used in the job description. In this case, however, the Officer, in stating that there was "no mention in the letter that you are assigning and reviewing the work of clerks under your charge, as outlined in the lead statement" (AR at 8), ignores the substance of the letter in favour of the specific words used. As the Applicant correctly notes, being "in charge of" something and "supervising" it are equivalent; this is particularly so when one considers the other duties outlined in the letter of reference, such as "training reservation operators and agents".

[17] Requiring the Applicant and/or East Link to have said more amounts to a requirement to repeat the language of the NOC's lead statement verbatim. Justice Russell, faced with a similar dispute in *Song*, had the following to say:

[29] It is clear that the duties listed in the employer's letter do not use the same words that appear in NOC 0621. But this will inevitably be the case because applications have been refused when an employer simply reiterates the wording of a NOC. So employers are obliged to describe in their own words exactly what applicants do. This requires officers to examine applications carefully and not to reject them because the same words are not used.

[18] The Applicant's submissions reveal that he does, as a 'Reservation Supervisor', "supervise and co-ordinate the activities of... reservation clerks", as the lead statement requires, even if the letter of reference did not use these words. The Applicant is "[i]n charge of reservation work of hotels, transportation vehicles and restaurants" and handles the "[t]raining [of] reservation operators and agents", per the reference letter of East Link (AR at 19). If he is training workers to handle reservations, and is also in charge of reservation work, the obvious inference is that, as a 'Reservation Supervisor', he supervises others, who he has trained, to engage in reservation work. While the onus is on applicants to establish that they meet the requirements of subsection 87.1(2) of the Regulations, officers cannot reject them when they meet those requirements simply for using different language from the NOC in question – especially when the case law instructs that verbatim use of the wording from the a NOC in a letter of reference can ground an adverse credibility finding (*Kamchibekov v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1411 at para 16).

[19] Ultimately, the Officer rejected the application at issue, despite the fact that the Applicant had the relevant work experience, simply because the Applicant's employer did not use the word "supervise" in his reference letter. This was an error, and by focusing on whether the language of the NOC and the Applicant's submissions matched, rather than examining the substance of the



Applicant's current position, the Officer reached an unreasonable conclusion. The application is therefore allowed and the file will be sent back to a different officer for reassessment.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. This application is allowed.
2. There are no costs.
3. There are no certified questions.

"Alan S. Diner"

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Judge

## ANNEX

*Immigration and Refugee  
Protection Regulations,  
SOR/2002-227*

87.1(2) A foreign national is a member of the Canadian experience class if

(a) they have acquired in Canada, within the three years before the date on which their application for permanent residence is made, at least one year of full-time work experience, or the equivalent in part-time work experience, in one or more occupations that are listed in Skill Type 0 Management Occupations or Skill Level A or B of the National Occupational Classification matrix, exclusive of restricted occupations; and

(b) during that period of employment they performed the actions described in the lead statement for the occupation as set out in the occupational descriptions of the National Occupational Classification;

(c) during that period of employment they performed a substantial number of the main duties of the occupation as set out in the occupational descriptions of the National Occupational Classification, including all of the essential duties;

(d) they have had their

*Règlement sur l'immigration  
et la protection des réfugiés  
(DORS/2002-227)*

87.1(2) Fait partie de la catégorie de l'expérience canadienne l'étranger qui satisfait aux exigences suivantes:

a) l'étranger a accumulé au Canada au moins une année d'expérience de travail à temps plein, ou l'équivalent temps plein pour un travail à temps partiel, dans au moins une des professions, autre qu'une profession d'accès limité, appartenant au genre de compétence 0 Gestion ou aux niveaux de compétence A ou B de la matrice de la Classification nationale des professions au cours des trois ans précédant la date de présentation de sa demande de résidence permanente;

b) pendant cette période d'emploi, il a accompli l'ensemble des tâches figurant dans l'énoncé principal établi pour la profession dans les descriptions des professions de la Classification nationale des professions;

c) pendant cette période d'emploi, il a exercé une partie appréciable des fonctions principales de la profession figurant dans les descriptions des professions de la Classification nationale des professions, notamment toutes les fonctions essentielles;

d) il a fait évaluer sa

proficiency in the English or French language evaluated by an organization or institution designated under subsection 74(3) and have met the applicable threshold fixed by the Minister under subsection 74(1) for each of the four language skill areas; and

(e) in the case where they have acquired the work experience referred to in paragraph (a) in more than one occupation, they meet the threshold for proficiency in the English or French language, fixed by the Minister under subsection 74(1), for the occupation in which they have acquired the greater amount of work experience in the three years referred to in paragraph (a).

compétence en français ou en anglais par une institution ou organisation désignée en vertu du paragraphe 74(3) et obtenu, pour chacune des quatre habiletés langagières, le niveau de compétence applicable établi par le ministre en vertu du paragraphe 74(1);

e) s'il a acquis l'expérience de travail visée à l'alinéa a) dans le cadre de plus d'une profession, il a obtenu le niveau de compétence en anglais ou en français établi par le ministre en vertu du paragraphe 74(1) à l'égard de la profession pour laquelle il a acquis le plus d'expérience au cours des trois années visées à l'alinéa a).

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

**DOCKET:** IMM-2409-15

**STYLE OF CAUSE:** JIAN CHEN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 1, 2016

**JUDGMENT AND REASONS:** DINER J.

**DATED:** JUNE 1, 2016

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