

Federal Court



Cour fédérale

Date: 20170724

Docket: IMM-32-17

Citation: 2017 FC 717

Ottawa, Ontario, July 24, 2017

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

**PARSHOTAM LAL
BALWINDER KAUR
MANVIR SINGH**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], of an Officer's decision dated December 20, 2016 rejecting the Applicants' application for permanent residence as a member of the Federal Skilled Trades [FST] class.

[2] The Applicants argues that the decision was based on an unreasonable assessment of the facts presented in the application.

[3] The application is dismissed.

I. Background

[4] The Principal Applicant is a citizen of India.

[5] On September 7, 2016, the Principal Applicant received an Invitation to Apply for permanent residence under the FST class based on his Express Entry profile. The Principal Applicant had already obtained a positive Labour Market Impact Assessment [LMIA] and a job offer.

[6] On October 12, 2016, the Principal Applicant applied for permanent residence as a member of the FST class based on the skilled trade occupation listed as National Occupational Classification [NOC] 7241 Electrician.

[7] The lead statement of NOC 7241 reads as follows:

Electricians in this unit group lay out, assemble, install, test, troubleshoot and repair electrical wiring, fixtures, control devices and related equipment in buildings and other structures. They are employed by electrical contractors and maintenance departments of buildings and other establishments, or they may be self-employed.

[8] The main duties attached to NOC 7241 are as follows:

- Read and interpret drawings, circuit diagrams and electrical code specifications to determine wiring layouts for new or existing installations
- Pull wire through conduits and through holes in walls and floors
- Install brackets and hangers to support electrical equipment
- Install, replace and repair lighting fixtures and electrical control and distribution equipment, such as switches, relays and circuit breaker panels
- Splice, join and connect wire to fixtures and components to form circuits
- Test continuity of circuits using test equipment to ensure compatibility and safety of system, following installation, replacement or repair
- Troubleshoot and isolate faults in electrical and electronic systems and remove and replace faulty components
- Connect electrical power to audio and visual communication equipment, signalling devices and heating and cooling systems
- Conduct preventive maintenance programs and keep maintenance records.

[9] His application included a letter dated August 19, 2016 from the Ivy Hospital, his employer since January 2011. This letter stated that the Principal Applicant had been working with Ivy Hospital as an electrician performing the following jobs and responsibilities:

- Assists electrical workers in installation, maintenance, and repair of electric-power generation and distribution equipment, underground cables, and related facilities, performing any combination of following tasks
- Places barricades around open manholes and excavations, and below crewmembers working overhead to protect workers and public from injury.

- Digs trenches, places shoring, and lowers tools and materials to workers in excavations and vaults.
- Positions reels of electric cable alongside trench or manhole, and guides cable as it is pulled into ducts to prevent damage to lead sheath
- Breaks up concrete to facilitate installation or repair of equipment, using air hammer.
- Rigs scaffolds and hoists, and helps move heavy machine parts to assist in assembly and repair of generators, converters, switchgear, and related equipment at generating station and substation, as directed

[10] His application also included a letter from Janus Engineering Pvt. Ltd. certifying that the Principal Applicant had worked with them from August 2008 to September 2010 as an electrician.

[11] On October 12, 2016, the Principal Applicant applied for permanent residence as a member of the FST class having already obtained a positive LMIA and a job offer.

[12] In a decision dated December 20, 2016, the Officer rejected the application. The Officer was not satisfied that the Principal Applicant's duties during the qualifying period were consistent with the lead statement or main duties of NOC 7241. The reasons set out by the Officer are as follows:

Your application for permanent residence in the Federal Skilled Trades Class was assessed against the requirements (pass/fail) based on the following skilled trade occupation specified in your application: National Occupational Classification (NOC) 7241 Electrician. Pursuant to sub-section 87.2(3)(b) of the Regulations, your qualifying work experience was assessed within the five years before the date on which your permanent resident visa application was made.

I am not satisfied you meet the employment requirements, specifically that you have during the five years before the date on which this permanent resident visa application was made, acquired at least two years of full-time work experience, or the equivalent in part-time work, in the skilled trade occupation specified in this application after becoming qualified to independently practice the occupation. You declared work experience from 2011/01 to present under NOC7241 at Ivy Hospital. You submitted a letter of employment from Ivy Hospital dated 2016-08-19 which includes duties such as: assists electrical workers in installations, places barricades, digs trenches, positions reels of electric cable alongside trench, rigs scaffolds, among others. I am not satisfied these duties are consistent with the lead statement of main duties of NOC7241.

As such, I am not satisfied that you meet the skilled trade work experience pursuant to subsections 87.2(3)(b) of the Regulations.

I. Relevant Legislation

[13] The Applicants' permanent resident application was rejected pursuant to subsection 87.2(3)(b) of the Immigration and Refugee Protection Regulations, SOR/2002-227 [the Regulations], which sets out eligibility requirements for the FST class:

| <i>Member of class</i> | <i>Qualité</i> |
|--|--|
| <p>(3) A foreign national is a member of the federal skilled trades class if</p> <p>[...]</p> <p>(b) they have, during the five years before the date on which their permanent resident visa application is made, acquired at least two years of full-time work experience, or the equivalent in part-time work, in the skilled trade occupation specified in the</p> | <p>(3) Fait partie de la catégorie des travailleurs de métiers spécialisés (fédéral) l'étranger qui :</p> <p>[...]</p> <p>b) a accumulé, au cours des cinq années qui ont précédé la date de présentation de sa demande de visa de résident permanent, au moins deux années d'expérience de travail à temps plein ou l'équivalent temps plein pour un travail à temps partiel dans le</p> |

application after becoming qualified to independently practice the occupation, and during that period of employment has performed

métier spécialisé visé par sa demande après qu'il se soit qualifié pour pratiquer son métier spécialisé de façon autonome, et a accompli pendant cette période d'emploi, à la fois :

(i) the actions described in the lead statement for the occupation as set out in the occupational descriptions of the *National Occupational Classification*, and

(ii) a substantial number of the main duties listed in the description of the occupation set out in the *National Occupational Classification*, including all of the essential duties;

(i) l'ensemble des tâches figurant dans l'énoncé principal établi pour le métier spécialisé dans les descriptions des métiers spécialisés de la *Classification nationale des professions*,

(ii) une partie appréciable des fonctions principales du métier spécialisé figurant dans les descriptions des métiers spécialisés de la *Classification nationale des professions*, notamment toutes les fonctions essentielles;

II. Issues

[14] The application raises two issues:

1. Was the Officer's decision reasonable?
2. Did the Officer err by failing to provide the Applicants with an opportunity to address his concerns?

III. Standard of Review

[15] The appropriate standard of review for this decision is that of reasonableness since it involves questions of mixed fact and law.

[16] While there is some debate as to what standard of review should apply to issues of procedural fairness (see *Bergeron v Canada (Attorney General)*, 2015 FCA 160 at paras 67-72), the parties have not argued that the correctness standard does not apply to this issue, a view generally espoused by the Supreme Court in *Mission Institution v Khela*, 2014 SCC 24 at para 79.

IV. Analysis

A. *Was the Officer's decision reasonable?*

[17] The Applicants submit that the Officer's decision was baseless, drew unreasonable inferences and failed to consider relevant evidence. The Officer failed to provide reasons for why the job duties disclosed in the Ivy Hospital letter are inconsistent with the NOC 7241 requirements. In fact, the Principal Applicant submits that he had performed the duties as mentioned on his experience letter and it matches the lead statement of NOC 7241.

[18] The Respondent submits that the decision is supported by the record, particularly by a comparison of the main duties of NOC 7241 and the duties as described in the Ivy Hospital letter. The duties performed by the Principal Applicant simply do not correspond with the main duties of an Electrician as set out in NOC 7241 as it relates to positioning the reels of electric cable and guiding the cable as it is pulled into ducts to prevent damage to lead sheet.

[19] More specifically, it was reasonable for the Officer to find that there were inconsistencies between the NOC 7241 description and the duties outlined in the Ivy Hospital letter. The first job and responsibility listed in the experience letter describes the Principal Applicant as someone who “assists electrical workers” which I find applies to the various duties that follow. The next five responsibilities listed all appear to be descriptions of tasks where he is providing assistance to others and where the responsibilities fail to match the main duties of NOC 7241. The letter primarily focuses on duties that do not fall within the NOC 7241 description.

B. *Did the Officer err by failing to provide the Applicants with an opportunity to address his concerns?*

[20] The Applicants submit that the Officer breached the duty of procedural fairness by failing to provide the Applicants with an opportunity to address his concerns. Notably, the Applicants cite *Gedeon v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1245 in which Justice Russell held as follows:

[102] In the present case, Officer should have dealt clearly in the Decision or the CAIPS notes with his reasons for rejecting the employer’s description of the Applicant’s experience and responsibilities in Lebanon and should have given the Applicant the opportunity to address the concerns he had in this regard. Not to do so was a reviewable error.

[21] In that case, the Officer had provided no reasons for finding the applicant had no experience, contrary to the letter of experience on file. This is distinguishable from the case at bar where the letter of experience has been accepted but the description of the tasks in the letter were deemed not to satisfy the description set out under NOC 7241.

[22] The Respondent submits that no duty of procedural fairness was owed in these circumstances. The case law clearly limits the duty to provide the applicant with an opportunity to respond to concerns in an application relating to concerns having to do with the credibility, accuracy or genuine nature of the information submitted (*Gedara v Canada (Citizenship and Immigration)*, 2004 FC 284 at para 29). The Officer was not required to advise the Applicants of the discrepancies between the duties listed in his letter of experience and the lead statement and main duties of NOC 7241 as this is a concern arising directly from the requirements of the Act and Regulations having to do with the sufficiency of the evidence (*ibid*).

[23] I agree with the Respondent that this is not a circumstance where the Officer had a duty to provide the Applicant with an opportunity to respond. The Officer's conclusion was purely one having to do with the sufficiency of the evidence. The Officer did not reject the Applicants' evidence for its credibility, accuracy or genuineness but, rather, reasonably decided that it did not satisfy the NOC 7241 description.

V. Conclusion

[24] The application is dismissed and no question is certified for appeal.

JUDGMENT

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

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-32-17

STYLE OF CAUSE: PARSHOTAM LAL ET AL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: ANNIS J.

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