Federal Court Cour fédérale

Date: 20200527

Docket: IMM-3742-19

Citation: 2020 FC 646

Ottawa, Ontario, May 27, 2020

PRESENT: Mr. Justice Norris

BETWEEN:

SWATHI POTLA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] Swathi Potla, the applicant, is a citizen of India. In January 2019, she applied for a permanent resident visa as a member of the Canadian Experience Class [CEC]. An immigration officer refused this application on June 3, 2019, because the applicant's Canadian work experience did not meet the statutory requirements.

[2] The applicant applies for judicial review of this decision under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. She contends that the officer's assessment of the evidence of her Canadian work experience is unreasonable and that the decision was made unfairly because the officer did not alert her in advance to concerns about the sufficiency of the evidence of her work experience.

[3] I do not accept either submission. As a result, this application must be dismissed.

II. BACKGROUND

[4] The applicant was born in April 1991. She completed undergraduate and graduate studies in India and also worked there for a few years before coming to Canada.

[5] The applicant and her husband, Jampani Sravan Kumar, were married in India in June 2015.

[6] The applicant arrived in Canada in June 2016 on an open work permit that was dependent on her husband's status here. Mr. Kumar initially came to Canada on a student visa; he later obtained a two-year work permit, which expired in January 2019.

[7] In August 2016, the applicant was hired by Scotiabank as a Customer Service Consultant. On October 2, 2017, her job title changed to "Corporate Credit Services – Loan Specialist." It is unclear on the record whether her responsibilities changed as well. The applicant continued to

work in this capacity until December 31, 2017. On January 1, 2018, she took on a new role as an "Analyst".

[8] Section 12(2) of the *IRPA* provides that "a foreign national may be selected as a member of the economic class on the basis of their ability to become economically established in Canada." Applying for permanent residency as she did under the Canadian experience class, among other things, the applicant had to establish that, within the three years preceding her application, she had at least one year of full-time experience in Canada (or its part-time equivalent) in a qualifying occupation as described in the National Occupational Classification matrix [NOC]: see paragraph 87.1(2)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. The applicant also had to establish that she had performed the actions described in the lead statement for the occupation as set out in the occupational descriptions in the NOC and that she performed "a substantial number" of the main duties of that occupation, again as set out in the NOC: see paragraphs 87.1(2)(b) and (c) of the *IRPR*.

[9] In her application, the applicant identified "Financial Sales Representatives" (NOC 6235) as the occupation in which she had the requisite experience.

[10] The lead statement for this occupation reads as follows:

> Financial sales representatives sell basic deposit, investment and loan products and services to individuals and businesses. They work in banks, credit unions, trust companies and similar financial institutions.

[11] Further, according to the NOC, financial sales representatives perform some or all of the following duties:

- Open new personal and non-personal accounts, and provide access to automated banking machine, telephone banking and online banking services
- Interview applicants for personal, mortgage, student and business loans
- Promote the sale of deposit, investment, credit and loan products and services
- Assist clients by proposing solutions to address financial objectives such as business expansion, debt management, investment and other financial goals
- Research and evaluate loan applicant’s financial status, references, credit and ability to repay the loan
- Complete credit and loan documentation
- Submit credit and loan applications to branch or credit manager with recommendations for approval or rejection, or approve or reject applications within authorized limits ensuring that credit standards of the institution are respected
- Prepare statements on delinquent accounts and forward irreconcilable accounts for collector action
- Review and update credit and loan files
- Act as joint custodian for cash and securities.

[12] The applicant submitted various letters of employment as part of her application package (including letters from Scotiabank) as proof of her experience as a skilled worker in the NOC 6235 category. She also submitted an assessment of her educational credentials, her IELTS scores, and letters from her previous employers in India.

[13] Two letters from Scotiabank (one dated October 22, 2018, the other dated May 2, 2019) set out the applicant’s job duties as an Analyst in identical terms as follows:

1. Champions a customer focused culture to deepen relationships and leverage broader Bank relationships, systems and knowledge.
2. Processing instructions given by Agents on participations and Customers on direct deals including verification of limit available, accuracy of calculations, and disbursement/application of funds.

3. Ensuring that terms and conditions of authorizations and/or loan documentation are being adhered to including pricing, term, and amount.
4. Communicating effectively with various contacts including Agent Banks to resolve issues on a timely basis.
5. Recognizing and bringing exceptions to policies and procedures to the attention of management for resolution when required.

[14] No other information concerning the nature of the duties the applicant performed as an Analyst is found in the record.

III. DECISION UNDER REVIEW

[15] The officer communicated her decision to the applicant by letter dated June 3, 2019.

[16] After setting out the requirements for eligibility for permanent residence under the CEC program, the officer states the substance of her reason for refusing the application as follows:

> I am not satisfied that you meet the skilled work experience requirement because you have not submitted sufficient evidence to satisfy me that you have performed the actions described in the lead statement for the occupation identified in your application. In addition, you have not submitted sufficient evidence to satisfy me that you have performed a substantial number of the main duties for the occupation identified in your application.

[17] In her Global Case Management System [GCMS] notes concerning the application, the officer is more specific about why the application was refused:

> The job duties as per [Letter of Employment] do not mention the sale of such products. In addition, it appears that [Principal Applicant] do [*sic*] not perform some of the main duties for NOC 6235. Job duties appear to be consistent with Group 655 –

> Customer and information services representative which is Skill level C.

[18] The relevance of the last observation is that NOC 6235, the occupation relied on by the applicant, is a qualifying occupation for the CEC program because it falls under Skill Level B but occupations categorized under Skill Level C are not: see paragraph 87.1(2)(a) of the *IRPR*.

IV. STANDARD OF REVIEW

[19] The parties did not make specific submissions on the standard of review but it is well established that the two issues raised by the applicant attract different standards.

[20] First, whether the officer's decision should be set aside on the basis of a breach of the requirements of procedural fairness is determined on what is effectively a correctness standard of review. I must conduct my own analysis and provide what I judge to be the right answer to the question of whether the process the officer followed satisfied the level of fairness required in all of the circumstances. This is functionally the same as applying the correctness standard of review: see *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 34 and 50; *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 54; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at paras 33-56; and *Elson v Canada (Attorney General)*, 2019 FCA 27 at para 31.

[21] Second, the substance of the officer's decision should be reviewed on a reasonableness standard: see, for example, *Lazar v Canada (Citizenship and Immigration)*, 2017 FC 16 at para

9; *Liu v Canada (Citizenship and Immigration)*, 2017 FC 968 at para 5; and *Parssian v Canada (Citizenship and Immigration)*, 2016 FC 304 at para 17.

[22] Following *Vavilov*, reasonableness is now the presumptive standard of review, subject to specific exceptions "only where required by a clear indication of legislative intent or by the rule of law" (at para 10). In my view, there is no basis for derogating from the presumption that reasonableness is the applicable standard of review here.

[23] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

[24] An assessment of the reasonableness of a decision must be sensitive and respectful yet robust (*Vavilov* at paras 12-13). Reasonableness review focuses on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). In matters concerning visa applications, deference is owed to the decision maker because of the largely fact-based nature of the decision and the decision maker's presumed familiarity with the applicable criteria. A visa officer is not required to give extensive reasons, but they must be sufficient to explain the result (*Pacheco v Canada (Citizenship and Immigration)*, 2010 FC 347 at para 36; *Ogbuchi v Canada (Citizenship and Immigration)*, 2016 FC 764 at paras 12-13; *Omijie v Canada (Citizenship and Immigration)*, 2018 FC 878 at paras 22-28). As the Supreme Court explained in *Vavilov*, "it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be

justified, by way of those reasons, by the decision maker to those to whom the decision applies" (at para 86, emphasis in original). The reasons given should be read in light of the record and with due sensitivity to the administrative setting in which they were given (*Vavilov* at paras 91-95).

[25] The burden is on the applicant to demonstrate that the officer's decision is unreasonable. She must establish that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100) or that the decision is "untenable in light of the relevant factual and legal constraints that bear on it" (*Vavilov* at para 101).

V. <u>ANALYSIS</u>

A. *Were the requirements of procedural fairness breached?*

[26] The applicant submits that the officer breached the requirements of procedural fairness by not giving her an opportunity to respond to concerns regarding her application. She submits that, given the importance of the decision, the officer had a duty to either provide a procedural fairness letter setting out her concerns or to verify the details of the applicant's responsibilities directly with Scotiabank.

[27] I do not agree.

[28] Recently, in *Lazar*, Justice Gleeson helpfully summarized the jurisprudence concerning the requirements of procedural fairness in the context of applications for permanent residence under the CEC program. Having regard to paragraph 20 of that judgment, the following four propositions are well established:

(1) an applicant has the onus of providing sufficient evidence to support a positive decision on the application;

(2) the degree of procedural fairness owed to an applicant under the CEC program is at the low end of the spectrum;

(3) there is no obligation on a decision maker to notify an applicant of deficiencies in the application or supporting documentation; and

(4) there is no obligation on a decision maker to provide an applicant with an opportunity to address any concerns that supporting documents are incomplete, unclear or insufficient to satisfy the decision maker that the applicant meets the legal requirements governing the application.

[29] On the other hand, as Justice Gleeson also explained, if a decision maker has concerns relating to the credibility of information submitted in support of an application or to the accuracy or genuineness of that information, procedural fairness will often require that the applicant be given an opportunity to address those concerns before a decision is made: see *Lazar* at para 21.

[30] The applicant relies on *Yazdanian v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 411, for the proposition that a visa officer has a duty to notify an applicant whenever there are “specific concerns” with the application: see *Yazdanian* at para 18. However, it is clear in light of more recent jurisprudence that this broad statement about the requirements of procedural fairness is no longer tenable: see *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at paras 33-40.

[31] In the present case, the officer did not have any concerns about the credibility, accuracy or genuineness of the information or supporting documents the applicant submitted with her application. To be precise, there is no suggestion that the officer had any doubt that the applicant had been employed as an Analyst with Scotiabank during the time period indicated in her application. Rather, the officer was not satisfied that this employment, as described in the documents the applicant submitted in support of her application, was sufficient to satisfy the legal requirements for obtaining permanent residence under the CEC program. Procedural fairness did not require the officer to alert the applicant to this deficiency in her application before refusing it.

B. *Is the decision to refuse the application for permanent residence unreasonable?*

[32] The applicant submits that the officer's decision is unreasonable because she did not mention the Scotiabank letters, which showed that she performed the duties of an Analyst, in the decision letter. She further submits that the decision is unreasonable because the officer diminished her responsibilities as an Analyst and ignored her "complete profile," especially documentary evidence related to her educational credentials and her prior work experience. Instead, the officer simply speculated that the applicant did not have the requisite skills to match the NOC 6235 classification. This is said to be reflected in the officer's determination that the applicant's job duties "appear to be consistent" with Customer and Information Services Representative (Group 655), which is Skill Level C, as opposed to Financial Sales Representative.

[33] There is no merit to any of these submissions.

[34] The GCMS notes demonstrate that the officer considered the employment letters provided by Scotiabank. Those notes, when read together with the decision letter and NOC 6235, also demonstrate why the officer refused the application. The lead statement for the occupation category the applicant relied on – Financial Sales Representative – indicates that, as the title suggests, individuals in this role "sell basic deposit, investment and loan products and services to individuals and businesses." The letters from Scotiabank, however, do not say that the applicant sells any such thing to anyone. Instead, as the respondent points out, the letters suggest that the applicant provided backroom support to others at the bank who did sell such things. Under paragraph 87.1(2)(b) of the *IRPR*, the applicant had to "perform the actions described in the lead statement for the occupation" she cited in her application to qualify. A simple comparison of the lead statement for Financial Sales Representatives with the Scotiabank letters demonstrates that this was not the case. The officer's determination is justified, transparent and intelligible.

[35] While this was sufficient to refuse the application, the officer also noted that the applicant did not perform a substantial number of the main duties of a Financial Sales Representative. Once again, this determination is justified, transparent and intelligible. Many of the main duties listed under NOC 6235 involved sales activities of one sort or another. There was no evidence before the officer that the applicant did any such thing. The officer's determination that the applicant had not provided sufficient evidence that she met this requirement, either, is also entirely reasonable.

[36] To qualify under the CEC program, the applicant had to satisfy, among other things, both of paragraphs 87.1(2)(b) and (c) of the *IRPR*. Whatever other positive attributes may have been part of her "complete profile," it was not open to the officer to ignore the fact that she had failed to establish that she met these requirements. While the decision to refuse the application for permanent residence was undoubtedly disappointing for the applicant, it was entirely reasonable on the evidence and information before the officer.

[37] Finally, as I understand it, the officer's rationale for mentioning the Customer and Information Services Representative occupation classification was simply to highlight how the applicant's job duties fell short of the job duties of a Financial Sales Representative in particular and of the requirements of the CEC program in general. The officer was not required to, and indeed did not, find that the applicant's duties were described more accurately as those of a Customer and Information Services Representative. Rather, she found that the applicant's duties were not accurately described as those of a Financial Sales Representative. This was the determinative issue before the officer and, as I have already said, her conclusion is entirely reasonable.

VI. CONCLUSION

[38] For these reasons, the application for judicial review will be dismissed.

[39] The parties have not suggested any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that none arise.

JUDGMENT IN IMM-3742-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Robert Gertler	FOR THE APPLICANT
Stephen Jarvis	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Robert Gertler Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT