

Federal Court



Cour fédérale

Date: 20200717

Docket: IMM-4194-19

Citation: 2020 FC 767

St. John's, Newfoundland and Labrador, July 17, 2020

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

NUSRATH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Nusrath (the “Applicant”) seeks judicial review of the decision of a Visa Officer (the “Officer”) denying her application for a work permit made pursuant to the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”).

[2] The Applicant, a citizen of India, applied for a work permit to work as a live in caregiver for a family of three boys aged 11, 14 and 17. Among other things, she provided evidence about her education and a Labour Market Impact Assessment (“LMIA”).

[3] The Officer refused the Applicant’s application on the grounds that she had failed to show she could perform the work in question.

[4] The decision, involving a question of mixed fact and law, is reviewable on the standard of reasonableness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

[5] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the standard of reasonableness requires that a decision be justifiable, transparent and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[6] In my opinion, considering the record, the reasons of the Officer, and the submissions of the parties, the decision of the Officer fails to meet this standard.

[7] It appears that the Officer applied his or her subjective views as to the Applicant’s ability to care for three children aged 11, 14 and 17. This approach is contrary to the guidance provided in the decision in *Russom v. Canada (Citizenship and Immigration)*, 2012 FC 1311.

[8] The application for judicial review will be allowed and the matter remitted to a different officer, for re-determination. There is no question for certification arising.

JUDGMENT in IMM-4194-19

THIS COURT'S JUDGMENT is that the application for judicial review is allowed and the matter remitted to a different officer for re-determination.

There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4194-19

STYLE OF CAUSE: NUSRATH v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

**HEARING HELD BY VIDEOCONFERENCE ON JULY 16, 2020 FROM ST.
JOHN'S, NEWFOUNDLAND AND LABRADOR (COURT) AND TORONTO,
ONTARIO (PARTIES)**

JUDGMENT AND REASONS: HENEGHAN J.

DATED: JULY 17, 2020

APPEARANCES:

Lorne Waldman FOR THE APPLICANT

Lorne McClenaghan FOR THE RESPONDENT

SOLICITORS OF RECORD:

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