

Federal Court



Cour fédérale

Date: 20211105

Docket: IMM-5713-20

Citation: 2021 FC 1186

Ottawa, Ontario, November 5, 2021

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

HAMEEDAT ADEBUKOLA ADEWUNMI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In this application for leave and judicial review, the Applicant challenges a decision by a visa officer [the Officer] dated October 22, 2020 [the Decision], determining that she was not eligible to become a permanent resident under the Canadian Experience Class because she did not have the requisite Canadian work experience.

[2] As explained in more detail below, this application is dismissed, because the Decision is reasonable, and the Officer did not breach requirements of procedural fairness in arriving at the Decision.

II. Background

[3] The Applicant is a Nigerian citizen who has been living in Canada since 2014. She has a Bachelor of Science in Economics from Nigeria.

[4] In August 2014, the Applicant arrived in Canada on a study permit in order to complete a Masters of Business Administration [MBA] at Thompson Rivers University in British Columbia. She finished her MBA in August 2016 and thereafter received a postgraduate work permit, valid from October 2016 to October 2019. During this period, the Applicant worked at two companies as a Financial Service(s) Representative: (a) at Gatestone & Co [Gatestone] from August 14, 2017 to April 11, 2018; and (b) at Loan Away from April 12, 2018 to September 28, 2018.

[5] The Applicant was invited to apply as a permanent resident under the Canadian Experience Class of the Express Entry Program and completed her application in June 2020. The Applicant provided letters from both Gatestone and Loan Away in order to demonstrate that she had the required work experience to qualify under National Occupation Code [NOC] 6235 – Financial Sales Representative.

[6] Under section 87.1(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], a foreign national is a member of the Canadian Experience Class if they

can show that they have at least one year of full-time experience (or part-time equivalent) in Canada in a qualifying occupation described in the NOC matrix and also meet other requirements. Under sections 87.1(2)(b) and (c), those requirements include showing that, during the period of employment, they performed the actions described in the lead statement of the occupational description in the applicable NOC and performed a substantial number of the main duties and all essential duties of the occupation as set out in the occupational description.

[7] The lead statement for NOC 6235 reads: “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.” The occupational description of NOC 6235 lists the main duties as:

- 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; and
- Act as joint custodian for cash and securities.

[8] By letter dated October 22, 2020, the Officer conveyed the Decision refusing the Applicant's application. After the Applicant requested reasons for the refusal, she was also provided with the Officer's Global Case Management System [GCMS] notes created in relation to her application, which provide further reasons for the Decision.

III. **Decision under Review**

[9] In the refusal letter, the Officer stated that, according to the documentation provided with her application, the duties and responsibilities performed by the Applicant when working at Gatestone and Loan Away did not correspond to the duties set out in the lead statement of the occupational description for NOC 6235 – Financial Sales Representatives. The Officer further stated that they were not satisfied the Applicant had performed a substantial number of the main duties, including all the essential duties, of the occupation as set out in the occupational description for NOC 6235, while employed by Gatestone and Loan Away. The Officer was therefore not satisfied that the Applicant had acquired one year of qualifying Canadian work experience and was a member of the Canadian Experience Class.

[10] The Officer's GCMS notes contain statements similar to the refusal letter. The notes also state the conclusion that the letters from the Applicant's employers and job description of her position, provided by the Applicant, did not confirm that she was actually selling basic deposit,

investment and loan products as described in the lead statement of NOC 6235. Rather, the job description confirmed that her position was, for example, to negotiate, plan and assist consumers with payment resolution, initiate consumer negotiation for debt recovery, attempting to collect payments, debt repayment, negotiating payment arrangements, obtaining payment on overdue accounts, and negotiating and assisting consumers with outstanding debt resolution. The Officer regarded the descriptions of the Applicant's duties and responsibilities to correspond more closely with the duties outlined in NOC 1435 – Collectors.

IV. **Issues and Standard of Review**

[11] The Applicant submits that this application raises the following two issues:

A. Is the Decision unreasonable?

B. Is the Decision procedurally unfair?

[12] Both parties agree, and I concur, that the appropriate standard of review for the first issue is reasonableness and, for the second issue, correctness.

V. **Analysis**

A. *Is the Decision unreasonable?*

[13] The Applicant raises various arguments in support of her position that the Decision is unreasonable. First, she asserts that the Officer erred by basing the Decision on a conclusion that she had not performed “all” the duties set out in NOC 6235, which exceeds the requirement in s 87.1(2)(c) of the *IRPR* to have performed “a substantial number” of the main duties of the

occupation. Although the parties disagree on the meaning of the phrase “a substantial number”, it is unnecessary for the Court to address that particular disagreement, as it is clear that “a substantial number” does not mean “all.”

[14] However, I find no merit to the Applicant’s argument that the Officer based the Decision on a conclusion that she had not performed all the duties in NOC 6235. She bases this argument on the statement in the refusal letter and GCMS notes that the Officer was not satisfied that she had “...performed a substantial number of the main duties, including all the essential duties, of the occupation(s) as set out in the occupational description of the National Occupation Classification code 6235 ...” (my emphasis). The Applicant submits that, because (unlike some other NOCs) the particular NOC 6235 does not include any essential duties, the Officer’s reference to all the essential duties must be read as a reference to all the main duties, translating into the Officer’s imposition of a requirement that the Applicant have performed all the main duties of NOC 6235.

[15] In my view, the Decision is not capable of being read as the Applicant submits. Rather, in employing the phrase “all essential duties”, the Officer was reciting a component of the language of s 87.1(2)(c) of the *IRPR*, albeit a component that is not engaged by this particular NOC. As I read the decision, the Officer concluded that the Applicant was not a member of the Canadian Experience Class, because she had not demonstrated that she had performed the actions described in the lead statement in NOC 6235, as required by s 87.1(2)(b), or that she had performed a substantial number of the main duties set out in NOC 6235, as required by s 87.1(2)(c).

[16] Next, the Applicant submits that the Officer erred in concluding that she had not performed a substantial number of the main duties set out in NOC 6235. She takes the position that she need only have performed one of the main duties to meet this requirement and, in her written submissions, provides a tabular comparison between her duties at Gatestone and Loan Away and the NOC 6235 duties. The Applicant argues that this comparison demonstrates that one or more of the duties she performed resembles in substance the NOC 6235 duties.

[17] Again, the dispute between the parties, as to whether the requirement to have performed “a substantial number” of the NOC duties can be satisfied by having performed just one of the listed duties, is not determinative of the issue raised by the Applicant. I agree with the Respondent’s submission that the tables prepared by the Applicant actually serve to highlight the discrepancy between the required duties and those performed by the Applicant. The Applicant emphasizes that her duties included assisting as a personal financial advisor and administering or performing financial assessments. However, I would find it difficult to infer that these duties correspond with NOC 6235 duties such as interviewing applicants for personal, mortgage, student and business loans; research in evaluating a loan applicant’s financial status, references, credit and ability to repay; or assisting clients by proposing solutions to address financial objectives such as business expansion, debt management, investment and other financial goals.

[18] More significantly, taking into account the applicable standard of review, I also agree with the Respondent’s position that the Applicant’s argument amounts to a request that the Court reweigh the evidence that was before the Officer. It is trite law that this is not the Court’s role in judicial review.

[19] Furthermore, even if the Applicant had successfully demonstrated an error in the Officer's analysis of whether she had performed a substantial number of the main NOC 6235 duties, this would not represent a reviewable error, because it would not undermine the Officer's conclusion that her duties do not correspond with those set out in the lead statement in NOC 6235. Consistent with the title of NOC 6235, "Financial Sales Representatives", the lead statement relates to the sale of various financial products and services. The Applicant has not identified anything in the evidence before the Officer that compellingly supports a conclusion that she acted in a sales role for Gatestone or Loan Away or, more importantly (taking into account the standard of review), any compelling basis for a conclusion that the Officer erred in assessing her satisfaction of the requirements of the lead statement. The Officer's finding surrounding the lead statement is determinative of the Decision that the Applicant is not a member of the Canadian Experience Class.

[20] The Applicant also argues that the Officer erred in concluding that the duties and responsibilities listed on her job description correspond better to NOC 1435 - Collectors. She submits that NOC 1435 is not excluded from NOC 6235 and further argues that, while some of her duties may correspond with NOC 1435, her roles as a personal financial advisor and in administering financial assessments exceed those of a Collector.

[21] I accept that NOC 1435 is not excluded from NOC 6235. However, I do not read the Decision as suggesting that the Officer regarded NOC 1435 as an excluded occupation. Rather, consistent with the description of a visa officer's role set out in *Rodrigues v Canada (Citizenship and Immigration)*, 2009 FC 111 at para 10, the Officer's reference to NOC 1435

represents a component of the Officer's efforts to identify the pith and substance of the work the Applicant performed. The fact the Applicant's duties may not correspond perfectly with NOC 1435 does not undermine the reasonableness of the Decision. As the Respondent submits, the determinative findings were the conclusions that the Applicant's experience did not correspond with the lead statement and a substantial number of the main duties of NOC 6235.

[22] Finally, the Applicant notes that NOC 6235 lists "Debt Counsellor" as an inclusion. The parties agree that this reference represents an example of a job title that may be held by someone who meets the requirements of NOC 6235. The Applicant submits that her job descriptions are consistent with the role of a Debt Counsellor and the Decision is unreasonable because the Officer that did not take this into account.

[23] I agree with the Respondent's submission that the particular job title a person may hold is not a significant factor in the assessment a visa officer is required to make under s 87.1(2) of the *IRPR*. I note, for instance, that one of the other example job titles in NOC 6235 is "Financial Services Officer", the precise title apparently held by the Applicant. The Officer's role was to consider whether the Applicant met the requirements of s 87.1(2) of the *IRPR*, in the context of NOC 6235, and the absence of a reference to the included title of Debt Counsellor does not undermine the reasonableness of the Decision.

B. Is the Decision procedurally unfair?

[24] The Applicant submits that there was no basis for the Officer to find the letters from her employers insufficient to meet the requirements of s 87.1(2) of the *IRPR* in the context of NOC

6235. She therefore argues that, before rejecting her application and in particular before relying on NOC 1435 as a point of comparison, procedural fairness required to Officer to afford her an opportunity to respond to the Officer's concerns.

[25] In support of her position, the Applicant relies on *Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264 [*Hamza*]. However, as the Respondent submits, the conclusion in *Hamza*, that the visa officer should have allowed the applicant an opportunity to address her concerns before rendering her decision, turned on the Court's conclusion that the officer doubted the accuracy of the relevant employment letter in reflecting the applicant's duties and responsibilities. I agree with the Respondent that the Court in *Hamza* considered the officer's finding, that the letter was insufficient to establish the applicant's work experience, to be a veiled credibility finding, which triggered a procedural fairness requirement (at para 39).

[26] *Hamza* is distinguishable from the case at hand. I find no basis to conclude that the Officer's analysis turned on concerns regarding the credibility or accuracy of the evidence. Rather, the Officer accepted the evidence provided by the Applicant but found that it did not demonstrate that the Applicant satisfied the requirements of s 87.1(2). As explained in *Saatchi v Canada (Citizenship and Immigration)*, 2018 FC 1037 at paras 39-41, where a visa officer has concerns as to whether an applicant's work experience satisfies the requirements of the legislation or regulations, there is no duty to notify the applicant of such concerns.

[27] Similarly, I find that the Officer had no obligation to notify the Applicant before taking NOC 1435 into account in arriving at the Decision. As explained above, the Officer's reference

to NOC 1435 is not a determinative finding. It cannot be concluded that the Applicant was deprived of an opportunity to know what she was required to demonstrate in order to succeed in her application under the Canadian Experience Class.

VI. **Conclusion**

[28] As I have found no reviewable error in the Decision, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-5713-20

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: HAMEEDAT ADEBUKOLA ADEWUNMI v THE
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