

Federal Court



Cour fédérale

Date: 20240719

Docket: IMM-4520-23

Citation: 2024 FC 1135

Ottawa, Ontario, July 19, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

SHILPA NINAD POTDAR

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of India who, in January 2021, submitted an application for permanent residence through the Federal Skilled Worker program [FSW]. In a decision dated March 17, 2023, the Immigration Officer [Officer] found the Applicant did not meet the requirements for immigration to Canada, as set out in subsection 75(2) of the *Immigration and*

Refugee Protection Regulations, SOR/2002-227 [IRPR], notably paragraphs a), b) and c), and refused the application.

[2] The Applicant now applies under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, for judicial review of the Officer's decision. For the reasons that follow, I am not persuaded that the Applicant has demonstrated any error warranting the Court's intervention on judicial review.

II. Skilled worker requirements

[3] Subsections 75(2) and (3) of the IRPR require that an officer refuse an application where an applicant fails to satisfy the requirements set out in the Regulations:

Skilled workers

(2) A foreign national is a skilled worker if

(a) within the 10 years before the date on which their application for a permanent resident visa is made, they have accumulated, over a continuous period, at least one year of full-time work experience, or the equivalent in part-time work, in the occupation that they identified in their application as their primary occupation, other than a restricted occupation, that is listed in TEER Category 0,

Qualité

(2) Est un travailleur qualifié l'étranger qui satisfait aux exigences suivantes :

a) il a accumulé, de façon continue, au moins une année d'expérience de travail à temps plein ou l'équivalent temps plein pour un travail à temps partiel, au cours des dix années qui ont précédé la date de présentation de sa demande de visa de résident permanent, dans la profession principale visée par sa demande appartenant aux catégories FÉER 0, 1, 2 ou 3 de la *Classification nationale des professions*,

1, 2 or 3 of the *National Occupational Classification*;

(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 submitted the results of a language test that is approved under subsection 74(3), which results must be provided by an organization or institution that is designated under that subsection, must be less than two years old on the date on which their application for a permanent resident visa is made and must indicate that they have met or exceeded the applicable language proficiency threshold in either English or French that is fixed by the Minister under subsection 74(1) for each of the four language skill areas; and

(e) they have submitted one of the following:

exception faite des professions d'accès limité;

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 cette classification;

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 cette classification, notamment toutes les fonctions essentielles;

d) il a fourni les résultats — datant de moins de deux ans au moment où la demande est faite — d'un test d'évaluation linguistique approuvé en vertu du paragraphe 74(3) provenant d'une institution ou d'une organisation désignée en vertu de ce paragraphe qui indiquent qu'il a obtenu, en français ou en anglais et pour chacune des quatre habiletés langagières, au moins le niveau de compétence établi par le ministre en application du paragraphe 74(1);

e) il a soumis l'un des documents suivants :

(i) their Canadian educational credential, or

(i) son diplôme canadien,

(ii) their foreign diploma, certificate or credential and the equivalency assessment, which assessment must be less than five years old on the date on which their application is made.

(ii) son diplôme, certificat ou attestation étranger ainsi que l'attestation d'équivalence, datant de moins de cinq ans au moment où la demande est faite.

[...]

[...]

Minimal requirements

Exigences

(3) If the foreign national fails to meet the requirements of subsection (2), the application for a permanent resident visa shall be refused and no further assessment is required.

(3) Si l'étranger ne satisfait pas aux exigences prévues au paragraphe (2), l'agent met fin à l'examen de la demande de visa de résident permanent et la refuse.

[Emphasis added.]

[Non souligné dans l'original.]

III. Analysis

[4] The Applicant argues that, despite the Officer having stated in the decision letter that the application was refused because the Applicant failed to satisfy the requirements set out in subsection 75(2) of the IRPR, the Global Case Management System [GCMS] notes also reflect a concern with the period of validity of the Applicant's job offer. This concern is not addressed in the decision letter. The Applicant submits that the inconsistency between the GCMS notes and the decision letter reflects a breach of fairness. The Applicant further submits that the decision is unreasonable.

A. *No breach of fairness*

[5] Subsection 75(3) of the IRPR states that a “permanent resident visa shall be refused” where an applicant does not satisfy the requirements of subsection 75(2) of the IRPR. In circumstances where an officer finds the IRPR requirements have not been satisfied, there is no requirement that the officer invite submissions, or engage with other concerns that might have been identified in the course of reviewing the application or address such concerns in the decision letter.

[6] In this instance, the validity period of the Applicant’s job offer was identified as a concern in the GCMS notes but this concern was not relied on in refusing the application. The Officer’s determinative finding was that the requirements of subsection 75(2) of the IRPR had not been met. There was no breach of fairness.

B. *The Officer’s decision is reasonable*

[7] The Applicant argues that the Officer’s determination pursuant to subsection 75(2) of the IRPR is lacking in transparency and justification, and is therefore unreasonable.

[8] A foreign national will be qualified under the FSW program where they have (1) accumulated at least one year of full-time work experience in their identified occupation; (2) performed the actions described in the lead statement for the declared National Occupational Classification [NOC]; and (3) performed a substantial number of the main duties of that NOC (IRPR paragraphs 75(2) (a), (b), and (c)). A “substantial number” of the main duties has been

interpreted as meaning more than one of the identified main duties (*Saatchi v Canada (Citizenship and Immigration)*, 2018 FC 1037 at para 27 [*Saatchi*], citing *Tabañag v Canada (Citizenship and Immigration)*, 2011 FC 1293 at para 18 [*Tabañag*]).

[9] In assessing the declared NOC, an officer must determine the pith and substance of the work performed by the applicant. Satisfying one of the main duties of the declared NOC is not sufficient to establish that an applicant is a skilled worker. Nor is providing evidence of academic qualifications or having a job title sufficient. An applicant must have performed a substantial number of the main duties of the NOC identified in their application.

[10] The assessment of whether an applicant performed a substantial number of the main duties of an identified NOC is a discretionary judgment call. Accordingly, deference should be given to the officer's assessment of the applicant's job experience in comparison to the declared NOC (*Saatchi* at paras 25-27, citing *Katebi v Canada (Citizenship and Immigration)*, 2014 FC 813 at paras 53-55, *Rodrigues v Canada (Citizenship and Immigration)*, 2009 FC 111 at para 10, and *Tabañag* at para 18; *Kumar v Canada (Citizenship and Immigration)*, 2019 FC 367 at para 20).

[11] In this case, the Officer's GCMS notes reflect that the Officer considered the work performed by the Applicant as described in the list of duties set out in the letter of employment which the Applicant provided in support of the application. The Officer then set out the lead statement and main duties for NOC 0015 (Senior Managers), the Applicant's declared NOC.

Having done so, the Officer then explained that the duties described in the letter of employment more closely align with NOC 0111 (Financial Managers).

[12] The Officer's decision is reviewable on the presumptive standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 [Vavilov]). Reasonableness review accounts for context and decisions are to be read in light of the record with sensitivity to the institutional setting (*Vavilov* at paras 91-98).

[13] In this instance, the Officer's decision is supported by a rational chain of analysis that is disclosed in the GCMS notes as described above (paragraph 11). The basis for the Officer's decision is readily discernable upon review of the GCMS notes, and is a conclusion that was reasonably available in light of the evidence before the Officer.

[14] That the Officer engaged in this analysis also distinguishes this matter from *Jamal v Canada (Citizenship and Immigration)*, 2022 FC 1283 at para 14, where the officer did not identify the applicant's reported work duties but rather cited job titles and positions.

[15] The Officer's decision reflects the attributes of transparency, intelligibility and justification. There is no basis to intervene.

IV. Conclusion

[16] The Application is dismissed. The Parties have not identified a question for certification and none arises.

JUDGMENT IN IMM-4520-23

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.
2. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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