

Date: 20080725

Docket: IMM-3111-07

Citation: 2008 FC 911

Ottawa, Ontario, July 25, 2008

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

ARVINDER KAUR GILL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] On August 14, 2001, the Applicant applied for permanent residence (the Application) as a skilled worker based on her qualifications as an accountant (NOC 1111.2) and as a computer programmer (NOC 2163).

[2] On May 30, 2007, the Applicant was interviewed by a Visa Officer (the Officer) in New Delhi, India and in a letter dated May 31, 2007, the Officer denied the Application (the Decision). This application is for judicial review of that Decision.

THE ISSUES

Issue 1 Was the Evidence Overlooked?

[3] The Applicant says and the Respondent acknowledges that the Officer failed to consider a letter from a firm of Chartered Accountants (the Accounting Firm) dated June 29, 2001 which showed that she had been employed as an accountant for one year after she completed her education (the Letter).

[4] The Respondent argues that the Officer's failure to consider the Letter is immaterial. In his affidavit of June 5, 2008, the Officer notes that the Letter does not include a description of the Applicant's duties and does not indicate that the Applicant met the employment requirements for accountants found in the National Occupational Classification (NOC) 1111.2. The first such requirement reads as follows:

Chartered accountants require a university degree
and
completion of a training program approved by the institute of
Chartered Accountants and several years of on-the-job training
and
accreditation by the Institute of Chartered Accountants.

...

[5] There is no issue that, although the Applicant holds a Bachelor and Masters degrees in Commerce, she has had no training and is not accredited as required by the NOC. For this reason, the Respondent says that the case should not be referred back for reconsideration because the outcome will be the same. The Respondent relied on the decision of the Federal Court of Appeal in

Cartier v. Canada (Attorney General), [2002] F.C.J. No. 1386 at paragraph 31 where the Court said:

One of the reasons which may lead a judge not to grant the relief sought even when the decision on review is reviewable is the futility of reconsidering the said decision. In *Mobil Oil Canada v. Canada—Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202, at 228, Iacobucci J. for the Court cited with approval this passage from Prof. Wade, *Administrative Law* (6th ed. 1988), at p. 535:

A distinction might perhaps be made according to the nature of the decision. In the case of a tribunal which must decide according to law, it may be justifiable to disregard a breach of natural justice where the demerits of the claim are such that it would in any case be hopeless.

At 229, Iacobucci J. explained that this factor of hopelessness was “exception [in] character”.

[6] In my view, because the mandatory requirements of the NOC have not been met, the case is clearly hopeless and should not be reconsidered based on this issue.

Issue 2 Procedural Fairness

[7] The CAIPS notes show that the Officer had concerns about the validity of a letter dated April 29, 2007 from her employer JPR Logistics of India (the JPR Letter). The Officer noted that the telephone number on the stationary was described as a cell number and that, although the JPR Letter was signed by the proprietor, his name and title were not typed. The Officer also observed that JPR had 25 employees and that it was not registered. Notwithstanding these observations, the

Officer questioned the Applicant at length about her employment as an accountant at JPR and about the duties described in the JPR Letter.

[8] The Officer concluded that she was not satisfied that the Applicant had performed most of the duties of NOC 1111. These facts defeat the Applicant's suggestion that, once the Officer doubted the JPR Letter, she failed to complete a thorough assessment of the Application.

[9] The second breach of fairness allegedly occurred at the end of the interview. In paragraph 7 of her affidavit of August 28, 2007, the Applicant lists documents which were submitted to the Visa Officer. Seven are documents in support of her application. However, the last document is entitled "Questions by the Visa Officer and my answers." It is attached as Exhibit I and lists twenty-two questions and answers followed by a conclusion. It reads:

Conclusion: - O.K Arvinder I am giving your passport back as all your certificate are O.K Your English is good but only I want to verify this JPR. I am keeping your working experience (original certificate) of JPR.

[10] The Applicant therefore says that the Officer undertook to verify the status of JPR and reached the Decision without doing so in breach of the duty of fairness. The difficulty with Exhibit I is that the Applicant's affidavit says nothing about when and by whom it was prepared. Further, it is obviously misdescribed. It cannot have been submitted to the Visa Office along with the other documents because it was clearly created after the Applicant's interview with the Officer.

[11] In contrast, the Officer's affidavit of June 5, 2008, says that she wrote her computerized notes on the day of the Applicant's interview. They conclude with the following statement:

...

I am satisfied that the points and units awarded under either Act accurately reflect the applicant's ability to establish economically in Canada.

Informed the PA that since he had failed to meet the minimum selection criteria under both the Acts, his application was refused and that a refusal letter would be sent to him by mail.

Asked the PA if there was anything he wished to add to the interview, PA stated there was not.

Passports and original documents returned to PA at interview.

...

[12] I have concluded that the Officer's CAIPS notes are the more reliable evidence about the end of the interview and that the Officer did not undertake to further investigate JPR to "verify" its status.

Issue 3 The Occupation of the Bookkeeper

[13] The Applicant says that she should have been assessed as a bookkeeper even though in her Application she only asked to be assessed as an accountant and as a computer programmer. Bookkeeper appears in the NOC under the heading "Similar Occupations Classified Elsewhere".

[14] In *Moksud v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 73, Mr. Justice Rouleau dealt with a case in which an application for permanent residence as a Software Engineer (NOC 2147.2) was denied. At paragraph 17, Justice Rouleau began by restating the principle that a Visa Officer's duty is to assess only the applicant's requested occupation and not alternative occupations which are not mentioned in an application. As well, at paragraph 20, he acknowledged that Visa Officers have no obligation to advance applicants' positions.

[15] However, the issue in this case, was whether two occupations described in NOC 2147.2 as "classified elsewhere" should have been assessed even though not mentioned in the applicant's application. Those occupations were Computer Programmer (NOC 2163) and Computer Systems Analyst (NOC 2162).

[16] Justice Rouleau held that those positions should have been considered but repeatedly confined his conclusion to the peculiar circumstances of the case in which:

- (i) no interview was held
- (ii) the Visa Officer unilaterally decided to assess the applicant for an alternative position but then chose an unreasonable alternative which bore no relationship to the applicant's areas of study.

[17] In my view, that decision is confined to its unusual facts and contrary to the Applicant's submission, it does not stand for the proposition that Visa Officers have a duty to consider occupations which an NOC describes as "Similar Occupations Classified Elsewhere".

[18] The Applicant also relies on the decision of Madam Justice Gauthier in *Jagjit Singh Lehal v. Minister of Citizenship and Immigration*, 2003 FC 1515 and says that, in that case, she held that there is a duty to assess occupations described in the NOC as “Similar Occupations Classified Elsewhere”. However, I have not been persuaded that Justice Gauthier made any such ruling. In my view, she was dealing only with an allegation that a visa officer had misconstrued NOC 2241.2.

ORDER

UPON reading the material filed and hearing the submissions of counsel for both parties in Toronto on June 11, 2008

THIS COURT ORDERS that, for the reasons given above, this application is hereby dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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