

Federal Court



Cour fédérale

Date: 20101001

Docket: IMM-1703-10

Citation: 2010 FC 984

Vancouver, British Columbia, October 1, 2010

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

JATINDER SINGH BUTTAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”), by Jatinder Singh Buttar (the “applicant”), for judicial review of a decision by a visa officer (the “officer”) at the Canadian High Commission in New Delhi, dated January 29, 2010, whereby the officer rejected his application for permanent residence as a member of the skilled worker class.

[2] The applicant is a 45-year-old citizen of India. In December 2003, he applied for a permanent resident visa in Canada under the federal skilled worker class and requested that his

application be considered under the occupation of a Financial Auditor and Accountant (NOC Code 1111), and included two letters from his employer, the Anjala Co-operative Sugar Mills Limited (the “Mill”).

[3] On June 18, 2008, the officer sent a letter to the applicant requesting further information and documentation.

[4] On July 21, 2008, the applicant submitted an updated application and additional supporting documents.

[5] Mr. Buttar submitted three letters in total with his application. The first two letters were sent with the initial application, and the third was sent with the updated application.

- a. First letter (April 9, 2003): From the Mill. Stated that he had worked since 1988 and that he had worked as an accountant there since March 20, 1996.
- b. Second letter (November 14, 2003): From the Mill. Listed some of the duties he performed as an assistant accountant from 1993-1996 and as an accountant from 1996.
- c. The third letter (June 30, 2008): From Supreme Freight Forwarders and documents from his most current employment. Details of some of his work duties from October 2006 to June 2008. Indicates that he managed the account section, bank reconciliations, payments of customs duties and other charges, raising debit notes of

brokerage claims to the shipping lines and supervising the preparation of income tax and service tax. He was also responsible for the finalization of the balance sheet and had obtained his “G” certificate which qualified him to work as a broker and customs agent to facilitate the importation of goods.

[6] The officer was not satisfied that the applicant had performed the duties of a Financial Auditor and Accountant listed in NOC 1111.

[7] Furthermore, the officer stated that it was clear that the applicant’s duties were closer to bookkeeping or accounting clerk duties, as described in the National Occupation Matrix, and which fell under skill level C.

[8] The decision of a visa officer regarding whether or not an applicant had performed the required duties is largely an assessment based on facts. The standard of review is reasonableness which attracts a high degree of deference (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, para. 47). As such, the Court will not interfere with the decision unless it does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[9] Given that an officer has great expertise in the issuance of visas, deference is owed (*Tiwana v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 100 (F.C.), para. 12).

[10] As for issues of procedural fairness, they are reviewable according to the correctness standard (*CUPE v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] S.C.J. No. 28 (S.C.C.) para. 100; *Sketchley v. Canada (Attorney General)*, 2005 FCA 404, [2005] F.C.J. No. 2056 (F.C.A.) para. 54).

[11] In the case at bar, I find that the officer's decision was reasonable for the reasons explained below.

[12] With regards to the allegation that the officer ignored the information provided about the applicant's work at the Mill, the affidavit submitted by the officer demonstrates that the officer did consider the letters from the Mill in coming to her conclusions. The Computer Assisted Immigration Processing System ("CAIPS") (page 6 of the Tribunal Record) shows that the officer reviewed all documents on file and the information provided by the applicant following a letter sent to him on June 18, 2008. The Court believes that the officer's affidavit is not an attempt to embellish her decision, but rather to explain how she reached it.

[13] The applicant has also argued that if the officer found that his work fit better under the heading of a "bookkeeper", which is a skill level B, then he should have been assessed under the corresponding NOC classification.

[14] The Court finds, however, that as stated in *Khan v. MCI*, 2009 FC 302, para. 17, "it is trite law that the visa officer had the obligation to assess the occupation listed by the applicant", which

was that of an accountant and not that of a bookkeeper. The fact that the officer stated that the duties performed by the applicant were more akin to bookkeeping or accounting clerk duties does not mean that the applicant would necessarily qualify as a skilled worker under one of these categories, it simply means that the work he has done is more similar to those categories than the category under which he applied.

[15] With regards to the alleged confusion by the officer, I accept that the officer made an error in typing Code “1411” instead of “1431”. I do not find that this shows any kind of confusion on her part.

[16] I see also no reason for the Court's intervention on the applicant's allegations of improper classification of his experience. The officer reasonably justified why she was not satisfied that the applicant's duties matched those set out under NOC 1111. For instance, the officer indicated in her affidavit that the duties of a financial auditor or accountant go beyond preparing financial documents and include examining and approving financial documents, preparing analysis of financial statements, providing financial business and tax advice and may also include supervising and training others.

[17] The officer's decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[18] Finally, on the question of breach of procedural fairness, the applicant's allegation pertained to the “ignoring of information” by the officer. Since I have found that the officer did in fact take into account the letters from the Mill, this submission is unfounded.

[19] No questions for certification were proposed and none arise.

JUDGMENT

THIS COURT ORDERS that this application for judicial review is dismissed.

No question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1703-10

STYLE OF CAUSE: JATINDER SINGH BUTTAR v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: September 29, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** BEAUDRY J.

DATED: October 1, 2010

APPEARANCES:

Linda L. Mark FOR THE APPLICANT

Susan Jane Bennett FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mark & Company Law Corporation FOR THE APPLICANT
Surrey, BC

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Vancouver, BC