Federal Court  Cour fédérale

Date: 20120727

Docket: IMM-542-12

Citation: 2012 FC 935

Ottawa, Ontario, July 27, 2012

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

SHAMSUN NAHER CHOWDHURY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is a citizen of Bangladesh. She applied for permanent residence as a member of the Federal Skilled Worker Class under s. 75(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*] on November 25, 2009. In a decision dated November 25, 2011, a visa officer (the Officer) determined that the Applicant did not meet the requirements for immigration to Canada as a member of the Federal Skilled Worker class.

[2] The Applicant seeks to overturn that decision, asserting that the Officer erred by:

1. failing to have regard to the decision of Justice Russell in *Chowdhury v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1315, 4 Imm LR (4th) 38 [*Chowdhury #1*];

2. concluding that the Applicant should only be assessed 22 points for education instead of 25 points for her 17 years of education;

3. failing to substitute the points assessment with his own evaluation as provided for in s. 76(3) of the *Regulations*; and

4. breaching the rules of procedural fairness by failing to provide the Applicant with an opportunity to address his concerns.

[3] I have concluded, for the reasons which follow, that the decision should be overturned

[4] Applications for permanent residence under the Federal Skilled Worker Class are reviewable on a standard of reasonableness (see *Chowdhury #1*, above at para 18). As taught by the Supreme Court in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190, "reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process", as well as with "whether the decision falls

within a range of possible, acceptable outcomes which are defensible in respect of the facts and law".

[5] The assessment in question was a second assessment, carried out because of the decision of Justice Russell in *Chowdhury #1*. The first reviewing officer had awarded the Applicant a total of only 61 points. Pointing to errors with respect to the assessment of her adaptability, her education (particularly her MBA studies) and a failure to carry out a substituted evaluation, Justice Russell overturned the first reviewing officer's decision.

[6] On this second review, the Officer awarded the Applicant a total of 66 points; 67 points was needed to meet the requirements for immigration to Canada. The only component of the evaluation that is questioned by the Applicant is that of her education. If the Applicant had been assessed 25 points for education – rather than 22 points awarded – she would have met the 67-point threshold.

[7] To obtain 25 points for education, the Applicant needed to demonstrate that she had 17 or more years of full-time study. The Officer found that the Applicant had provided evidence of the equivalent of only 15.5 years of full-time study - 12 for her pre-university education; 2 years for her B. Comm.; and 1.5 years for her MBA. This evaluation resulted in an assessment of 22 points for her education.

[8] The duty of fairness on the screening decision before me in this case is at the low end of the spectrum. Nevertheless, I am not satisfied that the Officer's decision is reasonable or that the

Applicant was afforded procedural fairness. The concerns that I have revolve around the assessment of the Applicant's educational credentials.

[9] With respect to her B. Comm., the first reviewing officer had awarded the Applicant credit for a three-year program of study. This finding was not questioned by the Applicant in her first application for judicial review and was not commented on by Justice Russell in *Chowdhury #1*. Nevertheless, the Officer examined the documents related to the B. Comm. and determined that they only demonstrated the completion of "at most" two years of study. I accept that the review of the Officer was a *de novo* review and, further, that the Officer is not obliged to advise the Applicant of weaknesses in her application (see, for example, *Kaur v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1189, 75 Imm LR (3d) 260). However, in these very unusual circumstances, as a matter of fairness, the Applicant should have been notified that the Officer was re-evaluating the B. Comm. documentation. In addition, I cannot understand how the Officer came to the conclusion that this was only a two-year program. The reference to 2001-2002 is quite obviously a notation of the academic year in which the Applicant began her studies; it is not, as apparently assumed by the Officer, a statement of her years of study.

[10] The Officer's assessment of the MBA program is also flawed. The documents submitted by the Applicant reflect that her MBA program consisted of 66 credit hours. The Officer's analysis of how 66 hours could translate to years of study equivalence is very difficult to understand and appears to be based on extrinsic evidence not disclosed to the Applicant. In

particular, the Officer, without notice to the Applicant, referred to the web site of a Canadian University, from which the Officer concludes that:

> 66 course hours would reflect 4 semesters of fulltime work in a Cdn institution (15 hours/semester for fulltime semester with max of 18 hours).

[11] Moreover, the Officer appears to have selectively read the information on the website. For example, the Officer ignores the statement in the website that a "normal full time load" can be as few as 9 credit-hours of courses per term.

[12] In brief, the decision of the Officer that the Applicant should be awarded credit for only 15.5 years of education lacks the transparency and justification that are required for the Court to conclude that the decision was reasonable.

[13] A further review should be undertaken by a different officer. That officer may well come to the same result but should do so only after receiving further submissions from the Applicant and providing the Applicant with reasons that satisfy the requirements of reasonableness. The Applicant must recognize that the officer is not bound by any of the previous findings of either the first reviewing or second reviewing officer with respect to any portion of the assessment.

[14] Finally, I observe that the facts of this case are unique and the opinions that I express herein should be limited to the situation of the Applicant.

[15] The Applicant seeks costs. I am not persuaded that special reasons are present that would warrant an award of costs.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for judicial review is allowed, the decision of the Officer is quashed and the matter is sent back for re-determination by a different immigration officer;

2. the Applicant will have an opportunity to make further submissions;

3. no costs are awarded; and

4. no question of general importance is certified.

"Judith A. Snider"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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