Federal Court  Cour fédérale

Date: 20120907

Docket: IMM-45-12

Citation: 2012 FC 1068

Ottawa, Ontario, September 7, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

PUSHPANIE PEDURU ARACHCHIGE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of a Citizenship and Immigration Canada (CIC) Case Officer ("the Officer"), by which the Applicant was denied permanent residence under the Canadian Experience Class of subsection 12(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) and section 87.1 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations). The Officer was not satisfied that the Applicant met the skilled work requirement of this category and rendered the decision on December 22, 2011.

[2] For the following reasons, this application is dismissed.

I. Facts

[3] The Applicant is a Sri Lankan citizen who first came to Canada on a student visa in 2004. After completing her Bachelor of Science at Trent University, the Applicant worked part-time as Cashier and then Store Supervisor at Bulk Barn #534 (Bulk Barn) in Toronto. She also worked part-time as a Technician at MNA Engineering, Ltd (MNA Engineering). She submitted an application for permanent residence under the Canadian Experience Class based on the hours worked in these two jobs on June 25, 2011. In her application, the Applicant categorized her employment under the *National Occupation Categories* (NOC) 6211 (Level B) – Retail Sales Supervisors and 2231 (Level B) – Civil Engineering Technologists and Technicians.

II. Decision under Review

[4] The Officer assessed the application on the basis of the following pass/fail requirements under section 87.1(2) of the Regulations: knowledge of English or French; Canadian skilled work experience; and Canadian educational credentials. The Officer was not satisfied that the Applicant met the skilled work experience requirement because she had not demonstrated that she had acquired a minimum of one year of qualifying full-time employment in accordance with the Regulations.

[5] Specifically, the Officer found that the letter of reference from MNA Engineering did not demonstrate that she performed the duties associated with jobs in the NOC 2231 category. Additionally, the Officer was not satisfied, based on the letter of reference from Bulk Barn and the Applicant's T4 from 2010, that she had worked sufficient hours to qualify her for permanent residence in the Canadian Experience Class.

III. Issues

[6] This application raises the following issues:

(a) Was failing to alert the Applicant to the Officer's concerns with her application a breach of procedural fairness?

(b) Was the Officer's decision reasonable?

IV. Standard of Review

[7] Issues of procedural fairness are reviewable on a standard of correctness (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 43).

[8] This Court has recently held that an officer's determinations under the Canadian Experience Class involve findings of fact and law, and are thus reviewable on a standard of reasonableness (see *Anabtawi v Canada (Minister of Citizenship & Immigration)*, 2012 FC 856, [2012] FCJ No 923 at

para 28). Moreover, and contrary to the Applicant's submissions, it is well-established that the standard of review for questions relating to the interpretation of the decision-maker's enabling statute or "statutes closely connected to its function, with which it will have particular familiarity" is also reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 54; *Smith v Alliance Pipeline Ltd*, 2011 SCC 7, [2011] 1 SCR 160 at para 26).

V. Analysis

A. *Procedural Fairness*

[9] The Applicant contends that the Officer breached the duty of procedural fairness by failing to afford her an opportunity to address the Officer's concerns with respect to the number of hours that she worked. The Applicant submits that, as in *Gedeon v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1245, [2004] FCJ No 1504, the Officer's conclusion was "so at odds with the information in the employer's letter that the Officer should have addressed this discrepancy and should have given the Applicant the opportunity to address his concerns" (*Gedeon*, above at para 99).

[10] The Respondent contends that the Officer was under no obligation to make further inquiries with the Applicant as to the sufficiency or credibility of the evidence she submitted with her application. I agree. This Court has held that an "applicant's failure to provide adequate, sufficient or credible proof with respect to his visa application does not trigger a duty to inform the applicant in order for him to submit further proof to address the finding of the officer with respect to the

inadequacy, deficiency or lack of credibility" (*Liu v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1025, [2006] FCJ No 1289 at para 16).

[11] At the core of the principle of procedural fairness is a determination of whether, considering all circumstances, those whose interests are affected by a decision had a meaningful opportunity to present their case fully and fairly (*Baker v Canada (Minister of Citizenship & Immigration)*, [1999] 2 SCR 817 at para 30). The legitimate expectations of, and importance of the decision to, the person who is affected by the decision are among the factors identified by the Supreme Court of Canada in *Baker*, above, to be considered in evaluating whether there has been a breach of procedural fairness in a given situation (see paras 25 and 26). The agency's choice of procedure is also to be given considerable weight (*Baker*, above, at para 27).

[12] The Applicant relied on the Document Checklist for Permanent Residence in the Canadian Experience Class ("Checklist") provided by CIC in submitting her application, expecting that, by complying with the Checklist, there would be no evidentiary issues. The Applicant further contends that Section 10.2 of CIC's Overseas Processing Manual OP 25 – Canadian Experience Class "clearly indicates that it may be necessary to hold a personal interview with the applicant if there are questions or doubts surrounding the application" (Applicant's Memorandum of Fact and Law at para 36).

[13] However, the Checklist on which the Applicant relies explicitly states that:

> The Visa Officer will assess your application on the basis of the information you have provided. The Officer is under no obligation to request information you have not provided.

[14] This Court has further held that, while an applicant may be provided with a list of required documents by the agency accepting the application, the applicant is not limited to supplying only those documents (*Qin v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 815, [2002] FCJ No 1098 at para 7). Here, the Applicant was free to submit T4 tax information slips and pay stubs from 2009 and 2011, even if the Checklist asked only for the "most recent T4 tax information slips and Notice of Assessment." The fact that she did not submit all of the evidence in her possession does not mean that the Applicant did not have a meaningful opportunity to present her case fully and fairly.

[15] Additionally, Section 10.1 of CIC's Overseas Processing Manual lays out the options available to an Officer in situations in which he or she is unable to make a decision, due to lack of information or documentation, or where there are serious doubts as to the legitimacy of the document submitted:

> - request, in writing, specific information or documentation to clarify; or
> - refuse the application; or
> - consider a personal interview (Section 10.2) (Overseas Processing Manual OP 25 - Canadian Experience Class at 20).

[16] The Officer's decision to refuse the application without requesting further information or convoking the Applicant for an interview is an outcome foreseen by the Processing Manual, which was available to the Applicant. I am thus of the opinion that there was no breach of procedural fairness in this case.

B. *Reasonableness of the Decision*

[17] The Applicant submits that the Officer erred in her assessment of the application by failing to consider the hours worked by the Applicant in 2009 and 2011. The Applicant further submits that the Officer's conclusion that the Applicant did not meet the work experience requirements of the Canadian Experience Class was unreasonable because the evidence before the Officer clearly indicated that she did.

[18] The evidence before the Officer included the letters from the Applicant's two employers and her T4s from 2010. The Officer turned her mind to the hours that the Applicant may have worked in 2009 or 2011, as claimed in the employer letters, but without corroborating evidence for those two years (i.e. T4s or pay slips), it was reasonable for the Officer to conclude that the Applicant had not met the requirements of the legislation.

VI. Conclusion

[19] The Officer was not obligated to notify the Applicant of her concerns with the application and, as such, did not breach procedural fairness. The Officer's conclusion, based on the evidence before her, was reasonable.

JUDGMENT

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

" D. G. Near "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-45-12**
STYLE OF CAUSE:	**PUSHPANIE PEDURU ARACHCHIGE v MCI**
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APPEARANCES:

Naseem Mithoowani	FOR THE APPLICANT
Neal Samson	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates Toronto, Ontario	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General Canada Toronto, Ontario	FOR THE RESPONDENT