

Federal Court



Cour fédérale

Date: 20121126

Docket: IMM-2568-12

Citation: 2012 FC 1364

Ottawa, Ontario, November 26, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

BABATUNDE JOSEPH AFOLABI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (Act) for judicial review of the decision of a Visa Officer (Officer) of the High Commission of Canada in Accra, Ghana, dated 28 February 2012 (Decision), which refused the Applicant's application for permanent residence in Canada as a member of the Skilled Worker class.

BACKGROUND

[2] The Applicant is 35-year-old citizen of Nigeria. He submitted an application for Permanent Residence as a Federal Skilled Worker at the High Commission of Canada in Accra, Ghana based on his professional qualifications as a Financial Manager. His application was refused because he failed to reach the 67 point threshold stipulated by regulation 76(1)(a) of the *Immigration and Refugee Protection Regulations*, (SOR/2002-227) [Regulations].

[3] The Applicant started his banking career in June 2004, working at Gulf Bank PLC. He worked there until December 2006. He submitted letters from Gulf Bank dated 4 June 2004, 20 April 2005, 4 May 2005, and 5 September 2005. These letters describe the Applicant's terms of employment and discuss certain transfers and promotions. None of them make any mention of the Applicant's job description or duties.

[4] In December 2006, the Applicant started working at Equitorial Trust Bank, where he remained until June 2009. He submitted an offer of employment from Equitorial dated 13 December 2006, which laid out the basic terms of employment such as hours and pay. He also submitted a reference letter from Equitorial dated 14 December 2009. This letter, however, did describe his job duties.

[5] The Applicant then started working for Oceanic Bank International PLC in June 2009, and he has remained there ever since. He submitted a letter of offer from Oceanic dated 15 April 2009,

which did not provide a job description. A letter of promotion from Oceanic was also provided dated 22 February 2010, which again did not provide a job description.

[6] The Computer Assisted Immigration Processing System (CAIPS) Notes indicate that the Applicant first submitted an application for permanent residence to the Centralized Intake Office in Sydney, Nova Scotia in September 2009. Based on the Applicant's self-assessment of his work experience, he was found to have one year's worth of experience in the NOC 0111 category. As a result, his file was transferred to the Canadian High Commission in Accra, Ghana.

[7] In October 2010, the Applicant was "provisionally" given 17 points for work experience. By letter dated 15 October 2010, the Applicant was asked to submit additional proof of his work experience as a Financial Manager, such as "letters from your employer(s) that indicate your job title, specific duties, responsibilities and length of employment."

[8] In November 2010, the Applicant responded and submitted his business card, a letter of introduction from Oceanic Bank, and a letter indicating he was registered to take his IELTS exam in January 2011. He also provided some contact information for his superiors at Oceanic Bank.

[9] The same officer who assessed the file in October 2010 assessed the file again in November 2010 and awarded the Applicant 15 points for work experience, based on the letter from Oceanic Bank. In February 2011, a copy of the IELTS test results was received, and the file was again reviewed by the same officer. The Applicant was still assessed as having less than two years

experience (June 2009 – February 2011). The application was forwarded to the Officer for a final decision.

[10] The Officer awarded the Applicant 17 points for his work experience, which is the number prescribed for more than two but less than three years of work experience. As such, the Applicant did not reach 67 points and the Officer rejected his application on 28 February 2012. The Applicant contends that he has five years of work experience and should have been awarded the full 21 points available under this category; this would have put him over the 67 point threshold.

DECISION UNDER REVIEW

[11] The Decision in this case consists of the Officer's CAIPS Notes.

[12] The Officer awarded the Applicant points for work experience based upon his employment at Oceanic Bank, starting in June 2009 until February 2012, the time of the Decision. This was under three years, so the Applicant was awarded 17 points. On 20 February 2012 he Officer stated:

It is possible that he has experience as Financial Manager from June 2009 to date of letter from Oceanic Bank Mar. 4, 2010 because the letter refers to him as a senior officer. However, for the period of Jan. 4, 2007 to June 26, 2009 his position at Equitorial Trust bank was Banking Officer and his job duties did not include management of staff as would normally be required at the level of 0111 of the NOC, as indicated by the lead statement and main duties. Therefore I will not award any points for experience for period prior to June 26, 2009.

[13] The Officer awarded 17 points out of a possible 21 for work experience. This put the Applicant's total points at 63, and as such his application was refused pursuant to subsection 11(1)

of the Act. A request for re-assessment was received on 28 February 2012, which was refused on 28 March 2012. The Applicant then commenced this application for judicial review.

ISSUES

[14] The Applicant raises the following issue in this application:

- a. Whether the Officer erred in the assessment of the Applicant's work experience.

STANDARD OF REVIEW

[15] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[16] The award of points in a permanent residence application is a mixed question of fact and law that attracts a standard of review of reasonableness (*Patel v Canada (Minister of Citizenship and Immigration)*, 2011 FCA 187 at paragraphs 36-38). Further, the decision of a visa officer to grant a permanent residency is reviewable on a standard of reasonableness (see *Enriquez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1091 at paragraph 4; *Torres v Canada*

(*Minister of Citizenship and Immigration*), 2011 FC 818 at paragraph 26). Thus, the standard of review is reasonableness.

[17] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

STATUTORY PROVISIONS

[18] The following provisions of the Act are applicable in these proceedings:

Application before entering Canada

11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

[...]

Visa et documents

11. (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

[...]

Obligation – answer truthfully

16. (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.

Obligation du demandeur

16. (1) L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.

[19] The following provisions of the Regulations are applicable in this proceeding:

Selection criteria

76. (1) For the purpose of determining whether a skilled worker, as a member of the federal skilled worker class, will be able to become economically established in Canada, they must be assessed on the basis of the following criteria:

(a) the skilled worker must be awarded not less than the minimum number of required points referred to in subsection (2) on the basis of the following factors, namely,

(i) education, in accordance with section 78,

(ii) proficiency in the official languages of Canada, in accordance with section 79,

(iii) experience, in accordance with section 80,

Critères de sélection

76. (1) Les critères ci-après indiquent que le travailleur qualifié peut réussir son établissement économique au Canada à titre de membre de la catégorie des travailleurs qualifiés (fédéral) :

a) le travailleur qualifié accumule le nombre minimum de points visé au paragraphe (2), au titre des facteurs suivants :

(i) les études, aux termes de l'article 78,

(ii) la compétence dans les langues officielles du Canada, aux termes de l'article 79,

(iii) l'expérience, aux termes de l'article 80,

- | | |
|---|--|
| <p>(iv) age, in accordance with section 81,</p> | <p>(iv) l'âge, aux termes de l'article 81,</p> |
| <p>(v) arranged employment, in accordance with section 82, and</p> | <p>(v) l'exercice d'un emploi réservé, aux termes de l'article 82,</p> |
| <p>(vi) adaptability, in accordance with section 83; and</p> | <p>(vi) la capacité d'adaptation, aux termes de l'article 83;</p> |
| <p>(b) the skilled worker must</p> | <p>b) le travailleur qualifié :</p> |
| <p>(i) have in the form of transferable and available funds, unencumbered by debts or other obligations, an amount equal to half the minimum necessary income applicable in respect of the group of persons consisting of the skilled worker and their family members, or</p> | <p>(i) soit dispose de fonds transférables — non grevés de dettes ou d'autres obligations financières — d'un montant égal à la moitié du revenu vital minimum qui lui permettrait de subvenir à ses propres besoins et à ceux des membres de sa famille,</p> |
| <p>(ii) be awarded the number of points referred to in subsection 82(2) for arranged employment in Canada within the meaning of subsection 82(1).</p> | <p>(ii) soit s'est vu attribuer le nombre de points prévu au paragraphe 82(2) pour un emploi réservé au Canada au sens du paragraphe 82(1).</p> |
| <p>[...]</p> | <p>[...]</p> |

Experience (21 points)

80. (1) Up to a maximum of 21 points shall be awarded to a skilled worker for full-time work experience, or the full-time equivalent for part-time work experience, within the 10 years preceding the date of their application, as follows:

Expérience (21 points)

80. (1) Un maximum de 21 points d'appréciation sont attribués au travailleur qualifié en fonction du nombre d'années d'expérience de travail à temps plein, ou l'équivalent temps plein du nombre d'années d'expérience de travail à temps partiel, au cours des dix années qui ont précédé la date de présentation de la demande, selon la grille

suivante :

(a) for one year of work experience, 15 points;	a) pour une année de travail, 15 points;
(b) for two years of work experience, 17 points;	b) pour deux années de travail, 17 points;
(c) for three years of work experience, 19 points; and	c) pour trois années de travail, 19 points;
(d) for four or more years of work experience, 21 points.	d) pour quatre années de travail, 21 points.
[...]	[...]

ARGUMENTS

The Applicant

[20] The Applicant says that for a decision to be reasonable it must be supported by reasons “that can stand up to a somewhat probing examination” (*Canada (Director of Investigation and Research Competition Act) v Southam Inc*, [1997] 1 SCR 748 at 776). The Officer awarded the Applicant 17 points for work experience, which is the amount attributed to two years experience. However, the Applicant says he submitted evidence indicating that he had five years of experience, and thus deserved to be awarded 21 points. The Applicant submits the Officer ignored the evidence demonstrating the Applicant has five years of work experience.

[21] The Applicant submits that the Decision is based on an erroneous finding of fact because the Officer did not consider the evidence that the Applicant had five years of work experience. There is

nothing in the Decision to indicate that the Officer considered this evidence. The Applicant submits that the magnitude of this error is such that the Decision should be set aside.

The Respondent

[22] The Respondent states that the evidence provided by the Applicant does not demonstrate that he has four or more years of experience in his intended occupation. The Applicant only produced one letter from one of his past employers that described the duties he performed from January 2007 to June 2009.

[23] Not only did the Applicant only submit one letter describing his job duties, none of the duties match any of the duties of a Financial Manager set out in NOC 0111. Although there is no description of any of the duties performed by the Applicant at Oceanic Bank, it appears the Officer still gave him the benefit of the doubt and awarded him experience for this employment. The Applicant did not submit any other evidence that he is experienced in the activities described in NOC 0111 – Financial Manager.

[24] Based on the evidence provided by the Applicant in support of this application, he has not shown that the Officer erred, or that he should have been awarded 21 points for work experience to bring his total to 67. This is a fact-driven decision, and entirely reasonable for the Officer to reject the application. The Respondent submits that this application for judicial review be dismissed.

ANALYSIS

[25] In his permanent resident visa application, the Applicant sought to be assessed for NOC 0111 Financial Manager. The Applicant was awarded 17 points for experience in the NOC 0111 category for the period from June 2009 to the time of the Decision (i.e. two years and eight months) for a total of 63 points.

[26] The Applicant now says that he had five years of experience under paragraph 80(1)(d) of the Regulations so that he should have been awarded the maximum of 21 points for experience. The Applicant says that he provided evidence to the Officer which demonstrated that he had five years of experience, and that the Officer's assessment was not based upon the evidence before him.

[27] Hence, this review involves a very narrow assessment of whether the Officer overlooked evidence of the Applicant's claimed five years of experience.

[28] I have reviewed the evidence submitted by the Applicant to show his experience in NOC 0111. In my view, there is insufficient evidence of experience as a Financial Manager to demonstrate that the Officer's Decision to award the Applicant 17 points for experience was unreasonable.

[29] This is because, as the Respondent points out, the Applicant has produced one letter from one bank describing the duties that he performed from January 2007 to June 2009. None of the duties described in the letter match any of the main duties of a financial manager set out in the NOC 0111.

[30] Nor was there any other evidence provided by the Applicant to show that he was involved in the development and implementation of policies and systems, or that he established performance standards, and prepared financial reports for senior management — activities listed in the lead statement of a Financial Manager.

[31] I think it is also worth pointing out that the Applicant was given notification of the deficiencies in his application regarding the need for additional proof of experience under NOC 0111. The Applicant simply failed to provide evidence that would establish additional relevant experience.

[32] I cannot say that the Decision contains a reviewable error. My own assessment convinces me that the Decision falls within the *Dunsmuir* range.

[33] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-2568-12

STYLE OF CAUSE: **BABATUNDE JOSEPH AFOLABI**

- and -

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 8, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** HON. MR. JUSTICE RUSSELL

DATED: November 26, 2012

APPEARANCES:

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Bridget A. O'Leary **RESPONDENT**

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