Federal Court  Cour fédérale

Date: 20121130

Docket: IMM-3269-12

Citation: 2012 FC 1402

Vancouver, British Columbia, November 30, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

VARINDER KUMAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This decision is in response to an application for judicial review wherein the Applicant was denied a visa for permanent residence under the federal skilled worker category.

[2] The visa was denied by the First Secretary in the New Delhi visa office due to inadequate experience under the specific National Occupation Classification [NOC].

The NOC, in question, 4131, stipulates:

4131 - College and Other Vocational Instructors Analytical text	**4131 - Enseignants/ enseignantes au niveau collégial et dans les écoles de formation professionnelle Textes de la profession**
Type of work	**Nature du travail**
This unit group includes instructors who teach applied arts, academic, technical and vocational subjects to students at community colleges, CEGEPs, agricultural colleges, technical and vocational institutes, language schools and other college level schools. …	Les enseignants au niveau collégial et les autres instructeurs de programmes de perfectionnement de ce groupe enseignent les matières scolaires, les arts appliqués, les matières de formation professionnelle et les techniques dans des cégeps, des collèges communautaires, des collèges d'agriculture, des instituts techniques et professionnels, des écoles de langue et d'autres établissements de niveau collégial. [...]

[3] The First Secretary determined that the level of instruction in which the Applicant was engaged was that of a commercial entity in the private sector; and, thus, it was not a teaching institution which could qualify the Applicant as an instructor under the category of responsibilities specified in NOC 4131. The teaching standard was not that of an educational institution which could be considered in the college category.

[4] The NOC 4131 provides for work experience gained from "organizations throughout the private and public sectors, private training establishments and vocational institutes", in this specific case for that of a computer training instructor.

[5] Z'Net Informatics is a private career training institution that is registered and approved by the Punjabi educational authorities. Uncontradicted evidence in the file, in addition to having the word "Reg'd", demonstrates that the institution is secondary and post-secondary granting diplomas and certification. This evidence must be given, at the very least, more consideration which is for the specialized decision-maker to consider on the basis of the actual documents in the file. The Court recognizes that it is for the specialized decision-maker to be satisfied with the institution as a duly registered entity serving the purpose stated by the Applicant. Therefore, it is for the first instance decision-maker, decision-maker of fact, to determine that further to the above, rather than for the Court to do so; however, in acknowledgment of the documents on file which appear uncontradicted, a need exists for greater specificity which can be accomplished in brevity (even one or two additional sentences) for the eventual decision to be understood on the face of the record (*Rodrigues v Canada (Minister of Citizenship and Immigration)*, 2009 FC 111 at para 7 and 10).

[6] Recognizing this Court's margin of deference depends on that which is reasonable, as per *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, and that when:

> [14] Read as a whole, I do not see *Dunsmuir* as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses — one for the reasons and a separate one for the result (Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at §§12:5330 and 12:5510). It is a more organic exercise — the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).

[7] Therefore, the Applicant's application for judicial review is granted and the matter is returned for redetermination anew (*de novo*).

JUDGMENT

THIS COURT ORDERS that the Applicant's application for judicial review be granted and the matter be returned for redetermination anew (*de novo*). No question for certification.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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