

Federal Court



Cour fédérale

Date: 20121221

Docket: IMM-4390-12

Citation: 2012 FC 1542

Ottawa, Ontario, December 21, 2012

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

MICHAEL OKWU OBETA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] in which the applicant seeks to quash the decision of a Visa Officer (the Officer) dated March 14, 2012, denying his application for a permanent resident visa under the federal skilled worker class on the basis that he failed to adduce adequate evidence of his work experience. For the following reasons, the application for judicial review will be dismissed.

Factual background

[2] Mr. Michael Okwu Obeta (the applicant) is a citizen of Nigeria. He is married and has two (2) minor children. The applicant applied for a permanent resident visa under the Federal Skilled Worker class. He has eighteen (18) years of formal education and holds a Bachelor's of Science in Accountancy and a Project Management Professional certificate. The applicant's spouse has seventeen (17) years of formal education and also holds a Bachelor's of Science (Tribunal Record, pp 25-26, 29, 34 and 62). The applicant claims to have over four (4) years of experience under the National Occupational Classification (NOC) code 0711 as a Construction Project Manager, and over two (2) years of work experience under the NOC code 0111 as a Financial Control Manager (Tribunal Record, p 39).

[3] The applicant's application was received on January 14, 2010 and forwarded to the Visa Office in Accra, Ghana, after an initial assessment on March 8, 2010 (Tribunal Record, pp 3-4). The applicant was asked at that time to submit his full application within one hundred and twenty (120) days and to send it to Accra (Tribunal Record, p 4). Further documents were requested from the applicant on November 28, 2011. The applicant submitted several documents in support of his application, including:

- a. letters of employment from Cirico Technical Services Limited (Cirico): a first letter dated March 30, 2010 (Tribunal Record, p 72), and a second letter submitted after the November 28, 2011 request, dated December 2, 2011 (Tribunal Record, p 85);
- b. letter of employment from Indepco Ltd (Indepco), dated March 30, 2010 (Tribunal Record, p 73);
- c. letter of employment from the Nigeria Union of Local Government Employees (Nulge), dated April 26, 2010, which does not refer to a listed NOC code for Federal Skilled Workers (Tribunal Record, p 74)

- d. employment offer from Indepco, dated August 6, 2001 (Tribunal Record, pp 79-81), signed August 9, 2004
- e. employment offer from Cirico, dated February 6, 2004 (Tribunal Record, pp 75-78), signed on February 10, 2004.

[4] The letters from Cirico attested to the applicant's position as a Construction Project Manager since February 2004 and listed ten (10) main duties (corresponding to NOC code 0711). The letter from Indepco indicated that the applicant had worked for this company from August 2001 until January 2004 as a Financial Control Manager and listed nine (9) main duties (corresponding to NOC code 0111).

[5] The applicant's application was reviewed and denied by the Officer on March 14, 2012 (Tribunal Record, p 7-10).

Decision under review

[6] The Computer Assisted Immigration Processing System (CAIPS) notes indicate that the applicant had, at a preliminary stage, sufficient points to meet the requirements of the Act, having accumulated a total of sixty-nine (69) points while the required amount is sixty-seven (67). Of the applicant's sixty-nine (69) points, twenty-one (21) were provisionally awarded for work experience based on the applicant's submissions (Tribunal Record, p 7). However, upon review by the Officer, the documents supporting the applicant's work experience were rejected and his application was therefore deemed ineligible for processing.

[7] The Officer found the letter submitted by the applicant from Cirico describing his duties as a Construction Project Manager since February 2004 was not credible and was likely fabricated for

immigration purposes (Tribunal Record, pp 7 and 72). The letter listed tasks which appeared to be copied directly from the NOC code 0711 and slightly modified. The company's letterhead and the business card attached to the letter were printed using an ink-jet printer. Furthermore, the Officer found it improbable that the applicant would be hired as a Construction Project Manager when he had no previous experience or training in the construction industry.

[8] The Officer also gave little weight to a letter submitted by the applicant from Indepco Ltd. to corroborate his experience under the NOC code 0111 as a Financial Control Manager, also finding that it was likely fabricated for immigration purposes (Tribunal Record, pp 8 and 73). The Officer noted that the letter was printed on the same type of paper, using the same low-quality ink-jet printer, and otherwise looked very similar to the Cirico reference letter. The Officer noted that the duties listed on this letter also appear to be copied from the wording of the NOC code 0111.

[9] Given the lack of satisfactory evidence concerning the applicant's work experience under the NOC code 0711 and NOC code 0111, the application was deemed ineligible for processing and was refused. The letter sent to the applicant, dated March 14, 2012, informed the applicant that he had "not provided sufficient evidence that [he] performed the actions described in the lead statement for those occupations" (Tribunal Record, p 9). The applicant requested reconsideration of the refusal decision on March 23, 2012. Attached to this request was a more detailed letter of employment from Cirico (Applicant's Record, Applicant's Affidavit, Exhibits H and I, pp 37-43). The applicant having received no response to his request for reconsideration, a reminder was sent via email by his counsel on April 3, 2012, which has also allegedly remained unanswered (Applicant's Record,

Applicant's Affidavit, Exhibit J, p 46). The applicant therefore filed this application for judicial review.

Issues

[10] After considering both parties' proposed issues for this application for judicial review, the Court is of the view that the issues are as follows:

- a. Did the Officer breach the duty of procedural fairness by not giving the applicant the opportunity to address his doubts about the evidence being falsified?
- b. Did the Officer err in deciding that the applicant's permanent residence application was ineligible for processing?

Statutory provisions

[11] The relevant provisions of the Act and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations], setting out the legislative framework for permanent residence applicants under the Federal Skilled Workers class, are set out in annex to this judgment. The Regulations require a minimum of one (1) year experience in a listed NOC code in the ten (10) year period preceding the application.

[12] Furthermore, section 87.3 of the Act provides for the issuance of Ministerial Instructions by the Minister of Citizenship and Immigration. The Ministerial Instructions, which were applicable to Federal Skilled Workers when the applicant applied for permanent residence, are entitled "MI1" (Ministerial Instructions, (2008) C Gaz I, 3043). They were applicable to applications received between February 27, 2008 and June 26, 2010. According to the MI1, applicants had to meet the requirements set forth under the instructions before being eligible for processing. Specifically,

applicants had to have secured an Arranged Employment Offer (AEO) or have at least one (1) year of continuous full-time paid work experience over the last ten (10) years in one of the specified occupations set out by the NOC and listed in the Ministerial Instructions. Having no AEO, the applicant in the present case had to demonstrate that he had at least one (1) year of continuous full-time paid work experience in a listed NOC code during the ten (10) preceding years for his application to be eligible for processing.

Standard of review

[13] Both parties submit that the issue is one of procedural fairness. When examining an issue of procedural fairness, the task for the Court is to determine whether the process followed by the decision-maker satisfied the level of fairness required in all of the circumstances (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43, [2009] 1 SCR 339)

[14] The issue of whether or not the Officer should have brought his concerns to the attention of the applicant and offered him an opportunity to address them is a question of procedural fairness, and is reviewable on a standard of correctness. However, the Officer's concerns themselves, namely his assessment of the evidence and subsequent conclusion that the application was ineligible for processing, are reviewable on the standard of reasonableness (*Kamchibekov v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1411 at para 12, [2011] FCJ No 1782 (QL) [*Kamchibekov*]). Deference being owed to the Officer in his assessment of the evidence, the Court will only interfere with the Officer's conclusions if they do not fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]).

Analysis

[15] From the outset, the Court recalls that visa applicants are owed a degree of procedural fairness which falls at the low end of the spectrum (*Dash v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1255 at para 27, [2010] FCJ No 1565 (QL) [*Dash*]), there being no substantive rights at issue as an applicant has no right to enter Canada (*Wang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1298 at para 20, 302 FTR 127). The decision on the application is neither judicial nor quasi-judicial in nature.

[16] In the present circumstances, the main issue raised by the applicant concerns allegations of breach of the duty of procedural fairness: i.e., that the Officer erred by not informing the applicant of his concerns with the authenticity of the letters provided in support of this application.

[17] More particularly, the applicant submits that the Officer should have provided him with a meaningful opportunity to respond to his concerns, and by failing to do so, the Officer committed a breach of procedural fairness (*Li v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1284, 337 FTR 100; *Rahim v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1252 at para 12, 152 ACWS (3d) 501). In this regard, the applicant relies on *Torres v Canada (Minister of Citizenship and Immigration)*, 2011 FC 818 at para 38, 2 ImmLR (4th) 57 [*Torres*], to argue that “where credibility, accuracy or the genuine nature of information is in question, a duty also exists to give an opportunity to an applicant to disabuse an officer of any concerns that may arise” (also relying on *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283, [2007] 3 FCR 501 [*Hassani*]). The applicant submits that his application was complete and that the issue is

accordingly not one of sufficiency, but rather of authenticity, of the documents provided in support of his application. In the applicant's view, it follows that the Officer owed him a duty of fairness.

[18] The respondent disagrees and argues that the documents presented to the Officer contained numerous defects and lacked credibility. In such circumstances, maintains the respondent, no duty of fairness arises.

[19] The applicant in this case agrees that an Officer is under no obligation to allow a given applicant to make further submissions if the concern is one that arises from the legislation or regulation. However, the applicant submits that his application was complete as it included the information required. As such, the applicant contends that he complied with the legislation and regulation and provided sufficient information. As indicated above, the applicant alleges that this case is not one that raises an issue of sufficiency of information – where no duty is owed by the Officer – but of authenticity of information. On the basis of this distinction, the applicant relies strongly on paragraph 24 in *Hassani*, and asserts that the Officer had a duty to provide him with an opportunity to address his concerns regarding the authenticity of the documents provided in support of his application. Justice Mosley in *Hassani*, above, at paragraph 24, observed the following:

[24] Having reviewed the factual context of the cases cited above, it is clear that where a concern arises directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns. Where however the issue is not one that arises in this context, such a duty may arise. This is often the case where the credibility, accuracy or genuine nature of information submitted by the applicant in support of their application is the basis of the visa officer's concern, as was the case in *Rukmangathan*, and in *John* and *Cornea* cited by the Court in *Rukmangathan*, above.

[Emphasis added.]

[20] For the reasons that follow, the Court cannot agree with the applicant's position and interpretation of *Hassani*.

[21] Firstly, the use of the word *may* at paragraph 24 in *Hassani* is an indication that Justice Mosley did not frame the duty of the Officer in absolute terms, as the applicant seems to suggest. In other words, Justice Mosley did not rule that there is necessarily a duty to provide an opportunity for the applicant to address his or her concerns when they arise outside the context of requirements pursuant to the legislation or related regulations.

[22] Likewise, the use of the word *often* is another indication that such a duty is not necessarily triggered even where the credibility, accuracy or genuine nature of information submitted by the applicant is at issue. Depending on the circumstances, this duty may simply not arise. Here, the Officer referred to the fact that the reference letters from past employers were most probably fabricated for immigration purposes.

[23] The Court observes, for instance, that the Officer noticed that the letters at pages 72, 73 and 74 of the Tribunal Record have the same font. He also noticed that the business cards make reference to a @yahoo.com and a @gmail.com email addresses, but not to a corporate email. Two (2) letters from two (2) different employers are signed on the same day, using the same type of paper with both letterheads printed in poor quality ink-jet and are otherwise quite alike (Tribunal Record, pp 72 and 73). The Officer further noticed that the duties enumerated in the letter from Cirico are nearly copied from the NOC. The applicant's comparative table between the NOC and the reference letters submitted to the Court failed to convince this Court (Applicant's Reply, para 6).

Furthermore, the Officer noted that it would be unlikely for a company to hire the applicant for a position (Construction Project Manager) for which he had no apparent previous experience (Tribunal Record, p 8). Thus, on the basis of this information, the Court is of the opinion that the Officer's decision was reasonable.

[24] Following the decision to the effect that the application was ineligible for processing and hence refused, the applicant attempted to perfect his application (Tribunal Record, pp 41-42). For instance, he explained that the use of ink-jet printers and the particular type of paper used by the employers is common practice for businesses in Nigeria (Applicant's Record, Applicant's Affidavit, p 16; Affidavit of Arinze Samuel Chukwudile, p 49), and that the font used on the letters is a default font on many computers in Nigeria (Applicant's Record, Applicant's affidavit, paras 31-32, pp 16-17). The Court agrees with the respondent that these statements made by the applicant in his own affidavit with respect to generalized business practice in Nigeria as to the paper, printer and font typically used are self-serving statements. (Applicant's Record, Affidavit of the Applicant, paras 28, 30 and 32, pp 16-17).

[25] As explained earlier, the burden of providing sufficient information rests on the applicant, and where the Officer's concerns arise directly from the requirements of the Act or its Regulations, there is no duty on the Officer to raise doubts or concerns with the applicant (*Kaur v Canada (Minister of Citizenship and Immigration)*, 2010 FC 442 at para 11, [2010] FCJ No 587 (QL) [*Kaur*]; *Hassani*, above, at para 24). Also, and contrary to the applicant's submission, there is no such absolute duty on the Officer where the application, on its face, is void of credibility. In terms of sufficient information, the onus will not shift on the Officer simply on the basis that the application

is “complete”. The applicant has the burden to put together an application that is not only “complete” but relevant, convincing and unambiguous (*Singh v Canada (Minister of Citizenship and Immigration)* 2012 FC 526, [2012] FCJ No 548; *Kamchibekov*, above, at para 26). Despite the distinction that the applicant attempts to make between sufficiency and authenticity, the fact of the matter is that a complete application is in fact insufficient if the information it includes is irrelevant, unconvincing or ambiguous.

[26] Moreover, the Court refers to the observations of Justice Zinn in *Singh v Canada (Minister of Citizenship and Immigration)*, 2009 FC 620 at para 7, [2009] FCJ No 797:

[7] I find that there is no merit to the submission that the officer ought to have provided the applicant with an opportunity to address his concerns. Justice Russell in *Ling v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1198, reviewed the law as to when a visa officer ought to provide such an opportunity. Relying on *Ali v Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 468, he noted firstly that there was no statutory right to an interview, or any dialogue of the sort suggested here. Secondly, it was noted that generally an opportunity to respond is available only when the officer has information of which the applicant is not aware. As in *Ling*, that is not the situation here and thus no opportunity was required to be given to Mr. Singh to address the officer’s concerns. Further, when as here the officer is relying only on materials submitted by or known to the applicant, there is no need for an interview.

[Emphasis added.]

[27] Finally, the applicant relies on the case of *Patel v Canada (Minister of Citizenship and Immigration)*, 2011 FC 571 at paras 21-27, [2011] FCJ No 714 (QL) [*Patel*], to support his argument that when the concern relates to the veracity (authenticity) of a document, as opposed to its sufficiency, an officer is obligated to inform an applicant of any concerns. In *Patel*, the officer was concerned about the veracity of the letter because the duties appeared to be copied directly from

the NOC descriptions. The Court held that it was an error not to inform the applicant of such doubts on the credibility of the submitted documents and set aside the officer's decision for breach of procedural fairness. However, the *Patel* decision is distinguishable from the present case. Indeed, in *Patel*, the Court found that the officer's reasons were inadequate (*Patel*, para 26). On the basis of the evidence on record, the Court is of the view that the Officer's reasons are adequate, as they explicitly make reference to the issue of "credibility and fabrication for immigration purposes".

[28] In the result, the applicant has not established that the Officer erred in considering the information before him, or that the Officer had a duty to give the applicant an opportunity to address his concerns. On the basis of the record taken as a whole and discussed above, the Court is therefore of the view that the Officer's decision was not unreasonable (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708; *Smith v Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 SCR 160; *Construction Labour Relations v Driver Iron Inc.*, 2012 SCC 65, [2012] SCJ No 65).

[29] Consequently, the application for judicial review will be dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. No question of general importance is certified.

“Richard Boivin”

Judge

Annex

The following provisions from the *Immigration and Refugee Protection Act* set out the legislative framework applicable to the present case:

PART 1	PARTIE 1
IMMIGRATION TO CANADA	IMMIGRATION AU CANADA
DIVISION 1	SECTION 1
REQUIREMENTS BEFORE ENTERING CANADA AND SELECTION	FORMALITES PREALABLES A L'ENTREE ET SELECTION
<p><i>Requirements Before Entering Canada</i></p> <p>Application before entering Canada</p> <p>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.</p> <p>...</p> <p><i>Selection of Permanent Residents</i></p> <p>Family reunification</p> <p>12. (1) A foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident.</p> <p>Economic immigration</p> <p>(2) A foreign national may be selected as a</p>	<p><i>Formalités préalables à l'entrée</i></p> <p>Visa et documents</p> <p>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.</p> <p>[...]</p> <p><i>Sélection des résidents permanents</i></p> <p>Regroupement familial</p> <p>12. (1) La sélection des étrangers de la catégorie « regroupement familial » se fait en fonction de la relation qu'ils ont avec un citoyen canadien ou un résident permanent, à titre d'époux, de conjoint de fait, d'enfant ou de père ou mère ou à titre d'autre membre de la famille prévu par règlement.</p> <p>Immigration économique</p> <p>(2) La sélection des étrangers de la</p>

member of the economic class on the basis of their ability to become economically established in Canada.

catégorie « immigration économique » se fait en fonction de leur capacité à réussir leur établissement économique au Canada.

Refugees

Réfugiés

(3) A foreign national, inside or outside Canada, may be selected as a person who under this Act is a Convention refugee or as a person in similar circumstances, taking into account Canada's humanitarian tradition with respect to the displaced and the persecuted.

(3) La sélection de l'étranger, qu'il soit au Canada ou non, s'effectue, conformément à la tradition humanitaire du Canada à l'égard des personnes déplacées ou persécutées, selon qu'il a la qualité, au titre de la présente loi, de réfugié ou de personne en situation semblable.

Furthermore, section 87.3 of the Act provides for the issuance of Ministerial Instructions by the Minister of Citizenship and Immigration:

PART 1	PARTIE 1
IMMIGRATION TO CANADA	IMMIGRATION AU CANADA
...	[...]
DIVISION 10	SECTION 10
GENERAL PROVISIONS	DISPOSITIONS GÉNÉRALES
<i>Instructions on Processing Applications and Requests</i>	<i>Instructions sur le traitement des demandes</i>
Application	Application
87.3 (1) This section applies to applications for visas or other documents made under subsection 11(1), other than those made by persons referred to in subsection 99(2), to sponsorship applications made by persons referred to in subsection 13(1), to applications for permanent resident status under subsection 21(1) or temporary resident status under subsection 22(1) made by foreign nationals in Canada, to applications for work or study permits and to requests under subsection 25(1) made by foreign nationals outside Canada.	87.3 (1) Le présent article s'applique aux demandes de visa et autres documents visées au paragraphe 11(1) – sauf à celle faite par la personne visée au paragraphe 99(2) –, aux demandes de parrainage faites par une personne visée au paragraphe 13(1), aux demandes de statut de résident permanent visées au paragraphe 21(1) ou de résident temporaire visées au paragraphe 22(1) faites par un étranger se trouvant au Canada, aux demandes de permis de travail ou d'études ainsi qu'aux demandes prévues au paragraphe 25(1) faites par un étranger se trouvant hors du Canada.
Attainment of immigration goals	Atteinte des objectifs d'immigration
(2) The processing of applications and requests is to be conducted in a manner that, in the opinion of the Minister, will best support the attainment of the immigration goals established by the Government of Canada.	(2) Le traitement des demandes se fait de la manière qui, selon le ministre, est la plus susceptible d'aider l'atteinte des objectifs fixés pour l'immigration par le gouvernement fédéral.
Instructions	Instructions
(3) For the purposes of subsection (2), the	(3) Pour l'application du paragraphe (2), le

Minister may give instructions with respect to the processing of applications and requests, including instructions

ministre peut donner des instructions sur le traitement des demandes, notamment des instructions :

(a) establishing categories of applications or requests to which the instructions apply;

a) prévoyant les groupes de demandes à l'égard desquels s'appliquent les instructions;

(a.1) establishing conditions, by category or otherwise, that must be met before or during the processing of an application or request;

a.1) prévoyant des conditions, notamment par groupe, à remplir en vue du traitement des demandes ou lors de celui-ci;

(b) establishing an order, by category or otherwise, for the processing of applications or requests;

b) prévoyant l'ordre de traitement des demandes, notamment par groupe;

(c) setting the number of applications or requests, by category or otherwise, to be processed in any year; and

c) précisant le nombre de demandes à traiter par an, notamment par groupe;

(d) providing for the disposition of applications and requests, including those made subsequent to the first application or request.

d) régissant la disposition des demandes dont celles faites de nouveau.

Application

Application

(3.1) An instruction may, if it so provides, apply in respect of pending applications or requests that are made before the day on which the instruction takes effect.

(3.1) Les instructions peuvent, lorsqu'elles le prévoient, s'appliquer à l'égard des demandes pendantes faites avant la date où elles prennent effet.

Clarification

Précision

(3.2) For greater certainty, an instruction given under paragraph (3)(c) may provide that the number of applications or requests, by category or otherwise, to be processed in any year be set at zero.

(3.2) Il est entendu que les instructions données en vertu de l'alinéa (3)c) peuvent préciser que le nombre de demandes à traiter par an, notamment par groupe, est de zéro.

Compliance with instructions

Respect des instructions

(4) Officers and persons authorized to exercise the powers of the Minister under section 25 shall comply with any

(4) L'agent – ou la personne habilitée à exercer les pouvoirs du ministre prévus à l'article 25 – est tenu de se conformer aux

instructions before processing an application or request or when processing one. If an application or request is not processed, it may be retained, returned or otherwise disposed of in accordance with the instructions of the Minister.

Clarification

(5) The fact that an application or request is retained, returned or otherwise disposed of does not constitute a decision not to issue the visa or other document, or grant the status or exemption, in relation to which the application or request is made.

Publication

(6) Instructions shall be published in the Canada Gazette.

Clarification

(7) Nothing in this section in any way limits the power of the Minister to otherwise determine the most efficient manner in which to administer this Act.

instructions avant et pendant le traitement de la demande; s'il ne procède pas au traitement de la demande, il peut, conformément aux instructions du ministre, la retenir, la retourner ou en disposer.

Précision

(5) Le fait de retenir ou de retourner une demande ou d'en disposer ne constitue pas un refus de délivrer les visas ou autres documents, d'octroyer le statut ou de lever tout ou partie des critères et obligations applicables.

Publication

(6) Les instructions sont publiées dans la Gazette du Canada.

Précision

(7) Le présent article n'a pas pour effet de porter atteinte au pouvoir du ministre de déterminer de toute autre façon la manière la plus efficace d'assurer l'application de la loi.

The following provisions from the *Immigration and Refugee Protection Regulations* set out the requirements for the Federal Skilled Workers class:

PART 6	PARTIE 6
ECONOMIC CLASSES	IMMIGRATION ÉCONOMIQUE
DIVISION 1	SECTION 1
SKILLED WORKERS	TRAVAILLEURS QUALIFIÉS
<p>...</p> <p style="text-align: center;"><i>Federal Skilled Workers</i></p> <p style="text-align: center;">Federal Skilled Worker Class</p> <p>Class</p> <p>75. (1) For the purposes of subsection 12(2) of the Act, the federal skilled worker class is hereby prescribed as a class of persons who are skilled workers and who may become permanent residents on the basis of their ability to become economically established in Canada and who intend to reside in a province other than the Province of Quebec.</p> <p>Skilled workers</p> <p>(2) A foreign national is a skilled worker if</p> <p>(a) within the 10 years preceding the date of their application for a permanent resident visa, they have at least one year of continuous full-time employment experience, as described in subsection 80(7), or the equivalent in continuous part-time employment in one or more occupations, other than a restricted occupation, that are listed in Skill Type 0 Management Occupations or Skill Level A or B of the</p>	<p>[...]</p> <p style="text-align: center;"><i>Travailleurs qualifiés (fédéral)</i></p> <p style="text-align: center;">Travailleurs qualifiés (fédéral)</p> <p>Catégorie</p> <p>75. (1) Pour l'application du paragraphe 12(2) de la Loi, la catégorie des travailleurs qualifiés (fédéral) est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada, qui sont des travailleurs qualifiés et qui cherchent à s'établir dans une province autre que le Québec.</p> <p>Qualité</p> <p>(2) Est un travailleur qualifié l'étranger qui satisfait aux exigences suivantes :</p> <p>a) il a accumulé au moins une année continue d'expérience de travail à temps plein au sens du paragraphe 80(7), ou l'équivalent s'il travaille à temps partiel de façon continue, au cours des dix années qui ont précédé la date de présentation de la demande de visa de résident permanent, dans au moins une des professions appartenant aux genre de compétence 0 Gestion ou niveaux de compétences A ou</p>

National Occupational Classification matrix;

B de la matrice de la Classification nationale des professions — exception faite des professions d'accès limité;

(b) during that period of employment they performed the actions described in the lead statement for the occupation as set out in the occupational descriptions of the National Occupational Classification; and

b) pendant cette période d'emploi, il a accompli l'ensemble des tâches figurant dans l'énoncé principal établi pour la profession dans les descriptions des professions de cette classification;

(c) during that period of employment they performed a substantial number of the main duties of the occupation as set out in the occupational descriptions of the National Occupational Classification, including all of the essential duties.

c) pendant cette période d'emploi, il a exercé une partie appréciable des fonctions principales de la profession figurant dans les descriptions des professions de cette classification, notamment toutes les fonctions essentielles.

Minimal requirements

Exigences

(3) If the foreign national fails to meet the requirements of subsection (2), the application for a permanent resident visa shall be refused and no further assessment is required.

(3) Si l'étranger ne satisfait pas aux exigences prévues au paragraphe (2), l'agent met fin à l'examen de la demande de visa de résident permanent et la refuse.

Selection criteria

Critères de sélection

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:

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) 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,

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

(i) education, in accordance with section 78,

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

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

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

- | | |
|---|---|
| (iii) experience, in accordance with section 80, | (iii) l'expérience, aux termes de l'article 80, |
| (iv) age, in accordance with section 81, | (iv) l'âge, aux termes de l'article 81, |
| (v) arranged employment, in accordance with section 82, and | (v) l'exercice d'un emploi réservé, aux termes de l'article 82, |
| (vi) adaptability, in accordance with section 83; and | (vi) la capacité d'adaptation, aux termes de l'article 83; |

(b) the skilled worker must

- (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
- (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).

Number of points

(2) The Minister shall fix and make available to the public the minimum number of points required of a skilled worker, on the basis of

- (a) the number of applications by skilled workers as members of the federal skilled worker class currently being processed;*
- (b) the number of skilled workers projected to become permanent residents according to the report to Parliament referred to in section 94 of the Act; and*
- (c) the potential, taking into account economic and other relevant factors, for the establishment of skilled workers in Canada.*

b) le travailleur qualifié :

- (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,
- (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).

Nombre de points

(2) Le ministre établit le nombre minimum de points que doit obtenir le travailleur qualifié en se fondant sur les éléments ci-après et en informe le public :

- a) le nombre de demandes, au titre de la catégorie des travailleurs qualifiés (fédéral), déjà en cours de traitement;*
- b) le nombre de travailleurs qualifiés qui devraient devenir résidents permanents selon le rapport présenté au Parlement conformément à l'article 94 de la Loi;*
- c) les perspectives d'établissement des travailleurs qualifiés au Canada, compte tenu des facteurs économiques et autres facteurs pertinents.*

Circumstances for officer's substituted evaluation

(3) Whether or not the skilled worker has been awarded the minimum number of required points referred to in subsection (2), an officer may substitute for the criteria set out in paragraph (1)(a) their evaluation of the likelihood of the ability of the skilled worker to become economically established in Canada if the number of points awarded is not a sufficient indicator of whether the skilled worker may become economically established in Canada.

Concurrence

(4) An evaluation made under subsection (3) requires the concurrence of a second officer.

Substitution de l'appréciation de l'agent à la grille

(3) Si le nombre de points obtenu par un travailleur qualifié — que celui-ci obtienne ou non le nombre minimum de points visé au paragraphe (2) — n'est pas un indicateur suffisant de l'aptitude de ce travailleur qualifié à réussir son établissement économique au Canada, l'agent peut substituer son appréciation aux critères prévus à l'alinéa (1)a).

Confirmation

(4) Toute décision de l'agent au titre du paragraphe (3) doit être confirmée par un autre agent.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4390-12

STYLE OF CAUSE: Michael Okwu Obeta v MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: December 5, 2012

REASONS FOR JUDGMENT: BOIVIN J.

DATED: December 21, 2012

APPEARANCES:

Gissa Rahme
Melissa Paulmier

FOR THE APPLICANT

Pavol Janura

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Law firm of Barbara J. Leiter
Montréal, Quebec

FOR THE APPLICANT

William F. Pentney,
Deputy Attorney General of Canada

FOR THE RESPONDENT