

Federal Court



Cour fédérale

Date: 20130110

Docket: IMM-5228-12

Citation: 2013 FC 17

Montréal, Quebec, January 10, 2013

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

KHALID BAZAID

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The Applicant is both educated at a Canadian university and trained clinically in hospitals in Canada in psychiatry, thus, medical specialization with recognized clinical experience in Canada. The Applicant, as a medical specialist, is also acknowledged as an accredited fellow of the Royal College of Physicians and Surgeons of Canada. The evidence specifies that the Applicant has worked abroad as a psychiatrist and as a specialist in a subspecialty in psychiatry. As per the evidence on its very face, the Applicant has worked as a psychiatrist clinically in the last number of

years as specified in uncontradicted evidence with an included certificate of good standing from a hospital abroad (all of which is included in the Certified Tribunal Record [CTR] from pp 58 to 62).

[2] If educated, trained and recognized as a specialist in the field in Canada by accreditation from an acknowledged Canadian professional entity, responsible for that accreditation, with a recent certificate in good standing to his name in respect of work in his specialization, it would stand to reason that the Applicant's Canadian education, training, accreditation and continued work in the field be assessed in furtherance of the requirements and goals of Canada in attempting to recruit permanent residents to fulfil Canada's growing and often urgent needs.

II. Introduction

[3] The Applicant seeks judicial review of the refusal of an Immigration Officer to process his application for permanent residence under the federal skilled worker class. In particular, the Applicant challenges the Immigration Officer's decision that he did not present sufficient evidence to establish that he met the occupational requirements for National Occupation Classification 3111 – Specialist Physicians [NOC 3111 class].

III. Judicial Procedure

[4] This is an application for judicial review of the Immigration Officer's decision, dated May 24, 2012, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

IV. Background

[5] The Applicant, Dr. Khalid Bazaid, is a citizen of Saudi Arabia who was born in 1965.

[6] In 1990, the Applicant received a medical degree from the King Faisal University in Saudi Arabia.

[7] In January 1992, the Applicant completed a two-year residency in Saudi Arabia.

[8] Until 1994, the Applicant worked full time as a general practitioner with the Saudi Arabian Oil Company [Saudi Aramco].

[9] In 1994, the Applicant came to Canada to complete a four-year residency in Psychiatry at the University of Ottawa.

[10] The Applicant completed his Psychiatry residency in 1998 and a two-year subspecialty program in Child Psychiatry at the University of Ottawa in 2000.

[11] From 1998 to 2002, the Applicant was employed as a psychiatrist by Saudi Aramco.

[12] In 2002, the Royal College of Physicians and Surgeons of Canada [College] granted the Applicant a specialty certificate in Psychiatry. Since August 31, 2002, the Applicant has been a fellow of the College.

[13] On September 23, 2002, the Applicant completed a clinical fellowship in child and adolescent psychology at the University of Ottawa.

[14] Since 2002, the Applicant has worked as a specialist psychiatrist and consultant in Saudi Arabia. He states that, since 1998, he has performed the main duties required for the NOC 3111 class, including: (i) diagnosing and treating diseases and psychiatric disorders; (ii) ordering laboratory tests and other diagnostic procedures; (iii) prescribing medication and treatment and referring patients for surgery; and, (iv) acting as a consultant to other physicians.

[15] In January 2012, the Applicant applied to be selected for permanent residence as a member of the federal skilled worker class under the NOC 3111 class [PR Application].

[16] On May 24, 2012, the Immigration Officer determined that the Applicant was not eligible to have his PR Application processed.

V. Decision under Review

[17] The Immigration Officer refused to process the Applicant's PR Application to be selected as a member of the federal skilled worker class pursuant to subsection 12(2) of the *IRPA* and subsection 75(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]. In the Immigration Officer's view, the Applicant presented insufficient evidence to establish that he met the criteria for the NOC 3111 class specified in the Ministerial Instructions [MI-3] established pursuant to subsection 87.3(3) of the *IRPA* and published in the *Canada Gazette* on June 25, 2011.

[18] The Immigration Officer reasoned that MI-3 provides that applications under the NOC 3111 class are processed only if they include (i) an arranged employment offer [AEO] consistent with subsection 82(2) of the *Regulations*, or (ii) evidence of experience in the last ten (10) years.

[19] The Immigration Officer determined that the Applicant did not produce evidence of an AEO or candidacy in a doctoral program.

[20] Nor, according to the Immigration Officer, did the Applicant produce sufficient evidence of work experience in the NOC 3111 class in the past ten (10) years. The Immigration Officer relied on the lead statement and list of main duties for the NOC 3111 class set forth in the occupational description for the NOC 3111 class [NOC document] to determine whether the Applicant had sufficient evidence to establish work experience. The Applicant's evidence did not demonstrate that he had performed the actions described in the lead statement or substantial number of the main duties in the NOC document.

[21] Consequently, the Immigration Officer was not satisfied that the Applicant met the requirements of MI-3 and refused to process the application.

VI. Issues

[22] (1) Was the Immigration Officer's assessment of the evidence reasonable?

(2) Was the Immigration Officer's application of the NOC document reasonable?

VII. Relevant Legislative Provisions

[23] Reference is made to Annex “A” for the relevant legislative provisions of the *IRPA*.

[24] Reference is also made to Annex “B” for the relevant provisions of MI-3.

[25] In addition, the Court refers to Annex “C” for the relevant sections of the NOC document.

VIII. Position of the Parties

[26] The Applicant submits that the Immigration Officer assessed his evidence unreasonably and applied the NOC document incorrectly.

[27] On the first issue, the Applicant states that he submitted the following evidence in support of his PR Application: (i) his diplomas and university certificates; (ii) a letter from Saudi Aramco attesting to his job positions between 1983 and 2009; (iii) a service certificate from King Fahad Specialist Hospital in Dammam stating that his last position was as a consultant adult psychiatrist; (iv) an attestation from Medicare Specialist Clinics in Saudi Arabia stating that he has worked as a consultant child and adolescent psychiatrist since May 2009; (v) a letter from King Fahad University College of Medicine in Saudi Arabia stating that he has been an assistant professor and consultant to the Department of Psychiatry since May 2010; and; (vi) evidence that he has been a registered fellow of the College since August 2002.

[28] The Applicant argues that his evidence establishes that he is a specialist physician with extensive experience in Canada and Saudi Arabia and that he satisfies the requirements in MI-3 and

the NOC document. According to the Applicant, the NOC document does not entail duties that would not be performed by someone with his particular specialized training and work experience. Citing *Taleb v Canada (Minister of Citizenship and Immigration)*, 2012 FC 384, the Applicant argues that the NOC document does not refer to “duties other than those which are usually performed by general practitioners or specialist physicians all over the world, that is, making diagnoses and treating their patients, ordering laboratory tests or other diagnostic procedures, prescribing medication, acting as a consultant for other physicians or occasionally conducting research” (at para 36).

[29] The Respondent submits that the Immigration Officer was reasonable in assessing the Applicant’s evidence and in applying the NOC document.

[30] The Respondent refers this Court to the Affidavit of Florence Chiasson and submits that the following was not before the Immigration Officer: (i) the Applicant’s diploma recognizing that he completed a Psychiatry residency at the University of Ottawa; (ii) the Applicant’s diploma recognizing that he completed a subspecialty program in Child Psychiatry at the University of Ottawa; and, (iii) the Applicant’s diploma recognizing that he completed a fellowship in Child and Adolescent Psychiatry at the University of Ottawa. Citing *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, the Respondent observes that the evidentiary record before this Court is restricted to evidence before the Immigration Officer.

[31] The Respondent argues that the Immigration Officer was tasked with assessing whether the Applicant's work experience in the past ten (10) years was sufficient to meet the requirements of MI-3. The Respondent submits that the letters from Saudi Aramco, a Saudi oil company, indicate that the Applicant held the position of Psychiatrist (Child and Adolescent) from 2002 to 2009 but stresses that these letters do not outline what duties the Applicant performed while he was employed by the oil company. The Respondent states that the certificate from the King Saud University establishes that the Applicant worked as Assistant Professor and Consultant to the Department of Psychiatry since 2010 but did not outline the scope of his duties; moreover, the Respondent submits that this certificate suggests that the Applicant worked in an academic capacity and does not suggest that the Applicant performed the duties specified by the Occupational Description. The certificate from the Medicare Specialist Clinics in Saudi Arabia, the Service Certificate from the King Fahad Specialist Hospital in Dammam, and the Certificate of Good Standing from the King Fahad Specialist Hospital in Dammam also state that the Applicant worked as a Consultant Child and Adolescent Psychiatrist (since May 2009), a Consultant Adult Psychiatrist (in 2009-2010), and continued as a Consultant Adult Psychiatrist. The Respondent argues that these documents provided insufficient evidence for the Immigration Officer to determine if the Applicant's positions entailed the performance of the main duties in the NOC document.

[32] Citing *Talpur v Canada (Minister of Citizenship and Immigration)*, 2012 FC 25 and *Pan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 838, the Respondent submits that the Applicant had the burden of satisfying the Immigration Officer that he performed the duties outlined in the NOC document and that the Immigration Officer had no legal obligation to request clarification of a deficient PR Application. According to the Respondent, the documents submitted

with the PR Application lacked sufficient detail for the Immigration Officer to determine if it satisfied the legal tests.

[33] The Respondent further submits that this Application is distinguishable from *Taleb*, above, where the applicant provided documents establishing her educational credentials and documentary evidence showing that, in the relevant ten (10) year period, she had performed the main duties of a practicing specialist physician outlined in the NOC document. In particular, the Respondent submits that the applicant in *Taleb* provided a work certificate stating that she “performs the function of physician assigned to the oncology department”, a work certificate stating that she “has been practicing as a specialist physician assigned to the medical oncology department”, a certificate stating that she “performed the functions of... [a] category A resident, in the department of medicine ... providing in-patient care” (at para 7). Emphasizing the use of the verb “to perform” in *Taleb* to describe the applicant’s duties, the Respondent submits that the Applicant has not presented comparable evidence sufficient to establish that he actually performed diagnostic and treatment work. By contrast, the Respondent reads the evidence to suggest that the Applicant was a consultant, academic, or oil company employee.

[34] In the Respondent’s submissions, the facts in this Application are analogous to those in *Tabañag v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1293, where Justice Richard Mosley held that evidence of academic qualifications, a job title, and correspondence addressing the applicant by that title was insufficient to establish that he had performed a substantial number of the main duties of an architect.

[35] In his Reply, the Applicant states that he did present the documents establishing his specialty residency training with his PR Application. As a result, the Applicant submits that the documents should be considered by this Court as part of the evidentiary record.

IX. Analysis

Standard of Review

[36] The standard of review that applies to an immigration officer's assessment of evidence submitted to support an application for permanent residence under the federal skilled worker category is that of reasonableness. This standard also applies to the application of the NOC document to the evidence (*Taleb*, above).

[37] Under the standard of reasonableness, this Court may only intervene if the Immigration Officer's reasons are not "justified, transparent or intelligible". A reasonable decision must fall within the "range of possible, acceptable outcomes ... defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

[38] Under subsection 87.3(2) of the *IRPA*, the processing of permanent resident applications must be conducted in a manner that, in the opinion of the Minister, will best support the attainment of the immigration goals established by the federal government. Paragraph 87.3(3)(d) of the *IRPA* authorizes the Minister to give instructions on processing applications, including instructions providing for their disposition. Ministerial instructions, under subsection 87.3(6) of the *IRPA*, must be published in the *Canada Gazette*.

[39] The MI-3 was published in the *Canada Gazette* on June 25, 2011 in accordance with subsection 87.3(6), and came into force on July 1, 2011.

[40] According to the MI-3, federal skilled worker applications after July 1, 2011, must be processed if they (i) are submitted with an AEO consistent with 82(2) of the *IRPA*; or, (ii) contain evidence of experience in the last ten years under the NOC 3111 class. The MI-3 also provides that NOC 3111 class applicants must have one year of continuous full-time or equivalent paid work experience in the NOC 3111 class. According to the MI-3, an applicant's work experience must reflect the actions described in the lead statement and include the performance of a substantial number of the main duties and all of the essential duties described in the NOC document.

[41] The NOC document states that the NOC 3111 class includes specialist physicians in clinical medicine, laboratory medicine, and surgery. According to the lead statement in the NOC document, a specialist in clinical medicine diagnoses and treats diseases and physiological or psychiatric disorders and acts as a consultant to other physicians. The lead statement in the NOC document further states that specialists in clinical medicine usually work in private practice or in a hospital and that residents in training to become specialist physicians are included in the NOC 3111 class.

[42] The NOC document outlines the main duties for clinical medicine specialists in the NOC 3111 class: (i) diagnosing and treating diseases and physiological or psychiatric disorders; (ii) ordering laboratory tests, X-rays, and other diagnostic procedures; (iii) prescribing medication and treatment and referring patients for surgery; (iv) acting as consultants to other physicians; and, (v) possibly conducting medical research.

[43] The determinative issue is whether the Applicant's evidence that he worked as a Psychiatrist was insufficient to establish that he met the requirements of the MI-3 since that evidence did not outline the specific duties he performed as a Psychiatrist. This issue requires this Court to assess the reasonability of the Immigration Officer's assessment of the evidence and the application of the NOC document. In considering this determinative issue, it is thus helpful to address the issues alleged by the Applicant together.

[44] In Schedule 3 of his PR Application, the Applicant stated that he worked as a Psychiatrist since September 1998. The Applicant stated that he performed the following duties as a Psychiatrist: (i) diagnosing diseases; (ii) acting as a consultant to other physicians; (iii) ordering laboratory tests; (iv) treating psychiatric disorders; and, (v) prescribing treatment and medication (CTR at p 37).

[45] The Applicant presented the following evidence to support his claims in Schedule 3:

- a. An End of Service Certificate stating that the Applicant was an employee of Saudi Aramco from August 2, 1983 to March 8, 2009 and that he was classified as a "Chf Med/Dental Svc", dated April 11, 2009;
- b. An End of Service Certificate stating that the Applicant was employed by Saudi Aramco as a Physician (February 1, 1992 - April 30, 1994), Psychiatrist (September 1, 1998 - November 10, 2002), and Psychiatrist – Child & Adolescent (November 11, 2002 - March 8, 2009), dated April 11, 2009;
- c. A letter from the King Saud University College of Medicine and the King Khalid University Hospital stating that the Applicant was Assistant Professor and

Consultant at the Department of Psychiatry since May 25, 2010, dated May 22, 2011;

- d. A letter from the Medicare Specialist Clinics stating that the Applicant was a Consultant Child and Adolescent Psychiatrist since May 2009;
- e. A Service Certificate from the King Fahad Specialist Hospital in Dammam stating that the Applicant was a Consultant Adult Psychiatrist, dated August 21, 2010;
- f. A Certificate of Good Standing from the King Fahad Specialist Hospital in Dammam stating that the Applicant was a Consultant Adult Psychiatrist in the Adult Mental Health Department from September 5, 2009 to August 23, 2010, dated October 19, 2010;
- g. A Certificate from the College that the Applicant is a Fellow of the College, dated October 9, 2002; and,
- h. A Specialist Certificate from the College stating that the Applicant is proficient in the specialty of Psychiatry, dated August 31, 2002.

(CTR at pp 57 to 70).

[46] The lead statement and list of main duties in the NOC document describe a set of tasks generally performed by most specialist physicians. It would be unreasonable to find that a person who held the job titles of Psychiatrist, Psychiatrist (Child & Adolescent), Assistant Professor and Consultant at the Department of Psychiatry, Consultant Child and Adolescent Psychiatrist and who is a Fellow of the College would not have diagnosed and treated psychiatric disorders, ordered diagnostic procedures, prescribed medication and treatment, and acted as a consultant to other

physicians. By setting out a generic list of tasks typical to most specialists, the NOC document does not command the level of detail that the Respondent advocates.

[47] The decision of Justice Luc Martineau in *Taleb*, above, is instructive on this point:

[36] I also agree with the applicant that the NOC contains no mention of any duties other than those which are usually performed by general practitioners or specialist physicians all over the world, that is, making diagnoses and treating their patients, ordering laboratory tests or other diagnostic procedures, prescribing medication, acting as a consultant for other physicians or occasionally conducting research. The duties described in NOC 3111 and 3112 are an inherent part of the work of any physician practising modern medicine. To reach the opposite conclusion would amount to believing that fire does not burn both in Athens and in Persia, to draw on a maxim from the Nicomachean Ethics which the great philosopher Aristotle used to distinguish between natural law and “conventional” law.

[48] The Respondent’s argument that *Taleb* is distinguishable cannot succeed. The Respondent distinguishes *Taleb*, since: (i) the applicant’s work certificates stated that she “perform[ed] the function of physician assigned to the oncology department”, “practis[ed] as a specialist physician assigned to the medical oncology department”, “perform[ed] the functions of” a resident, and “provid[ed] in-patient care” (at para 7); and, (ii) the applicant presented evidence of residency training unlike this Applicant. Reading Justice Martineau’s summary, the Respondent argues that the verb “perform” is operative in *Taleb*.

[49] The distinction, however, between holding the job title of Psychiatrist and performing the functions of Psychiatrist or practicing as a Psychiatrist or providing in-patient care, is untenable. A person who holds the job title of Psychiatrist will obviously perform the functions of a Psychiatrist, practice as a Psychiatrist, and provide in-patient care.

[50] The other ground on which the Respondent seeks to distinguish *Taleb* is also unpersuasive. The MI-3 required the Applicant to establish that he had one year of continuous full-time or equivalent work experience in the NOC 3111 class. Under the MI-3, the Applicant's work experience had to reflect the actions in the lead statement for the NOC 3111 class as set out in the occupational descriptions of the NOC 3111 class, including the performance of a substantial number of the main duties and all of the essential duties. In reviewing the PR Application against the MI-3, the Immigration Officer was required to consider whether the Applicant had one year of continuous full-time work experience by examining two aspects of the NOC document: (i) the lead statement; and, (ii) the main duties. The Immigration Officer was not required to consider whether the Applicant satisfied the express residency requirements under the "Employment requirements" heading of the NOC document in applying the MI-3. The Respondent, himself, states that the focus of the Immigration Officer's analysis rests with the work performed by the Applicant during the preceding 10 year period rather than, for example, his educational achievements. Since the Applicant only needed to establish that he had one year of work experience to establish that his PR Application was eligible to be processed, the Immigration Officer was not obligated to consider his residency training at this stage. It would be unreasonable to find that the MI-3 required the Applicant to present documents establishing specialty and subspecialty training. *Taleb* is not distinguishable since the Applicant failed to present his residency documents.

[51] This Court is not persuaded by the Respondent's arguments that the Applicant's certificates from Saudi Aramco only establish that he worked for an oil company and that the letter describing him as an Assistant Professor suggests he only worked in an academic capacity. The certificates

from Saudi Aramco state that the Applicant worked as a Psychiatrist for Saudi Aramco. The Applicant may have been an oil company employee but he was an oil company employee whose position was within the NOC 3111 class. The MI-3 only required the Applicant to establish that he had one year's full-time experience in the NOC 3111 class. Since the other documentation presented by the Applicant was sufficient to establish this, it would not be reasonable to conclude that the Applicant did not satisfy the MI-3 as he was Assistant Professor since 2010. In this regard, this Court notes, *in obiter*, that the Respondent may not have recognized the nature of academic medicine. Clinical academics generally continue to provide clinical care in performing research and teaching duties. This is to ensure that their students obtain practical knowledge for their eventual practices.

[52] Finally, this Application is not analogous to the decision of this Court in *Tabañag*, above. In *Tabañag*, it was held that an applicant could not simply provide evidence that he had “academic qualifications, [bore] a job title and [was] addressed by that title in correspondence” to establish that he was within the class of NOC 2151 – Architect (at para 22). The lead statement and main duties for the NOC 2151 class are more specific and exacting than those for the NOC 3111 class. While the applicant in *Tabañag* might not have performed the main duties for the NOC 2151 class, an applicant holding the position of Psychiatrist would have performed substantially all of the standard duties required for the NOC 3111 class.

X. Conclusion

[53] For all of the above reasons, the Applicant's application for judicial review is granted and the matter is returned for determination anew (*de novo*) before a different Immigration Officer.

JUDGMENT

THIS COURT ORDERS that the Applicant's application for judicial review be granted and the matter be returned for determination anew (*de novo*) before a different Immigration Officer. No question of general importance for certification.

“Michel M.J. Shore”

Judge

ANNEX “A”

The following are the relevant legislative provisions of the *Immigration and Refugee Protection Act*, SC 2001, c 27:

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.

...

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.

(2) The processing of applications and requests is to be conducted in a manner that,

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.

[...]

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.

(2) Le traitement des demandes se fait de la manière qui, selon le ministre, est la plus

in the opinion of the Minister, will best support the attainment of the immigration goals established by the Government of Canada.

susceptible d'aider l'atteinte des objectifs fixés pour l'immigration par le gouvernement fédéral.

(3) For the purposes of subsection (2), the Minister may give instructions with respect to the processing of applications and requests, including instructions

(3) Pour l'application du paragraphe (2), le 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.

(3.1) An instruction may, if it so provides, apply in respect of pending applications or requests that are made before

(3.1) Les instructions peuvent, lorsqu'elles le prévoient, s'appliquer à l'égard des demandes pendantes faites

the day on which the instruction takes effect.

avant la date où elles prennent effet.

(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.

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

(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 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.

(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.

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

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

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

(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.

(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.

ANNEX "B"

The following are the relevant provisions of the Ministerial Instructions [MI-3]:

Instructions for processing
Federal Skilled Worker
applications

Federal Skilled Worker
applications

(see footnote 1) received by the
Centralized Intake Office in
Sydney, Nova Scotia on or after
July 1, 2011, and that meet
either of the following criteria
shall be placed into processing:

1. Applications submitted
with an Arranged
Employment Offer (AEO)
consistent with
requirements of subsection
82(2) of the Immigration
and Refugee Protection
Regulations.

or

2. Applications from skilled
workers with evidence of
experience in the last ten
years under one or more
(see footnote 2) of the
following National
Occupation Classification
(NOC) codes, not exceeding
the identified caps:

Instructions relatives au
traitement des demandes de
travailleurs qualifiés (fédéral)

Les demandes présentées au
titre du Programme des
travailleurs qualifiés (fédéral)
(voir référence 1) qui sont
reçues par le Bureau de
réception centralisée des
demandes à Sydney, en
Nouvelle-Écosse, le 1er juillet
2011 ou après cette date et qui
remplissent l'un ou l'autre des
critères suivants doivent être
envisagées aux fins du
traitement :

1. Les demandes
accompagnées d'une offre
d'emploi réservé,
conformément aux
exigences du paragraphe
82(2) du Règlement sur
l'immigration et la
protection des réfugiés.

ou

2. Les demandes de
travailleurs qualifiés
accompagnées d'une preuve
attestant que l'intéressé
possède une expérience,
acquise au cours des dix
dernières années, dans une
profession correspondant à
l'un ou plusieurs (voir
référence 2) des codes
suivants de la CNP, à
condition que le nombre de

demandes traitées ne
dépasse pas les plafonds
établis :

...

[...]

• 3111 Specialist Physicians

• 3111 Médecins specialists

...

[...]

Footnote 1

In order to be considered, applications must be completed according to the application kit requirements in place at the time the application is received by the designated office.

Référence 1

Pour être envisagées aux fins du traitement, les demandes doivent être remplies conformément aux exigences énoncées dans la trousse de demande en vigueur à la date où le bureau désigné de CIC les reçoit.

Footnote 2

Applicants will have one year of continuous full-time or equivalent paid work experience in at least one of the listed NOCs and not combined partial year experience in multiple NOCs. This work experience will reflect the actions described in the lead statement for the occupation as set out in the occupational descriptions of the NOC, including the performance of a substantial number of the main duties and all of the essential duties described.

Référence 2

Les demandeurs doivent posséder une année continue d'expérience de travail rémunérée à temps plein, ou l'équivalent, dans au moins une des professions correspondant aux codes de la CNP énumérés, et non une expérience combinée d'années partielles dans plusieurs professions de la CNP. Cette expérience de travail tiendra compte des fonctions décrites dans l'énoncé principal de la profession, selon les descriptions de travail de la CNP, y compris la réalisation d'un nombre important des fonctions principales du poste ainsi de que toutes les fonctions essentielles décrites.

...

[...]

ANNEX “C”

The following are the relevant sections of the National Occupation Classification 3111 – Specialist

Physicians [NOC 3111 class]:

This unit group includes specialist physicians in clinical medicine, in laboratory medicine and in surgery. Specialists in clinical medicine diagnose and treat diseases and physiological or psychiatric disorders and act as consultants to other physicians. Specialists in laboratory medicine study the nature, cause and development of diseases in humans. Specialists in surgery perform and supervise surgical procedures. Specialists in clinical medicine usually work in private practice or in a hospital while those in laboratory medicine and in surgery usually work in hospitals. Residents in training to become specialist physicians are included in this unit group.

...

Specialists in clinical medicine perform some or all of the following duties:

Ce groupe de base comprend les médecins spécialistes en médecine clinique, en médecine de laboratoire et en chirurgie. Les spécialistes en médecine clinique diagnostiquent et traitent les maladies et les troubles physiologiques ou psychologiques, et exercent des fonctions de consultant auprès des autres médecins. Les spécialistes en médecine de laboratoire étudient la nature, la pathogenèse et l'évolution des maladies chez les humains. Les spécialistes en chirurgie pratiquent des interventions chirurgicales et supervisent les procédures chirurgicales. Les spécialistes en médecine clinique exercent en cabinet privé ou dans un centre hospitalier, alors que les spécialistes en médecine de laboratoire et en chirurgie travaillent dans les centres hospitaliers. Les résidents en médecine spécialisée sont inclus dans ce groupe de base.

[...]

Les médecins spécialistes exercent une partie ou l'ensemble des fonctions suivantes :
Spécialistes en médecine clinique

- Diagnose and treat diseases and physiological or psychiatric disorders
 - Order laboratory tests, X-rays and other diagnostic procedures
 - Prescribe medication and treatment and refer patients for surgery
 - Act as consultants to other physicians
 - May conduct medical research.
- diagnostiquer et traiter les maladies et les troubles physiologiques ou psychiatriques;
 - commander des épreuves de laboratoire, des rayons X et autres procédures de diagnostic;
 - prescrire des médicaments et des traitements et diriger les patients au service de chirurgie;
 - exercer des fonctions de consultant auprès des autres médecins;
 - faire, s'il y a lieu, de la recherche.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-5228-12

STYLE OF CAUSE: KHALID BAZAID v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 9, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** SHORE J.

DATED: January 10, 2013

APPEARANCES:

Hazem Mehrez FOR THE APPLICANT

Daniel Latulippe FOR THE RESPONDENT

SOLICITORS OF RECORD:

Hazem Mehrez FOR THE APPLICANT
Avocat
Montréal, Quebec

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, Quebec