Federal Court  Cour fédérale

Date: 20130425

Docket: IMM-6550-12

Citation: 2013 FC 403

Ottawa, Ontario, this 25th day of April 2013

Present: The Honourable Mr. Justice Roy

BETWEEN:

Maritza Rocio PERILLA-GIBNEY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, (the "Act") of the decision of a visa officer at the High Commission of Canada in London, United Kingdom, refusing the application for permanent residence in Canada as a Federal Skilled Worker of the applicant, Ms. Maritza Rocio Perilla-Gibney (the "applicant").

Facts

[2] The applicant, a citizen of Colombia and also Ireland, submitted an application for permanent residence in Canada on October 23, 2009. The memorandum of arguments submitted on behalf of the applicant refers to her as a citizen of England, but it appears that she is merely a resident of the United Kingdom. This first application was denied. On March 29, 2010, a second application for permanent residency to Canada was submitted, together with an updated employment reference letter. It is the refusal of that second application which is the subject of this judicial review.

[3] The sole issue in this case is whether the applicant met the requirements under the National Occupation Classification 4131 - College and Other Vocational Instructors [NOC 4131]. The application was denied on May 2, 2012, by a visa officer (the "decision-maker").

Arguments

[4] The applicant contends that the necessary documentation was supplied and that she met the criteria under the appropriate NOC. The applicant faults the officer for not having stated "very clearly the type of evidence he was looking for if what was submitted did not meet the standard he was looking for" (paragraph 23, written submissions).

[5] The applicant then proceeds to list the duties she was required to perform as a Deputy Health and Safety Manager at the St. George's Healthcare NHS, between August 2007 and June 2009.

[6] The respondent takes the exact opposite point of view and argues that the decision of the officer was reasonable, given the evidence put in front of him.

Analysis

[7] A foreigner seeking permanent residence in Canada must first obtain a visa (subsection 11(1) of the Act). In the case at hand, the applicant seeks to qualify under an economic class. Subsection 12(2) of the Act reads:

12. (2) A foreign national may be selected as a member of the economic class on the basis of their ability to become economically established in Canada.	**12.** (2) La sélection des étrangers de la catégorie « immigration économique » se fait en fonction de leur capacité à réussir leur établissement économique au Canada.

[8] It is the *Immigration and Refugee Protection Regulations*, SOR/2002-227, (the "Regulations") that govern how applications for permanent residency under the Federal Skilled Worker Class are to be assessed. Section 75 of the Regulations states:

75. (1) For the purposes of section 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.	**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.
(2) A foreign national is a skilled worker if	(2) Est un travailleur qualifié l'étranger qui satisfait aux exigences suivantes :
(*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	*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

occupations, other than a restricted occupation, that are listed in Skill Type 0 Management Occupations or Skill Level A or B of the *National Occupational Classification* matrix;

(*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

(*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.

(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.

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

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) 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.

(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.

[9] It is not disputed that the applicant meets the requirement for continuous full-time employment experience. It is rather the requirements associated with the lead statement for the occupation and the performance of a substantial number of the main duties that are not adequate in the view of the visa officer.

[10] It would appear that the applicant makes two arguments. First, she contends that the visa officer ought to have indicated more clearly what evidence would be needed in order to satisfy the requirement. Second, an argument is presented on the merits of the decision made.

[11] As for the first argument, our Court has repeatedly stated that the visa officer is under no obligation to raise concerns about the adequacy of an application.

[12] There could be a procedural fairness issue if the decision-maker had failed to raise concerns with an applicant about the credibility or authenticity of information submitted in support of an application. But such is not the case here. In the words of Justice Richard Mosley in *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283, [2007] 3 FCR 501:

> [23] … there is no obligation on the part of the visa officer to apprise an applicant of her concerns that arise directly from the requirements of the former Act and Regulations …

See also *Pan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 838 and *Kaur v Canada (Minister of Citizenship and Immigration)*, 2010 FC 442. The applicant cannot succeed on the basis of her first argument because her argument concerns the sufficiency of evidence. There is no obligation for the visa officer to advise on the sufficiency.

[13] As for the merits of the decision to deny the visa, the decision is unequivocal, "the main duties that you listed do not indicate that you performed all of the essential duties and a substantial number of the main duties, as set out in the occupational descriptions of the NOC". The visa officer was not satisfied with the sufficiency of the information. The assessment of the information supplied by the applicant was such that the applicant is ineligible.

[14] On an issue of sufficiency of evidence, the standard of review has been authoritatively decided to be one of reasonableness: *Hoang v Canada (Minister of Citizenship and Immigration)*,

2011 FC 545; *Khan v Canada (Minister of Citizenship and Immigration)*, 2009 FC 302; *Hanif v Canada (Minister of Citizenship and Immigration)*, 2009 FC 68; *Obeta v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1542. It will suffice that a "decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190, at paragraph 47).

[15] Here, the matter boils down to a comparison between NOC 4131 and the information submitted by the applicant in order to satisfy the requirements of section 75 of the Regulations. They are that the actions described in the lead statement for the occupation have been performed as well as a substantial number of the main duties for that occupation. Was it reasonable for the decision-maker to decide that such was not the case?

[16] NOC 4131 read as follows at the time the application was made:

> *NOC 4131 College and Other Vocational Instructors*
>
> 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. This unit group also includes trainers who are employed by private training establishments, companies, community agencies and governments to deliver internal training or development courses. College teachers who are heads of departments are included in this group.
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> Example Titles
> - CEGEP teacher
> - college teacher
> - commercial art instructor
> - community college teacher
> - company trainer
> - computer training instructor
> - department chairperson – college

- department head – CEGEP
- firefighting instructor
- language school instructor
- teacher – institute of technology
- teacher, legal assistant program
- training officer – company
- vocational institute teacher

Main Duties

College and other vocational instructors perform some or all of the following duties:
- Teach students using a systematic plan of lectures, demonstrations, discussion groups, laboratory work, shop sessions, seminars, case studies, field assignments and independent or group projects
- Develop curriculum and prepare teaching materials and outlines for courses
- Prepare, administer and mark tests and papers to evaluate students' progress
- Advise students on program curricula and career decisions
- Provide individualized tutorial/remedial instructions
- Supervise independent or group projects, field placements, laboratory work or hands-on training
- Supervise teaching assistants
- May provide consultation services to government, business and other organizations
- May serve on committees concerned with matters such as budgets, curriculum revision, and course and diploma requirements.

These instructors specialize in particular fields or areas of study such as visual arts, dental hygiene, welding, engineering technology, policing, computer software, management and early childhood education.

[17] The reasons for the refusal decision are less than ideal. They barely satisfy the standard of *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708. However, they are sufficient to establish that the decision is reasonable in light of the outcome.

[18] It was reasonable for the decision-maker to conclude that the focus of NOC 4131 is on being an instructor, whereas the material offered in support of the application had training as a marginal activity. The material could be seen as making training a marginal activity in view of everything else that was listed. It was certainly open to the decision-maker to reach that conclusion. It was one of the acceptable outcomes. It may not have been the only one, but, as stated in *Dunsmuir, supra* at paragraph 47, "certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions". Thus the deferential standard applied in these types of cases.

[19] On its face, the job description refers to the position as a Health and Safety Manager and the description of the position seems to fit the job title nicely. Training was a marginal activity while NOC 4131 makes it clear that Canada is looking for instructors. That was the view of the visa officer as he pointed out in the Field Operating Support System notes: "She might be involved a little into training but this is not her main task". The evidence before the decision-maker supported that finding amply.

[20] As a result, this application for judicial review is dismissed. The parties did not seek to have a question certified pursuant to section 74 of the Act, and none arose.

JUDGMENT

The application for judicial review of the decision rendered by a visa officer at the High Commission of Canada in London, United Kingdom, on May 2, 2012 is dismissed.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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