Federal Court  Cour fédérale

**Date: 20130709**

**Docket: IMM-8347-12**

**Citation: 2013 FC 766**

**Ottawa, Ontario, July 9, 2013**

**PRESENT: The Honourable Mr. Justice Russell**

**BETWEEN:**

**SEYEDMEHDI HOSSEINI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (Act) for judicial review of the decision of a Visa Officer (Officer) of the Canadian Embassy in Ankara, Turkey, dated 26 June 2012 (Decision), which refused the Applicant's application for permanent residence in Canada as a member of the Federal Skilled Worker class.

**BACKGROUND**

[2] The Applicant is a 32-year-old citizen of Iran. He submitted an application for Permanent Residence as a Federal Skilled Worker on 15 March 2010 under National Occupation Classification code (NOC) 0711 – Construction Manager.

[3] The lead statement for NOC 0711 describes the job of a Construction Manager as:

> Construction managers plan, organize, direct, control and evaluate the activities of a construction company or a construction department within a company, under the direction of a general manager or other senior manager. They are employed by residential, commercial and industrial construction companies and by construction departments of companies outside the construction industry.

[4] NOC 0711 states that Construction Managers perform some or all of the following main duties:

- Plan, organize, direct, control and evaluate construction projects from start to finish according to schedule, specifications and budget;
- Prepare and submit construction project budget estimates;
- Plan and prepare construction schedules and milestones and monitor progress against established schedules;
- Prepare contracts and negotiate revisions, changes and additions to contractual agreements with architects, consultants, clients, suppliers and subcontractors;
- Develop and implement quality control programs;
- Represent company on matters such as business services and union contracts negotiation;

- Prepare progress reports and issue progress schedules to clients;
- Direct the purchase of building materials and land acquisitions;
- Hire and supervise the activities of subcontractors and subordinate staff.

[5] Along with his application, the Applicant submitted a letter from Kerman Farnam Construction Co., dated 1 September 2010. The letter stated that the Applicant was employed part-time with the company as a Pipeline Construction Manager for a period of 19 months that began on 6 September 2003. In this position, the Applicant monitored project progress and supervised workers. The Applicant also submitted another contract from the same company for 30 months of full-time work (Applicant's Record, page 49) dated 6 November 2004. This contract listed the Applicant's duties as "Predicting and estimating the project cost and time as well as evaluating project progress."

[6] By letter dated 26 June 2012, the Officer informed the Applicant that he had not provided satisfactory evidence that he had the required work experience for NOC 0711, and thus his application was not eligible for processing.

**DECISION UNDER REVIEW**

[7] The Decision in this case consists of the letter dated 26 June 2012 (Refusal Letter), as well as the Global Case Management System (GCMS) Notes made by the Officer.

[8] The Officer completed an assessment of the application and found that it was not eligible because the Applicant had provided insufficient evidence that he met the work experience requirements in the Ministerial Instructions. The employment letters provided by the Applicant only contained vague descriptions of his job duties, and the Officer was therefore not satisfied that the Applicant had performed the actions described in NOC 0711.

[9] The Officer's entry in the GCMS Notes, dated 14 June 2012, states that the Officer was not satisfied that the job descriptions provided in the Applicant's employment letters indicated that the Applicant had performed the actions described in the lead statement of NOC 0711. The Applicant's employment letter said that he "planned, designed and organized pipeline and sewage projects; monitored project progress and adaptation with pre-made plan [*sic*] and supervised performance of staff (part-time) and in his latest position predicted and estimated the project cost and time as well as evaluated the project progress." The Officer was not satisfied that this meant that the Applicant had performed the actions described in the lead statement under NOC 0711.

[10] The Officer found that since the Applicant had not provided satisfactory evidence that he had work experience in the listed occupation, his application was not eligible for processing.

**ISSUES**

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

a. Is the Officer's Decision unreasonable, and was it made without regard to the evidence?

b. Did the Officer err by failing to give the Applicant an opportunity to respond to the Officer's concerns, even after the Applicant had *prima facie* met the application requirements?

**STANDARD OF REVIEW**

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

[13] The first issue involves an evaluation of the Officer's conclusion that the Applicant was ineligible under the Federal Skilled Worker category. The case law has established that this is reviewable on a reasonableness standard (*Zhong v Canada (Minister of Citizenship and Immigration)*, 2011 FC 980 at paragraph 11; *Malik v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1283 at paragraph 22).

[14] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph

47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[15] In his arguments, the Applicant takes issue with the adequacy of the Officer's reasons. He submits that this is a matter of procedural fairness. However, in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*], the Supreme Court of Canada held at paragraph 14 that the adequacy of reasons is not a stand-alone basis for quashing a decision. Rather, "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." Thus, the adequacy of the reasons will be analysed along with the reasonableness of the Decision as a whole.

[16] The second issue regarding the failure to give the Applicant an opportunity to respond to the Officer's concerns is a matter of procedural fairness (*Kuhathasan v Canada (Minister of Citizenship and Immigration)*, 2008 FC 457 [*Kuhathasan*] at paragraph 18). As stated by the Supreme Court in *Canadian Union of Public Employees (CUPE) v Ontario (Minister of Labour)*, [2003] 1 SCR 539 at paragraph 100, "it is for the courts, not the Minister, to provide the legal answer to procedural fairness questions." Accordingly, the standard of review applicable to the second issue is correctness.

**STATUTORY PROVISIONS**

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

| | |
|---|---|
| **Application before entering Canada** | **Visa et documents** |
| **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. | **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) 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. |
| (2) The processing of | (2) Le traitement des |

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.

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.

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

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

*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 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.

| | |
|---|---|
| (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. |

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

| | |
|---|---|
| **Experience (21 points)**<br>80. (1) Up to a maximum of 21 points shall be awarded to a skilled worker for full-time work experience, or the full-time equivalent for part-time work experience, within the 10 years preceding the date of their application, as follows: | **Expérience (21 points)**<br>80. (1) Un maximum de 21 points d'appréciation sont attribués au travailleur qualifié en fonction du nombre d'années d'expérience de travail à temps plein, ou l'équivalent temps plein du nombre d'années d'expérience de travail à temps partiel, au cours des dix années qui ont précédé la date de présentation de la demande, selon la grille suivante : |
| […] | […] |
| **Occupational experience** | **Expérience professionnelle** |
| (3) For the purposes of | (3) Pour l'application du |

| | |
|---|---|
| subsection (1), a skilled worker is considered to have experience in an occupation, regardless of whether they meet the employment requirements of the occupation as set out in the occupational descriptions of the *National Occupational Classification*, if they performed | paragraphe (1), le travailleur qualifié, indépendamment du fait qu'il satisfait ou non aux conditions d'accès établies à l'égard d'une profession ou d'un métier figurant dans les description des professions de la *Classification nationale des professions*, est considéré comme ayant acquis de l'expérience dans la profession ou le métier : |
| (*a*) the actions described in the lead statement for the occupation as set out in the occupational descriptions of the *National Occupational Classification*; and | *a*) s'il a accompli l'ensemble des tâches figurant dans l'énoncé principal établi pour la profession ou le métier dans les descriptions des professions de cette classification; |
| (*b*) at least a substantial number of the main duties of the occupation as set out in the occupational descriptions of the *National Occupational Classification*, including all the essential duties. | *b*) s'il a exercé une partie appréciable des fonctions principales de la profession ou du métier figurant dans les descriptions des professions de cette classification, notamment toutes les fonctions essentielles. |

**ARGUMENTS**

**The Applicant**

**The Reasonableness of the Decision**

[19] In *Shinde v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1056, the Federal Court said that

> 17 It is not a requirement that the applicant perform all of the duties listed for Travel Counsellor in NOC 6431.0 as the NOC states

> that Travel Counsellors must "perform some or all of the following duties". The jurisprudence of this Court has established that a requirement that the applicant perform "some or all of the following duties" means that the applicant should have performed a substantial number of the main duties set out in the NOC, including any essential duties (see *Rudani v. Canada (Minister of Citizenship and Immigration)* [2000] F.C.J. No. 1922 (F.C.T.D.).

[20] There is no requirement that the Applicant must have performed all the main duties described in NOC 0711, but simply that the Applicant has performed one or more of the main duties. As was said in *Tabanag v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1293:

> 18 Paragraph 80(3)(*b*) of the Regulations requires an officer to consider whether or not the applicant has performed a substantial number of duties found in a NOC. Courts have interpreted that paragraph as meaning that an officer needs to be satisfied that an applicant has performed one or more of the main duties: *A'Bed v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1027 at para 12; *Noman v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1169 at para 28; and *Dahyalal v Canada (Minister of Citizenship and Immigration)*, 2007 FC 666 at para 4.

[21] In this case, the Applicant indicated that he had performed at least four of the duties, including the actions described in the lead statement. He had estimated the cost of projects and anticipated timeframes, as well as planned, designed and organized construction projects. The Applicant also provided his company's business card, which confirmed that the company engaged in large construction projects. The Applicant submits it was unreasonable for the Officer to find that he had not performed a sufficient number of duties.

[22] Furthermore, the Officer did not consider that the Applicant had all the requirements of a construction manager. The Applicant provided proof that he had completed a degree in civil

engineering, and had several years of experience in the construction industry. He also obtained a Master's of Business Administration, which enhances his credentials as a construction manager.

[23] The Applicant also submits that the Officer's reasons were not sufficient. The Refusal Letter simply states that the duties described in his employment documents are vague, and the GCMS Notes do not shed any more light on the Officer's reasoning – they simply summarize the duties described in the employment letter and state that the Officer is not satisfied that the Applicant performed the actions described in the lead statement of NOC 0711.

[24] In *Ogunfowora v Canada (Minister of Citizenship and Immigration)*, 2007 FC 471, the Court held that

> 60 Clearly that CAIPS notes can constitute sufficient reasons, but only if they provide sufficient details for the person to know the reason for which the application was denied. On the basis of the tests outlined above, it would appear that the officer's CAIPS notes in this case do not meet the necessary requirements. Although the notes state the basis for the decision, they do not provide in sufficient detail an analysis of why the officer held that the applicants would not return to Nigeria at the end of their authorized stay. This is further emphasized by the fact the officer thought it necessary to explain in more detail in his Affidavit to the Court why he decided the way he did. This reasoning should have been provided at the outset.

[25] In *I.V.S. v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1009, the Federal Court had the following to say about the sufficiency of reasons

> 19 It has become commonplace to read H&C and PRRA decisions in which the reasons offered are confined to the following formula: "The applicants allege X; however, I find insufficient objective evidence to establish X." This boilerplate approach is contrary to the purpose of providing reasons as it obscures, rather than reveals, the rationale for the officer's decision. Reasons should be drafted to

> permit an applicant to understand why a decision was made and not to insulate that decision from judicial scrutiny…

[26] As in the cases above, the Applicant submits that the Officer's reasons do not provide any details which allow him to know how the Officer reached the Decision. The Officer simply dismissed the Applicant's evidence without explaining why the listed duties, which correspond with the NOC 0711 description, were not sufficient to establish that he had performed the actions in the lead statement, and a substantial number of the duties in the description.

**Procedural Fairness**

[27] In *Liao v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1926, the Federal Court held as follows:

> 15 Visa officers have the duty to give an immigrant the opportunity to answer the specific case against him. This duty of fairness may require visa officers to inform an applicant of their concerns or negative impressions regarding the case and give the applicant the opportunity to disabuse them.
>
> 16 The duty of fairness owed by visa officers was explained as follows in *Fong v. Canada (M.E.I.)* [1990], 11 Imm.L.R. (2d) 205 at 215, where the court adopted the reasoning in *Re. K.(H.) (Infant)*, [1967] 1 All E.R. 226:
>
> > Even if an immigration officer is not in a judicial or quasi-judicial capacity, he must at any rate give the immigrant an opportunity of satisfying him of the matters in the subsection, and for that purpose let the immigrant know what his immediate impression is so that the immigrant can disabuse him.
>
> 17 However, this duty to inform the applicant will be fulfilled if the visa officer adopts an appropriate line of questioning or makes reasonable inquiries which give the applicant the opportunity to respond to the visa officer's concerns….

[28] In *Rukmangatham v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284, the Court held at paragraph 22 that the duty to provide an Applicant with an opportunity to "disabuse" an officer of concerns may arise "even when such concerns arise from evidence tendered by the Applicant." See also *Talpur v Canada (Minister of Citizenship and Immigration)*, 2012 FC 25 at paragraph 21.

[29] This duty applies even in cases where a visa officer is conducting an initial assessment of a case. In *Kumar v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1072, the applicant sought judicial review of a denial of his application for non-compliance with the Ministerial Instructions. Even at this initial stage, the Court said at paragraph 29 that "if an application, on its face meets all of the applicable requirements, an immigration officer would be under a duty to inform the applicant of any other consideration or concern prior to rejection."

[30] The Applicant was not informed of any of the Officer's concerns. Had he been informed he would have been able to respond to them and provide additional information on his job duties. The Applicant made a *prima facie* case that he worked as a construction manager, and provided all of the necessary documentation. The Applicant submits that the Officer's failure to provide him with an opportunity to respond to any concerns was a breach of procedural fairness.

**The Respondent**

**The Reasonableness of the Decision**

[31] The onus is squarely on the Applicant to satisfy the Officer of everything needed for a positive application (*Prasad v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 453 (TD)). There is no absolute right to the screening and processing of a Federal Skilled Worker application, and no right to a visa to enter Canada (*Bellido v Canada (Minister of Citizenship and Immigration)*, 2005 FC 452 at paragraph 35).

[32] Simply put, the application was refused because the Applicant provided insufficient evidence that he performed the main duties as listed in NOC 0711. The Officer clearly indicated that this was the basis for the refusal. The Applicant identified himself several times in his application as a Construction Manager, and in that regard the Officer considered the NOC and found that the position was not listed in the NOC and that the employment documents submitted did not satisfy the Officer that job duties performed related to the occupational descriptions in the NOC. Although the Officer's Notes were brief, this is not a basis for judicial review.

[33] On the face of the letters submitted by the Applicant, it appears that the Applicant did not perform many of the duties listed in NOC 0711 - the duties identified in the employment letters do not correspond with the duties set out in the NOC. This problem was clearly identified by the Officer. The Applicant cites the decision in *Tabanag*, above, for the proposition that he only needed to show that he performed one duty, but the Court went on to say at paragraph 22 that an applicant

"must provide evidence that the have actually performed 'a substantial number of the main duties of the occupation'."

[34] The Applicant also refers to his degrees and business card as support for his employment duties. An applicant's education is a neutral factor in determining if an NOC is satisfied (*Tabanag*, paragraph 22). The Applicant is requesting that an inference be drawn by simply re-stating some of the main duties in the application described in the NOC, without providing further details. This type of inference was rejected by the Court in *Ismaili v Canada (Minister of Citizenship and Immigration)*, 2012 FC 351 [*Ismaili*].

[35] An officer is not required to speculate as to an applicant's experience in an occupation (*Wankhede v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 968). A presumption exists that all documentary evidence was taken into consideration (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598). The Applicant fails to show that any evidence was ignored or that the Officer erred. The Respondent submits that the Decision was reasonable and ought to be shown deference. The Respondent submits that a review of the CTR supports the reasonableness of the Decision.

**Procedural Fairness**

[36] The Respondent submits that the onus is on the Applicant to fully satisfy the Officer (*Prasad*, above). There is no general duty on officers to make further inquiries or request

clarification from an applicant if an application is ambiguous or lacks supporting documentation (*Lam v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1239).

[37] Furthermore, the duty of fairness owed to the Applicant is at the low end of the spectrum. As was said in of *Pan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 838 [*Pan*]:

> 26 In the case of visa applicants, the minimum degree of procedural fairness to which they are entitled is at the low end of the spectrum (*Chiau v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 297, at para. 41 (C.A.); *Khan v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345, [2002] 2 F.C. 413, at paras. 30-32; *Patel v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 55, 23 Imm. L.R. (3d) 161, at para. 10).
>
> 27 In general, the onus is on a visa applicant to put his best foot forward by providing all relevant supporting documentation and sufficient credible evidence in support of his application. The onus does not shift to the visa officer and there is no entitlement to a personal interview if the application is ambiguous or supporting material is not included (*Silva v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 733, at para. 20).
>
> 28 In addition, a visa officer has no legal obligation to seek to clarify a deficient application (*Sharma v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 786, at para. 8; *Fernandez v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 994, at para. 13; *Dhillon v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 574, at para. 4), to reach out and make the applicant's case (*Mazumder v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 444, at para. 14), to apprise an applicant of concerns relating to whether the requirements set out in the legislation have been met (*Ayyalasomayajula v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 248, at para. 18), or to provide the applicant with a "running-score" at every step of the application process (*Covrig v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 1413, at para. 21). To impose such an obligation on a visa officer would be akin to requiring a visa officer to give advance notice of a negative decision, an obligation that has been expressly rejected (*Ahmed v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 940 (QL); *Sharma*, above).

[38] Procedural fairness must be assessed based on the circumstances of each case. In *Chadha v Canada (Minister of Citizenship and Immigration)*, 2013 FC 105 at paragraphs 48-51:

> 48 The content of procedural fairness is variable and contextual. In deciding what the duty of fairness entails, with respect to visa applicants, the Courts have been careful to balance the requirements of fairness with the needs of the administrative immigration process in question. See *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, paragraph 21; *Patel*, above, at paragraph 10; and *Khan*, above, at paragraphs 22, 30-32.
>
> 49 The duty of fairness in this case, involving an administrative decision-maker, is more limited than in one involving a quasi-judicial tribunal where the obligation to confront an applicant with concerns may be more stringent. See *Khan*, above, paragraphs 31-32. The Federal Court has held that the Officer is under no obligation to provide a running score of weaknesses in an applicant's application. See *Kamchibekov*, above, paragraph 25; *Thandal v Canada (Minister of Citizenship and Immigration)* 2008 FC 489, paragraph 9; *Nabin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 200, paragraphs 7-10.
>
> 50 The question of whether the Applicant has the relevant experience required for the profession in which he claims to be a skilled worker is based directly on the requirements of the Act and its Regulations. See *Chen*, above, at paragraphs 20-22. Thus, the Officer was not required to provide the Applicant with an opportunity to respond to the Officer's concerns, as he was not entitled to an interview to remedy his own shortcomings. See *Kamchibekov*, above, at paragraph 26; and *Kaur*, above.
>
> 51 This was not a case about the credibility or accuracy of the Applicant's information, as the Applicant alleges. The Applicant simply failed to provide an application in accordance with the relevant instructions, and the Officer properly followed OB 120.

[39] Furthermore, given the nature of the Decision and the evidence submitted, the reasons were adequate in this case. The Officer's notes were brief, but it was clear why the Applicant's application failed. Based on the above, the Respondent submits that the duty of fairness was met in this case.

**The Applicant's Reply**

[40] The Respondent submits that the Applicant did not establish that he performed the main duties listed in NOC 0711, but the Applicant maintains his position that his materials established that he performed at least four of the main duties including the actions in the lead statement, as set out in paragraph 22 of the Applicant's Memorandum of Fact and Law. The Reasons for the Decision are inadequate because they do not explain why these four duties were not sufficient to establish that the Applicant met the NOC 0711 description.

[41] The Applicant points out that the Respondent did not address the case law submitted by the Applicant stating that an officer need only be satisfied that an applicant has performed one or more of the main duties. The Respondent relies on *Ismaili*, above, but in that case the applicant had only provided an employment letter which confirmed his job title, whereas in this case the Applicant provided an employment letter which confirmed he had performed four of the main duties for NOC 0711.

[42] The Respondent argues that the Applicant has not rebutted the presumption that the Officer reviewed all the evidence, but it is the Applicant's position that he provided this evidence and there is no indication that it was considered by the Officer, thus he has rebutted the presumption.

[43] The Respondent also relies on *Pan*, above, but in that case the applicant was told of deficiencies in her application, invited to make further submissions, and invited for an interview. The Applicant was provided with none of those procedural safeguards in the present case.

[44] In *Gay v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1280 [*Gay*], Justice Michel Shore pointed out that

> 32 Justice Dolores Hansen of the Federal Court has specified in *Alimard v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1223 (QL), that if an Officer is not satisfied with the evidence submitted and that it is determined to be incomplete, then, an opportunity must be given to the Applicant to provide further evidence:
>
> > [15] In situations such as this, the jurisprudence is clear that where a visa officer has an impression of deficiency in the proof being offered, fairness requires that the visa officer give the applicant some opportunity to disabuse the visa officer of that impression (*Muliadi v. Canada (Minister of Citizenship and Immigration)* [1986] 2 F.C. 205).
> >
> > [16] As the visa officer's finding that the applicant lacked sufficient funds was a key factor in her assessment of his ability to successfully establish a business in Canada, the applicant should have been given the opportunity to address her concerns. He may have been able to provide her with evidence as to the bona fides of the valuation or a new valuation.
> >
> > [17] The respondent argued that it was the failure of the applicant to submit valuations for all of his properties which resulted in the visa officer being unable to make a proper assessment of the applicant's financial ability. As was explained in Muliadi, *supra*, this does not "relieve the visa officer of the duty to act fairly".
>
> 33 Justice Eleanor R. Dawson of the Federal Court opined in *Negriy v. Canada (Minister of Citizenship and Immigration),* [2000] F.C.J. No. 710 (QL), that a Visa Officer's obligation is to obtain further clarifications if doubt is expressed in regard to the authenticity of evidence that has been provided:
>
> > [23] Once information was received to the effect that the applicant's education was as she had initially stated it to be, and once that information was accepted and incorporated into the assessment, on receipt of a letter apparently under seal from the

> Sanatorium Arcadia purporting to confirm the applicant's employment, it was not in my view reasonable for the visa officer to reject the applicant's application as she did.
>
> [24] [...] further inquiries should have been directed as to the authenticity of the letter under seal from the Sanatorium Arcadia before it was rejected.

[45] In *Gay*, the officer had concerns regarding the applicant's evidence showing his financial capacity to settle in Canada. Justice Shore found that the officer erred by not affording the applicant an opportunity to respond to these concerns:

> 38 The Respondent argued, however, that the Officer acted fairly and consistently with the OP6 Manual in this case -- because she sent the Applicant a "fairness letter", dated March 22, 2006, which informed the Applicant that he would have to provide proof of the availability of his settlement funds before his dossier could be finalized; therefore, the Applicant was informed that the information he had provided in his application with respect to his settlement funds was insufficient. (Applicant's Record, p. 13, Tab 3, Exhibit B; Affidavit of Herick Gay, paras. 4-6.)
>
> 39 Nevertheless, the Officer should have informed Mr. Gay of concern with regard to the documents provided in support of his financial capacity to become economically established in Canada. The Officer should, thus, have afforded him an opportunity to respond to concerns relating to a material aspect of the application.

[46] Similar to the jurisprudence reviewed in *Gay*, given that the Applicant in this case had made a *prima facie* case that he had worked as a construction manager, the Officer should have afforded the Applicant an opportunity to respond to his concerns.

**ANALYSIS**

[47] In my view, the reasons for the Decision are straightforward and readily apparent from the GCMS Notes. The Officer says that, based upon the job description submitted by the Applicant, he was "not satisfied…that PA indeed performed a substantial amount of the duties in NOC 0711, and was "not satisfied that you have performed the actions described in the lead statement of the occupation described under NOC 0711."

[48] As the Applicant points out in his submissions, the jurisprudence of the Court is that there is no requirement that he should have performed all the main duties described in NOC 0711. See *Tabanag*, above, at paragraph 18. The Applicant only had to show that he had performed "a substantial number of the main duties set out in the NOC, including any essential duties." See *Shinde*, above, at paragraph 17.

[49] It is clear from the reasons that the Officer understood this because the basis of the Decision is that the Officer did not believe, given the material submitted by the Applicant, that the Applicant had "indeed performed a substantial amount of duties stated in NOC 0711."

[50] The principal issue in this case is whether the Officer's Decision was reasonable on this point.

[51] The Applicant says that the materials he submitted demonstrated that he had performed at least four of the duties set out in NOC 0711, including the actions described in the lead statement:

a. He indicated that he had planned, designed and organized construction projects, including pipeline and sewer projects, which correspond with the first duty listed;

b. He indicated that he predicated and estimated the costs of projects and anticipated schedules and time frames;

c. He indicated that he had monitored project progress according to pre-established schedules;

d. He indicated that he had supervised staff and workers.

[52] The Respondent disagrees and says that the documents submitted do not support that the Applicant performed the main duties as listed in NOC 0711: Construction Managers.

[53] When I examine the employment letter from Kerman Farnam Construction submitted by the Applicant, I find the following duties identified:

a. The Applicant "cooperated" with the company "part-time" as a "Pipeline Construction Manager to plan, design and organize pipeline and storage projects…for 19 months including 1 working day (8 hours) and 3 working days (5 hours) per week;

b. He has also worked part-time "as a construction superintendent to monitor the project progress and adaptation with the pre-made plan and supervising the good performance of staff and workers";

c. He has also "continued his corporation full-time… as a Construction Manager in predicting and estimating the project cost and time as well as evaluating project progress…"

[54] When these duties are compared with the lead statement and the duties set out in NOC 0711, it is clear that there is some overlap, but whether it can be said that the Applicant has performed "a substantial number of the main duties set out in the NOC is very much a discretionary judgment call. Parliament has said that visa officers are to make that discretionary call and, as the jurisprudence makes clear, the Court cannot countermand a decision unless it falls outside of the range posited in paragraph 47 of *Dunsmuir*.

[55] As the Respondent points out, this Court has previously found that, even if an applicant's position and job description are similar to the NOC, deference is warranted to officers and their decisions should only be overturned where they are not within the range of acceptable outcomes based on the evidence before them. See *Anabtawi v Canada (Minister of Citizenship and Immigration)*, [2012] FCJ No 923 at paragraph 43.

[56] In the present case, there is considerable scope for disagreement as to whether the Applicant has indeed performed a substantial number of the main duties set out in NOC 0711, but I cannot say that the Officer's conclusion that he has not demonstrated that he has performed a substantial amount of the duties is not within the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[57] I find that no procedural fairness issues arise on the facts of this case as regards giving the Applicant an opportunity to make further submissions. A visa officer has no duty to alert an applicant that his submissions and evidence do not meet the requirements of a NOC and provide

him with an opportunity to supplement his or her application. See *Chadha*, above, at paragraphs 46 – 51, and *Pan*, above, at paragraphs 26 – 28.

[58] The Applicant says, however, that the Officer was required to go further in his reasons and explain why the duties he had performed were not substantial enough to satisfy the lead statement and NOC 0711, and that all we have is a bald opinion from the Officer that what the Applicant has done is not substantial enough.

[59] In regards to the adequacy of reasons, the reasons in this case are quite sparse when compared to some other cases (see, for example, *Zhong v Canada (Minister of Citizenship and Immigration)*, 2011 FC 980), but those decisions involved applications that were rejected for more complex reasons than deficiency of evidence. The problem in this case was that the Applicant submitted minimal evidence. Considering the record, I do not think that further elaboration on this point was required.

[60] As the jurisprudence of the Court shows, when it comes to the adequacy of reasons, much depends upon the evidence and submissions made by the applicant and the reasons for rejecting the application. I am satisfied that, in the present case, the reasons taken as a whole are sufficiently intelligible and transparent and justified so as to enable the Applicant to understand what was considered by the Officer and the conclusions reached in respect of the relevant issues.

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

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application is dismissed.

2. There is no question for certification.

"James Russell"

Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | IMM-8347-12 |
| **STYLE OF CAUSE:** | **SEYEDMEHDI HOSSEINI** |
| | - and - |
| | **THE MINISTER OF CITIZENSHIP AND IMMIGRATION** |
| **PLACE OF HEARING:** | Toronto, Ontario |
| **DATE OF HEARING:** | June 6, 2013 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | HON. MR. JUSTICE RUSSELL |
| **DATED:** | July 9, 2013 |

**APPEARANCES:**

| | |
|---|---|
| Clare Crummey | **APPLICANT** |
| Jocelyn Espejo-Clarke | **RESPONDENT** |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Waldman and Associates<br>Barrister and Solicitor<br>Toronto, Ontario | **APPLICANT** |
| William F. Pentney<br>Deputy Attorney General of Canada | **RESPONDENT** |