

Federal Court



Cour fédérale

Date: 20130827

Docket: IMM-6493-12

Citation: 2013 FC 906

Ottawa, Ontario, August 27, 2013

PRESENT: The Honourable Mr. Justice Annis

Docket: IMM-6493-12

BETWEEN:

MAJID MOLLAJAFARI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, of a decision refusing the applicant's application for permanent residence in Canada in the Federal Skilled Worker category.

[2] The applicant is requesting an order of *certiorari* quashing the negative decision and an order of *mandamus* compelling the respondent to reconsider his application.

Background

[3] Mr. Mollajafari was born in Iran in 1977. He attended Islamic Azad University, obtaining a three-year Civil Surveying associate's degree and a B.A. in Civil Engineering in 2007. He then went to work for Eista Bon Consulting Engineers Company as a construction manager. In 2009, he applied to immigrate to Canada in the Skilled Worker category under National Occupation Code [NOC] 0711 Construction Manager. He explains that his application was accepted by the Sydney, Nova Scotia office and the visa officer in Damascus, but he was then refused because he was short two education points (having been credited with only one university credential, not two). He was advised that it would be more practical to apply again than to request judicial review.

[4] Accordingly, he applied again in 2010. The Sydney office approved his application again. However, the visa office in Damascus closed before it could reassess the application, and his file was forwarded to Ankara. There, a visa officer accepted both university credentials but rejected the application on June 18, 2012 on the new ground that the applicant had not demonstrated that he had performed the duties of NOC 0711. This time Mr. Mollajafari applied for judicial review.

[5] The dispositive portion of the decision letter to Mr. Mollajafari states as follows:

You have indicated that you have work experience in (an) occupation(s) with the following NOC (National Occupational Classification) code(s): **0711- Construction Managers**. Although the NOC code(s) correspond(s) to the occupations specified in the Instructions, you have not provided sufficient evidence that you performed the actions described in the lead statement for the occupation, as set out in the occupational descriptions of the NOC and 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 duties described on your reference letter from Eista Bon Consulting Engineers Company do not match the occupational

descriptions of the NOC. As such, I am not satisfied that you are a **Construction Manager - 0711**.

[6] The main activities listed in the reference letter of the applicant were described as follows:

- a. Structure design of the residential buildings as such as residential complexes, long towers, apartment and Villa
- b. Structure design of the official, commercial and educational complexes
- c. Structure design of the cultural, sport and recreational complexes
- d. Design of the space structures
- e. Preparation, control and confirmation of estimation of the consumer materials and cost price of projects
- f. Management of designing team
- g. Supervisor of surveying team in preparation of topographical plans of projects at beginning of designing process
- h. Buildings industrial designing with use from the modern technology
- i. Management of the supervision team
- j. Management of constructional projects
- k. Selection and employment of the technical personnel in the constructional projects

[7] The Computer Assisted Immigration Processing System [CAIPS] notes which form part of the reasons for the decision state that:

The job description provided in the reference letter more closely resembles the description of a Construction Engineer (NOC2131). PA was involved in design work, estimation, supervision of surveying teams etc., which more closely resemble NOC2131. Have same concerns with respect to the description provided by PA on Schedule 3 form. Consequently, am not satisfied that PA performed a substantial amount of the duties stated in NOC0711. Therefore, am not satisfied that the ministerial instructions have been met.

Issues

[8] The issue is whether the visa officer came to an unreasonable decision based on the documentation before him.

Standard of review

[9] Where jurisprudence has already determined the standard of review applicable to a particular issue, the reviewing court may adopt that standard (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 57). As noted in *Patel v Canada (MCI)*, 2011 FC 571, at para 18 and in *Kamchibekov v Canada (MCI)*, 2011 FC 1411, at para 12, it has been established that a visa officer's determination on eligibility under the Federal Skilled Worker class, as a question of mixed fact and law, is reviewable on a standard of reasonableness and should be granted a high degree of deference.

Analysis

[10] The applicant argues that the reasons for decision show that the visa officer assessed his documentation against the description of NOC 2131, an employee job, and failed to assess it against NOC 0711, a managerial job (as shown by the "0" designation). He argues that both jobs required an engineering educational credential, so it is obvious that there would be a certain amount of overlap in the duties.

[11] He submits that the visa officer was required to assess him in the category he claimed (*Hajariwala v Canada (MEI)*, [1988] FCJ No 1021 (QL) (TD); *Hussain v Canada (MCI)*, [1998] FCJ No 1570 (QL) (TD)).

[12] I disagree that the applicant was measured against the civil engineer category. The decision letter stated that "the duties described on your reference letter from Eista Bon Consulting Engineers

Company do not match the occupational descriptions of the NOC”. This statement is supported by the letter and the comparison with the requirements for a construction manager in NOC 0711.

[13] The lead statement for NOC 0711 as provided in the applicant’s materials reads:

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.

[14] An applicant is required to have performed the duties in the lead statement and all or more of the main duties of the occupation. Applicants have the onus of providing documentation to demonstrate this. In the present case, the visa officer specifically considered the company reference letter. While he found that the applicant was involved in design work, estimation, supervision of surveying terms, etc., that was more akin to NOC 2131, this was because there was only one clear item relating to construction management from a list of 11 duties carried out by the applicant, that of “management of constructional projects”.

[15] The respondent argues that the applicant proposes that the key aspect of the lead statement was being a manager rather than an employee, but in fact the key distinction was working for a construction company or a construction department. While his company described him as a “Constructional Projects Manager” and an “engineer”, the employer’s reference letter sets out a long list of items pertaining to design and provides minimal detail supporting a conclusion that he was involved in managing the physical construction of buildings or was employed on construction job sites.

[16] I agree with the respondent that describing the applicant as a “Constructional Projects Manager” carries no weight when the main activities relate to structural design and managing design and surveying teams.

[17] I also conclude that common sense dictates that it was entirely reasonable for the visa officer to consider related NOCs when it is apparent from the list of duties provided in his employer’s reference letter that the applicant was performing mostly design and surveying functions.

[18] Granted, there may be some overlap in the field, but nevertheless the NOC makes no reference to design and surveying functions, which would exclude the large majority of duties of the applicant as described by his employer. They do not fall within the NOC description for a construction manager.

[19] The applicant submitted that the Court should take into consideration other evidence from the record, including the applicant’s education which showed construction management courses as part of a civil engineering program and the fact that he was on the Board of Directors of a construction company. This evidence however does not demonstrate that the applicant was working as a construction manager.

[20] On the basis of the evidence provided by the applicant with a view to demonstrate his work experience as a construction manager, I am satisfied that the visa officer’s decision that the

applicant did not meet the requirements as a construction manager described in NOC 0711 falls within the possible, acceptable outcomes that are defensible in fact and in law.

[21] Accordingly, the application is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed.

“Peter Annis”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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CITIZENSHIP AND IMMIGRATION

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

DATED: AUGUST 27, 2013

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