

Federal Court



Cour fédérale

Date: 20131029

Docket: IMM-11945-12

Citation: 2013 FC 1104

Ottawa, Ontario, October 29, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

MAHMOUD SHAABAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In 2006, Mr Mahmoud Shaaban, a citizen of Iraq, applied for permanent residence as a skilled worker. His application included an employment offer from a Canadian company. The offer remained valid until February 2013.

[2] In 2009, an immigration officer evaluated Mr Shaaban's application and rejected it because his score was 63 points, four points short of the required 67 points. The officer gave Mr Shaaban zero points for his employment offer. The offer could have been worth up to 15 points and made a significant difference to the evaluation of Mr Shaaban's application.

[3] Mr Shaaban requested that his application be reconsidered. In 2010, Mr Shaaban was asked for additional documents. The employer confirmed its interest in hiring Mr Shaaban.

[4] In 2012, Mr Shaaban's application remained under review. The officer contacted the employer again and was informed that the job offer was no longer valid. The officer again gave Mr Shaaban zero points for the employment offer and scored Mr Shaaban's application at 66 points, once again short of the 67 point minimum.

[5] Mr Shaaban argues that the information received from the putative employer was "extrinsic evidence" and that he should have been given a chance to respond to it. Further, he contends that the officer should have conducted a substituted evaluation of his application. He asks me to quash the officer's decision and order another officer to reconsider his application.

[6] I can find no grounds for overturning the officer's decision. The officer's communication with the employer did not amount to extrinsic evidence. It was entirely foreseeable that the officer would wish to verify the currency of the offer. Further, the officer had no duty to carry out a substituted evaluation without a specific request from Mr Shaaban.

[7] The issues are:

1. Did the officer treat Mr Shaaban unfairly?
2. Did the officer err in failing to carry out a substituted evaluation?

II. Issue One – Did the officer treat Mr Shaaban unfairly?

[8] Mr Shaaban argues that it was unfair for the officer to contact the employer and to refuse to grant him credit for arranged employment, given the delay in responding to his application and his request for reconsideration. Further, the officer clearly erred in the first evaluation of his application. In addition, the communication with the employer yielded evidence from an outside source to which Mr Shaaban should have been given a chance to respond. If he had been aware that he would not be credited for the job offer, he could have tried to revive the offer and supplement his application with more advantageous language test scores.

[9] In my view, the officer's communication with the potential employer did not yield "extrinsic evidence". It was entirely proper and predictable for the officer to check whether the offer was still valid. With reasonable diligence, Mr Shaaban could have ensured that his offer of employment remained in force. Moreover, he could have provided further evidence of his language skills if he felt it would improve his chances of success.

[10] Obviously, it was unfortunate that an error was made in the original evaluation of Mr Shaaban's application. However, it is the decision on reconsideration that is in issue before me. I cannot find any unfairness in the process leading to that decision.

III. Issue Two – Did the officer err by failing to undertake a substituted evaluation?

[11] Mr Shaaban argues that the officer should have conducted a substituted evaluation – an assessment of his likelihood of becoming successfully established in Canada even though the applicant may not have achieved the required number of points.

[12] An officer is not required to carry out a substituted evaluation if the applicant does not request it. Further, a substituted evaluation is appropriate where the number of points awarded is not a sufficient indicator of the applicant's ability to become economically established in Canada.

[13] Here, no request for a substituted evaluation was made. Further, the officer specifically stated that he was "satisfied units accurately reflect settlement ability". This suggests that the officer did not believe that Mr Shaaban's score was an insufficient indicator of his ability to become economically established in Canada.

[14] Therefore, I can see no error on the officer's part.

IV. Conclusion and Disposition

[15] The officer treated Mr Shaaban fairly. In contacting Mr Shaaban's proposed employer, the officer did not consult extrinsic sources of information and, therefore, had no duty to provide Mr Shaaban a chance to respond to the information the employer provided. Further, the officer had no obligation to conduct a substituted evaluation of Mr Shaaban's application in the absence of a request to do so.

[16] I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-11945-12

STYLE OF CAUSE: MAHMOUD SHAABAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 9, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: OCTOBER 29, 2013

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