

Federal Court



Cour fédérale

Date: 20131126

Docket: IMM-1379-13

Citation: 2013 FC 1186

Ottawa, Ontario, November 26, 2013

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

MARYAM MORADI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[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], dated June 1, 2012, which denied an application for permanent residence in the Federal Skilled Worker [FSW] class.

BACKGROUND

[2] The Applicant is a citizen of Iran who submitted an application for permanent residence as a Federal Skilled Worker. Under the relevant Ministerial instructions, only those with an Offer of Arranged Employment, those legally residing in Canada for at least one year as a Temporary Foreign Worker or International Student, or those who have work experience in certain listed occupations can apply through this program. The Applicant applied based on experience as an accountant under National Occupational Classification (NOC) 1111, Financial Auditors and Accountants, which is one of the eligible occupations.

[3] The application for permanent residence was initially screened by the Central Intake Office in Sydney, Nova Scotia, and determined to be eligible for processing under the FSW class. The Applicant was invited to submit a full application package, which was referred to an overseas visa office for a final determination of eligibility. A visa officer in Ankara, Turkey denied the application, and the Applicant was notified of this decision by a letter dated June 1, 2012.

[4] The “lead statement” for NOC 1111 states:

Financial auditors examine and analyze the accounting and financial records of individuals and establishments to ensure accuracy and compliance with established accounting standards and procedures. Accountants plan, organize and administer accounting systems for individuals and establishments. Articling students in accounting firms are included in this unit group. Financial auditors and accountants are employed by auditing and accounting firms throughout the private and public sectors, or they may be self-employed.

[5] Under “main duties,” NOC 1111 states that accountants perform some or all of the following duties:

- Plan, set up and administer accounting systems and prepare financial information for individuals, departments within organizations, businesses and other establishments
- Examine accounting records and prepare financial statements and reports
- Develop and maintain cost finding, reporting and internal control procedures
- Examine financial accounts and records and prepare income tax returns from accounting records
- Analyze financial statements and reports and provide financial, business and tax advice
- May act as a trustee in bankruptcy proceedings
- May supervise and train articling students, other accountants or administrative technicians.

DECISION UNDER REVIEW

[6] The Officer determined that the Applicant was not eligible to immigrate in the FSW class because her work experience did not match the description of NOC 1111. In the Officer’s view, the Applicant had not provided sufficient evidence that she had performed the actions described in the lead statement for the occupation, nor that she had performed all of the essential duties and a substantial number of the main duties set out in the NOC.

[7] The Officer found that the duties described in the two employment letters submitted in support of the application more closely resembled the duties of a bookkeeper (NOC 1231) or an accounting clerk (NOC 1431), which are not eligible occupations under the FSW. The Officer’s

May 29, 2012 notes from the Global Case Management System (GCMS Notes), which form part of the reasons for the Decision, read as follows:

...PA states has experience as an Accountant NOC 1111. PA submitted two employment letters in support of application. One is from Hafez Karan Sehat and states that PA prepared monthly reports and lists of salary, insurance, tax and submitted them to relevant organizations, analyzed proposed projects and determined profits and loss, prepared financial reports and data for employers and director. Second employment letter is from Iran Khodro and states that PA analyzed and calculated costs associated with “outbound delegates”, calculated and paid daily allowances, prepared and issued foreign exchange bills. Am not satisfied, on the basis of the descriptions provided in employment letters that PA performed a substantial amount of the duties stated in NOC 1111. Her work experience more closely resembles that of a bookkeeper (NOC1231) or accounting clerk (NOC1431). Therefore, am not satisfied that the ministerial instructions have been met. ECP: Pls draft eligibility-not met ltr and refund all processing fees.

ISSUES

[8] The Applicant raises the following issues in this Application:

- a. Did the Officer breach a duty of procedural fairness by failing to inform the Applicant of his concerns regarding her employment experience and provide her an opportunity to address those concerns before rejecting the application?
- b. Was the Officer’s decision unreasonable?

STANDARD OF REVIEW

[9] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] 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 settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where

this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48 [*Agraira*].

[10] The Respondent argues that a visa officer's determination of eligibility for permanent residence under the FSW class involves findings of mixed fact and law, and is reviewable on a standard of reasonableness: *Dunsmuir*, above, at paras 47-48 and 50-51; *Nasr v Canada (Minister of Citizenship and Immigration)*, 2011 FC 783 at para 12. The Applicant argues that this Application also raises issues of natural justice and procedural fairness, and that such questions are reviewable on a standard of correctness: *Kastrati v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1141 at paras 9-10; *Benitez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 461 at para 44; *Khan v Canada (Minister of Citizenship and Immigration)*, 2009 FC 302; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43 [*Khosa*].

[11] I agree with the Applicant that, to the extent issues of procedural fairness arise here, they are reviewable on a standard of correctness: *Canadian Union of Public Employees (C.U.P.E.) v Ontario (Minister of Labour)*, 2003 SCC 29 at para 100; *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 53. The Officer's decision regarding whether the applicant was eligible to immigrate under the FSW class is reviewable on a standard of reasonableness.

[12] 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 para 47, and *Khosa*, above, at para 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.”

STATUTORY PROVISIONS

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

12 [...]

Economic immigration

(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 [...]

Immigration économique

(2) La sélection des étrangers de la catégorie « immigration économique » se fait en fonction de leur capacité à réussir leur établissement économique au Canada.

[14] The following provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations] in effect on the date of the decision are applicable in these proceedings:

Issuance

70. (1) An officer shall issue a permanent resident visa to a foreign national if, following an examination, it is established that

(a) the foreign national has applied in accordance with these Regulations for a

Délivrance du visa

70. (1) L’agent délivre un visa de résident permanent à l’étranger si, à l’issue d’un contrôle, les éléments suivants sont établis :

a) l’étranger en a fait, conformément au présent règlement, la demande au titre

permanent resident visa as a member of a class referred to in subsection (2);

[...]

Classes

(2) The classes are

[...]

(b) the economic class, consisting of the federal skilled worker class, the transitional federal skilled worker class, the Quebec skilled worker class, the provincial nominee class, the Canadian experience class, the investor class, the entrepreneur class, the self-employed persons class, the transitional federal investor class, the transitional federal entrepreneur class and the transitional federal self-employed persons class; and

[...]

Class

75. (1) For the purposes of subsection 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

d'une des catégories prévues au paragraphe (2);

[...]

Catégories

(2) Les catégories sont les suivantes :

[...]

b) la catégorie de l'immigration économique, qui comprend la catégorie des travailleurs qualifiés (fédéral), la catégorie des travailleurs qualifiés (fédéral — transitoire), la catégorie des travailleurs qualifiés (Québec), la catégorie des candidats des provinces, la catégorie de l'expérience canadienne, la catégorie des investisseurs, la catégorie des entrepreneurs, la catégorie des travailleurs autonomes, la catégorie des investisseurs (fédéral — transitoire), la catégorie des entrepreneurs (fédéral — transitoire) et la catégorie des travailleurs autonomes (fédéral — transitoire);

Catégorie

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 and who intend to reside in a province other than the Province of Quebec.

Canada, qui sont des travailleurs qualifiés et qui cherchent à s'établir dans une province autre que le Québec.

Skilled workers

Qualité

(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 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;

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 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) 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

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) 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

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

Occupational Classification, including all of the essential duties.

classification, notamment toutes les fonctions essentielles.

Minimal requirements

Exigences

(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.

(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.

ARGUMENT

Applicant

Procedural Fairness

[15] The Applicant argues that the Officer breached a duty of procedural fairness by not informing the Applicant of concerns regarding her employment experience and providing her an opportunity to address those concerns. This Court has previously held that the 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”: *Liao v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ 1926 (QL) at paras 15-17. The duty to provide an opportunity to “disabuse” an officer of their concerns may apply “even when such concerns arise from evidence tendered by the Applicant”: *Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284 at para 22 [*Rukmangathan*]. It is well established that the duty encompasses an officer’s concerns relating to the credibility or authenticity of documents: *Talpur v Canada (Minister of Citizenship and Immigration)*, 2012 FC 25 at para 21. The Applicant submits that it can also extend to concerns that the evidence is deficient or incomplete: *Gay v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1280 at paras 32-33, 38-39 [*Gay*].

[16] The Applicant says that while the NOC and the Regulations do not identify which of the duties listed in the NOC description are considered to be “essential”, or what constitutes a “substantial number” of the main duties of an occupation, the applicable departmental manual states that this is a determination to be made by officers on a case-by-case basis, and “in cases where officers have concerns about whether or not the applicant has carried out ‘a substantial number of the main duties... including all of the essential duties,’ they should give the applicant an opportunity to respond to these concerns”: OP6A Manual, section 10.13.

[17] This Court has held that where a person has complied with the requirements of the Act, and should not reasonably have anticipated the Officer’s concerns, the failure to provide notice of the concerns and an opportunity to respond is a breach of natural justice: *Kuhathasan v Canada (Minister of Citizenship and Immigration)*, 2008 FC 457 at paras 39-41. In this case, the Applicant had offered *prima facie* evidence that she met the description of an accountant set out in NOC 1111, and she therefore could not have anticipated that the Officer would have concerns on this point, or would conclude that she was a bookkeeper or a clerk. The Applicant argues that her Affidavit filed with this application shows that had the officer expressed these concerns, she could have provided further evidence, explanations and details of her job duties that would have alleviated those concerns.

[18] While there is no duty on an Officer to advise the Applicant of concerns that arise directly from the Regulations, an applicant must be advised of concerns that relate to credibility and accuracy. Concerns regarding the documentation and evidence submitted to prove a legal

requirement can be credibility concerns, because they relate to the accuracy of the statements and documentation at issue: *Rukmangathan*, above, at para 38; *Hassani v Canada*, 2006 FC 1283 at paras 27-28 [*Hassani*]; *Gay*, above at paras 32, 38-39. In other words, when the Officer doubts statements in the Applicant's evidence, that is a credibility concern. This is not a case where the Applicant failed to provide evidence to satisfy a legal requirement, but rather a case where the Officer had unanticipated questions about the authenticity of the documentation and statements provided. The Officer doubted the Applicant's statements that she was an accountant, and doubted the employment letters that confirmed that she worked as an accountant.

Reasonableness of the Decision

[19] The Applicant also argues that the Officer's finding that the Applicant is not an accountant, but is rather a bookkeeper or accounting clerk, is unreasonable. She has the qualifications of an accountant and is working as an accountant, performing the duties listed in NOC 1111.

[20] Recent case law interprets the requirement for FSW applicants to have performed all of the "essential" duties and a "substantial number" of the main duties set out in the NOC description (see subsection 75(2)(c) of the Regulations) to mean that the applicant must have performed "one or more of the main duties": *Tabanag v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1293 at para 18 [*Tabanag*]; *Navid Jafari v Canada (Minister of Citizenship and Immigration)* (unpublished Order of May 16, 2013 in Federal Court file IMM-7376-12). An Officer who requires an applicant to have performed all of the duties listed in the NOC description is essentially adding requirements and changing the applicable legal standard, and thereby acting in excess of their jurisdiction: *Chen v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ 422 at para 8.

[21] While the NOC is legally binding, it should not be meticulously construed, but should rather be given a broad interpretation: *Hussain v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1570 at para 27.

[22] The Applicant has a degree in accounting, provided two job letters confirming that she has work experience as an accountant, and has consistently stated that this is her occupation. Her job letter from Hafez Karan Sehat states that she holds the position of accounting expert and head of the salary and wage section, and lists her duties as including:

- Preparing monthly reports and lists of salary, insurance and tax and their submission to the relevant sections and organizations;
- Analyzing the (sic) proposed projects and determining their profit and loss and also reporting them to the Managing Director for making due decision (sic);
- Preparing financial reports and data for employers and the Managing Director.

[23] The Applicant submits that this letter demonstrates that she has performed:

- The first main duty listed in the NOC, "...prepare financial information for individuals, departments within organizations, businesses and other establishments," because she prepares monthly reports and lists of salaries, insurance and tax and submits them to various sections and organizations within the company;
- The second main duty, "[e]xamine accounting records and prepare financial statements and reports," because she prepares financial reports; and

- The fifth main duty, “[a]nalyze financial statements and reports and provide financial, business and tax advice,” because she analyzes proposed projects from an accounting perspective, determining their profit and loss, and provides reports and advice on the projects, which necessarily implies that she analyzes the company’s financial reports.

[24] The Applicant’s second job letter also demonstrates that she has performed the duties in NOC 1111, as it shows that she was responsible for analyzing financial records to calculate costs associated with outbound delegates, and for preparing financial reports and financial information for individuals in the process of preparing and issuing foreign exchange bills for delegates.

[25] Both letters show she had more responsibility than a bookkeeper or an accounting clerk, the Applicant says. Unlike those occupations, an accountant is responsible for analysis and providing reports based on financial analysis, and the letters show that the Applicant performed these duties. The duties of a bookkeeper are focused solely on maintaining records. The duties of an accounting clerk are also predominantly administrative: maintaining records and preparing and processing bills. Neither occupation involves the kind of analysis and report preparation that the Applicant’s jobs have entailed.

[26] In addition, the Applicant says that the Officer’s reasons are inadequate. The Officer did not explain why or how the duties listed in the job letters correspond to those of a bookkeeper or accounting clerk, and found that the Applicant has not performed the essential duties or many of the main duties without specifying what duties in the NOC are essential and which are main: *McHugh v*

Canada (Minister of Citizenship and Immigration), 2006 FC 1181 at para 14. The Applicant says that the Court's analysis in *Gulati v Canada (Minister of Citizenship and Immigration)*, 2010 FC 451 at paras 41-42 applies to this case. There, the Court found that it was impossible to assess the officer's conclusion that the applicant had not performed a substantial number of the main duties of the NOC category at issue without knowing which duties the officer thought had not been performed and why.

Respondent

Procedural Fairness

[27] The Respondent argues that the Officer in this case was under no duty to make further inquiries about the Applicant's work experience. In the context of a skilled worker application, relevant work experience is a concern that arises directly from the requirements of the Act and Regulations, and a visa officer is under no duty to mention his or her concerns regarding that work experience to the applicant: *Kamchibekov v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1411 [*Kamchibekov*]; *Kaur v Canada (Minister of Citizenship and Immigration)*, 2010 FC 442 [*Kaur*]. More generally, an applicant's failure to provide adequate, sufficient or credible proof in support of a visa application does not trigger a duty to inform the applicant of concerns about the sufficiency or credibility of the proof provided: *Kamchibekov*, above, at para 26; *Kaur*, above, at para 12; *Hassani*, above, at para 24.

[28] The case law cited by the Applicant relates to credibility, which is not at issue in the present case. There were no specific concerns with the evidence. Rather, the Officer was not satisfied, on the basis of the evidence taken as a whole, that the Applicant had performed a substantial number of

the duties stated in NOC 1111. The Applicant essentially argues that every application denied due to insufficient or unsatisfactory evidence involves a credibility issue – a proposition that has been rejected by this Court: *Nauman v Canada (Minister of Citizenship and Immigration)*, 2013 FC 188 [*Nauman*].

[29] Similarly, a duty of procedural fairness does not arise whenever an officer has concerns that the applicant could not reasonably have anticipated. Rather, “[t]he onus is upon applicants to put together applications that are convincing and that anticipate possible adverse inferences contained in the evidence and local conditions and address them”: *Singh v Canada (Minister of Citizenship and Immigration)*, 2012 FC 526 at para 52. Here, the Respondent says, the Applicant simply did not put together convincing evidence that she had the required work experience.

Reasonableness of the Decision

[30] The Respondent argues that the onus is on the Applicant to put her “best case forward.” Here, the test established by the statutory scheme was not met; the Applicant failed to satisfy the Officer that she has work experience as an accountant: *Oladipo v Canada (Minister of Citizenship and Immigration)*, 2008 FC 366 at para 24; *Kaur*, above, at para 9. This conclusion was well within the range of possible, acceptable outcomes.

[31] Neither the Applicant’s assertion nor the employment letters were capable of establishing that she had performed the actions described in the lead statement for NOC 1111, and she did not provide sufficient evidence that she performed all of the essential duties and a substantial number of the main duties set out in the NOC. Her degree and position title do not establish that she had work

experience as an accountant: *Tabanag*, above, at para 22. A visa 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.

[32] While an applicant is not required to have performed all of the main duties set out in the NOC description, he or she must have performed a few – that is, more than one. The task of a visa officer is to determine the “pith and substance” of the work performed: *Rodrigues v Canada (Minister of Citizenship and Immigration)*, 2009 FC 111 at paras 9-10 [*Rodrigues*], citing *Norman v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1169 (FCTD).

ANALYSIS

[33] In my view, there is no procedural fairness issue in this case. The Officer had no concerns with respect to the Applicant's credibility or the accuracy and authenticity of the information and documentation she provided. There is no indication that the Officer doubted the veracity of the letters; he or she simply did not accept that the duties described in the letters brought the Applicant within the definition of “Accountant” as described in NOC 1111. The issue was whether the Applicant satisfied the requirements of the legislation, and the jurisprudence of the Court is clear that this does not give rise to procedural fairness issues. See, for example, Justice Kane's recent summary of the law in *Ansari v Canada (Minister of Citizenship and Immigration)*, 2013 FC 849 at para 14 and Justice Scott's recent analysis in *Nauman*, above, at paras 26-29.

[34] Also, in my view, there is no inadequacy of reasons issue in this case. As the Decision (including the GCMS notes) makes clear, the application was refused because the Applicant did not

provide “sufficient evidence that [she] performed the actions described in the lead statement for the occupation, as set out in the occupational descriptions of the NOC ...” or that she had “performed all of the essential duties and a substantial number of the main duties, as set out in the occupational description of the NOC.” The reason why, in the Officer’s view, this was the case was because “the duties described in your employment letters do not match the occupational descriptions of the NOC.” These reasons are entirely transparent and intelligible within the meaning of para 47 of *Dunsmuir and Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16. The only issue is whether the Decision is reasonable.

[35] The Applicant points to her academic qualifications and job title as evidence that she performed accounting duties. However, academic credentials and job titles are not evidence of experience performing specific duties. As Justice Mosley pointed out in *Tabanag*, above, at para 22:

22 Here, there was no evidence before the agent to establish that the applicant had performed any of the duties required to satisfy the occupational classification. It is not sufficient for an applicant to provide evidence that he or she has the academic qualifications, bears a job title and is addressed by that title in correspondence. They must provide evidence that they have actually performed "a substantial number of the main duties of the occupation". Here, the applicant did not provide that evidence either through the employer's certificate or alternate documentation. The information submitted fell short of establishing a *prima facie* case, as the applicant contends.

[Emphasis added]

[36] The lead statement for NOC 1111 for financial auditors and accountants provides that “Accountants plan, organize and administer accounting systems for individuals and establishments...”. The duties listed for NOC 1111 include the following:

- Plan, set up and administer accounting systems and prepare financial information for individuals, departments within organizations, businesses and other establishments;
- Examine accounting records and prepare financial statements and reports;
- Develop and maintain cost finding, reporting and internal control procedures;
- Examine financial accounts and records and prepare income tax returns from accounting records;
- Analyze financial statements and reports and provide financial, business and tax advice;
- May act as a trustee in bankruptcy proceedings;
- May supervise and train articling students, other accountants or administrative technicians.

[37] In my view, there is nothing in the employment letters submitted to the Officer to suggest that the Applicant planned or organized accounting systems for either employer. The letters suggest that the Applicant's duties were confined to compiling lists and reports, determining profit and loss, preparing financial reports and data, and calculating and paying costs associated with outbound delegates. The Applicant has done some of the things that, according to NOC 1111, accountants do, but she has also done some of the things that a bookkeeper does under NOC 1231, or an accounting clerk does under NOC 1431. So the difficulty for the Officer was to determine where the Applicant fits into the scheme of the Act and the Regulations. As the Court pointed out in *Rodrigues*, above, at para 10:

The real function of the visa officer is to determine what is the pith and substance of the work performed by an applicant. Tangential performance of one or more functions under one or more job

categories does not convert the job or the functions from one NOC category to another.

[38] Consequently, I cannot say that the Officer's conclusions in the GCMS notes that "on the basis of the descriptions provided in employment letters," he or she could not be satisfied that the Applicant "performed a substantial amount of the duties stated in NOC 1111" was unreasonable. There is obviously scope for disagreement over this finding, but I cannot say it falls outside of the *Dunsmuir* range. In a tangential way, the Applicant has done some of the things that an accountant may do from time to time, but this does not mean that the pith and substance of the work she has performed fits under NOC 1111.

[39] The Applicant concedes, for instance, that items 1 and 3 in the letter from Hafez Karan Sehat are just as likely to be performed by a bookkeeper or an accounting clerk. She says, however, that item 2 in the same letter is what raises her to the level of accountant and qualifies her under NOC 1111:

2 - Analyzing the proposed projects and determining their profit and loss and also reporting them to the Managing Director for making due decision.

[40] She says that this is equivalent to one of the "Main Duties" under NOC 1111:

Analyse financial statements and reports and provide financial, business and tax advice.

[41] I can see that both statements refer to analysis, but without more information a meaningful comparison is all but impossible. In any event, I do not think that this kind of possible overlap is

sufficient to render the Applicant's experience, in pith and substance, that of an accountant. Or, more to the point, I do not think it is enough to take the Officer's Decision outside of the *Dunsmuir* range and render it unreasonable.

[42] 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

SOLICITORS OF RECORD

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**REASONS FOR JUDGMENT
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DATED: November 26, 2013

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