

Federal Court



Cour fédérale

Date: 20140505

Docket: IMM-13200-12

Citation: 2014 FC 425

Ottawa, Ontario, May 5, 2014

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

VALERIA PRITCHIN

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 2010, Ms Valeria Pritchins applied for permanent residence in Canada as a skilled worker, namely, a graphic designer. She studied graphic design in Canada in 2008 and 2009 while her refugee claim (based on alleged persecution in Israel) was under consideration. She also worked for over two years as a graphic designer in a small shop called "VideoCorner". She returned to Israel when her refugee claim failed.

[2] As part of her application for permanent residence, Ms Pritchin provided evidence that VideoCorner wished to expand its graphic design capacity and wanted to hire her back as a designer. An officer in the Canadian consulate in Tel Aviv reviewed Ms Pritchin's application and, out of concern about some possible discrepancies, interviewed her in 2012.

[3] The officer, finding Ms Pritchin not to be credible and not being satisfied that the job offer in Canada was genuine, rejected her application. Ms Pritchin argues that the officer treated her unfairly by comparing her evidence against a report prepared by the Canadian Border Services Agency (CBSA), of which she was unaware. She also contends that the officer arrived at an unreasonable conclusion on the evidence. She asks me to overturn the officer's decision and order another officer to reconsider her application.

[4] In my view, the officer treated Ms Pritchin fairly by providing her an interview at which she could respond to concerns arising from her application. Further, the officer's conclusion was not unreasonable in light of evidence casting doubt on the genuineness of the alleged job offer. Therefore, I must dismiss this application for judicial review.

[5] There are two issues:

1. Did the officer treat Ms Pritchin unfairly?
2. Was the officer's conclusion unreasonable?

II. The Officer's Decision

[6] The officer awarded Ms Pritchin a total of 55 points, twelve points short of the threshold for success on an application for permanent residence. The shortfall resulted from the officer's doubts about Ms Pritchin's previous experience as a graphic designer and the genuineness of the job offer at VideoCorner. The officer gave Ms Pritchin credit for only one year of full-time experience as a graphic designer since it was not clear that she had been working full-time. In particular, there were discrepancies between her account of her responsibilities and working conditions at VideoCorner compared to the evidence provided by the shop's manager and by an investigator from CBSA, who had visited the shop. Further, Ms Pritchin had only reported income of \$9,000 in each of the years she was working at the shop, suggesting that she worked part-time. The officer gave Ms Pritchin a chance to respond to these concerns, but she had nothing to add.

A. *Issue One – Did the officer treat Ms Pritchin unfairly?*

[7] Ms Pritchin argues that the officer unfairly relied on extrinsic evidence from the CBSA about the genuineness of the job offer. The CBSA officer's notes raised concerns about Ms Pritchin's experience, her hours of work, and her responsibilities, but Ms Pritchin alleges that she did not have a proper opportunity to respond. She argues that the officer should have put those concerns to her in writing rather than confronting her with them at the interview.

[8] Further, Ms Pritchin contends that the officer should not have interviewed her about the job offer because the officer had no jurisdiction to question whether it was valid. Ms Pritchin had already obtained an Arranged Employment Offer (AEO) certified as genuine by Service Canada.

The officer's sole responsibility was to determine whether Ms Pritchin could perform the job. The officer should, therefore, have granted her 10 points for the offer.

[9] I cannot agree with Ms Pritchin's submissions.

[10] The officer was entitled to convene an interview with Ms Pritchin to discuss issues arising from her application, and the interview amounted to an adequate opportunity for Ms Pritchin to address the officer's concerns (*Kimball v Canada (Minister of Citizenship and Immigration)*, 2013 FC 428, at para 11). She was simply unable to do so, and did not request further time to submit a response. I see nothing unfair about the officer's treatment of Ms Pritchin.

[11] Further, the officer was also entitled to consider whether the job offer was genuine. The officer is the ultimate decision maker on an application, and must determine whether the applicant is "able to perform and likely to accept and carry out the employment" (*Immigration and Refugee Protection Regulations*, SOR/2002-227, s 82(2)). Obviously, an applicant cannot perform or carry out a job that may not exist (*Ghazeleh v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1521, at para 20). Therefore, the officer must be able to assess the genuineness of an offer.

B. *Issue Two - Was the officer's conclusion unreasonable?*

[12] Ms Pritchin contends that the officer's explanation for rejecting her application was not intelligible or transparent. The officer simply stated that Ms Pritchin was unable to explain

contradictions in the evidence. Further, on the issue of her salary, she argues that the officer seemed to fault Ms Pritchin for not knowing her right to a minimum wage under Ontario employment law.

[13] In my view, the officer's conclusion was reasonable and adequately explained. The areas of the officer's concerns were clear, and Ms Pritchin was simply unable to address them. The basis for the officer's rejection of Ms Pritchin's application is apparent from the record.

[14] Further, the officer did not expect Ms Pritchin to be familiar with Ontario employment law. Rather, the officer inferred from Ms Pritchin's low salary that she was probably not working full-time. The shop manager also confirmed that Ms Pritchin worked part-time. Ms Pritchin could have provided other evidence on this issue (*eg*, pay stubs) but did not.

[15] Therefore, I cannot conclude that the officer's decision was unreasonable. It fell within the range of defensible outcomes based on the facts and the law.

III. Conclusion and Disposition

[16] The officer who assessed Ms Pritchin's application treated her fairly and arrived at a reasonable conclusion. 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 the application for judicial review is dismissed.

No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13200-12

STYLE OF CAUSE: VALERIA PRITCHIN v MINISTER OF CITIZENSHIP
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APPEARANCES:

Nikolay Y. Chsherbinin

FOR THE APPLICANT

Daniel Engel

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Chsherbinin Litigation
Barrister and Solicitor
Toronto, Ontario

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of
Canada
Toronto, Ontario

FOR THE RESPONDENT