Federal Court  Cour fédérale

**Date: 20150108**

**Dockets: IMM-2996-14**
**IMM-2997-14**

**Citation: 2015 FC 27**

**Ottawa, Ontario, January 8, 2015**

**PRESENT: THE CHIEF JUSTICE**

**Docket: IMM-2996-14**

**BETWEEN:**

**FRANKIE'S BURGERS LOUGHEED INC**
**(DBA FATBURGER LOUGHEED)**

**Applicant**

**and**

**THE MINISTER OF EMPLOYMENT AND**
**SOCIAL DEVELOPMENT CANADA**

**Respondent**

**Docket: IMM-2997-14**

**AND BETWEEN:**

**SETON FB LTD. DBA FATBURGER**

**Applicant**

**and**

**THE MINISTER OF EMPLOYMENT AND**
**SOCIAL DEVELOPMENT CANADA**

**Respondent**

## JUDGMENT AND REASONS

[1] These reasons concern two virtually identical decisions by Ms. Nimira Sandhu, an officer with Employment and Social Development Canada [ESDC], to refuse positive labour market opinions [LMOs] sought by the Applicants.

[2] The LMOs were sought in respect of the hiring of foreign nationals, pursuant to the Temporary Foreign Worker Program [TFWP], as food counter attendants at two restaurant locations operated by the Applicants under the "Fatburger" banner. One of those locations is in Lougheed, British Columbia, while the other is located in Seton, Alberta.

[3] The decision that is the subject of Court file IMM-2996-14 pertains to the Lougheed location, while the decision that is the subject of Court file IMM-2997-14 pertains to the Seton location.

[4] The Applicants seek to have the officer's decisions set aside on the following grounds:

A. The officer's assessment was unreasonable, including as it relates to the conclusions that the Applicants:

i. should have made a greater effort to recruit part-time workers to fill the vacant positions;

ii. failed to demonstrate the existence of a labour shortage; and

iii. had not met the minimum advertising requirements for the positions they were seeking to have filled.

B. The officer failed to provide an opportunity to address her concerns regarding the authenticity of certain advertisements that were posted in respect of the restaurant in Seton, Alberta.

C. The officer fettered her discretion in assessing their applications, by not taking their particular circumstances into account and by relying on operational guidelines issued by the ESDC in refusing those applications.

[5] For the reasons that follow, the application in Court file IMM-2996-14 will be dismissed and the application in Court file IMM-2997-14 will be granted, as set forth in the attached Judgment.

## I. Background

[6] The Applicants are part of a related group of companies that, in aggregate, operate restaurants in approximately 60 locations in Western Canada. Approximately 16 of those restaurants are operated by Frankie's Burger Enterprises Inc. [Frankie's] under the Fatburger banner in British Columbia, while approximately 18 of them are operated by Frankie's under that banner in Alberta.

[7] In November 2013, Ms. Dianna Lasenby, the Senior Concept Leader and President of Frankie's, submitted applications to the Department of Human Resources and Skills Development Canada [HRSDC] on behalf of the Applicants for LMOs under the TFWP for

unnamed temporary foreign workers, to fill four food counter attendant [FCA] positions at the Lougheed location and ten FCA positions at the Seton location. HRSDC has since been renamed the Department of Employment and Social Development Canada [ESDC].

[8] In support of those applications, Ms. Lasenby provided documentary evidence of the unsuccessful efforts that she and a duly authorized third party representative [Third Party] had made to recruit Canadian citizens or permanent residents to fill the FCA positions.

[9] In February 2014, in further support of the applications, Ms. Lasenby provided supplementary documentation to show ongoing efforts to recruit Canadian citizens or permanent residents to fill the FCA positions.

[10] In April 2014, Ms. Lasenby provided additional evidence of such efforts.

[11] Ms. Lasenby also spoke with the officer on several occasions in March 2014 and on April 2, 2014. In those discussions, the officer stated that she was assessing the applications based on the information provided at the time they were submitted. She added that although ongoing recruitment efforts are required, changes made to advertisements, such as adding the addresses of the restaurant locations, would not change the assessment of the applications, as originally filed.

[12] The officer also expressed various concerns to Ms. Lasenby. In particular, the officer was concerned that the advertisements that had been included with the applications in November 2013 only mentioned full-time positions, and did not mention the business addresses of the

restaurants in question. She was also concerned as to whether sufficient efforts had been made to target underrepresented groups, as the applications initially did not include supporting documentation or other information to indicate how long the advertisements targeted at such groups had been posted. In addition, the officer requested details regarding the individuals who had applied for the advertised positions and the reasons why they were not hired.

## II. Relevant Legislation and ESDC Guidelines

[13] The TFWP was established pursuant to the *Immigration and Refugee Protection Act*, SC 2001, c 27, and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]. Its implementation is carried out pursuant to various administrative arrangements and related policies and procedures established between ESDC, Citizenship and Immigration Canada [CIC] and the Canada Border Services Agency.

[14] To work in Canada legally, a temporary foreign worker must have a permit.

[15] Pursuant to paragraph 200(1)(c) of the Regulations, a CIC officer shall issue a work permit to a foreign national upon the satisfaction of certain conditions. Those conditions include the making of a positive determination under paragraphs 203(1)(a) to (e) of the Regulations. For the purposes of this decision, the relevant provision in section 203 is paragraph 203(1)(b), which requires the CIC officer to determine, on the basis of an LMO from ESDC, whether the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada.

[16] Pursuant to subsection 203(3), an LMO by an ESDC officer shall be based on a consideration of the following seven factors:

> (a) whether the employment of the foreign national will or is likely to result in direct job creation or job retention for Canadian citizens or permanent residents;
>
> (b) whether the employment of the foreign national will or is likely to result in the development or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;
>
> (c) whether the employment of the foreign national is likely to fill a labour shortage;
>
> (d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;
>
> (e) whether the employer will hire or train Canadian citizens or permanent residents or has made, or has agreed to make, reasonable efforts to do so;
>
> (f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute; and
>
> (g) whether the employer has fulfilled or has made reasonable efforts to fulfill any commitments made, in the context of any opinion that was previously provided under subsection (2), with respect to the matters referred to in paragraphs (a), (b) and (e).

[17] For the purposes of these reasons, only two of the foregoing factors are relevant namely, (c) and (e).

[18] It bears underscoring that it is the decisions of the ESDC officer refusing the LMOs that are the subject of the Applicants' applications for judicial review in this Court.

[19] Attached as Exhibit "A" to an affidavit filed by Michele Morandini, Director, TFWP, Western and Territories Region, Citizen Service Program Delivery Branch of ESDC, on behalf of the Respondent, is a document downloaded from ESDC's website, entitled *Stream for Lower-skilled Occupations* [Guidelines]. That document is described as setting out ESDC's LMO advertising and recruitment requirements with respect to lower-skilled occupations, the TFW stream that is relevant to these proceedings.

[20] Among other things, the Guidelines state that recruitment advertisements must include the business address, the terms of employment and the location of work (local area, city or town). In addition, they state that "[e]mployers must demonstrate that they meet the advertising requirements by providing proof of advertisement and the results of their efforts to recruit Canadian citizens and permanent residents (e.g. and information to support where, when and for how long the position was advertised)."

[21] Under the heading "How to Apply", the Guidelines stipulate that applicants for an LMO will be expected to meet the minimum recruitment efforts.

## III. Standard of Review

[22] The standard of review applicable to the issues that have been raised regarding the reasonableness of the conclusions reached by the ESDC officer is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, at paras 51-53 [*Dunsmuir*].

[23] The procedural fairness issue that has been raised is reviewable on a standard of correctness (*Dunsmuir*, above at paras 79 and 87; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 43).

[24] With respect to the fettering of discretion issue that has been raised, it is not necessary to definitively determine whether the standard of review is correctness or reasonableness, since the result is the same: a decision that is the product of a fettered discretion must *per se* be unreasonable (*Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299, at paras 20-24).

## IV. Analysis

### A. *Was the officer's assessment unreasonable?*

#### (1) Overview

[25] The officer's virtually identical decisions to refuse to issue the LMOs sought by the Applicants were communicated in what Ms. Morandini described as being the "standard language" used by ESDC to ensure consistency.

[26] Those decisions were based on three principal findings.

[27] First, the officer determined that the Applicants had not sufficiently demonstrated that there was a reasonable employment need in their business for the jobs they posted, namely, full-time jobs alone. This determination related to paragraph 200(5)(b) of the Regulations, which requires an assessment of whether a job offer is consistent with the reasonable employment needs of the employer, in the overall determination of whether an offer of employment is genuine.

[28] Second, the officer found that the Applicants had not demonstrated that a labour shortage exists, as contemplated by paragraph 203(3)(c) of the Regulations.

[29] Third, the officer determined that the Applicants had not demonstrated sufficient efforts to hire Canadian citizens or permanent residents for the vacant positions, as contemplated by paragraph 203(3)(e) of the Regulations.

[30] The Applicants submit that each of these determinations was unreasonable.

[31] In assessing the Applicants' submissions, it must be kept in mind that the overall focus of this Court's review will be on the reasonableness of the officer's ultimate decisions to refuse to issue the LMOs. Those decisions were made after the officer concluded that the Applicants had not demonstrated that the employment of the unnamed foreign nationals they sought to employ

would likely have a neutral or positive effect on the labour market in Canada, as required by paragraph 203(1)(b) of the Regulations.

[32] The reasonableness of the officer's overall decision to refuse the LMOs will be considered at the end of this section, in Part IV.A.(5) below, after considering the various submissions made by the Applicants.

(2) The officer's conclusion regarding the need to advertise for part-time positions

[33] After stating that the Applicants had not sufficiently demonstrated that there is a reasonable employment need for the jobs that they had advertised, the officer provided the following explanation: "Service Canada is unable to issue a positive labour market opinion for a position where the requirement(s) is/are limited to full-time given that such conditions are not the norm for the industry and deemed to be excessive."

[34] The officer elaborated upon her concern in her Notes to file, where she stated the following: "Advised [the Applicant] that the norm in the industry is PT and if *[sic]* she has considered hiring PT staff? [The Applicant's] response was that was not the norm with Fatburger." The officer's Notes to file added that the approximately 59% of the workforce is part-time and 41% full-time, with 61% being between the ages of 15 and 24. Later, under the heading "DECISION: REFUSE," the officer stated: "Not a reasonable employment need (Norm in industry is PT – [Terms of employment] on ad's [*sic*] don't list PT." PT refers to part-time.

[35] The Applicants submit that their failure to advertise for part-time positions was not a valid basis for the officer to refuse to issue an LMO. They assert that an employer must be given discretion as to whether to seek full-time or part-time employees. In this regard, they note that it may cost more to hire, train and schedule multiple part-time employees, relative to hiring fewer full-time employees, and that the quality and consistency of part-time employees' work may be inferior to that of full-time employees.

[36] In support of their position, the Applicants rely on Justice Zinn's statement in *Construction and Specialized Workers' v Canada (Citizenship and Immigration)*, 2013 FC 512, at para 142 [*Specialized Workers*] that "an employer must be given some latitude in its hiring even within the TFWP." I agree with this as a general principle, although I would add that, of course, it has limits and cannot be extended to the point that it is inconsistent with the scheme set forth in the Regulations. I also agree with Justice Zinn's observation, in the next sentence, that "[t]he real question is whether there was anything before the officer from which he should reasonably have concluded that the applicant had failed to make reasonable efforts to hire Canadians."

[37] In that case, Justice Zinn noted that there was a labour shortage in the mining industry, that one of the respondents had an application that was approved for the same project only 12 months earlier, and that it and another respondent had both engaged in recruitment. It was readily apparent from these observations that Justice Zinn was satisfied that there was not in fact anything before the officer from which he should reasonably have concluded that the applicant had failed to make reasonable efforts to hire Canadians.

[38] The facts that formed the basis for the officer's decisions in these proceedings were very different from those in *Specialized Workers*. As discussed below, the Applicants did not establish the existence of a labour shortage in their particular business. Moreover, as the officer observed, the norm in that business was to hire part-time workers. This was reflected in the above-mentioned statistics that were cited in the officer's Notes to file. Those statistics may, at least to some extent, explain why the Applicants' advertisements generated so few responses from potential recruits.

[39] I recognize that it may well cost the Applicants more to hire, train, and schedule part-time workers, relative to full-time workers, and that the latter may well perform better and be more reliable over the long-run than the former.

[40] However, the Applicants did not direct my attention to anything that would support the proposition that the reasonableness of the officer's decision should be assessed primarily by reference to these considerations. Indeed, it is readily apparent from subsection 203(3) of the Regulations that the reasonableness of the officer's decisions should be assessed by reference to the ultimate test of whether "the employment of the foreign national is unlikely to have a positive or neutral effect on the labour market in Canada as a result of the application." The seven specific criteria set forth in paragraphs 203(3)(a) – (g) reinforce this orientation, and do not in any way allude to or contemplate the types of considerations or latitude emphasized by the Applicants.

[41] Ms. Morandini's uncontested evidence is that the purpose of the TFWP is to enable employers to hire foreign workers on a temporary basis to fill immediate skills and labour shortages when there are not sufficient Canadian citizens or permanent residents available to fill the positions in question.

[42] Considering that the majority (59%) of workers in the restaurant business are part-time, and that approximately 61% of them are between the ages of 15 and 24, it was not unreasonable for the officer to be concerned that Canadian citizens or permanent residents who may otherwise have been available to fill the Applicants' FCA positions had not been provided with the opportunity to apply for those positions. Indeed, this concern was rooted firmly in paragraph 203(3)(e) of the Regulations.

[43] Contrary to what the Applicants' position would imply, the TFWP was not intended to be used as a means to allow employers to change industry standards by excluding segments of the workforce in Canada, such as students or other young people, who traditionally have filled particular positions through part-time work. Moreover, ESDC was not under any obligation to provide employers advance notice of this in the Guidelines.

[44] The fact that the website of WorkBC, the provincial counterpart of the National Job Bank, did not permit the posting of just a single advertisement for both full-time and part-time workers until earlier this year does not assist the Applicants. In part, this is because the other advertisements posted for the positions at the restaurant in Lougheed, British Columbia prior to when the applications for the LMOs were submitted also mentioned only full-time positions.

Moreover, as noted by the Respondent, there was no good reason why separate postings for part-time and full-time positions could not have been made on the website of WorkBC.

[45] Likewise, it does not help the Applicants that they amended their advertisements in February and March 2014 to state the following: "Even though this position is a full time position but *[sic]* we encourage part-time candidates to apply as well." The Guidelines make it very clear that employers are expected to at least meet the minimum recruitment efforts required for lower skilled occupations before they apply for an LMO. This is an entirely reasonable position, as ESDC officers need to be able to assess requests for LMOs at a point in time. There is nothing unreasonable about taking the position that such time is when the application is submitted. The fact that ongoing recruitment efforts are also required simply ensures that employers will continue to endeavour to find Canadian citizens or permanent residents to fill the vacant positions until a positive LMO is issued.

[46] In passing, I observe that the above-quoted statement (encouraging part-time recruits to apply) that was added to the Applicants' advertisements appeared in most of them towards the end of the posting. In several cases, this was on the second or third page of the amended advertisement. In my view, this did not constitute a reasonable effort to make it clear to potential applicants that there were part-time positions available, particularly given that the references to full-time positions were made in prominent places at the very outset of the advertisements.

[47] Considering the foregoing, I am satisfied that it was not unreasonable for the officer to have refused to issue the positive LMOs, in part because the Applicants had not indicated a willingness in their advertisements to hire part-time workers.

[48] I will deal in Part IV.B of these reasons below with the fact that some of the advertisements posted with respect to the vacant positions at the restaurant in Seton, Alberta contained the above-quoted sentence directed towards part-time candidates, and were dated prior to when the Applicants submitted their requests for LMOs.

(3) The officer's conclusions regarding the Applicants' failure to demonstrate the existence of a labour shortage

[49] The officer's determination that the Applicants had failed to demonstrate the existence of a labour shortage, as contemplated by paragraph 203(3)(c) of the Regulations, appears to have been based on a finding that such a shortage had not been established by the results of their recruitment efforts.

[50] In her Notes to file with respect to both of her refusal decisions, the officer observed that the Applicants were unable to provide accurate results in respect of their recruitment efforts. The explanation provided by the Applicants was that those efforts had been undertaken by the Third Party, who had combined the results for the FCA positions with recruitment results for food services supervisor [FSS] positions.

[51] With respect to the Lougheed location, the officer's Notes to file stated that 18 applications had been received for the FCA and FSS positions combined prior to November 18, 2013. Of those, 14 were from Canadian citizens or permanent residents and four were from foreign nationals. It was then noted that all of them had been contacted by the Third Party, who reported that two had found jobs, one had provided an incorrect telephone number, two were not looking for full-time work, and five did not return the Third Party's telephone calls. Later, the officer noted that the Third Party had clarified that 13 of the applications had been for the FCA positions, while five of them had been for the FSS positions. In addition, it was noted that the Third Party had reported that none of the applicants for the FCA positions had been hired, because they could not be contacted, were out of the country, had found other employment, or were otherwise unavailable. The officer added that the Third Party and the employer had been unable to provide the details of the candidates for each position. Finally, she noted that only two of the seven labour market indicators for the job category in question (NOC 6641) indicated a potential labour shortage, and that the overall regional unemployment rate for British Columbia is 6.5%.

[52] With respect to the Seton location, the officer's Notes to file stated that eight applications had been received for the FCA position, and that none of the applicants had been hired because they were either unavailable or out of the country. It was then observed that whereas no staff had been employed at this location at the time the request for the LMO was initially made in November 2013, eight "walk-ins" were subsequently hired. The officer was clearly concerned that this development reflected the lack of a genuine prior effort to hire Canadian citizens or local residents.

[53] The Applicants maintain that they provided a reasonable summary of the results pertaining to the candidates who applied for the FCA positions. In addition, they note that neither the Guidelines nor any other information available on ESDC's website describes the level of detail required to be provided in respect of recruitment results. They therefore assert that they cannot be expected to conform to un-published requirements.

[54] With respect to the location in Seton, Alberta, the Applicant in Court file IMM-2997-14 observes that data included at pages 43 and 44 of the Certified Tribunal Record report the unemployment rate for Calgary, Alberta to have been 4.5% and 5.0% in February and March 2014, respectively. The Applicant submits that this does not support the conclusion reached by the officer regarding the existence of a labour shortage, particularly given that ESDC currently processes low-skilled applications if the work location is in an area of low unemployment, which ESDC allegedly defines as below 6%.

[55] On the particular facts of the Applicants' cases, I am satisfied that it was not unreasonable for the officer to have concluded that the Applicants had not demonstrated the existence of a labour shortage. The information they provided was scant and vague. It was reasonably open to the officer to determine that it fell well below the level of detail that was required in the circumstances to meet their burden.

[56] With respect to the Lougheed location, the fact that only two of the seven labour market indicators for the job category in question (NOC 6641) indicated a potential labour shortage provided additional support for the officer's conclusion.

[57] With respect to the Seton location, such additional support was provided by the fact that eight "walk-ins" were hired after the Applicant claimed the following in its application: "After extensive recruitment efforts, we are unable to find local Canadians/PR's [sic] to fill this vacancy with our company." The fact that the unemployment rate for Calgary as a whole was reported to be 4.5% and 5.0% in February and March 2014, respectively, does not, in and of itself, establish that there is a labour shortage for FCA positions.

(4) The officer's conclusions regarding the Applicants' failure to meet minimum advertising requirements

[58] The officer's conclusions on this point related to her determination that the Applicants had not demonstrated sufficient efforts to hire Canadian citizens or permanent residents for their vacant positions, as contemplated by paragraph 203(3)(e) of the Regulations.

[59] This determination appears to have been based primarily on the fact that the Applicants' advertisements did not include the full addresses of the restaurants, as set forth in the Guidelines. Under the heading "DECISION: REFUSE," the officer's Notes to file state: "insufficient recruitment (no business address)." Elsewhere in those notes, it is stated that the advertisements were exactly the same as the advertisements that Ms. Lasenby had contemporaneously submitted in connection with a request for LMOs in Edmonton, Alberta, which had been refused due to missing business addresses. The officer observed that since she had refused the requests for LMOs in Edmonton on this basis, the results for the Lougheed and Seton locations would be the same, because the advertisements were the same. Her Notes to file indicate that she advised Ms. Lasenby of this decision in a telephone call on March 11, 2014 and that Ms. Lasenby informed

her the following week that she would submit written confirmation of her withdrawal of her requests for the LMOs. However, it appears that approximately two weeks later, the Third Party advised the officer to proceed with her assessments of the Applicants' requests.

[60] In the officer's Notes to file regarding the Lougheed location, it was noted that the five advertisements submitted in support of the request for an LMO identified the address as being either "Lougheed, Vancouver BC," " Lougheed, Burnaby," " Lougheed Hwy, Burnaby BC" and "various locations in Vancouver." With respect to the Seton location, it was noted that the advertisements submitted with the request identified the addresses as being either "Seton, Calgary, Alberta," "Seton, Calgary "or "Seton" (under a heading "various locations in Calgary"). The Notes to file stated that these addresses were not sufficient. A subsequent entry observed that amended advertisements containing the full business addresses were submitted after Ms. Lasenby was advised of the missing information. That entry refers to a dispute that I will deal with separately, in Part IV.C. of these reasons below.

[61] Leaving aside that separate dispute for the moment, the officer's determination that the Applicants' advertisements were insufficient because they did not include the full addresses of the employment locations was not unreasonable. This is particularly so given that (i) the Guidelines made it very clear that advertisements must include <u>both</u> the "location of work (local area, city or town)" and the business address of the place of employment, and (ii) it is reasonable to expect that potential candidates for part-time positions in a restaurant may well want to know this information before applying for a advertised position. In this latter regard, I accept Ms. Morandini's uncontested evidence that if "an employer's advertisements do not contain the

basic information required by the TFWP about the position, potential Canadian candidates are not provided with a fair opportunity to evaluate their suitability or interest in the position." This is especially so with respect to new locations, such as the restaurant in Seton. The Applicants did not adduce any evidence to support the proposition that their restaurants in Lougheed and Seton are so well known by the general public that it was not reasonably necessary for them to have included the specific addresses of those restaurants, so that potential candidates could make an informed decision as to whether the vacancies might be of interest to them.

[62] The fact that the Applicants may have amended their advertisements, subsequent to their request for the LMOs in November 2013, is irrelevant. As noted at paragraph 45 above, the Guidelines make it very clear that employers are expected to at least meet the minimum recruitment efforts required for lower skilled occupations before they apply for an LMO. For the reasons explained in that paragraph, this is not an unreasonable position. I note that Ms. Lasenby confirmed in her affidavit that she was advised by the officer in March 2014 that although ongoing recruitment efforts are required until the point in time at which a decision is made on a request for an LMO, "changes made such as the addition of addresses will not change the assessment of the original application." Moreover, in the applications, Ms. Lasenby checked off the box beside the following statement: "I am aware of and I have complied with the published recruitment and advertising requirements set by [ESDC]."

[63] In addition to her concern regarding the lack of full business addresses, the officer's Notes to file reflect a second concern with respect to the efforts made by the Applicants to target under-represented groups. With respect to the Lougheed location, those Notes to file stated that

the Applicant had not provided evidence of efforts to target under-represented groups. As a result, the Applicants were requested to provide the exact dates and duration of such efforts, together with contact information and the content of advertising. A subsequent entry in the officer's notes indicates that the follow-up information provided by the Third Party did not indicate the time and duration of the efforts to target under-represented groups.

[64] With respect to the Seton location, the Notes to file stated that, in April 2014, the Third Party had provided a list of under-represented groups targeted. However, as with the Lougheed location, no indication was provided of the dates or duration of the advertisements.

[65] In her affidavits, Ms. Lasenby explained why she was unable to confirm when the advertisements targeting under-represented groups were posted, and for how long. In brief, after she sent an advertisement to various organizations, together with a request that it be posted on the organization's bulletin board, she did not receive any response from the organizations confirming how long the advertisement had been posted. Ms. Lasenby further explained that after the officer requested the names of the persons who had been contacted at those organizations, she supplied such information in April 2014.

[66] The fax transmission sheets attached to Ms. Lasenby's affidavit indicate that many of the requests were sent to the organizations in question in mid-August 2013. With respect to the Seton location, there is a dispute between the parties regarding whether some of that documentation had in fact been sent to the officer. In any event, I am satisfied that it was not

reasonable for the officer to have insisted upon the additional information, regarding precisely when and for how long the advertisements were posted by the organizations in question.

[67] As noted by the Applicants, paragraph 203(3)(e) of the Regulations requires an assessment of whether reasonable efforts have been made to hire or train Canadian citizens or permanent residents. In turn, the Guidelines simply suggest that employers target under-represented groups by "trying" to recruit workers from organizations such as local or provincial/territorial employment centres and services centres for Aboriginal youth. This is precisely what the Applicants endeavoured to do. Assuming that they did in fact supply to the officer the information that they faxed to the organizations in question, together with the information regarding their contact persons at those organizations, it was unreasonable for the officer to have required additional information regarding the duration and timing of the posting of the advertisements by the organizations. This information was not readily available to the Applicants or the Third Party.

[68] It is not necessary to dwell on this particular issue, because the principal reason why the officer found the Applicants' recruitment efforts to have been insufficient was because the advertisements initially supplied with their requests for an LMO did not include the business addresses of the Lougheed and Seton locations. With that in mind, I am satisfied that the officer's overall conclusion regarding the insufficiency of those efforts was reasonable. This is subject to my assessment below of whether the officer erred by failing to provide an opportunity to the Applicants to address her concerns regarding the authenticity of some of the advertisements that were provided in connection with the Seton location.

(5) The overall reasonableness of the officer's refusal to issue the LMOs

[69] The officer's refusal to issue the positive LMOs requested by the Applicants was based on three principal grounds, namely, the Applicants' failure to demonstrate (i) that there was a reasonable employment need in their business for the full-time jobs they posted, (ii) the existence of a labour shortage for the FCA positions, and (iii) that they had made sufficient efforts to hire Canadians for their vacant positions.

[70] As noted at the outset of Part IV.A of these reasons, those determinations related to paragraphs 200(5)(b), 203(3)(c) and 203(3)(e) of the Regulations, respectively. After making those determinations, the officer concluded that the hiring of foreign workers for the Applicants' vacant positions "would have a negative impact on the Canadian labour market, specifically, the availability of employment opportunities for Canadians and permanent residents." In other words, the officer implicitly concluded that the Applicants had not demonstrated that the employment of the unnamed foreign nationals they sought to hire would likely have a neutral or positive effect on the labour market in Canada, as required by paragraph 203(1)(b) of the Regulations.

[71] Given that each of the determinations made by the officer in relation to the three principal issues which she identified was reasonable, her decision on the paramount issue of whether the employment of the unnamed foreign nationals would likely have a neutral or positive impact on the labour market in Canada was also reasonable.

B. *Did the officer err by failing to provide an opportunity to address her concerns regarding the authenticity of certain advertisements?*

[72] The Applicant in file IMM-2997-14 submits that the officer erred by failing to provide it with an opportunity to address her concerns regarding the authenticity of certain advertisements that it provided to the officer in March and April 2014. Several of those advertisements appear to have been posted in August 2013 and to have contained both the full address of the Seton location as well as an encouragement to "part-time candidates to apply as well."

[73] The requirements of procedural fairness will vary according to the specific context of each case (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at para 21 [*Baker*]). In the context of applications by employers for LMOs, a consideration of the relevant factors that should be assessed in determining those requirements suggests that those requirements are relatively low. This is because, (i) the structure of the LMO assessment process is far from judicial in nature, (ii) unsuccessful applicants can simply submit another application (*Maysch v Canada (Citizenship and Immigration)*, 2010 FC 1253, at para 30; *Li v Canada (Citizenship and Immigration)*, 2012 FC 484, at para 31 [*Li*]), and (iii) refusals of LMO requests do not have a substantial adverse impact on employers, in the sense of carrying "grave," "permanent," or "profound" consequences (*Baker*, above, at paras 23-25).

[74] Nonetheless, employers have a legitimate expectation that they will be afforded an opportunity to respond to any concerns that an ESDC officer may have regarding their credibility or the authenticity of documentation that they supply in support of a request for a positive LMO (*Baker*, above, at para. 26; *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006

FC 1283, at para 24; *Ma v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1042, at para 13; *Li*, above, at para 33).

[75] Accordingly, I agree that the officer erred by failing to provide the Applicant with an opportunity to address her concerns regarding the authenticity of the advertisements in question. This alone is a sufficient basis upon which to set aside the officer's decision in respect of the Seton location.

[76] In her Notes to file, under the heading "DECISION: REFUSE," and immediately below the list of the three principal reasons for refusing the Applicant's request for an LMO, the officer stated the following:

> "NOTE: Original recruitment provided with application used to render decision on recruitment. [Employer] has provided hard copies of SAME AD'S (same job order number and print dates) however they have been altered – very evident (different fonts used to alter location) specifically job bank and kijiji – issues of credibility and authenticity." (My emphasis)

[77] Further down on the same page of the officer's note, the officer wrote "Authenticity of ads targeting underrepresented groups."

[78] These entries into the officer's notes make it readily apparent that the officer's concerns regarding the authenticity of the information supplied by the Applicant played a significant role in her decision to refuse the LMO in connection with the Seton location.

[79] The officer's concerns in this regard were not unreasonable, particularly given the following: (i) the advertisements in question were submitted to her in March 2014, after the officer advised Ms. Lasenby of her concerns, yet those advertisements were purportedly posted in August 2013, (ii) some of those advertisements were posted by the same entities (Service Canada's Job Bank, Kijiji, Craigslist and AllStarJobs) as those whose advertisements were provided to the officer in November 2013, but did not contain the new information, (iii) the print font in which the business addresses were displayed in the Kijiji advertisements was different from the font in the rest of the advertisement, and (iv) some of the advertisements in question contained the very same language encouraging part-time candidates to apply that only appeared in the advertisements for the Lougheed location in March 2014.

[80] Nonetheless, given that the officer's concerns related to the authenticity of advertisements that contained the full business address of the Seton location and purportedly were posted in August 2013, it cannot be said that the failure of the officer to provide the Applicant with an opportunity to address her concerns was immaterial. This is because it is possible that the Applicant may have been able to alleviate those concerns, in which case the officer may well have reached a different conclusion regarding the Applicant's failure to include a full business address for the Seton location in its advertisements. Since this was the principal reason why the officer concluded that the Applicant had not met the minimum advertising

requirements set forth in the Guidelines, the officer's conclusion on this point may well have been different.

[81] In turn, had the officer's conclusion on this latter point been different, it is possible that her overall conclusion to refuse the LMO requested by the Applicant also may have been different. Although such an outcome would appear to be unlikely, due to the officer's findings on the other issues discussed in these reasons for judgment, it cannot be said to be remote. Stated differently, it cannot be said that the officer's ultimate conclusion was inevitable, even if she had accepted the authenticity of the advertisements in question (*Hassani*, above, at paras 35 – 44).

[82] Given my conclusion on this point, the officer's decision in respect of the Seton location will be set aside and the matter will be remitted to a different officer for reconsideration in accordance with these reasons.

C. *Did the officer fetter her discretion?*

[83] Notwithstanding the conclusion that I have reached immediately above, I will proceed to consider this issue because it has been raised by the Applicants with respect to the officer's decisions in respect of both the Lougheed and the Seton locations.

[84] The Applicants submit that the officer fettered her discretion in assessing their requests for a positive LMO because she "blindly followed" ESDC's policy, as expressed in the Guidelines, without taking their individual circumstances into account. The Applicants maintain

that although the ESDC's policies may be used to assist the officer, the officer should be prepared to make exceptions on the basis of an individual's case.

[85] More specifically, the Applicants submit that the officer refused their application exclusively or primarily on the basis that their advertisements did not contain the business addresses of their restaurant locations. They maintain that while this requirement may be identified in the Guidelines, paragraph 203(3)(e) of the Regulations simply requires an assessment of whether an employer has made reasonable efforts to hire or train Canadian citizens or permanent residents.

[86] In support of their position, the Applicants rely on Justice Zinn's observation in *Specialized Workers*, above, at paragraph 137, that "it might very well have been a 'fettering of discretion' to strictly follow HRSDC recruitment policies, i.e. if the information otherwise indicated that HD Mining's recruitment efforts were 'reasonable'." In that case, the officer did not strictly follow the HRSDC's policies in deciding to grant the LMOs. Justice Zinn declined to set aside the officer's decision on this ground, after implicitly determining that the information otherwise indicated that HD Mining's recruitment efforts were "reasonable."

[87] In contrast, the materials that have been filed in these proceedings do not "otherwise indicate" that the Applicants' recruitment efforts were reasonable, such that a departure from the Guidelines was warranted. By comparison with the extensive documentation that was before Justice Zinn in *Specialized Workers*, above, evidencing HD Mining's recruitment efforts, the information that the Applicants provided in support of their requests for positive LMOs was

sparse and uncompelling. There was nothing about the Applicants' particular circumstances, as reflected in the materials before the officer, that required a departure from the Guidelines or an explanation as to why no such departure was made.

[88] The Applicants also rely on this Court's decisions in *Xiao v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 731, at para 11 [*Xiao*], and *Campagna v Canada (Minister of Citizenship and Immigration)*, 2014 FC 49, at paras 11-15 [*Campagna*].

[89] Those cases involved applications for permanent residence and spousal sponsorship, respectively, that were returned to the applicants on the grounds of incompleteness, just before statutory changes were made which disadvantaged the applicants. In each case, the decision-maker relied on operational policies in returning the applications. The question was whether the applicants were entitled to have the applications that they resubmitted assessed in accordance with the statutory regime that existed at the time they filed their initial applications. The Court in both cases essentially held that the decision-maker's policies could not be relied on to support the position that the applications had not been submitted under the prior statutory regime.

[90] In reaching this conclusion in *Xiao*, above, the Court stated that the Minister's authority to impose mandatory requirements that have binding legal effect must be found in explicit and positive language in a relevant statute or regulation, and cannot be contained in guidelines or other non-binding instruments. That decision was followed in *Campagna*, above, after the Court determined that there was no clear authority in the Regulations for the decision by an officer to treat an incomplete application for spousal sponsorship as if it did not exist. It did not matter that

the CIC's operational manual appears to have clearly stated that an application does not exist until it is complete.

[91] It is trite law that administrative guidelines are not binding and cannot be applied in a manner that unduly fetters a decision maker's discretion, unless they constitute delegated legislation, having the full force of law (*Canada (Minister of Citizenship and Immigration) v Thamotharem*, 2007 FCA 198, at paras 62-72; *Herman v Canada (Minister of Citizenship and Immigration*, 2010 FC 629, at para 28). I was not referred to anything that might support the view that the Guidelines constitute such delegated legislation.

[92] So long as the Guidelines are not binding on officers, and are applied in a manner that permit departures where warranted, it is not unreasonable for officers to apply and follow them in the majority, or even the substantial majority of cases.

[93] In her affidavit, Ms. Morandini stated that thousands of work permits are issued to TFWs each year. This suggests that ESDC must process a very large volume of requests for LMOs annually. In this context, it is not reasonable to expect that the ESDC should explain why departures from the Guidelines are not made, unless the particular circumstances of an applicant's case are such that it would be reasonable for such a departure to have been given serious consideration. One would expect that such circumstances would be somewhat exceptional or unusual in nature.

[94] Broad adherence to the Guidelines in this type of flexible manner can be generally expected to have many public benefits. These include increased administrative efficiency, reduced backlogs, decreased scope for arbitrariness and increased certainty and predictability. Published operational policies such as Guidelines also serve the useful role of giving rise to legitimate expectations regarding the assessment framework that will be followed by a public agency such as the ESDC (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, at para 98 [*Agraira*]). They can also be expected to enhance the quality of the agency's decision-making (*Malik v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1283, at para 33).

[95] Moreover, documents such as the Guidelines can serve as "a useful indicator of what constitutes a reasonable interpretation" of legislation such as paragraph 203(3)(e) of the Regulations (*Agraira*, above, at para 85).

[96] The facts in the Applicants' cases are distinguishable from those in *Xiao*, above, and *Campagna*, above, most importantly because the Guidelines appear to be flexibly applied by the officer and others at ESDC. This is reflected in the officer's Notes to file and in several passages of Ms. Morandini's affidavit.

[97] In her Notes to file, the officer observed that Ms. Lasenby had stated that she had been informed by the Third Party that the officer had accepted other files with the same recruitment information. In this regard, the officer stated: "Advised [Ms. Lasenby] that each file is based on it's own merit (and facts on hand)." Although the officer proceeded to note that "since

government introduced change (July 31, 203 [sic] mandatory advertisements must be met," I am prepared to give her the benefit of the doubt, particularly given the first of her two quoted statements immediately above, and given Ms. Morandini's evidence.

[98] At paragraph 20 of her affidavit, Ms. Morandini stated the following in relation to advertising requirements: "ESDC does consider variations on these requirements in a variety of occupations where the labour market conditions or the advertising and recruitment norms for the occupation support a variation." To some extent, this is reflected in the Guidelines. The Guidelines also explicitly provide flexibility regarding the methods of advertising and targeting under-represented groups.

[99] ESDC's flexible approach to the Guidelines appears to be reflected elsewhere in Ms. Morandini's affidavit. For example, at paragraph 21 of her affidavit she states: "As such, without accurate and complete advertising completed prior to the date of the LMO application, the requirement to make sufficient efforts to hire Canadians and permanent residents under s. 203(3)(e) will typically not be satisfied." (My emphasis.) She then proceeds in paragraph 22 to state: "If the under-represented groups have not had the opportunity to apply for these positions, the employment of the foreign national could have a negative impact on the labour market in Canada." (My emphasis.)

[100] In view of the officer's Notes to file and Ms. Morandini's uncontested evidence, I am satisfied that the officer did not fetter her discretion by "blindly following" the Guidelines in refusing the Applicants' requests for a positive LMO.

[101] Notwithstanding the foregoing, the Guidelines could be much clearer regarding their flexible application. In this regard, an explicit statement at the beginning of the Guidelines, stating that departures from them may be made in appropriate circumstances, would have been helpful. In any event, in applying the Guidelines, officers would be well advised to avoid using language that may suggest that the Guidelines are binding in all circumstances.

[102] In a related submission, the Applicants also assert that the officer "cannot consider only one factor (business address) and refuse the application without assessing the application as a whole."

[103] It should be readily apparent from my assessment of the officer's decisions that she did not, in fact, refuse the Applicants' requests for positive LMOs based solely on their failure to include the business addresses of their restaurants in their advertisements. As discussed at the outset of Part IV.A. of these reasons for judgment, those requests were refused for three principal, and different, reasons.

## V. Conclusion

[104] Given the foregoing, the application in Court file IMM-2996-14 will be dismissed and the application in Court file IMM-2997-14 will be granted. The decision that is the subject of the latter application is set aside and will be remitted to a different officer for reconsideration in accordance with these reasons.

[105] No question for certification was suggested by the parties. I am satisfied that none arises on the particular facts of these applications.

## JUDGMENT

**THIS COURT'S JUDGMENT is as follows:**

1. The application in Court file IMM-2996-14 is dismissed.
2. The application in Court file IMM-2997-14 is granted. The decision that is the subject of that application is set aside and remitted to a different officer for reconsideration in accordance with these reasons.
3. There is no question for certification.

"Paul S. Crampton"
Chief Justice

## APPENDIX "1"

## Legislation

*Immigration and Refugee Protection Regulations*, SOR/2002-227

| | |
|---|---|
| Work Permits | Permis de travail — demande préalable à l'entrée au Canada |
| 200. (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that | 200. (1) Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis : |
| (c) the foreign national | c) il se trouve dans l'une des situations suivantes : |
| (i) is described in section 206, 207 or 208, | (i) il est visé par les articles 206, 207 ou 208, |
| (ii) intends to perform work described in section 204 or 205 but does not have an offer of employment to perform that work, | (ii) il entend exercer un travail visé aux articles 204 ou 205 pour lequel aucune offre d'emploi ne lui a été présentée, |
| (ii.1) intends to perform work described in section 204 or 205, has an offer of employment to perform that work and an officer has determined, on the basis of any information provided on the officer's request by the employer making the offer and any other relevant information, | (ii.1) il entend exercer un travail visé aux articles 204 ou 205, il a reçu une offre d'emploi pour un tel travail et l'agent a conclu, en se fondant sur tout renseignement fourni, à la demande de l'agent, par l'employeur qui présente l'offre d'emploi et tout autre renseignement pertinent, que : |
| (A) that the offer is genuine under subsection (5), and | (A) l'offre était authentique conformément au paragraphe |

(5),

(B) that the employer

(I) during the six-year period before the day on which the application for the work permit is received by the Department, provided each foreign national employed by the employer with employment in the same occupation as that set out in the foreign national's offer of employment and with wages and working conditions that were substantially the same as — but not less favourable than — those set out in that offer, or

(II) is able to justify, under subsection 203(1.1), any failure to satisfy the criteria set out in subclause (I), or

(iii) has been offered employment, and an officer has made a positive determination under paragraphs 203(1)(a) to (e); and

Assessment of employment offered

203. (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(c)(i) to (ii.1), an officer must determine, on the basis of an opinion provided by the Department of Employment and Social Development, of any information provided on the officer's request by the employer making the offer and

(B) l'employeur, selon le cas :

(I) au cours des six années précédant la date de la réception de la demande de permis de travail par le ministère, a confié à tout étranger à son service un emploi dans la même profession que celle précisée dans l'offre d'emploi et lui a versé un salaire et ménagé des conditions de travail qui étaient essentiellement les mêmes — mais non moins avantageux — que ceux précisés dans l'offre,

(II) peut justifier le non-respect des critères prévus à la sous-division (I) au titre du paragraphe 203(1.1),

(iii) il a reçu une offre d'emploi et l'agent a rendu une décision positive conformément aux alinéas 203(1)a) à e);

Appréciation de l'emploi offert

203. (1) Sur présentation d'une demande de permis de travail conformément à la section 2 par tout étranger, autre que celui visé à l'un des sous-alinéas 200(1)c)(i) à (ii.1), l'agent décide, en se fondant sur l'avis du ministère de l'Emploi et du Développement social, sur tout renseignement fourni, à la demande de l'agent, par l'employeur qui présente l'offre d'emploi et sur

of any other relevant information, if

tout autre renseignement pertinent, si, à la fois :

(a) the job offer is genuine under subsection 200(5);

a) l'offre d'emploi est authentique conformément au paragraphe 200(5);

(b) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;

b) le travail de l'étranger est susceptible d'avoir des effets positifs ou neutres sur le marché du travail canadien;

(c) the issuance of a work permit would not be inconsistent with the terms of any federal-provincial agreement that apply to the employers of foreign nationals;

c) la délivrance du permis de travail respecte les conditions prévues dans l'accord fédéral-provincial applicable aux employeurs qui embauchent des travailleurs étrangers;

(d) in the case of a foreign national who seeks to enter Canada as a live-in caregiver,

d) s'agissant d'un étranger qui cherche à entrer au Canada à titre d'aide familial :

(i) the foreign national will reside in a private household in Canada and provide child care, senior home support care or care of a disabled person in that household without supervision,

(i) il habitera dans une résidence privée au Canada et y fournira sans supervision des soins à un enfant ou à une personne âgée ou handicapée,

(ii) the employer will provide the foreign national with adequate furnished and private accommodations in the household, and

(ii) son employeur lui fournira, dans la résidence, un logement privé meublé qui est adéquat,

(iii) the employer has sufficient financial resources to pay the foreign national the wages that are offered to the foreign national; and

(iii) son employeur possède les ressources financières suffisantes pour lui verser le salaire offert;

(e) the employer

e) l'employeur, selon le cas :

(i) during the period beginning six years before the day on

(i) au cours de la période commençant six ans avant la

which the request for an opinion under subsection (2) is received by the Department of Employment and Social Development and ending on the day on which the application for the work permit is received by the Department, provided each foreign national employed by the employer with employment in the same occupation as that set out in the foreign national's offer of employment and with wages and working conditions that were substantially the same as — but not less favourable than — those set out in that offer, or

date de la réception, par le ministère de l'Emploi et du Développement social, de la demande d'avis visée au paragraphe (2) et se terminant à la date de réception de la demande de permis de travail par le ministère, a confié à tout étranger à son service un emploi dans la même profession que celle précisée dans l'offre d'emploi et lui a versé un salaire et ménagé des conditions de travail qui étaient essentiellement les mêmes — mais non moins avantageux — que ceux précisés dans l'offre,

(ii) is able to justify, under subsection (1.1), any failure to satisfy the criteria set out in subparagraph (i).

(ii) peut justifier le non-respect des critères prévus au sous-alinéa (i) au titre du paragraphe (1.1).

Factors — effect on labour market

Facteurs – effets sur le marché du travail

(3) An opinion provided by the Department of Employment and Social Development with respect to the matters referred to in paragraph (1)(b) shall, unless the employment of the foreign national is unlikely to have a positive or neutral effect on the labour market in Canada as a result of the application of subsection (1.01), be based on the following factors:

(3) Le ministère de l'Emploi et du Développement social fonde son avis relatif aux éléments visés à l'alinéa (1)b) sur les facteurs ci-après, sauf dans les cas où le travail de l'étranger n'est pas susceptible d'avoir des effets positifs ou neutres sur le marché du travail canadien en raison de l'application du paragraphe (1.01) :

(a) whether the employment of the foreign national will or is likely to result in direct job creation or job retention for Canadian citizens or

a) le travail de l'étranger entraînera ou est susceptible d'entraîner la création directe ou le maintien d'emplois pour des citoyens canadiens ou des

permanent residents;

résidents permanents;

(b) whether the employment of the foreign national will or is likely to result in the development or transfer of skills and knowledge for the benefit of Canadian citizens or permanent residents;

b) le travail de l'étranger entraînera ou est susceptible d'entraîner le développement ou le transfert de compétences ou de connaissances au profit des citoyens canadiens ou des résidents permanents;

(c) whether the employment of the foreign national is likely to fill a labour shortage;

c) le travail de l'étranger est susceptible de résorber une pénurie de main-d'oeuvre;

(d) whether the wages offered to the foreign national are consistent with the prevailing wage rate for the occupation and whether the working conditions meet generally accepted Canadian standards;

d) le salaire offert à l'étranger correspond aux taux de salaires courants pour cette profession et les conditions de travail qui lui sont offertes satisfont aux normes canadiennes généralement acceptées;

(e) whether the employer will hire or train Canadian citizens or permanent residents or has made, or has agreed to make, reasonable efforts to do so;

e) l'employeur embauchera ou formera des citoyens canadiens ou des résidents permanents, ou a fait ou accepté de faire des efforts raisonnables à cet effet;

(f) whether the employment of the foreign national is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute; and

f) le travail de l'étranger est susceptible de nuire au règlement d'un conflit de travail en cours ou à l'emploi de toute personne touchée par ce conflit;

(g) whether the employer has fulfilled or has made reasonable efforts to fulfill any commitments made, in the context of any opinion that was previously provided under subsection (2), with respect to the matters referred to in paragraphs (a), (b) and (e).

g) l'employeur a respecté ou a fait des efforts raisonnables pour respecter tout engagement pris dans le cadre d'un avis précédemment fourni en application du paragraphe (2) relativement aux facteurs visés aux alinéas a), b) et e).

**FEDERAL COURT**
**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKETS:** | IMM-2996-14 AND IMM-2997-14 |
| **DOCKET:** | IMM-2996-14 |
| **STYLE OF CAUSE:** | FRANKIE'S BURGERS LOUGHEED INC (DBA FATBURGER LOUGHEED) v THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA |
| **AND DOCKET:** | IMM-2997-14 |
| **STYLE OF CAUSE:** | SETON FB LTD. DBA FATBURGER v THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA |
| **PLACE OF HEARING:** | VANCOUVER, BRITISH COLUMBIA |
| **DATE OF HEARING:** | NOVEMBER 24, 2014 |
| **REASONS FOR UDGMENT AND JUDGMENT:** | CRAMPTON C.J. |
| **DATED:** | JANUARY 8, 2015 |

**APPEARANCES:**

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