

Federal Court



Cour fédérale

Date: 20151204

Docket: IMM-8464-14

Citation: 2015 FC 1346

Ottawa, Ontario, December 4, 2015

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

**TAHIRA YASMIN
MUNAYAR HUSSAIN RANA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act] of a decision made by an immigration officer of the High Commission of Canada [the Officer] refusing the Applicants' permanent residence as members of the Provincial Nominee Class. The Applicants are seeking to have the decision set aside and referred back to a different officer for redetermination.

[2] For the reasons that follow, the application is dismissed.

I. Background

[3] The Principal Applicant, Tahira Yasmin, a citizen of Pakistan, was named in a certificate issued by the province of Saskatchewan for a permanent resident visa application as a member of the Provincial Nominee Class as someone who may become a permanent resident on the basis of their ability to become economically established in Canada pursuant to section 87 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the IRPR or Regulations].

[4] The Saskatchewan Immigration Nominee Program [SINP] concluded that the Principal Applicant demonstrated an ability to economically establish herself in Saskatchewan based upon the Province's low unemployment rate and availability of more than 14,000 jobs, many of which were related to the Applicant's education and experience.

[5] It also relied upon the fact that the Principal Applicant had an offer of permanent full-time employment from an employer who verified that she had the skills required to perform the job, being that of a cashier working in a gas station.

[6] After exchanges with the SINP and a fairness letter being sent to the Applicants, the Officer acting pursuant to section 87(3) substituted his criteria for those of the SINP. It concluded that in order for the Applicants to become economically established, it is expected that they will be able to obtain employment in Canada and already have the abilities, education and work experience which will enable them to procure employment.

[7] Based on the foregoing criteria, the Officer concluded that the Applicant did not have the English language skills to be able to perform the duties required for the position of a cashier.

[8] This refusal is the decision currently under judicial review.

II. Impugned Decision

[9] The Officer noted the Applicants' sufficient settlement funds, but concluded that this in itself was an insufficient indicator of the Applicants' ability to become economically established.

[10] The Officer considered the prospective employer's letter indicating, amongst other considerations, that the Principal Applicant's language abilities were similar to those of other employees of his who successfully carried out their duties. The Officer nonetheless concluded that it was reasonable to expect a cashier to require at least moderate English language abilities to work in Saskatoon. Based upon the Applicant's most recent International English Language Testing System [IELTS] results placing her English language abilities below basic for listening, and at the basic level for reading, writing and speaking, she did not have the required level of English proficiency.

[11] The Officer indicated to the Principal Applicant that with the level of English language ability she had demonstrated, he was not satisfied that she would be able to perform the tasks of a cashier.

III. Statutory Provisions

[12] The relevant subsections of section 87 of the IRPR, SOR/2002-227 in force at the time are as follows:

87. (1) For the purposes of subsection 12(2) of the Act, the provincial nominee class is hereby prescribed as a class of persons who may become permanent residents on the basis of their ability to become economically established in Canada.

(2) A foreign national is a member of the provincial nominee class if

(a) subject to subsection (5), they are named in a nomination certificate issued by the government of a province under a provincial nomination agreement between that province and the Minister; and

(b) they intend to reside in the province that has nominated them.

(3) If the fact that the foreign national is named in a certificate referred to in paragraph (2)(a) is not a sufficient indicator of whether they may become economically established in

87. (1) Pour l'application du paragraphe 12(2) de la Loi, la catégorie des candidats des provinces est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada.

(2) Fait partie de la catégorie des candidats des provinces l'étranger qui satisfait aux critères suivants :

a) sous réserve du paragraphe (5), il est visé par un certificat de désignation délivré par le gouvernement provincial concerné conformément à l'accord concernant les candidats des provinces que la province en cause a conclu avec le ministre;

b) il cherche à s'établir dans la province qui a délivré le certificat de désignation.

(3) Si le fait que l'étranger est visé par le certificat de désignation mentionné à l'alinéa (2)a n'est pas un indicateur suffisant de l'aptitude à réussir son établissement économique au

Canada and an officer has consulted the government that issued the certificate, the officer may substitute for the criteria set out in subsection (2) their evaluation of the likelihood of the ability of the foreign national to become economically established in Canada.

Canada, l'agent peut, après consultation auprès du gouvernement qui a délivré le certificat, substituer son appréciation aux critères prévus au paragraphe (2).

(4) An evaluation made under subsection (3) requires the concurrence of a second officer.

(4) Toute décision de l'agent au titre du paragraphe (3) doit être confirmée par un autre agent.

IV. Issue

[13] This application raises the issue as to whether the Officer's assessment of the Principal Applicant's permanent resident under the Provincial Nominee Program was reasonable.

V. Standard of Review

[14] The applicable standard of review in this application is one of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9).

VI. Analysis

[15] There was some discussion during the hearing concerning the appropriate interpretation of the requirements of demonstrating an ability to become economically established in Canada. The Applicant referred to the decision of *Rezaeiazar v Canada (Minister of Citizenship and*

Immigration), 2013 FC 761 [*Rezaeiazar*] where at paragraph 77 Justice Russell considered the meaning of becoming economically established in Canada pursuant to paragraph 85 (3) (b) as follows:

[77] This brings up the issue of the relationship between the point system and economic self-sufficiency. The Applicant says that, in order to meet the requirements necessary to come to Canada pursuant to the skilled worker class, she must meet the points requirements set out in paragraph 85(3)(b) of the Regulations and demonstrate that she can become economically established in Canada. That is, that she can become economically self-sufficient within a reasonable amount of time upon her arrival in Canada. Given that the Applicant has already surpassed the points requirement by three points in this case, she says that the only issue is whether or not there is an additional requirement that she be able to establish herself economically in the occupation in which she qualified.

[Emphasis added]

[16] Based on the criterion in *Rezaeiazar* of the Applicant becoming “economically self-sufficient within a reasonable amount of time upon her arrival in Canada” and the employer’s letter indicating other employees with similar language deficits were successfully employed, I think it fair to conclude that the Applicant would have the ability to become economically established within a reasonable time after arrival in Canada.

[17] The Officer did not apply a test based on reasonably acquiring the abilities in a reasonable time period after arriving in Canada. Instead, the Officer required that the Applicants demonstrate that “they will be able to obtain employment in Canada and already have the abilities, education and work experience which will enable them to procure employment.”

[Emphasis added]

[18] I am satisfied that the Officer applied an appropriate definition of the “the ability to become economically established” for the purpose of section 87 (3) of the Regulations. I find that the circumstances before Justice Russell are distinguishable from those in this matter. In *Rezaeiazar*, the applicant had “already surpassed the points requirement” and therefore, her abilities, education and work experience were not in issue.

[19] It is understandable that the Regulations would require that persons arriving in Canada to occupy positions already possess the necessary abilities, education and work experience to discharge their duties. Otherwise the granting of permanent residency would be based upon a contingent outcome in the future. Once accepted as a permanent resident under the program, the foreign national maintains that status, even if it proves that she is unable to perform in the position, or leaves the Province to live somewhere else in Canada.

[20] It is therefore a reasonable policy that an employer’s representation of the future successful outcome of someone in the position offered should not outweigh an objective reasonable conclusion that an Applicant who cannot perform the tasks of the position offered is not able to participate sufficiently in the Canadian labour market to economically support herself.

[21] Accordingly, I accept the Officer’s implicit interpretation of the requirement of becoming economically established in Canada that applicants must demonstrate upon arrival in Canada that they already have the abilities, education and work experience which will enable them to procure employment.

[22] On this basis, I also reject the Applicant's argument that in engaging considerations beyond those relied upon by the SINP, the Officer was basing his decision on irrelevant considerations. The Officer acknowledged that deference was owed to the factors underpinning the Province's nomination of persons for the Provincial Nominee Class. Nevertheless, by section 87(3) of the IRPR, it remains the mandate of the Minister to determine whether the Principal Applicant can support herself economically. Accordingly, it is reasonable that the Principal Applicant must be able to demonstrate that she is capable of performing the job offered which includes the communication and related language skills to perform in the position.

[23] With respect to the substance of the Officer's decision, I furthermore find it reasonable to conclude that for a position that has tasks of complexity that range from basic to moderate, the Principal Applicant should have at least, moderate English language proficiency. The Principal Applicant possessed only "Extremely limited user" for listening skills, and only basic abilities in reading, writing and speaking in English. These abilities improved slightly on the second test.

[24] Additionally, while the employer's statement that he may be prepared to keep persons in a position even though the person does not possess the skills to perform the position because of a shortage of available workers to otherwise perform the tasks, the employer nevertheless did not explain how someone could be a cashier who cannot understand customers, or provide services or maintain or prepare reports with only basic reading, writing and speaking skills.

[25] I similarly agree with the Officer's conclusion that the employer's response that the language ability required for the position is "not high" does not explain how the Principal

Applicant would be able to perform her duties with only basic and below basic English language abilities except by the employee learning on the job.

[26] An employer's representation of the future successful outcome of someone in the position offered does not outweigh an objective reasonable conclusion that an applicant who cannot perform the tasks of the position offered is not able to participate sufficiently in the Canadian labour market to economically support herself.

[27] I also conclude that the decision of *Sran v Canada (Minister of Citizenship and Immigration)*, 2012 FC 791 cited by the Applicants where it was found that the officer was applying the criteria from the skilled worker class is distinguishable inasmuch as there is no suggestion here that a language skill is not relevant to being able to perform the job, whether or not it is also a factor for a skilled worker NOC evaluation.

[28] Given the deference owed to the decision-maker, including applying his own statute if this could be considered an interpretation issue, I find the evidence sufficient to support the Officer's conclusion that the Applicant does not have the English language skills to be a cashier. As such, the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

VII. Conclusion

[29] The application is dismissed and no question will be certified for appeal.

JUDGMENT

THIS COURT'S *JUDGMENT* is that the application is dismissed and no question is certified for appeal.

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8464-14

STYLE OF CAUSE: TAHIRA YASMIN AND MUNAYAR HUSSAIN RANA
v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

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JUDGMENT AND REASONS: ANNIS J.

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