

Federal Court



Cour fédérale

Date: 20260225

Docket: IMM-24644-24

Citation: 2026 FC 262

Toronto, Ontario, February 25, 2026

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

NEXT ALUTECH LTD.

Applicant

and

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

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Next Alutech Ltd [Company], brings this consolidated application for judicial review of separate decisions, each dated December 16, 2024 [Decisions], of an officer [Officer] of Employment and Social Development Canada [ESDC] refusing the Company's Labour Market Impact Assessment [LMIA] applications [LMIA Applications]. The Officer considered that the Company had not demonstrated a reasonable ability to fulfill the terms of job

offers for the hiring of aluminum siding installer and general construction labourer positions as it was required to do under paragraph 200(5)(c) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*].

[2] I am allowing this application as the Company has shown that the Officer failed to address relevant documents provided by the Company to show its ability to fulfill the terms of the job offers that were the subject of the LMIA Applications. The Officer's repeated and persistent demand for an attestation from a financial institution demonstrates a fettering of the Officer's broad discretion under subsection 203(2.1) of the *Regulations*, which allows an officer to consider any information provided by an employer.

II. Legislative Framework

[3] Pursuant to subsection 200(5) of the *Regulations*, employers applying for LMIAs for the hire of Temporary Foreign Workers [TFWs] must demonstrate the genuineness of the proposed job offer, which includes showing that the employer is reasonably able to fulfill the terms of the offer of employment such as the TFW's pay (paragraph 200(5)(c) of the *Regulations*).

[4] Subsection 203(2.1) of the *Regulations* provides that the assessment provided by ESDC in considering whether a job offer is genuine under subsection 200(5) of the *Regulations*, "must be based on any information provided by the employer making the offer and any other relevant information."

[5] Publicly-available ESDC guidelines titled, Employment and Social Development Canada, *Guidelines on Business Legitimacy*, (Guideline), (online: 22 November 2024) [*Guidelines*], state that employers who have not obtained a positive LMIA in the last two years must provide at least one of the following documents in support of their application: (i) T2 – Schedule 100 and T2 – Schedule 125; (ii) T2042; (iii) T2125; (iv) T3010; (v) recent T4; (vi) attestation from a financial institution confirming that the business is in good standing and can pay the proposed TFWs for the duration of their employment; or (vii) any other documents that an applicant considers appropriate as proof of an ability to fulfill the terms of the job offer.

III. Facts

A. *The Officer's assessment of the LIMA Applications*

[6] The Company designs, fabricates and installs cladding solutions including aluminum panels, siding and custom architectural trims. It submitted the LMIA Applications in August 2024.

[7] The Officer contacted the Company on November 13, 2024, via email for the purpose of scheduling a LMIA assessment interview. The Officer also requested outstanding documentation and information.

[8] On November 14, 2024, the Company provided its most recently issued PD7A form and T2 Schedule 100 and 125 forms. The T2 documents showed negative retained earnings and a modest net income in 2022, and negative retained earnings and a negative net income in 2023.

[9] After a phone interview with the Managing Director for the Company on November 14, 2024, the Officer sent an email to the Company advising that in light of the negative tax documents, an attestation from a financial institution would be required.

[10] On November 22, 2024, the Company's financial institution notified the Applicant that they would be unable to provide an attestation letter in the format requested by ESDC due to possible legal ramifications. The Company immediately emailed the Officer advising of its inability to obtain the requested attestation. Instead, the Company provided alternate documentation including recent business bank account statements (showing a positive balance), client invoices and purchase orders.

B. *The Additional Documents provided by the Company*

[11] On December 10, 2024, the Officer notified the Company that an attestation from a financial institution would be required by December 13, 2024, failing which the Officer would render a decision with the documentation on file. A day before the deadline, the Company again requested that the Officer consider alternate financial documentation in lieu of an attestation.

[12] On December 12, 2024, the Company emailed the Officer requesting that she consider additional documents or escalate the application assessments to a TFW program supervisor. The Company provided: (i) 2023 T2 Schedule 100 and 125 forms; (ii) updated business bank account statements (showing a positive balance); (iii) an internal customer accounts balance summary (showing outstanding payments); and (iv) client invoices matching the information listed on the balance summary [collectively, the Additional Documents].

[13] On December 13, 2024, the Officer confirmed receipt of the Additional Documents, and without commenting on them, repeated her demand for an attestation from a financial institution.

C. *The Decisions*

[14] On December 16, 2024, the Officer issued negative assessments for the LMIA Applications due to the Company's inability to provide an attestation from a financial institution. The notes accompanying the Decisions cite paragraph 200(5)(c) of the *Regulations* and reference the Officer's finding that the Company has not demonstrated a reasonable ability to fulfill the terms of the job offer.

IV. Issues and Standard of Review

[15] The only issue raised by the Applicant is whether the Officer fettered her discretion.

[16] Issues alleging the fettering of a decision maker's discretion are not particularly amenable to a standard of review; however a decision that is the product of fettered discretion should be set aside on the basis of a reviewable error regardless of the nomenclature that is employed to reach this result (*Frankie's Burgers Lougheed Inc v Canada (Employment and Social Development)*, 2015 FC 27 at para 24 citing *Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299 at paras 20-24).

V. Analysis

[17] The Company submits that the Officer fettered her discretion by singularly focusing on the Company's inability to provide an attestation from a financial institution without considering the Additional Documents the Company provided in lieu of an attestation. The Company relies on the authority of *Seven Valleys Transportation Inc v Canada (Employment and Social Development)*, 2017 FC 195 [*Seven Valleys*], in which the Court found that it was unreasonable for an officer to rely solely on one preferred factor or data point while ignoring relevant information provided by the applicant and that doing so amounts to a fettering of discretion (*Seven Valleys* at paras 31 and 33).

[18] The Respondent defends the Decisions on the basis that it was well within the Officer's discretion to assess the documents submitted by the Company and require more or other documents. The Respondent submits that while the Officer wanted a bank attestation, her notes show that this was prompted by the Company's negative tax documents for the years 2022 and 2023. As for the Additional Documents, the Respondent submits that it is apparent why these documents were rejected by the Officer since even if they show significant earnings including in 2024, they provide an incomplete picture of the Company's finances.

[19] While the Respondent's walk-through of the Additional Documents provides a reasoned basis for finding them insufficient, they are not the Officer's reasons, which cannot be buttressed (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 96). The

fact is that the Officer's notes do not show that she considered the Additional Documents which clearly fall within the ambit of subsection 203(2.1) of the *Regulations* and the *Guidelines*.

[20] Given that an attestation from a financial institution is not mandatory, I find that the Officer fettered her discretion in insisting that the Company provide one and in failing to give effect to the broad range of possible alternative financial information that she was entitled to consider (*Seven Valleys* at para 32 citing *Paturel International Company v Canada (Employment and Social Development)*, 2016 FC 541 at paras 11-12).

VI. Conclusion

[21] This application for judicial review is granted as the Officer fettered her discretion in assessing the LMIA Applications, which is a reviewable error justifying this Court's intervention.

[22] No question of general importance for certification has been proposed by the parties, and none arises from the fact of this case.

JUDGMENT in IMM-24644-24

THIS COURT'S JUDGMENT is that:

1. The consolidated application is granted;
2. The decisions dated December 16, 2024 are quashed and the matters shall be remitted back to a different decision maker for redetermination.
3. There is no question of general importance for certification.

"Allyson Whyte Nowak"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-24644-24

STYLE OF CAUSE: NEXT ALUTECH LTD. v THE MINISTER OF
EMPLOYMENT AND SOCIAL DEVELOPMENT
CANADA

PLACE OF HEARING: HELD BY WAY OF ZOOM VIDEOCONFERENCE

DATE OF HEARING: FEBRUARY 24, 2026

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