

Date: 20080414

Docket: IMM-1206-07

Citation: 2008 FC 473

Ottawa, Ontario, April 14, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

CHANDRAKANT GORDHANDAS HINSU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This judicial review application is in respect of a decision rendered by a Visa Officer (Officer) refusing the Applicant's application for permanent resident visa on the grounds that he did not qualify under the specified national occupation classifications of financial manager, financial auditor and accountant, personnel and recruitment officer, or specialist in human resources. The

Applicant relies solely on the issues raised in his Supplemental Memorandum and therefore the only issue before the Court is the adequacy of the assessment made by the Officer.

II. BACKGROUND

[2] The Applicant is a citizen of both Kenya and India. He filed his application for permanent residence in Rome and the file was subsequently transferred to the office in Nairobi, Kenya.

[3] The Applicant was interviewed in May 2004 by the Officer but no decision was made at the end of that interview. Subsequent to the interview, the Applicant's immigration consultant filed further submissions with the Officer stressing the factor of personal suitability.

[4] On November 23, 2006, the Applicant was informed of his failure to meet the requirements with respect to the job classifications for immigration to Canada.

[5] During the interview the Officer not only asked the Applicant to prepare certain documents such as a basic balance sheet, but also inquired into the Applicant's knowledge of audits within the firm he worked at, the income tax structure in Kenya and details of the financial systems that he allegedly developed for the company over the past 18 years. In all respects, the Applicant was found to be deficient in his responses. It was for this reason that the Officer denied the application.

III. ANALYSIS

[6] The specific provision under which the Officer reached his conclusion was paragraph 75(2)(c) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations), which requires that “during the period of employment [a visa applicant] performed a substantial number of the main duties of the occupation as set out in the occupational descriptions of the *National Occupational Classification*, including all of the essential duties”. The principal factual issues before this Court concerned the interview itself, and whether or not the Officer properly inquired into the duties that were performed by the Applicant and whether they met this requirement.

[7] With respect to the standard of review, it is now clear under *Dunsmuir v. New Brunswick*, 2008 SCC 9, that the only standards to be considered are that of correctness and reasonableness. As the determination of whether a person is eligible under the economic class provisions of the Regulations is a question of mixed fact and law, the appropriate standard of review is reasonableness.

[8] In regard to the reasonableness of the Officer’s decision, the Court is mindful that the Officer was present at the interview, that the Officer has detailed and specific knowledge in respect of the *National Occupational Classification* and that the Officer is exercising a largely discretionary power.

[9] The Applicant's argument is that the CAIPS notes show that the Officer did not perform a proper assessment of the Applicant's visa application and that he failed to consider evidence or otherwise produced an inadequate record of the reasons for his decision. It was the Applicant's contention that the Officer's questions regarding personnel management only covered one of the several duties listed and that the Officer essentially did not perform a thorough review of the occupational requirements.

[10] As this matter turns upon what occurred during the course of the interview, the Court must consider the specific evidence. The affidavit of the Officer outlines the several areas canvassed by her during the interview including questions regarding other substantive duties performed. On the other hand, the Applicant's affidavit is silent as to what was said. No rebuttal evidence has been filed in respect of the Officer's affidavit nor was any cross-examination of the Officer conducted.

IV. CONCLUSION

[11] In the face of the evidentiary gap presented by the Applicant, the Court must conclude that the better evidence is that of the Officer. That evidence indicates a thorough review of all of the relevant issues in respect of the various job classifications. Therefore, I must conclude that the Applicant has not made out a case for judicial intervention and this application for judicial review will be dismissed.

[12] There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review will be dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1206-07

STYLE OF CAUSE: CHANDRAKANT GORDHANDAS HINSU
and
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 8, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** Phelan J.

DATED: April 14, 2008

APPEARANCES:

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Ms. Janet Chisholm FOR THE RESPONDENT

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