

Federal Court



Cour fédérale

Date: 20090508

Docket: IMM-2626-08

Citation: 2009 FC 477

Ottawa, Ontario, May 8, 2009

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

BHARATKUMAR KANTIBHAI PATEL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] In 2002, Mr. Bharatkumar Patel, a citizen of India, applied for permanent residence in Canada as a skilled worker (a chemist). A visa officer in New Delhi denied Mr. Patel's application in 2008 on the basis that Mr. Patel's experience did not match the description of the role of a chemist as set out in the National Occupational Classification (NOC 2112).

[2] Mr. Patel argues that the officer failed to conduct a proper assessment of his application and treated him unfairly in the process. I agree with Mr. Patel on the former ground, and will allow this application for judicial review on that basis.

[3] The issue is whether the officer conducted a proper assessment of Mr. Patel's application when he found that Mr. Patel's experience fell outside the NOC description of a chemist.

I. Factual Background

[4] In his application, Mr. Patel stated that he had worked as a "laboratory chemist" with a firm called Synthopharm Chemicals from 2000 to 2004. From then on, he worked as a "quality control chemist" with Astral Polytechnik Ltd. He submitted a letter from Synthopharm but, because the letter did not set out what his duties were, the officer did not consider the letter helpful. Mr. Patel also supplied two documents from Astral Polytechnik that described his duties there. In his role as Senior Chemist for Quality Assurance and Quality Control, Mr. Patel's duties included:

- operating various instruments for analyzing and testing compounds, including sieve analysis, moisture content, viscosity, bulk density, vicat softening point, melting point apparatus, refractive index burst pressure testing, water bath, hot air oven, zero degree chamber, injection moulding machines and sulphated ash content tester;
- compounding and mixing raw material for the manufacture of PVC pipes and fittings;
- implementing good laboratory practices; and
- achieving ISO 9001 approval for the plant's testing practices from the American Society of Testing of Materials.

II. Did the Officer Perform a Proper Assessment?

[5] I can overturn the officer's decision only if I find that it was unreasonable.

[6] To succeed in his application, Mr. Patel had to show that he had at least one year's experience performing the actions described in the NOC's "Lead Statement", and a substantial number of the main duties. The Lead Statement for NOC 2112 (Chemists) says that chemists "conduct research and analysis" for various purposes including "quality control". They also conduct research into basic chemical processes "to create or synthesize new products". They work in various settings including "quality control laboratories" and "manufacturing" establishments.

[7] The NOC goes on to list the main duties of a chemist. They include:

- Analyze chemical compounds;
- Develop programs of analysis to ensure quality control;
- Conduct programs of sample and data collection and analysis; and
- Conduct research into the properties of chemical compounds or to evaluate new products.

[8] After reviewing Mr. Patel's application, the officer stated in his notes that Mr. Patel's duties were "not at all the duties of a Chemist". In his letter of refusal, the officer said that Mr. Patel's responsibilities did "not match the lead statement or main duties of a Chemist".

[9] In my view, the officer's conclusion was unreasonable in the sense that it was not justified, transparent or intelligible. Nor does it fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, para. 47). As I read them, Mr. Patel's responsibilities at Astral Polytechnik lined up with the NOC's Lead Statement and corresponded with many of the specified duties of a chemist. The officer appears not to have appreciated what Mr. Patel's role was at Astral Polytechnik or the purposes for which Mr. Patel was operating various testing instruments at the plant.

III. Conclusion and Disposition

[10] In my view, the officer's assessment of Mr. Patel's application was unreasonable because it did not take account of Mr. Patel's role or responsibilities as a senior chemist. Accordingly, I must allow this application for judicial review and order a re-assessment of Mr. Patel's application by a different officer. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT IS that

1. The application for judicial review is allowed. The matter is referred back to another officer for re-assessment.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2626-08

STYLE OF CAUSE: BHARATKUMAR KANTIBHAI PATEL v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 12, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: May 8, 2009

APPEARANCES:

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