Federal Court  Cour fédérale

Date: 20130412

Docket: IMM-3021-12

Citation: 2013 FC 371

Ottawa, Ontario, April 12, 2013

PRESENT: The Honourable Madam Justice Gleason

BETWEEN:

SHANZA BAIG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is a citizen of Pakistan, who sought permanent residence in Canada as a member of the Federal Skilled Worker Class, described in section 75 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. She claimed to possess the requisite one year's experience in the National Occupational Classification [NOC] 4131 – College and Other Vocational Instructors. The applicant had worked for at least a year in the position of lecturer in law at the Pakistan College of Law, which is affiliated with the University of the Punjab. In support of her application, she provided a listing of the duties she performed in that position (much of which was

expressed in terms identical to the descriptor contained in NOC 4131), an excerpt from the College's calendar, showing her to be a member of the Law Faculty and providing a brief biography, and a confirmation of employment letter from the Dean of the Law Faculty, which provided some additional detail regarding the applicant's duties as a lecturer.

[2] Her application was rejected by an Immigration Officer at the Canadian High Commission in London on February 27, 2012. In the letter advising the applicant of the rejection of her application, the Officer provided extremely short reasons, stating only that:

> [The] main duties that [the applicant] listed [did] not indicate that [she] performed the actions described in the lead statement for the occupation, as set out in the occupational descriptions of the NOC or that [the applicant] performed all of the essential duties and a substantial number of the main duties, as set out in the occupational descriptions of the NOC.

[3] The Officer provided more detail in the Computer Assisted Immigration Processing System [CAIPS] notes, which the Officer prepared contemporaneously with the decision; these notes are recognized as forming part of the Officer's decision (*Ziaei v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1169 at para 21; *Toma v Canada (Minister of Citizenship and Immigration)*, 2006 FC 779 at para 10). In the CAIPS notes, the Officer stated:

> Although the NOC Code 4131 corresponds to an occupation specified in the instructions, the information submitted to support this application is insufficient to substantiate that applicant meets the occupational description and/or a substantial number of the main duties of NOC 4131. The employment letters do not contain any list of duties to demonstrate that [the applicant] performed a substantial number of the main duties of NOC 4131.

[4] In this application for judicial review, the applicant argues that the Officer's decision should be set aside because the Officer erred in failing to apply reason and common sense to assess the totality of the evidence, which demonstrates that the applicant meets the requirements of NOC 4131 as a university lecturer must necessarily perform the tasks set out in the NOC 4131. The applicant also argues that the Officer unreasonably fettered his or her discretion by relying on departmental guidelines and failing to assess the merits of the applicant's application. The applicant seeks costs, arguing that the decision is so clearly erroneous that an award of costs is warranted.

[5] The respondent argues that the decision is reasonable, because it was open to the officer to reject the details the applicant provided in her application as they were copied verbatim from the NOC descriptor and that it was likewise open to the Officer to reject the letter from the Dean as it did not confirm that the applicant performed the duties listed in the descriptor for NOC 4131. The respondent argues that this case is on all fours with the recent decision of Justice Russell in *Zeeshan v Canada (Minister of Citizenship and Immigration)*, 2013 FC 248 [*Zeeshan*], where he upheld a visa officer's decision on similar facts. Insofar as concerns the allegation the Officer fettered his or her discretion, the respondent argues that there is no evidence that the Officer relied on any guideline in making the decision and thus this argument is without foundation.

[6] The respondent is correct in the latter assertion as there is no evidence that the Officer relied on any guidelines in making her decision. Thus, the sole issue for determination is whether the Officer's conclusion is reasonable. For the reasons set out below, I have determined that it is and that this application should accordingly be dismissed.

Standard of Review

[7] The standard of review applicable to the applicant's challenge to the Officer's decision is reasonableness as the applicant is challenging the factual findings made by the Officer (*Patel v Canada (Minister of Citizenship and Immigration)*, 2011 FCA 187 at para 36; *Qin v Canada (Minister of Citizenship and Immigration)*, 2013 FC 147 at para 16; *Nasr v Canda (Minister of Citizenship and Immigration)*, 2011 FC 783 at para 12; *Roohi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1408 at para 13). The reasonableness standard is a deferential one and involves consideration of "the existence of justification, transparency and intelligibility within the decision-making process [and of] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

Factual findings reasonable

[8] As noted, the particulars offered by the Officer in support of her conclusion were that the "employment letter" the applicant submitted did "not contain any list of duties to demonstrate that [the applicant] performed a substantial number of the main duties of NOC 4131." Contrary to what the applicant asserts, this finding does not involve a conclusion that there were no details in the supporting documentation offered by the applicant (which would be erroneous as the Dean's letter does provide some detail regarding the nature of the tasks performed by the applicant). Rather, the Officer held that the details provided by the Dean did not establish that the applicant performed a substantial number of the main duties of the NOC 4131.

[9] In his letter, the Dean noted that the applicant's "major responsibilities included lecturing in the areas of Jurisprudence, International Law, Property Laws, Constitutional Law, Human Rights […] Humanitarian Law […] and [the] English Legal System." He went on to note that she was a member of the Editorial Board of the Pakistan Law review, the faculty member responsible for the College newsletter and involved in the Faculty's legal aid clinic.

[10] The main duties in NOC 4131, on the other hand, encompass:

- Teach students using a systematic plan of lectures, demonstrations, discussion groups, laboratory work, shop sessions, seminars, case studies, field assignments and independent or group projects
- Develop curriculum and prepare teaching materials and outlines for courses
- Prepare, administer and mark tests and papers to evaluate students' progress
- Advise students on program curricula and career decisions
- Provide individualized tutorial/remedial instructions
- Supervise independent or group projects, field placements, laboratory work or hands-on training
- Supervise teaching assistants
- May provide consultation services to government, business and other organizations
- May serve on committees concerned with matters such as budgets, curriculum revision, and course and diploma requirements.

[11] In my view, this case is indeed on all fours with Justice Russell's decision in *Zeeshan*. There, an almost identically-worded reference letter was found by the visa officer to be insufficient

to establish that the applicant met the almost identical classification of NOC 4121 University Professors. (Parenthetically, this category is likely the more applicable one in this case than the category the applicant applied under, as she taught at a university as opposed to a college or vocational school.) In *Zeeshan*, Justice Russell wrote at paras 43 and 44:

> 43 The letter from Lahore College submitted by the Principal Applicant reads as follows:
>
> > I, in the capacity of registrar had been known Ms. Talat Zeeshan since Oct 2004. She is presently a lecturer in Physics Department LCWU, Lahore in BPS-18. She is a well qualified and experienced teacher. Her performance is up to the mark. Her total experience at LCWU is five years to date.
>
> Her annual salary is PKR 2,50,000/-only. I wish her success in every field of life.
>
> 44 At best, this letter tells us that the Principal Applicant teaches physics and, by inference, that she prepares and delivers lectures to students. I do not think the letter can be said to provide evidence that the Principal Applicant has performed a substantial number of the main duties, including all of the essential duties in the NOC 4121 description, and it was not unreasonable for the Officer to come to this conclusion. These deficiencies in the Principal Applicant's submissions cannot be rectified by her assertion that she has performed the NOC 4121 duties, or by listing her academic certificates and degrees. The application was simply deficient in a fundamental requirement that the guidelines say is necessary.

[12] In result, Justice Russell determined that the officer's decision – premised on the same grounds as here – was reasonable. While I am sympathetic to the applicant's arguments regarding the need for officers to apply common sense to their review of visa applications, given the strikingly similarity between this case and *Zeeshan,* I believe that I should follow it as a matter of comity and, accordingly, am dismissing this application.

[13] Neither party submitted a question for certification and none arises as this decision is closely tied to its facts. The respondent did not seek costs, and there is no basis to depart from the general rule that costs are not awarded in immigration matters because there is nothing about this case that would justify an award of costs.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed;

2. No question is certified under section 74 of the *Immigration and Refugee Protection Act*, SOR/2002-227; and

3. There is no order as to costs.

"Mary J.L. Gleason"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3021-12
STYLE OF CAUSE:	*Shanza Baig v The Minister of Citizenship and Immigration*
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REASONS FOR JUDGMENT AND JUDGMENT:	GLEASON J.
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APPEARANCES:

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