

Federal Court



Cour fédérale

Date: 20130517

Docket: IMM-7130-12

Citation: 2013 FC 515

Ottawa, Ontario, May 17, 2013

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

REZA GHANNADI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This judicial review concerns a decision of a Visa Officer [Officer] denying the Applicant's application for permanent residence under the Federal Skilled Worker Class as a Construction Manager.

II. BACKGROUND

[2] The Applicant is a citizen of Iran who applied for a visa based on his experience as a construction manager.

[3] The visa application included the Applicant's curriculum vitae, a letter from an earlier employer directed to his work as a marine structure designer and a letter from his current employer, Chausse Construction Co., which listed the duties performed since his employment in March 2006.

[4] The Officer denied the application on the basis of insufficient evidence that the Applicant had performed the occupations specified in the National Occupation Classification [NOC] and Ministerial Instructions.

[5] The only reason for the Officer's conclusion that the Applicant had insufficient evidence appears to be that the employer's letter closely paraphrased the occupational descriptions of the NOC, thus diminishing its credibility. In the Officer's Notes he describes the employer's letter as "self-serving and was prepared solely for the purposes of this application".

[6] The Applicant raises two issues: the reasonableness of the Officer's conclusion and breach of procedural fairness in not permitting the Applicant to address the Officer's concerns.

III. ANALYSIS

[7] It is by now trite law that the Officer's conclusions are subject to the reasonableness standard of review (see *Kamchibekov v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1411, 210 ACWS (3d) 222) and procedural fairness is subject to correctness.

[8] With respect to the Officer's assessment of the visa application, the employer's letter from Chaussee Construction is the sole basis for his negative conclusion on the grounds that it closely paralleled the NOC job description.

[9] Firstly, a fair review of that employer's letter does not disclose the type of mindless copying of the NOC description which gives some basis for undermining the weight to be given to that evidence. The letter does not list all of the functions in the NOC description and it separates out what functions were performed in respect of two key projects. Those functions were not identical with each project. This was an unfair and unreasonable characterization.

[10] Secondly, as Justice Heneghan held in *Siddiqui v Canada (Minister of Citizenship and Immigration)* (January 26, 2011), Toronto IMM-2327-10 (FC), the use of language in reference letters similar to job descriptions in the NOC Code "is not, *per se*, grounds for dismissing those reference letters".

[11] There is no reference to the CV and the job performance there or to other evidence which was consistent with the Applicant's description of his work experience.

[12] It was unreasonable to reject the employer's letter. The Officer did not just give it less weight, he totally rejected that evidence as not credible. It is hardly surprising that employer's letters would closely mirror the NOC; after all, it is the information that the government says is relevant and an exercise in use of a thesaurus to find synonyms is not likely to provide any better evidence.

[13] The Officer also discounted the employer's letter because it was prepared for the sole purpose of the Applicant's application. It is difficult to see what other reason an employer would have to create such a letter. The comment is irrelevant and prejudicial.

[14] Under the circumstances of this case, the Officer's conclusion was unreasonable.

[15] As to the breach of procedural fairness, the Officer used the term "credibility" to undermine the employer's letter. If, as it appears, the Officer concluded that the letter was a fraud or misrepresentation, the Applicant would have been entitled to an opportunity to address that concern (*Ma v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FC 1042, 84 Imm LR (3d) 280, and *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283, [2007] 3 FCR 501). If what the Officer meant is that he gave it less weight, it was an unreasonable basis to conclude lack of sufficiency of evidence.

IV. CONCLUSION

[16] Therefore, this judicial review will be granted, the Visa Officer's decision will be quashed and the application referred to a different visa officer for a new decision. There is no question for certification.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review is granted, the Visa Officer’s decision is quashed and the application is to be referred to a different visa officer for a new decision.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7130-12

STYLE OF CAUSE: REZA GHANNADI

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 7, 2013

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

DATED: May 17s, 2013

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