

Federal Court



Cour fédérale

**Date: 20130517**

**Docket: IMM-8549-12**

**Citation: 2013 FC 516**

**Ottawa, Ontario, May 17, 2013**

**PRESENT: The Honourable Mr. Justice Phelan**

**BETWEEN:**

**ROYA NIK ZADEH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. INTRODUCTION**

[1] This is a judicial review of a Visa Officer's [Officer] decision to deny the application for a permanent resident visa under the Federal Skilled Worker Class.

**II. BACKGROUND**

[2] The Applicant claimed that she qualified under National Occupation Classification [NOC] Code as a Financial Manager. She is a resident of Iran and works as a financial manager for Hugel

Co., Hugugan Qeshm Trading Co. in Iran. She holds a Bachelor Degree in Business Management and the university certificates suggest that she had a Masters degree. Nothing seems to turn on this distinction.

[3] The Applicant's file was transferred from Damascus to Ankara, Turkey for processing. Despite the Applicant's argument that she did not know this and that it is somehow unfair, I see no prejudice to the Applicant nor any infringement of her rights.

[4] The Officer's decision turned on the Applicant's failure to provide sufficient evidence to support her claim. The duties described in the employment letters did match the occupational description of the NOC Code.

The Officer's Notes detail the deficiencies more precisely by referring to the specific activities performed at each of her current and prior employers.

The Officer found that the Applicant was more like a Bookkeeper than a Financial Manager.

### III. ANALYSIS

[5] The Applicant argued (a) that the Officer erred in assessing the Applicant's experience as it related to NOC – Financial Manager; and (b) breached natural justice/procedural fairness by not providing the Applicant with an opportunity to address the Officer's concerns about her application.

[6] It is well settled that the standard of review for the evaluation of eligibility within the Federal Skilled Workers Category is reasonableness (*Chadha v Canada (Minister of Citizenship and Immigration)*, 2013 FC 105, 225 ACWS (3d) 202). This includes the issue of sufficiency of

reasons (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708).

The issue of procedural fairness is subject to a correctness standard of review (*Chadha*, above).

#### A. *Procedural Fairness*

##### (1) Officer's Evaluation

[7] This Court has confirmed, in cases such as *Farooqui v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 714, 182 FTR 306 (FCTD), that a visa officer can give greater weight to certain duties within the NOC description. This Court's role is to review the reasonableness of the Officer's conclusion.

[8] A comparison between the Applicant's experience and the NOC description provides a sound basis for assessing the reasonableness of the Officer's evaluation.

<u>Applicant's Experience</u>	<u>NOC Description</u>
<ul style="list-style-type: none"> <li>• programming, organizing, guidance, control and accounting operations assessment and studying other financial department activities [sic in original translated letter];</li> <li>• employment, organizing, educating and managing employees of financial department;</li> <li>• providing financial report to directing management;</li> <li>• to prepare and provide financial lists and analyzing the final cost and other financial reports;</li> <li>• to assess financial reporting system, accounting process and investment activities and to provide proposal regard to modify operating procedure,</li> </ul>	<ul style="list-style-type: none"> <li>• plan, organize, direct, control and evaluate the operation of an accounting, audit or other financial department;</li> <li>• recruit, organize, train and manage staff;</li> <li>• prepare or co-ordinate the preparation of financial statements, summaries, and other cost-benefit analyses and financial management reports;</li> <li>• develop and implement the financial policies, systems and procedures of an establishment;</li> <li>• evaluate financial reporting systems, accounting procedures and investment activities and make recommendations for changes to procedures, operating</li> </ul>

- budgeting to company directing management and other related departments.
- codified programming in order to registration of company books;
  - being assured of optimum registration of financial activities in system and presenting reports of balance sheet;
  - optimum usages of tax regulations;
  - preparing financial reports for related organs including Ministry of Finance, insurance and etc., under the control of the manager of the company;
  - determining competent personnel in financial affairs;
  - closing fiscal year accounts and preparing financial reports appropriate to them; and,
  - presenting financial consulting services.
- systems, budgets and other financial control functions to senior managers and other department or regional managers;
- co-ordinate the financial planning and budget process, and analyze and correct estimates;
  - supervise the development and implementation of financial simulation models;
  - act as liaison between the organization and its shareholders, the investing public and external financial analysts;
  - establish profitability standards for investment activities and handle mergers and/or acquisitions; and,
  - notify and report to senior management concerning any trends that are critical to the organization's financial performance.

[9] There are a number of areas in which there is no evidence of the Applicant meeting the job description. These include:

- developing policies or procedures;
- supervising the development or implementation of financial simulation models;
- liaising between the organization and shareholders, the public or other analysts;
- establishing profitability standards;
- handling mergers or acquisitions; and
- reporting trends that are critical to the organization's financial performance.

[10] While the Officer concluded that the Applicant had no experience in "recruiting, organizing or training staff", there was in fact evidence that she had experience in this area. Despite this questionable finding, reviewed as a whole, the Officer's conclusions were reasonable.

[11] I can find no relevant evidence that was ignored. Contrary to the Applicant's submissions, the Cooperation Contracts were specifically noted by the Officer and therefore were considered.

[12] Further, I can find no basis for concluding that the reasons were not sufficient. The Applicant seeks to expand *Newfoundland Nurses*, above, to formalize decisions of visa officers along the lines of court decisions. I do not interpret *Newfoundland Nurses* to impose that requirement. It is sufficient if the record, including notes, shows the reasons behind the administrative decision. The Officer's decision satisfies that requirement and is reasonable when examined in totality.

[13] The Applicant contends that the Officer should have accorded her an opportunity to address the Officer's concerns about her application.

[14] As Justice Rennie held in *Chen v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1279, 209 ACWS (3d) 668, the visa officer is to focus on relevant experience, training or education and certification. The officer is not expected to engage in a dialogue.

[15] The decision under review is one of adequacy of the evidence where the onus is on the Applicant. The decision is not one where true credibility is at issue or accuracy and genuineness of documents are questioned where cases such as *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, indicate that fairness dictates that an applicant be able to address those matters.

[16] Therefore, there was no breach of procedural fairness.

#### IV. CONCLUSION

[17] This judicial review will be dismissed. There is no question for certification.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that** the application for judicial review is dismissed.

“Michael L. Phelan”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-8549-12

**STYLE OF CAUSE:** ROYA NIK ZADEH

and

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 6, 2013

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

**DATED:** May 17, 2013

**APPEARANCES:**

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