

Federal Court



Cour fédérale

Date: 20130613

Docket: IMM-9413-12

Citation: 2013 FC 630

Ottawa, Ontario, this 13th day of June 2013

Present: The Honourable Mr. Justice Pinard

BETWEEN:

JOHNSON IQBAL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”), of a decision by a visa officer (the “officer”) with the Immigration Division of the High Commission of Canada in London, England (the “High Commission”). In the decision, dated August 16, 2012, the officer refused the applicant’s application for permanent residence under the Federal Skilled Worker class.

[2] Mr. Johnson Iqbal (the “applicant”) is a 40-year-old citizen of Pakistan who applied for a permanent resident visa under the Federal Skilled Worker class. He indicated that he had work experience as a cook and that he fell under the National Occupational Classification [NOC] code 6242. In October 2010, Citizenship and Immigration Canada transferred his application to the High Commission for processing.

[3] The officer noted that the Ministerial Instructions (the “Instructions”) published in the *Canada Gazette* on November 28, 2008 specified that applications under the Federal Skilled Worker category are only eligible for processing if the applicant (i) has an arranged employment offer; (ii) is legally residing in Canada and has been in Canada for one year as a Temporary Foreign Worker or International Student; or (iii) has at least one year of continuous full-time or equivalence paid work experience in the last ten years in a listed occupation class.

[4] The officer accepted that the NOC 6242 class is a listed occupation class under the Instructions but found that that the main duties the applicant listed did not indicate that he had performed the actions described in the lead statement for the occupation or that he performed all of the essential duties and a substantial number of the main duties, as set out in the occupational description of the NOC.

[5] Since the officer found that the applicant had not shown that he had work experience in any of the listed occupations, he concluded the applicant did not meet the requirements of the Instructions and that the application was not eligible for processing.

[6] The officer provided more detail for the reasons for his decision in the Global Case Management System notes. The officer noted that although the applicant provided a work reference from the Creek-Inn stating that he was employed as a cook, besides a general statement that he was involved in the preparation of Pakistani and Indian cuisines and desserts, no duties were provided. The officer also noted that a work reference from the Days Inn Karachi was provided, but that it only listed the applicant's qualifications from his training period and presented no details of his duties during his employment.

[7] Subsection 75(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, describes a skilled worker as follows:

75. (2) A foreign national is a skilled worker if

(a) within the 10 years preceding the date of their application for a permanent resident visa, they have at least one year of continuous full-time employment experience, as described in subsection 80(7), or the equivalent in continuous part-time employment in one or more occupations, other than a restricted occupation, that are listed in Skill Type 0 Management Occupations or Skill Level A or B of the *National Occupational Classification* matrix;

(b) during that period of employment they performed the actions described in the lead statement for the occupation as set out in the occupational descriptions of the *National Occupational Classification*; and

(c) during that period of employment they 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.

75. (2) Est un travailleur qualifié l'étranger qui satisfait aux exigences suivantes :

a) il a accumulé au moins une année continue d'expérience de travail à temps plein au sens du paragraphe 80(7), ou l'équivalent s'il travaille à temps partiel de façon continue, au cours des dix années qui ont précédé la date de présentation de la demande de visa de résident permanent, dans au moins une des professions appartenant au genre de compétence 0 Gestion ou niveaux de compétences A ou B de la matrice de la *Classification nationale des professions* — exception faite des professions d'accès limité;

b) pendant cette période d'emploi, il a accompli l'ensemble des tâches figurant dans l'énoncé principal établi pour la profession dans les descriptions des professions de cette classification;

c) pendant cette période d'emploi, il a exercé une partie appréciable des fonctions principales de la profession figurant dans les descriptions

des professions de cette classification,
notamment toutes les fonctions essentielles.

* * * * *

[8] The issue is whether the officer erred in assessing the applicant's work experience.

[9] A visa officer's exercise of discretion in assessing a permanent residence application under the skilled worker class is reviewable on the reasonableness standard (*Persaud v The Minister of Citizenship and Immigration*, 2009 FC 206; *Ali v The Minister of Citizenship and Immigration*, 2011 FC 1247 at para 26). Accordingly, the Court will consider "the existence of justification, transparency and intelligibility within the decision-making process" and "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] 1 SCR 190 at para 47).

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[10] As accepted by the officer in the case at bar, the NOC 6242 class is one of the occupations listed in the Instructions. The NOC 6242 lead statement states the following:

Cooks prepare and cook a wide variety of foods. They are employed in restaurants, hotels, hospitals and other health care institutions, central food commissaries, educational institutions and other establishments. Cooks are also employed aboard ships and at construction and logging campsites. Apprentice cooks are included in this unit group.

[11] The occupational description for NOC 6242 does not list any essential tasks. Rather, it outlines the following “main duties”:

Cooks perform some or all of the following duties:

- Prepare and cook complete meals or individual dishes and foods
- Prepare and cook special meals for patients as instructed by dietitian or chef
- Schedule and supervise kitchen helpers
- Oversee kitchen operations
- Maintain inventory and records of food, supplies and equipment
- May set up and oversee buffets
- May clean kitchen and work area
- May plan menus, determine size of food portions, estimate food requirements and costs, and monitor and order supplies
- May hire and train kitchen staff

Cooks may specialize in preparing and cooking ethnic cuisine or special dishes.

[12] The applicant submitted the following to demonstrate his work experience as a cook:

- an “Apprenticeship Certificate” from the Days Inn Karachi stating that from October 15, 2003 to October 14, 2005 he completed an apprenticeship program as a cook for Pakistani and Indian food and that at the end of his apprenticeship, the executive chef found him to be fully qualified in the preparation of a variety of Pakistani and Indian snacks, dishes, breads, and desserts;
- a letter from the Days Inn Karachi restaurant dated October 18, 2007, attesting to his employment as a cook from November 2005 to September 2007;
- documentation from the Creek-Inn dated November 16, 2010 attesting to the fact that he was employed as a cook in the restaurant since November 2007 and prepared a variety of Pakistani and Indian cuisines, different types of desserts, etc.;
- photographs of himself at work.

[13] The applicant submits the evidence before the officer showed that he performed eight out of the nine main duties listed under NOC 6242. In addition to the letters from the Days Inn and Creek-Inn, the applicant bases this assertion on the photographs he says were before the officer, as well as his statements in his application form and assumptions that can be made about the tasks of a cook.

However, I agree with the following statement by Justice Marie-Josée Bédard in *Ismaili v The Minister of Citizenship and Immigration*, 2012 FC 351, at paragraph 23:

The applicant argues that the duties of a pilot are obvious and that the immigration officer is expected to know what they are. This argument requires that the immigration officer assume that a pilot for Gulf Air performs the duties as described in NOC 2271. With respect, an immigration officer should not determine whether an applicant's work experience corresponds to the lead statement and main duties set out in the NOC for an occupation based on his personal knowledge of an occupation or on the personal knowledge that an applicant imputes to the immigration officer. Immigration officers must assess applications based on the evidence that applicants put forward and not on their own personal knowledge or assumptions. In my view, this is the only rigorous, fair, cohesive and coherent approach to assessing whether an applicant has performed the main duties of any position described in the NOC.

[14] The relevant documentary evidence the applicant put forward in the present case only mentioned work experience for one of the main duties listed in the occupational description for NOC 6242: the preparation and cooking of "complete meals or individual dishes and foods". I cannot agree with the applicant that it was unreasonable based on the minimal evidence submitted that the officer found the applicant had not established that he had work experience in some or all of the duties listed in the occupational description. As noted by the respondent, subsection 16(1) of the Act requires that when making an application, an applicant must produce all relevant evidence and documents that the officer reasonably requires.

[15] Nor can I agree with the applicant that the officer had a duty to explain the main duties in the occupational description for which the applicant failed to demonstrate work experience. The applicant did not point to any authority to support this submission.

[16] In my view, the officer reasonably found that the documents from the Days Inn Karachi only provided a list of the applicant's qualifications from his training period and no details of his duties during his employment. I believe it was also reasonable for the officer to find that other than the general statement that the applicant was involved in the preparation of Pakistani and Indian desserts, the letter from the Creek-Inn did not indicate the applicant's specific duties as a cook in the Creek-Inn restaurant.

[17] As for the photographs, I agree with the respondent that they do not detail the applicant's duties as a cook. As indicated by the officer in his affidavit: "Photographs are neither proof nor demonstrative of actual work experience."

[18] Overall, in my opinion the evidence supported the officer's finding that the applicant had not provided satisfactory evidence to demonstrate that he had work experience as a cook as described in NOC 6242.

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[19] For the above-mentioned reasons, the application for judicial review is dismissed.

[20] I agree with counsel for the parties that this is not a matter for certification.

JUDGMENT

The application for judicial review of the decision of a visa officer with the Immigration Division of the High Commission of Canada in London, England, dated August 16, 2012, is dismissed.

“Yvon Pinard”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-9413-12

STYLE OF CAUSE: JOHNSON IQBAL v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: April 30, 2013

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

DATED: June 13, 2013

APPEARANCES:

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Me Helen Park FOR THE RESPONDENT

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