

Federal Court



Cour fédérale

Date: 20130822

Docket: IMM-7131-12

Citation: 2013 FC 891

Ottawa, Ontario, August 22, 2013

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

HAMMAD AHMAD KHAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of a First Secretary (Immigration) at the Embassy of Canada in London [the Officer], pursuant to subsection 72(1) of the Immigration and Refugee Protection Act, SC 2001, c 27 [the Act]. The Officer refused the Applicant's claim for Permanent Residence in Canada as a Federal Skilled Worker.

I. Background

[2] The Applicant is a Pakistani citizen. He applied for permanent residence in Canada as a skilled worker in June, 2010. He was subsequently assessed for eligibility based on his work experience as a Financial Manager.

[3] Included in his application were various documents as evidence of his prior employment with two financial firms: Lehman Brothers and Marshall Wace. These letters were submitted to meet the requirement that he hold one year of continuous full-time paid work experience as a Financial Manager for the last ten years.

[4] The documents relating to Lehman Brothers include a letter from MJA Jarvis, the bankruptcy administrators for Lehman Brothers, which confirmed that he was employed in the firm's equities department as a Quant Associate from June 26, 2006, to October 3, 2008 at a salary of £70,000. The letter also notes that the general practice of Lehman Brothers is only to provide the department, job title and dates of employment in reference to former employees. The Applicant also provided a copy of his original employment contract with Lehman Brothers and a letter explaining that due to the bankruptcy proceedings against Lehman Brothers, he was unable to obtain a more detailed reference letter.

[5] In his Memorandum of Argument, the Applicant states that his job at Lehman Brothers entailed various financial analysis duties, including advising clients on investments, stock trading, and developing various investments models.

[6] The documents relating to Marshall Wace include a letter from a director at Marshall Wace confirming that he was employed from October 2008 to January 2011 (the date of the letter), though he does note in his Memorandum of Argument that he was employed there until June, 2011. The letter notes his job as involving responsibility for researching and implementing new ideas in stock and futures markets, his salary as £85,000, and his title as a “quantitative researcher.” The Applicant also submitted his offer letter and contract of employment for his position with Marshall Wace.

[7] In his Memorandum of Argument, the Applicant notes that he attempted to get another letter from Marshall Wace after being refused by the Officer, but as he no longer worked at the firm he was unsuccessful.

[8] The Applicant also submits his own description relating to his employment at these firms in Schedule 3 of his application. For Marshall Wace, this includes a reiteration of the responsibilities described in the employment letter. For Lehman Brothers, he describes his main duties as “Advising clients on Quantitative Investment in Global Stock Markets and Global Futures markets and making quantitative tools to help their investments.”

[9] A document checklist for skilled worker applications describes the necessary content of employment letters, which are required to prove the necessary work experience. As specified by this checklist, these letters must include: period of employment, position(s) held, main responsibilities and duties in each position, total annual salary plus benefits, and the number of hours per week.

[10] On May 24, 2012, the Applicant's application was rejected on the basis that the letters he submitted provided insufficient evidence that he had met the work experience requirement as described above. In particular, the Officer's notes indicated that only brief reference letters were provided, and these did not list the duties involved in his employment. Further, the Officer held that the evidence provided in Schedule 3 was not objective.

II. Issues

[11] The issue raised in the present application are as follows:

- A. Did the Officer breach the duty of procedural fairness in failing to raise concerns with the Applicant prior to rendering a decision?
- B. Was the Officer's decision to reject the Applicant unreasonable in light of the evidence provided?

III. Standard of review

[12] The parties agree that the standard of review for procedural fairness is correctness (*Kastrati v Canada (Minister Citizenship and Immigration)*, 2008 FC 1141 at paras 9-10; *Dhillon v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1049 at paras 11-14).

[13] The parties further agree that the standard of review for the second issue is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

IV. Analysis

A. *Did the Officer Breach the Duty of Procedural Fairness in Failing to Raise Concerns with the Applicant Prior to Rendering a Decision?*

[14] I find that there was no breach of procedural fairness.

[15] The Applicant submits that the Officer should have raised her concerns about the letters from Lehman Brothers and Marshall Wace prior to refusing his application, and that this duty extends to evidence provided by the Applicant himself, as well as any concerns over credibility.

[16] While there is a duty of procedural fairness to consult an Applicant when there is a perceived issue of credibility or authenticity, that duty does not extend to insufficiency of an Applicant's evidence (*Luongo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 618 at paras 16, 18).

[17] The Officer's decision to reject the Applicant's application turned on insufficiency of the evidence before her. As stated by Justice Gleason in *Bayat v Canada (Minister of Citizenship and Immigration)*, unreported, IMM-7042-12, at page 7:

Finally, insofar as concerns the alleged violation of procedural fairness, contrary to the applicant's claim, the officer was not required to inform the applicant of the concerns with his application as these related simply to the insufficiency of the evidence submitted by the applicant and did not involve questioning the applicant's credibility or the authenticity of the documents he submitted. It is well-established that in such circumstances a visa officer need not afford an applicant an opportunity to provide additional submissions (*Talpur v Canada (Minister of Citizenship and Immigration)*, 2012 FC 25; *Pan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 838 at paras 26-28; *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24). The cases relied upon by the applicant – namely, *Farooq v Canada (Minister of Citizenship and Immigration)*, 2013 FC 164 and *Farsoodeh v*

Canada (Minister of Citizenship and Immigration) (24 May 2013), IMM-7132-12 (FC) – are consistent with this case law, as both turned on the officer having doubted the credibility of the evidence offered. This did not occur in the present case, and there was accordingly no violation of the applicant’s rights to procedural fairness.

[18] Moreover, the onus is on the Applicants to provide the necessary evidence that he meets the criteria of the particular category in which they are applying for status in Canada (*Shetty v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1321 at para 12).

B. *Was the Officer’s Decision to Reject the Applicant Unreasonable in Light of the Evidence Provided?*

[19] The Applicant argues in his Memorandum of Argument that he met the documentary requirements specified in the Overseas Processing Manual relating to skilled workers to support his claim that he had at least one year of continuous work experience in the last ten years. This Manual specifies that the evidence should include “sufficient detail” to support such a claim.

[20] The Applicant cites *Shinde v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 1468 for the proposition that the case law has established that an applicant is not required to have performed all duties for a position as listed in the National Occupational Classification [NOC]. In *Tabanag v Canada (Minister of Citizenship and Immigration)*, [2011] FCJ No 1575, the court held that “one or more” of the main duties was sufficient if performed.

[21] The Respondent’s argument in both the initial and further Memorandum of Argument are focussed on the fact that the document checklist clearly explains the required content of the employment letters and that none of the letters provided met that criteria. In addition, the document

checklist clearly states that self-declared descriptions of duties will not be accepted. As a result, it was reasonable for the Officer to require objective evidence of the Applicant's duties (*Bar v Canada (Minister of Citizenship and Immigration)*, 2013 FC 317 at paras 22-23).

[22] The NOC description of a Financial Manager is as follows:

Financial managers plan, organize, direct, control and evaluate the operation of financial and accounting departments. They develop and implement the financial policies and systems of establishments. Financial managers establish performance standards and prepare various financial reports for senior management. They are employed in financial and accounting departments in companies throughout the private sector and in government.

[23] The main duties of a Financial Manager are described as follows:

Financial managers perform some or all of the following duties:

1. Plan, organize, direct, control and evaluate the operation of an accounting, audit or other financial department
2. Develop and implement the financial policies, systems and procedures of an establishment
3. Prepare or co-ordinate the preparation of financial statements, summaries, and other cost-benefit analyses and financial management reports
4. Co-ordinate the financial planning and budget process, and analyze and correct estimates
5. Supervise the development and implementation of financial simulation models
6. Evaluate financial reporting systems, accounting procedures and investment activities and make recommendations for changes to procedures, operating systems, budgets and other financial control functions to senior managers and other department or regional managers
7. Recruit, organize, train and manage staff
8. Act as liaison between the organization and its shareholders, the investing public and external financial analysts
9. Establish profitability standards for investment activities and handle mergers and/or acquisitions
10. Notify and report to senior management concerning any trends that are critical to the organization's financial performance.

[24] Returning to the Applicant's evidence, the Respondent's letter from Marshall Wace somewhat corresponds to the duty listed in point 5, above, as does his description of duties for his employment at Lehman Brothers.

[25] However, it was reasonable for the Officer to find that the Applicant is not appropriately qualified. Regardless of the precise number of duties required, it is clear that the Applicant's evidence established that he may have met, at best, one of the duties. While, on the basis of the precedent in *Taleb*, the Applicant has an argument that the Officer ought to have given greater weight to his description of duties in Schedule 3, I do not see, given the scarcity of information provided the Applicant's Schedule 3, how that assists the Applicant's claim that that the Officer was unreasonable in deciding the Applicant fell short of meeting his obligation to provide sufficient evidence.

[26] The Officer's reasons as to why he rejected the Applicant were clear – he did not find the evidence of duties performed to be sufficient. As argued by counsel for the Respondent, it is not for the Officer to have to infer what duties the Applicant in fact carried out as part of his employment merely from a job title and a salary amount. This is justifiable in light of the evidence, and is within a range of possible outcomes as required by *Dunsmuir*. The deference owed to this Officer results in my finding that her decision is upheld.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The Applicant’s application is dismissed;
2. There is no question to be certified.

“Michael D. Manson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7131-12

STYLE OF CAUSE: Khan v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: August 19, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** MANSON J.

DATED: August 22, 2013

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