

Federal Court



Cour fédérale

Date: 20141112

Docket: IMM-3728-13

Citation: 2014 FC 1064

Ottawa, Ontario, November 12, 2014

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

WENQI HUANG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act] of a decision by an Immigration Case Officer [the Officer] rejecting the applicant's application for permanent resident visa as a member of the Canadian Experience Class [CEC]. The applicant is seeking to have the decision quashed and an order of mandamus directing the respondent to process the applicant's application within 60 days of the order.

[2] I am prepared to allow the application because I find that there are simply too many anomalies in the decision to be satisfied that the Officer properly addressed the applicant's application.

[3] Most substantively, I find that the specific formulation of the requirements described by the Officer, and which forms the basis for the decision, does not sufficiently adhere to the requirements, and indeed adds to and raises the level of the requirements, in comparison with the description of the position in the National Occupational Classification [NOC] 1221 (Administrative Officers).

[4] The introductory description of NOC 1221 describes the position as follows:

Administrative officers oversee and implement administrative procedures, establish work priorities [insertion point] and coordinate the acquisition of administrative services such as office space, supplies and security services...

[5] The officer quotes this description, but adds to it at the insertion point referred to in the above passage, the additional requirement of "conduct analyses of administrative operations". Thereafter, in defining the job requirements, the officer makes specific reference to the requirement added stating "specifically, related to analyses of administrative operations ...", ultimately rejecting the applicant's application concluding "I am not satisfied that this [applicant's employment] fulfills the requirement of conducting analyses of administrative operations ...".

[6] Even accepting that deferential respect is owed the Officer's exercise of discretion regarding a question of mixed fact and law, I do not see how it extends to circumstances where a visa officer has added a higher skill requirement to the general NOC description, which is relied on to reject the application. In doing so, the Officer exceeds his authority rendering the decision unreasonable and lacking justification.

[7] I have additional difficulties with the Officer's decision in this case, including:

(1) incorrectly basing the decision on the applicant having worked for less than the required 12 months at the time of the application, which was clearly incorrect; (2) concluding that she did not perform the "essential" duties of NOC 1221, when there were no essential duties in the NOC classification; (3) concluding that she did not perform the other duties of the NOC on a full-time basis, when she was a full-time employee at both Joyce Beauty Health Centre [Joyce Beauty] and Kwok Shing Enterprises Ltd. [Kwok Shing]; (4) referring in the notes only to the duties while employed with Joyce Beauty, when her employment at Kwok Shing was more recent and of a longer duration.

[8] Accordingly, this application is granted and Ms. Huang's application for permanent residence is remitted back for decision by a different officer to decide whether her skilled work experience meets the requirements listed in NOC 1221. No question was proposed for certification.

JUDGMENT

[1] **THIS COURT'S JUDGMENT is that** the application is granted and the application for permanent residence is remitted back for decision by a different officer. No question was proposed for certification.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3728-13

STYLE OF CAUSE: WENQI HUANG v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 10, 2014

JUDGMENT AND REASONS: ANNIS J.

DATED: NOVEMBER 12, 2014

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