

Federal Court



Cour fédérale

**Date: 20151019**

**Docket: IMM-93-15**

**Citation: 2015 FC 1179**

**Ottawa, Ontario, October 19, 2015**

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

**BETWEEN:**

**SOURABH PAUL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Background**

[1] This is an application for judicial review by the Applicant pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 of a decision dated December 16, 2014, wherein an Immigration Officer [Officer] rejected the Applicant's Federal Skilled Worker application.

[2] The Applicant, Sourabh Paul, is an entrepreneur and a citizen of Kenya. In October 2014, the Applicant applied for permanent residence under the Federal Skilled Worker class and identified, in his application, Senior Manager under two separate managerial occupations (NOC 0013 and NOC 0015) but only identified NOC 0015 as is current occupation.

[3] The Officer rejected his application under NOC 0015 and did not examine his application under NOC 0013. The Officer rejected the Applicant's application on two grounds:

You have not provided sufficient evidence that you performed the actions described in the lead statement for the occupation as set out in the occupational description of the NOC.

You have not provided sufficient evidence that you performed a substantial number of the main duties of the occupation as set out in the occupational description of the NOC, including all of the essential duties.

Therefore, I am not satisfied there is sufficient evidence that you meet the work experience requirement for the occupation as described of the NOC - 0015.

(Decision and Reasons, Applicant's Record, at pp 5 and 6)

## II. Issues

[4] Although several issues were raised by the parties, the Court considers that the central issues to be determined by this application for judicial review are:

- 1) Did the Officer err in finding that the Applicant did not provide sufficient evidence that he satisfied the requirements under subsection 75(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227?
- 2) Did the Officer err by failing to consider whether the Applicant met the duties under NOC 0013?

### III. Position of the Parties

[5] The Applicant argues that he submitted, in support of his application, several letters stating that he was a Senior Manager for various corporations. Therefore, it was unreasonable for the Officer to ignore this corroborating evidence, or in the alternative, that the Officer did not explain why he rejected the letters as evidence without providing clear reasons for doing so (*Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 228; *Ababio v Canada (Department of Employment and Immigration)*, [1988] FCJ No 250; *Armson v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 800). The Officer had a duty to consider all of the evidence and to provide coherent reasons for the decision (*Taleb v Canada (Minister of Citizenship and Immigration)*, 2012 FC 384 [*Taleb*]; *Monteverde v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1402; *Shirazi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 306 [*Shirazi*]), but failed to do so as he incorrectly stated in his computer notes that “there are no duties listed on any letters” when in fact several letters, as well as Schedule 3 of the Applicant, indicated the duties performed by the Applicant. Furthermore, the described duties in the letters and in Schedule 3 of the application are consistent with those described in the NOC. As a result of the Officer ignoring or disregarding the evidence, his decision is unreasonable and should be overturned on this basis alone (*Turizo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 721; *Ghannadi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 515). In the alternative, the Applicant submits that the Officer had a duty to examine the Applicant’s experience under NOC 0013 as the Applicant had the right to be assessed for every occupation that he is qualified under (*Li v Canada (Minister of Employment and Immigration)*, [1990] FCJ No 40).

[6] Conversely, the Respondent submits that it was reasonable for the Officer to solely assess the Applicant's application under NOC 0015 as it is the primary occupation that the Applicant identified in his application. It was also reasonable for the Officer to find that the Applicant did not provide sufficient evidence that he had performed the duties described under NOC 0015 as the letters submitted with his application do not speak of the Applicant having performed the duties described in the lead statement of NOC 0015. Rather, the letters only describe the Applicant's job title with vague reference to his role in the various companies and that the signatories of the letters know the Applicant. As a result, it was reasonable for the Officer to find that the Applicant did not meet the criteria as set out in the Ministerial Instructions.

#### IV. Standard of Review

[7] The assessment by an Officer of the Applicant's eligibility to permanent residence pursuant to the Federal Skilled Worker class is a determination of mixed fact and law reviewable under a standard of reasonableness (*Ansari v Canada (Minister of Citizenship and Immigration)*, 2013 FC 849; *Shirazi*, above).

#### V. Analysis

##### A. *Adequacy of reasons and sufficient evidence*

[8] It is well established that a high degree of deference is owed to decisions of an Officer on an assessment of an application for permanent residence under the Federal Skilled Worker class (*Katebi v Canada (Minister of Citizenship and Immigration)*, 2014 FC 813 at para 36 [*Katebi*]; *Shirazi*, above at para 15; *Taleb*, above at para 27). As a result, this Court must not interfere with

the decision unless it is unreasonable, namely that the decision is not transparent, intelligible, or, that it does not fall 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, 2008 SCC 9 at para 47).

[9] The Applicant submits that the decision is unreasonable as the Officer failed to explain why he had rejected the letters submitted with the application.

[10] It is important to note that adequacy of reasons is not a stand-alone basis to quash a decision (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708, 2011 SCC 62 at para 14 [*Newfoundland Nurses*]). In considering whether a decision-maker provides sufficient reasons, the Court must be able to understand “why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met” (*Newfoundland Nurses*, above at para 16).

[11] As discussed above, the Officer's reasons are minimal; they only state that the Applicant did not provide sufficient evidence that he had performed the duties described in the lead statement for NOC 0015 and that he had not performed a substantial number of the main duties for NOC 0015. Since the notes entered in the Computer-Assisted Immigration Processing System [CAIPS] do constitute part of the reasons, the Court must also take them into consideration (*Taleb*, above at para 25). The Officer entered as notes in the CAIPS that “there are no duties listed on any letter which accompanies the application”. Given the lack of justification

by the Officer as to why he found that the Applicant did not provide evidence, the Court is unable to understand why the Officer came to the decision he did. As a result, his decision is inadequate.

[12] The Applicant submits that the Officer ignored the evidence and that it was not reasonable for the Officer to conclude that the Applicant did not meet the requirements under NOC 0015. The Court agrees with that.

[13] The onus is on the Applicant to put together an application that is complete, relevant, convincing and unambiguous (*Katebi*, above at para 35; *Obeta v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1542 at para 25). After reviewing the application submitted by the Applicant, this Court finds that it was unreasonable for the Officer to conclude as he did. Furthermore, it is not for the Court to reweigh the evidence and substitute its decision for that of the Officer (*Khoshnavaz v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1134 at para 41), unless the evidence shows otherwise which it does in this specific case.

B. *Failure to consider NOC 0013*

[14] In addition, the Applicant specifically mentioned in his application that his current occupation was both under NOC 0015 and NOC 0013.

VI. Conclusion

[15] Consequently, the application for judicial review is granted.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is granted and the file is to be considered anew by a different Immigration Officer. There is no serious question of general importance to be certified.

"Michel M.J. Shore"

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Judge

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

**DOCKET:** IMM-93-15

**STYLE OF CAUSE:** SOURABH PAUL v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 13, 2015

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