

Federal Court



Cour fédérale

Date: 20160916

Docket: IMM-4519-15

Citation: 2016 FC 1053

Ottawa, Ontario, September 16, 2016

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

ISMAIL MK AL-KATANANI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 2012, Mr. Ismail Mk Al-Katanani applied for permanent residence in Canada as a member of the economic class, under the self-employed person category. Mr. Al-Katanani submitted that he had the required minimal two periods of one-year experience in the

management of a farm, one of only three possible categories recognized by the Canadian immigration authorities to be admitted as a self-employed person.

[2] A visa officer [the Officer] at the Canadian High Commission in London, England reviewed Mr. Al-Katanani's permanent resident application but refused it in a decision dated August 10, 2015 [the Decision]. The Officer was not satisfied that Mr. Al-Katanani had enough relevant experience in the management of a farm, nor that he could make a significant contribution to this specified economic activity in Canada. Mr. Al-Katanani sought a redetermination of his application in September 2015, but his request was refused in November 2015 as no sufficient compelling information warranted the re-opening of his file.

[3] Mr. Al-Katanani has applied to this Court for judicial review of the Officer's Decision dismissing his permanent residence application. He argues that the Officer's Decision is unreasonable because it was based on findings of fact unsupported by the evidence and the Officer ignored or failed to properly consider the materials provided on his relevant work experience. Mr. Al-Katanani also contends that the Officer's reasons are inadequate since they do not sufficiently explain how the Officer reached his conclusion that Mr. Al-Katanani did not have the required experience under the self-employed category. He asks this Court to quash the decision and to send it back for redetermination by a different visa officer.

[4] Mr. Al-Katanani's application raises two issues: 1) was the Officer's Decision denying the permanent resident status sought by Mr. Al-Katanani reasonable; 2) were the Officer's reasons sufficiently inadequate to warrant the intervention of the Court.

[5] Having considered the evidence before the Officer and the applicable law, I can find no basis for overturning the Officer's Decision. The Decision was responsive to the evidence and the outcome is defensible based on the facts and the law. It falls well within the range of possible, acceptable outcomes. I also find that the reasons for the Decision adequately explain how the Officer found that Mr. Al-Katanani did not meet the requirements for permanent residence in Canada in the self-employed person category. There are no sufficient grounds to justify this Court's intervention, and I must therefore dismiss Mr. Al-Katanani's application for judicial review.

II. Background

A. *The Officer's Decision*

[6] In his Decision, the Officer first reiterated all the relevant provisions and requirements to satisfy the self-employed person class. He then indicated to Mr. Al-Katanani that, based on the evidence provided on his education, his experience and his personal net worth, Mr. Al-Katanani did not "show that [he had] relevant experience gained through active involvement in the management of a farm, and [he had] not adequately explained how [he would] be able to be self-employed in Canada or make a significant contribution through the purchase and management of a farm".

[7] The notes taken by the Officer in the Global Case Management System [GCMS], which form part of his reasons and were indeed sent to Mr. Al-Katanani with the Decision, offer more detail. The GCMS notes entered on February 23, 2015 indicated that Mr. Al-Katanani listed

experience in banking as an IT manager since 1997, and seemed to have experience in computer science. While a support letter from a Mr. Khayrat Meshrefah stated that he participated in farm management from September 2009 to May 2012, Mr. Al-Katanani's evidence regarding the accumulation of his funds since 1998 showed that he was, during that same period, "Head of Information Tech. for Global Investment House". The Officer found unreasonable that Mr. Al-Katanani could have gained full-time experience in farm management at a time where he was also working full-time in his field of study. He also noted the absence of any explanation as to how Mr. Al-Katanani could be involved in agriculture without having any educational or employment background in this field. As a result, the Officer was not satisfied that Mr. Al-Katanani demonstrated enough experience in farm management.

[8] A procedural fairness letter was sent to Mr. Al-Katanani after the February 2015 GCMS notes were written, warning him that he did not appear to meet the applicable criteria, and giving him an opportunity to respond. The procedural fairness notably outlined the deficiencies identified by the Officer in Mr. Al-Katanani's work experience, including his hours worked, income and level of direct involvement in farming. In response, Mr. Al-Katanani provided a letter on March 24, 2015, a business plan and proof of his brother's education in agriculture. No further details were offered on Mr. Al-Katanani's experience in the management of a farm.

[9] In the GCMS notes entered on August 7, 2015, after receipt of Mr. Al-Katanani's response to the procedural fairness letter, the Officer reiterated that Mr. Al-Katanani's IT and management experience in financial institutions did not give him the relevant experience in farm management. The Officer observed that, in his March 2015 letter, Mr. Al-Katanani himself

acknowledged that his education and relevant experience “may not provide sufficient evidence for the ‘self-employed person’ in the farming business”. Mr. Al-Katanani however contended that his IT background and management experience in financial institutions would provide him “with the required skills and competencies to manage the farm”.

[10] As a result, the Officer found that Mr. Al-Katanani’s intended reliance on his brother’s knowledge in agriculture and his lack of relevant experience or educational background in farm management failed to demonstrate Mr. Al-Katanani’s personal ability to make a significant contribution to farming. Furthermore, the \$150,000 to \$200,000 of “seed” money foreseen in Mr. Al-Katanani’s business plan to buy a farm was considered insufficient by the Officer. The Officer therefore concluded that Mr. Al-Katanani was not eligible to become a permanent residence in Canada under the self-employed person class.

B. *The standard of review*

[11] The standard of review for a visa officer’s decision on the admissions of foreign nationals under the self-employed sub-class of the economic class is reasonableness as it is a question a mixed facts and law (*Singh v Canada (Citizenship and Immigration)*, 2016 FC 904 at para 10; *Guryeva v Canada (Citizenship and Immigration)*, 2015 FC 1103 at para 5).

[12] The issue of adequacy of reasons is also reviewable under a reasonableness standard (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*] at paras 14-16; *Canada (Citizenship and Immigration) v Gabor*, 2015 FC 168 at paras 16-19).

[13] When reviewing a decision on the standard of reasonableness, the analysis is concerned with the existence of justification, transparency and intelligibility within the decision-making process, and the Officer's findings should not be disturbed as long as 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 SCC 9 [*Dunsmuir*] at para 47). In conducting a reasonableness review of factual findings, it is not the role of the Court to reweigh the evidence or the relative importance given by the decision-maker to any relevant factor (*Kanhasamy v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113 at para 99). Under a reasonableness standard, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, and the decision is supported by acceptable evidence that can be justified in fact and in law, a reviewing court should not substitute its own view of a preferable outcome (*Newfoundland Nurses* at para 17).

III. Analysis

A. *The Officer's Decision is reasonable*

[14] Mr. Al-Katanani argues that the Officer's Decision is unreasonable, as it ignored much of the information contained in the detailed letter from Mr. Meshrefah and in Mr. Al-Katanani's business plan. Mr. Al-Katanani claims that Mr. Meshrefah's letter indicated clearly that he had farm management experience as he assisted in "planning, budgeting, and managing production and handling business administration". He adds that Mr. Meshrefah also described the activities in which he participated, namely "planting, growing, and harvesting crops or breeding and raising livestock", assisting in "inspecting the farm buildings and equipment", as well as

“ensuring that farm operations and practices meet health, safety, and environmental standards and regulations”.

[15] Mr. Al-Katanani further submits that he addressed all the issues raised by the Officer in the procedural fairness letter and provided evidence to confirm his statements. He pleads that, in dismissing his application, the Officer either ignored or misconstrued his explanations. Mr. Al-Katanani refers notably to his evidence showing that he would capitalize on his brother’s experience in agriculture, who will be his partner with a 50% share in the farm, that he would hire a full time technical manager, that he would be fully dedicated to enriching his knowledge in farm management, and that his IT background in financial institutions would provide him with the required skills and competencies to succeed in farm management.

[16] More particularly, Mr. Al-Katanani singles out the fact that the Officer failed to mention the Meshrefah letter and thus ignored his working experience of 3 years on a farm. Finally, Mr. Al-Katanani submits that the Officer did not apply the proper test as he indicated in the GCMS notes that “although only two one year periods is required in the management of a farm, it appears reasonable to expect that a person with the ability to purchase a farm in Canada and make a significant contribution, would have several years’ experience in agriculture both at and below the management level”. Furthermore, says Mr. Al-Katanani, the Officer wrongly required “full-time” work experience.

[17] I do not agree with Mr. Al-Katanani and instead conclude that the Officer’s Decision fits well within the boundaries of reasonableness.

[18] Contrary to Mr. Al-Katanani's submissions, the Officer did not ignore the letter from Mr. Meshrefah. In fact, the Officer's GCMS notes went to considerable length in explaining his specific concerns with the shortcomings of that letter. It is simply incorrect for Mr. Al-Katanani to state that there "is no mention whatsoever of the letter in the reasons for decision" and that the Officer gave "no indication as to why the experience and duties outlined in the letter were not found to be suitable". The GCMS notes rather unveiled many problems identified by the Officer in the Meshrefah letter, such as the absence of a statement or explanation regarding Mr. Al-Katanani's participation outlined in the letter, the reasons for Mr. Al-Katanani's involvement in agriculture (an industry unrelated to his educational or employment background), and the fact that "[w]ithout additional evidence of his experience, [the Officer] cannot be satisfied the purpose of this letter was not to facilitate [Mr. Al-Katanani's] application".

[19] In his discussion of Mr. Meshrefah's letter, the Officer also observed that it did not appear reasonable that Mr. Al-Katanani "would have gained full-time experience in the management of a farm" during a period where he also listed "experience as the Head of Information Tech. for Global Investment House". In short, the Officer discussed extensively Mr. Meshrefah's letter and its references to Mr. Al-Katanani's alleged participation in farm management, and he was not satisfied that such experience "meets the definition of two one year periods in the management of a farm".

[20] I also observe that the letter from Mr. Meshrefah refers to Mr. Al-Katanani's "participation" and "assistance" in the farm business but contains no real description of the tasks he actually performed. While this could arguably have been sufficient for someone who clearly

had past experience or educational background in agriculture, Mr. Al-Katanani had neither. Instead, the evidence shows that he studied computer science during 7 years, followed by 15 years of work in IT jobs in the banking sector. Thus, it was certainly not unreasonable for the Officer to raise the incompatibility between his alleged two lines of work experience and to conclude that Mr. Al-Katanani's alleged experience in farming was not sufficient. Indeed, the Officer flagged those concerns to Mr. Al-Katanani in his procedural fairness letter, but Mr. Al-Katanani elected not to address them in his responses.

[21] Under subsection 88(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, a self-employed person is someone who brings together a "relevant experience", the ability "to be self-employed in Canada" and "to make a significant contribution to specified economic activities in Canada", as well as the intention to do all of the above. At least two years of experience in farm management out of the last five years is required to prove the first element, which is the relevant experience. Not only did the Officer find that Mr. Al-Katanani did not have the necessary experience, but he also concluded that he lacked the ability to make a significant contribution through the purchase and management of a farm. Contrary to what Mr. Al-Katanani alleges, to expect more than the sole the two years of farm experience, and to expect that an applicant shows an ability to contribute to the Canadian society, is part of the test. It does not amount to a reviewable error.

[22] As to the Officer's reference to a lack of "full-time" experience, I fail to see how such an interpretation of section 88 of the *Regulations* can be unreasonable. Section 88 requires that, in the five years before the application, there needs to be two one-year periods of experience in the

management of a farm. Evidently, the five-year denominator in section 88 is not a less than full-time period; so, the two-year numerator must also logically (and reasonably) refer to a full-time dimension as well.

[23] I pause to point out that Mr. Al-Katanani himself acknowledged, in his March 2015 letter responding to the procedural fairness letter, that his “education and/or relevant experience may not provide sufficient evidence for the ‘self-employed person’ in the farming business”.

[24] As for the business plan, it was also taken into consideration by the Officer, even though Mr. Al-Katanani was found not to have enough relevant experience. The Officer mentioned Mr. Al-Katanani’s net worth, but his “seed” money of \$150,000-\$200,000 was considered insufficient. An unrealistic or insufficiently-funded business plan is a factor that a visa officer can retain in assessing whether an applicant meets the requirements (*Singh Sahota v Canada (Minister of Citizenship and Immigration)*, 2005 FC 856 at para 13; *Wohlmayer v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 155 at para 11). Also, the Operational Manual of Citizenship and Immigration Canada regarding the self-employed persons class clearly establishes that purchasing a farm can be onerous, and that an officers must take into account different factors in order to assess an applicant’s experience, intent and ability to own a farm in Canada.

[25] In sum, Mr. Al-Katanani does not point to any cogent evidence suggesting that documents were ignored by the Officer. On the contrary, the GCMC notes are replete with

explicit references to the materials submitted by Mr. At-Katanani, such as Mr. Meshrefah's letter, his business plan and the education certificates of Mr. Al-Katanani's brother.

[26] It is well recognized that a decision-maker is presumed to have weighed and considered all the evidence presented to it unless the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 598 (FCA) at para 1). A decision-maker is not required to refer to each and every piece of evidence supporting its conclusions if the reasons permit the Court to understand why the decision was made and determine whether the conclusion falls within the range of possible, acceptable outcomes (*Newfoundland Nurses* at para 16). Similarly, a failure to mention a particular piece of evidence does not mean that it was ignored. It is only when a tribunal is silent on evidence clearly pointing to an opposite conclusion that the Court may intervene and infer that the tribunal overlooked the contradictory evidence when making its finding of fact (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 (FCTD) at paras 16-17). This is not the case here, as the evidence was clearly referred to and the facts contained in Mr. Al-Katanani's submissions were taken into consideration by the Officer. The *Ekladious Mansour v Canada (Citizenship and Immigration)*, 2013 FC 343 matter relied on by Mr. Al-Katanani is clearly distinguishable as, in that case, the Officer completely omitted to refer to a material letter provided by the applicant.

[27] The reasons are to be read as a whole, in conjunction with the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 [Agraira] at para 53; *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65 at para 3). That said, a judicial review is not a "line-by-line treasure hunt for error" (*Communications, Energy and Paperworkers Union of*

Canada, Local 30 v Irving Pulp & Paper, Ltd, 2013 SCC 34 at para 54). The Court should approach the reasons with a view to “understanding, not to puzzling over every possible inconsistency, ambiguity or infelicity of expression” (*Ragupathy v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 151 at para 15).

[28] In essence, Mr. Al-Katanani is simply inviting the Court to reweigh the evidence that he has presented before the Officer. In conducting a reasonableness review of factual findings, it is not the role of the Court to do so or to reassess the relative importance given by the decision-maker to any relevant piece of evidence. If the findings provide sufficient justification and rationality in light of the totality of the evidence before the decision-maker, a reviewing court should not substitute its own view of a preferable outcome. In the end, I find nothing unreasonable in the Officer’s Decision.

B. *The Officer’s reasons are sufficient and adequate*

[29] Mr. Al-Katanani further claims that the Officer’s reasons are inadequate to meet the requirement of fairness as the Officer did not offer any acceptable explanations as to why Mr. Al-Katanani did not satisfy the self-employed person requirements. He submits that reasons “are adequate when they are clear, precise and intelligible and when they state why the decision was reached” (*Canada (Citizenship and Immigration) v Jeizan*, 2010 FC 323 [*Jeizan*] at para 17). Relying on *Canada (Minister of Citizenship and Immigration) v Wong*, 2009 FC 1085 [*Wong*], Mr. Al-Katanani further pleads that the “reasons should be sufficiently clear and detailed so as to demonstrate to the Minister that all relevant facts have been considered and weighed appropriately and that the correct legal tests have been applied” (*Wong* at para 17).

[30] The test articulated by this Court in *Jeizan* and *Wong* has been reaffirmed by the Supreme Court in *Newfoundland Nurses*. Reasons are sufficient if they “allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes” (*Newfoundland Nurses* at para 16). Contrary to Mr. Al-Katanani, I am of the view that the Officer’s Decision amply meets these requirements.

[31] As I explained in *Canada (Minister of Citizenship and Immigration) v Abdulghafoor*, 2015 FC 1020 at paras 30-36, the law relating to the sufficiency of reasons in administrative decision-making has evolved substantially since *Dunsmuir*. It is true both with respect to the degree of scrutiny to which fact-based decisions (such as the Decision at issue in this case) should be subjected, and in relation to the sufficiency of reasons as a stand-alone ground for judicial review.

[32] In *Newfoundland Nurses*, the Supreme Court provided guidance on how to approach situations where decision-makers provide brief or limited reasons. Reasons need not be fulsome or perfect, and need not address all of the evidence or arguments put forward by a party or in the record (*Newfoundland Nurses* at paras 16 and 18). The reasons are to be read as a whole, in conjunction with the record, in order to determine whether they provide the justification, transparency and intelligibility required of a reasonable decision (*Agraira* at para 53). Reasonableness, not perfection, is the standard. Even where the reasons for the decision are brief, or poorly written, this Court should defer to the decision-maker’s weighing of the evidence, as long as the Court is able to understand why the decision was made. I find that, in this case, the Officer’s Decision is transparent and intelligible and clearly falls within such a range.

[33] A decision-maker is not required to refer to each and every detail supporting his or her conclusion. In order to provide adequate reasons, “the decision maker must set out its findings of fact and the principal evidence upon which those findings were based”, as well as “address the major point in issue” and “reflect consideration of the main relevant factors” (*VIA Rail Canada Inc v National Transportation Agency*, [2001] 2 FCR 25 at para 22). This is exactly what the Officer did. Reasons do not need to be lengthy either. Even a sentence or two can be enough to provide adequate reasons (*Vancouver International Airport Authority v Public Service Alliance of Canada*, 2010 FCA 158 at para 25). As long as the reasons “allow the individual to understand why the decision was made” and “allow the reviewing court to assess the validity of the decision”, they will be sufficient (*Lake v Canada (Minister of Justice)*, 2008 SCC 23 at para 46).

[34] A reviewing court looks to the record with a view to upholding the decision. Where they are readily apparent, evidentiary gaps may be filled in when supported by the evidence, and logical inferences implicit to the result may be drawn (*Komolafe v Canada (Minister of Citizenship and Immigration)*, 2013 FC 431 [*Komolafe*] at para 10). I agree that *Newfoundland Nurses* and its progeny is not an invitation to the Courts to provide reasons that were not given, nor is it a licence to guess what findings might have been made or to speculate as to what a decision-maker might have been thinking (*Komolafe* at para 11). However, in this case, I conclude that the reasons are vastly sufficient and adequate with regard to the test established by *Newfoundland Nurses*. The Officer’s reasons are clear, straightforward, and well-documented. They enable me to understand how the Officer reached its conclusion as they explain why Mr. Al-Katanani did not meet the requirements of the self-employed person class, and there is factual foundation for reaching this conclusion. There is no inadequacy of reasons.

IV. Conclusion

[35] The Officer's refusal of Mr. Al-Katanani's application for permanent residence in the self-employed person category represents a reasonable outcome based on the law and the evidence before the Officer. On a standard of reasonableness, it suffices if the decision subject to judicial review falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. This is the case here. In addition, the Officer provided adequate reasons. Therefore, I must dismiss Mr. Al-Katanani's application for judicial review.

[36] Neither party has proposed a question of general importance for me to certify, and I agree there is none.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, without costs;
2. No question of general importance is certified.

"Denis Gascon"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4519-15

STYLE OF CAUSE: ISMAIL MK AL-KATANANI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 14, 2016

JUDGMENT AND REASONS: GASCON J.

DATED: SEPTEMBER 16, 2016

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