Federal Court of Canada
Trial Division

Section de première instance de
la Cour fédérale du Canada

IMM-1184-96

BETWEEN: SAMEH MONEER AYAD,

Applicant,

AND: MINISTER OF CITIZENSHIP and IMMIGRATION CANADA,

Respondent.

REASONS FOR ORDER and ORDER

DENAULT J.:

The applicant is seeking judicial review of a decision of a visa officer in Buffalo, N.Y., dated January 29, 1996, refusing his application for permanent residence on the ground that he does not meet the requirements for the occupation he stated in his application, Chef-Cook, General (6121-111). The visa officer also did not approve the applicant's application for permanent residence under a heading that would have been more favourable to him, the occupation of Short-order Cook (6121-130).

The visa officer refused the applicant's application because he did not have enough units of assessment, as required by the *Immigration Regulations, 1978* (the Regulations), and was therefore a member of an inadmissible class of persons within the meaning of paragraph 19(2)(*d*) of the *Immigration Act* (the Act).

Essentially, counsel for the applicant argued that the visa officer erred in assessing the applicant's Specific Vocational Preparation (SVP) as a Chef-Cook, General, by failing to take into account the experience he had acquired in a New York restaurant before submitting his application for permanent residence.

The facts in this case, which are quite simple, are set out in the affidavits of the applicant and the visa officer. It appears from the decision that the applicant was first assessed as a Chef-Cook, General (6121-111). However, his application was refused on that basis since when he was examined it was apparent that he had attended training courses in a cooking school for a period of only six months, two evenings per week, and that he therefore did not have enough vocational training to be classified in this occupation.

The standard for judicial review that applies in a case like this was stated in *Hajariwala v. Canada*, [1989] 2 F.C. 79. In order for his or her application for judicial review to be successful, what an applicant must satisfy the judge of is not that a different decision from the one reached by the visa officer could have been made; rather, "[t]here must be either an error of law apparent on the face of the record, or a breach of the duty of fairness appropriate to this essentially administrative assessment".

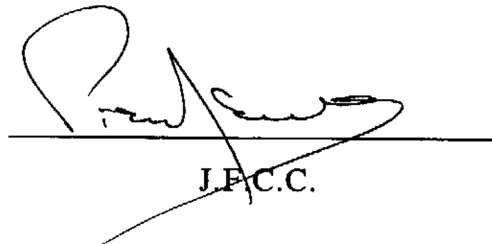
In order to determine whether an immigrant will be able to become successfully established in Canada, a visa officer must assess each of the factors listed in Column I of Schedule I, as provided in paragraph 8(1)(*a*) of the *Immigration Regulations, 1978* (SOR/92-133). Thus an immigrant who submits an application for an immigrant visa must obtain 70 units of assessment (subparagraph 9(1)(*b*)(i) of the Regulations). Schedule I contains 9 assessment factors, one of which is Specific Vocational Preparation (SVP). The criteria for assessing this factor are measured by the amount of formal professional, vocational, apprenticeship, in-plant or on-the-job training specified in the *Canadian Classification and Dictionary of Occupations* (CCDO). Given that the CCDO assigns a value of 7 for the SVP factor for the occupation of Chef-Cook, General (6121-111), the period of training needed for this occupation must be at least two to four years. If an applicant meets this requirement, he is then given 15 units of assessment for SVP. Otherwise, he is not eligible under that heading.

In the instant case, the evidence establishes that the applicant took training courses in a cooking school for a period of only six months, two evenings per week. The visa officer therefore determined that he had insufficient Specific Vocational Preparation and refused his application on that basis. According to counsel for the applicant, the visa officer thereby committed an error by failing to take into account the experience he had acquired in a New York restaurant (the Celebrity Restaurant) where he had worked since January 15, 1993. However, the evidence does not establish that he was doing on-the-job training or an apprenticeship there.

It is important to note that when a visa officer examines an applicant's Specific Vocational Preparation, he or she must take into account the training acquired through professional, vocational, apprenticeship, in-plant or on-the-job training, as set out in Appendix B, and not simply work experience. The onus is on an applicant to submit the information that is pertinent to his application and to establish that he meets the requirements of the Canadian legislation. Where he has failed to establish that he was in training or apprenticeship during the period of work on which he relied, this Court cannot conclude, on this point, that the visa officer committed any error.

For these reasons, the application for judicial review is dismissed.

OTTAWA, 20 mai 1997



J.F.C.C.

Certified true translation

Christiane Delon