

Date: 20071108

Docket: IMM-3697-06

Citation: 2007 FC 1164

Toronto, Ontario, November 8, 2007

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

ATULKUMAR THAKORLAL PATEL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant, an Indian citizen, applied in 2000 for permanent residence in Canada as a skilled worker under the National Occupational Classification of Chemist (NOC 2112). In his application, and over the next six years, the Applicant submitted substantial evidence regarding his employment in India as a “chemist”. This evidence includes multiple letters from his employer over the six year period and detailed technical documentation with respect to the duties of his employment.

[2] In 2006, in accordance with s.361(4) of the *Immigration and Refugee Protection Regulations, 2002 (IRPR)*, the Applicant's application was assessed pursuant to skilled worker criteria in the *Immigration Regulations, 1978* as well as the under the corresponding criteria of the *IRPR*. The results of this assessment constitute the decision under review.

[3] As the Applicant applied as a Chemist under NOC 2112, in order to assess the correct number of points to award the Applicant under the work experience factor, a visa officer is required, under the *Immigration Regulations, 1978*, to determine whether he had performed a substantial number of the duties listed under this NOC.

[4] On April 19, 2006, the Applicant was interviewed by the decision-maker Visa Officer in New Delhi. The interview lasted 49 minutes, during which time many topics were covered. Notes regarding this interview were entered by the Officer into the CAIPS system. It is agreed that these notes, in addition to the refusal letter sent to the Applicant, forms the content of the decision under review.

[5] Based on the evidence before her, the Officer came to the conclusion that the Applicant did not perform a substantial number of the duties listed under NOC 2112; therefore, she refused to issue him any points under this classification. She found that the Applicant did perform a substantial number of duties of NOC 2211, Chemical Technologist, yet stated that if assessed under this NOC, he would still not receive the requisite number of points.

[6] The question for determination is, given the evidence presented, do the Officer's reasons on each of the two NOCs considered substantiate a finding of reviewable error.

[7] In my opinion, with respect to the Officer's finding that the Applicant was not a Chemist, the answer is "yes". The entire analysis with respect to this issue is as follows:

Based on PI's explanation of duties and responsibilities, I am not satisfied that PI has performed a substantial number of the main duties of a CHEMIST as per the description of main duties in NOC. Satisfied that PI has performed the duties of a CHEMICAL TECHNOLOGIST, NOC 2211.

This statement does not indicate that the Officer undertook any critical assessment of the Applicant's employment duties in relation to the NOC of Chemist. It also does not reference any of the copious evidence submitted by the Applicant regarding his employment. It is a statement of conclusion unsupported by reasoning.

[8] I am also of the opinion that the Officer's assessment of the Applicant under NOC 2211, Chemical Technologist, substantiates a finding of reviewable error. The Officer's entire assessment is contained in the refusal letter:

I have also considered your application in the occupation of CHEMICAL TECHNOLOGIST, NOC 2211 but you do not meet the minimum point requirement in order to pass in this occupation.

These reasons are wholly deficient; they do not state how the Officer computed the points or provide any reasons for reaching the conclusion stated.

ORDER

[9] Accordingly, I set aside the decision under review and refer the matter back for redetermination by a different visa officer.

[10] I find that there is no certified question to be addressed.

“Douglas R. Campbell”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-3697-06

STYLE OF CAUSE: ATULKUMAR THAKORLAL PATEL v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 7, 2007

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: NOVEMBER 8, 2007

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