Federal Court  Cour fédérale

Date: 20130131

Docket: IMM-3727-12

Citation: 2013 FC 105

Ottawa, Ontario, January 31, 2013

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

RASHPAL SINGH CHADHA
MANPINDER KAUR
ISHIKA KAUR CHADHA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (Act) for judicial review of the decision of a Visa Officer (Officer) of the High Commission of Canada in London, United Kingdom, dated 16 March 2012 (Decision), which refused the Applicant's application for permanent residence in Canada as a member of the Federal Skilled Worker class.

BACKGROUND

[2] The Principle Applicant (Applicant) is a 45-year-old citizen of India and a resident of Kuwait. The Secondary Applicants are his wife and daughter. The Applicant submitted an application for Permanent Residence as a Federal Skilled Worker on 21 April 2010 based on his professional qualifications as an Accountant. The Centralized Intake Office (CIO) conducted an initial assessment of his application, and then transferred it to the Officer for final determination. The Applicant received notice of this transfer by way of letter dated 16 July 2010.

[3] The Applicant submitted his application under the National Occupation Classification code (NOC) 1111 – Financial Auditors and Accountants. NOC 1111 states that Accountants perform some or all of the following main duties:

a. Plan, set up and administer accounting systems and prepare financial information for an individual, department, company or other establishment;
b. Examine accounting records and prepare financial statements and reports;
c. Develop and maintain cost finding, reporting and internal control procedures;
d. Examine financial accounts and records and prepare income tax returns from accounting records;
e. Analyze financial statements and reports and provide financial, business and tax advice;
f. May act as a trustee in bankruptcy proceedings;
g. May supervise and train articling students, other accountants or administrative technicians.

[4] Along with his application, the Applicant submitted a Schedule 3 listing duties he performed during his work experience:

a. Reconciling and maintaining balance sheet accounts;

b. Auditing data sheets of raw material used to manufacture oil into finished product;

c. Preparing monthly payroll and daily wage reports;

d. Maintaining and following up on maintenance contracts with clients;

e. Handling accounts receivable;

f. Preparing collection analysis reports;

g. Handling cash flow and bank reconciliations;

h. Supervising annual stock audits.

[5] The Applicant also submitted letters from his previous employers: Kuwait National Lube Oil Co., Al-Sundus Gen. Trading & Cont. Est., Kuwait Oxygen & Acetylene Company, and the United Fisheries of Kuwait. These letters all spoke highly of the Applicant and confirmed his employment, but none of them discussed the duties that he performed as an employee.

[6] After receiving the 16 July 2010 letter, the Applicant heard nothing until he received a letter dated 16 March 2012 informing him that his application was not eligible for further processing.

DECISION UNDER REVIEW

[7] The Decision in this case consists of the letter dated 16 March 2012 (Refusal Letter), as well as the Computer Assisted Immigration Processing System (CAIPS) Notes made by the Officer.

[8] The Officer completed an assessment of the application and found that it was not eligible because the "information submitted to support this application is insufficient to substantiate that [the] applicant meets the occupational description and/or a substantial number of the main duties of the NOC Code."

[9] The Officer found that the main duties listed by the Applicant in Schedule 3 did not reflect the main duties of NOC 1111, and the employment letters did not actually describe his past jobs. Therefore, the Officer was not satisfied that the Applicant had one year of job experience in this occupation, and found that the application was not eligible for further processing.

ISSUES

[10] The Applicant raises the following issue in this application:

a. Whether the Officer erred by concluding that the Applicant did not meet the requirements of NOC 1111, when it is clear the Applicant did;

b. Whether the Officer breached the duty of fairness owed to the Applicant by failing to give him an opportunity to respond to the Officer's concerns.

STANDARD OF REVIEW

[11] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the

reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[12] The first issue involves an evaluation of the Officer's conclusion that the Applicant was ineligible under the Federal Skilled Worker category. The case law has established that this is reviewable on a reasonableness standard (*Zhong v Canada (Minister of Citizenship and Immigration)*, 2011 FC 980 at paragraph 11; *Malik v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1283 at paragraph 22).

[13] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[14] In his arguments, the Applicant also takes issue with the adequacy of the Officer's reasons. He submits that this is a matter of procedural fairness. However, in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*], the Supreme Court of Canada held at paragraph 14 that the adequacy of reasons is not a

stand-alone basis for quashing a decision. Rather, "the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes." Thus, the adequacy of the reasons will be analysed along with the reasonableness of the Decision as a whole.

[15] The second issue is a matter of procedural fairness (*Kuhathasan v Canada (Minister of Citizenship and Immigration)*, 2008 FC 457 [*Kuhathasan*] at paragraph 18). As stated by the Supreme Court of Canada in *Canadian Union of Public Employees (C.U.P.E.) v Ontario (Minister of Labour)*, [2003] 1 SCR 539 at paragraph 100, "it is for the courts, not the Minister, to provide the legal answer to procedural fairness questions." Accordingly, the standard of review applicable to the second issue is correctness.

STATUTORY PROVISIONS

[16] The following provisions of the Act are applicable in these proceedings:

Application before entering Canada	**Visa et documents**
11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	**11.** (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
[…]	[…]

87.3 (1) This section applies to applications for visas or other documents made under subsection 11(1), other than those made by persons referred to in subsection 99(2), to sponsorship applications made by persons referred to in subsection 13(1), to applications for permanent resident status under subsection 21(1) or temporary resident status under subsection 22(1) made by foreign nationals in Canada, to applications for work or study permits and to requests under subsection 25(1) made by foreign nationals outside Canada.

87.3 (1) Le présent article s'applique aux demandes de visa et autres documents visées au paragraphe 11(1) — sauf à celle faite par la personne visée au paragraphe 99(2) —, aux demandes de parrainage faites par une personne visée au paragraphe 13(1), aux demandes de statut de résident permanent visées au paragraphe 21(1) ou de résident temporaire visées au paragraphe 22(1) faites par un étranger se trouvant au Canada, aux demandes de permis de travail ou d'études ainsi qu'aux demandes prévues au paragraphe 25(1) faites par un étranger se trouvant hors du Canada.

(2) The processing of applications and requests is to be conducted in a manner that, in the opinion of the Minister, will best support the attainment of the immigration goals established by the Government of Canada.

(2) Le traitement des demandes se fait de la manière qui, selon le ministre, est la plus susceptible d'aider l'atteinte des objectifs fixés pour l'immigration par le gouvernement fédéral.

(3) For the purposes of subsection (2), the Minister may give instructions with respect to the processing of applications and requests, including instructions

(3) Pour l'application du paragraphe (2), le ministre peut donner des instructions sur le traitement des demandes, notamment des instructions :

(*a*) establishing categories of applications or requests to which the instructions apply;
(*a.1*) establishing conditions, by category or otherwise, that must be met before or during the processing of an application or request;

a) prévoyant les groupes de demandes à l'égard desquels s'appliquent les instructions;
a.1) prévoyant des conditions, notamment par groupe, à remplir en vue du traitement des demandes ou lors de celui-ci;

(*b*) establishing an order, by category or otherwise, for the processing of applications or requests;	*b*) prévoyant l'ordre de traitement des demandes, notamment par groupe;
(*c*) setting the number of applications or requests, by category or otherwise, to be processed in any year; and	*c*) précisant le nombre de demandes à traiter par an, notamment par groupe;
(*d*) providing for the disposition of applications and requests, including those made subsequent to the first application or request. (3.1) An instruction may, if it so provides, apply in respect of pending applications or requests that are made before the day on which the instruction takes effect. (3.2) For greater certainty, an instruction given under paragraph (3)(*c*) may provide that the number of applications or requests, by category or otherwise, to be processed in any year be set at zero.	*d*) régissant la disposition des demandes dont celles faites de nouveau. (3.1) Les instructions peuvent, lorsqu'elles le prévoient, s'appliquer à l'égard des demandes pendantes faites avant la date où elles prennent effet. (3.2) Il est entendu que les instructions données en vertu de l'alinéa (3)*c*) peuvent préciser que le nombre de demandes à traiter par an, notamment par groupe, est de zéro.
(4) Officers and persons authorized to exercise the powers of the Minister under section 25 shall comply with any instructions before processing an application or request or when processing one. If an application or request is not processed, it may be retained, returned or otherwise disposed of in accordance with the instructions of the Minister.	(4) L'agent — ou la personne habilitée à exercer les pouvoirs du ministre prévus à l'article 25 — est tenu de se conformer aux instructions avant et pendant le traitement de la demande; s'il ne procède pas au traitement de la demande, il peut, conformément aux instructions du ministre, la retenir, la retourner ou en disposer.

[17] The following provisions of the Regulations are applicable in this proceeding:

Experience (21 points)

80. (1) Up to a maximum of 21 points shall be awarded to a skilled worker for full-time work experience, or the full-time equivalent for part-time work experience, within the 10 years preceding the date of their application, as follows:

[…]

Occupational experience

(3) For the purposes of subsection (1), a skilled worker is considered to have experience in an occupation, regardless of whether they meet the employment requirements of the occupation as set out in the occupational descriptions of the *National Occupational Classification*, if they performed

(*a*) the actions described in the lead statement for the occupation as set out in the occupational descriptions of the *National Occupational Classification*; and

(*b*) at least a substantial number of the main duties of the occupation as set out in the occupational descriptions of

Expérience (21 points)

80. (1) Un maximum de 21 points d'appréciation sont attribués au travailleur qualifié en fonction du nombre d'années d'expérience de travail à temps plein, ou l'équivalent temps plein du nombre d'années d'expérience de travail à temps partiel, au cours des dix années qui ont précédé la date de présentation de la demande, selon la grille suivante :

[…]

Expérience professionnelle

(3) Pour l'application du paragraphe (1), le travailleur qualifié, indépendamment du fait qu'il satisfait ou non aux conditions d'accès établies à l'égard d'une profession ou d'un métier figurant dans les description des professions de la *Classification nationale des professions*, est considéré comme ayant acquis de l'expérience dans la profession ou le métier :

a) s'il a accompli l'ensemble des tâches figurant dans l'énoncé principal établi pour la profession ou le métier dans les descriptions des professions de cette classification;

b) s'il a exercé une partie appréciable des fonctions principales de la profession ou du métier figurant dans les

the *National Occupational Classification*, including all the essential duties.	descriptions des professions de cette classification, notamment toutes les fonctions essentielles.

[18] On 15 June 2009, Citizenship and Immigration Canada issued the publicly available Operational Bulletin (OB 120). OB 120 is meant to provide "visa officers with additional guidance on making final determinations of eligibility for processing of federal skilled workers (FSW) files referred from the Centralized Intake Office in Sydney." It states:

> Insufficient evidence of meeting Ministerial Instructions: Visa officers will assess the application on the basis of the information on file. If the applicant's submission is insufficient to determine that the application is eligible for processing, a negative determination of eligibility should be rendered.
>
> […]
>
> For SW1 (one of the 38 occupations listed in the MI), review the documents related to work experience. These documents should include those listed in the Appendix A document checklist of the visa office specific forms. They should include sufficient detail to support the claim of one year of continuous work experience or equivalent paid work experience in the occupation in the last 10 years. Documents lacking sufficient information about the employer or, containing only vague descriptions of duties and periods of employment, should be given less weight. Descriptions of duties taken verbatim from the NOC should be regarded as self-serving. Presented with such documents, visa officers may question whether they accurately describe an applicant's experience. A document that lacks sufficient detail to permit eventual verification and a credible description of the applicant's experience is unlikely to satisfy an officer of an applicant's eligibility.

[19] The Appendix A Checklist to the Federal Skilled Worker application form is also relevant to this application. Page A-4 of that document says:

> 7. WORK EXPERIENCE
>
> […]

Letters must include all the following information:

i. the specific period of your employment with the company

ii. the positions you have held during the period of employment and the time spent in each position

iii. your main responsibilities and duties in each position

iv. your total annual salary plus benefits

v. the signature of your immediate supervisor or the personnel officer of the company

vi. a business card of the person signing

ARGUMENTS

The Applicant

The Reasonableness of the Decision

[20] The Applicant submits that having worked as an accountant for 13 years, it is obvious he would have performed the required duties of the profession. Additionally, the duties he performed were explicitly detailed in the Schedule 3 portion of his application. The Applicant also submits that the CIO would not have forwarded his application to the Officer for further review if, on the face of it, it did not appear that the Applicant met the requirements of NOC 1111.

[21] The Applicant states that there is no explanation offered in the Decision as to why the Officer did not think he met the requirements of NOC 1111, considering the evidence that was before him or her. There is no factual foundation for the Officer's conclusions, and the reasons are lacking in analysis or explanation. The Officer's reasons fail to explain the basis for the conclusions

reached in the Decision, and this is a reviewable error (*Canada (Minister of Citizenship and Immigration) v Jeizan*, 2010 FC 323).

Procedural Fairness

[22] The Applicant also submits that the Officer did not reach the Decision in accordance with principles of procedural fairness and failed to provide the Applicant with an opportunity to address his or her concerns. As Justice Richard Mosley said at paragraph 22 of *Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284:

> It is well established that in the context of visa officer decisions procedural fairness requires that an applicant be given an opportunity to respond to extrinsic evidence relied upon by the visa officer and to be apprised of the officer's concerns arising therefrom: *Muliadi*, *supra*. In my view, the Federal Court of Appeal's endorsement in *Muliadi*, *supra*, of Lord Parker's comments in In *re H.K. (An Infant)*, [1967] 2 Q.B. 617, indicates that the duty of fairness may require immigration officials to inform applicants of their concerns with applications so that an applicant may have a chance to "disabuse" an officer of such concerns, even where such concerns arise from evidence tendered by the applicant. Other decisions of this court support this interpretation of *Muliadi*, supra. See, for example, *Fong v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 705 (T.D.), *John v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 350 (T.D.)(QL) and *Cornea v. Canada (Minister of Citizenship and Immigration)* (2003), 30 Imm. L.R. (3d) 38 (F.C.T.D.), where it had been held that a visa officer should apprise an applicant at an interview of her negative impressions of evidence tendered by the applicant.

[23] In *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at paragraph 24:

> Having reviewed the factual context of the cases cited above, it is clear that where a concern arises directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns. Where however the issue is not one that arises in this

> context, such a duty may arise. This is often the case where the credibility, accuracy or genuine nature of information submitted by the applicant in support of their application is the basis of the visa officer's concern, as was the case in *Rukmangathan*, and in *John* and *Cornea* cited by the Court in *Rukmangathan*, above.

[24] Also, in *Gedeon v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1245 at paragraphs 101-102:

> Although the Applicant has the burden of proving that she qualifies to come to Canada, this does not relieve the Visa Officer of the duty to act fairly. This Court has stated on numerous occasions that, while a decision maker is not required to refer explicitly, or to analyse, every item before it in evidence that tends to negate a finding of fact, "much depends upon the relevancy and cogency of the evidence, and upon its importance to the ultimate decision on the fact to which the evidence relates," to borrow the words of Mr. Justice Rouleau in *Toth v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 1518 (T.D.).
>
> In the present case, the Officer should have dealt clearly in the Decision or the CAIPS notes with his reasons for rejecting the employer's description of the Applicant's experience and responsibilities in Lebanon and should have given the Applicant the opportunity to address the concerns he had in this regard. Not to do so was a reviewable error.

[25] The Applicant submits that if the Officer had concerns about the evidence in the application, he or she had a duty to give the Applicant an opportunity to respond. The Applicant was not aware there was a problem with the documentation, and none of the Officer's concerns were raised with the Applicant.

[26] As stated in *Liao v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1926 at paragraph 17, the "duty to inform the applicant will be fulfilled if the visa officer adopts an appropriate line of questioning or makes reasonable inquiries which give the applicant the opportunity to respond to the visa officer's concerns."

[27] The Applicant submits that his case is similar to the situation in *Kuhathasan*, above, where the Court said at paragraphs 39-41:

> In considering procedural fairness issues in the present case, I think it has to be borne in mind that the Applicants were dealt with under somewhat exceptional circumstances and that normal procedures had to be adjusted. I see no real evidence that the Applicants had access to the information they needed to satisfy all of the requirements under the Act. The Respondent's web-site instructions were published to tell applicants and those helping them how to apply. Those instructions told the Applicants to use the Federal Skilled Worker application form and also asked for a letter from a family member in Canada offering financial assistance.
>
> The fact is that the Applicants did all they were asked to do and complied with the instructions that were posted on the web-site. The Officer's principal concern, as shown in the Decision, was general financial viability, although the documentation suggests that there were also peripheral credibility issues regarding the financial capabilities of the Canadian relative.
>
> Under the specific facts in this case, I cannot see how the Applicants could have anticipated and addressed either the financial viability issue, the peripheral credibility issues, or possible language problems in advance. They did what they were told to do in accordance with the instructions on the web-site. General financial viability was obviously a crucial issue in the Decision. On these facts, fairness required the Officer to give the Applicants some kind of opportunity to address her concerns. There is no evidence before me to suggest that, had the Applicants been given such an opportunity, they could not have satisfied the Officer's concerns. The Principal Applicant is an established professional and he has also indicated various other connections and resources he can tap into for financial support.

[28] The Applicant also relies upon *Sekhon v Canada (Minister of Citizenship and Immigration)*, 2012 FC 700 where Justice James O'Reilly had the following to say at paragraphs 12-14:

> Mr. Sekhon's submissions were directed to the officer's concerns about whether the school was carrying on business at the stated address. The parents' letters and photographs were aimed at meeting those concerns, and further documentation was provided regarding the school's finances. But Mr. Sekhon could not have met the

> officer's other unstated concerns because he was not made aware of them.
>
> Accordingly, I find that Mr. Sekhon was not given a fair opportunity to meet the officer's concerns about the shortcomings of his application.
>
> The officer did not give Mr. Sekhon a chance to meet her real concerns about his application. Therefore, he was not treated fairly. Accordingly, I must allow this application for judicial review and order a reassessment of Mr. Sekhon's application by another officer…

[29] The Applicant submits that, based on the above, the Officer had a duty to advise the Applicant of the problems with the application and give him an opportunity to respond. As this was not done, the Applicant's rights of procedural fairness were breached.

The Respondent

[30] On 29 November 2008, the Government of Canada published in the *Canada Gazette* instructions issued under subsection 87.3 of the Act that in order to have an application processed, it must first be determined whether an application is eligible for processing. On 15 June 2009, Citizenship and Immigration Canada issued the publicly available Operational Bulletin 120 (OB 120) that provides "visa officers with additional guidance on making final determinations of eligibility for processing of federal skilled worker (FSW) files referred from the Centralized Intake Office in Sydney."

The Reasonableness of the Decision

[31] The Court has established that the onus is on the Applicant to submit a clear and complete application, and to satisfy the Officer that he has met all the requirements of his application (*Prasad*

v Canada (Minister of Citizenship and Immigration), [1996] FCJ No 453 (TD)). There is no general obligation on visa officers to request clarification from an applicant (*Lam v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1239).

[32] In this case, the Applicant provided five reference letters, none of which described the duties actually performed by him. Therefore, the Respondent submits it was open to the Officer to find that the Applicant had not demonstrated that he performed the duties described in the lead statement of NOC 1111.

[33] The Officer did not ignore evidence. The Applicant's documentary evidence was specifically considered, including his Schedule 3, and found to be insufficient to establish that he had the requisite experience under NOC 1111. The Respondent submits that in light of OB 120, above, and the concerns the Officer had with the letters submitted by the Applicant, this was a reasonable finding. It was open to the Officer to find that there was insufficient evidence to demonstrate the Applicant's work experience (*Elisha v Canada (Minister of Citizenship and Immigration)*, 2012 FC 520).

[34] The Court said at paragraphs 9-10 of *Rodrigues v Canada (Minister of Citizenship and Immigration)*, 2009 FC 111:

> In the Federal Court of Appeal's decision in *Noman v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 1568, 2002 FCT 1169, while the Court outlined that an applicant was not required to perform all of the main duties in a NOC job category; they did require that an applicant perform a few -- meaning more than one.
>
> The real function of the visa officer is to determine what is the pith and substance of the work performed by an applicant. Tangential performance of one or more functions under one or more job

> categories does not convert the job or the functions from one NOC category to another.

[35] The Applicant failed to satisfy the Officer that he had the requisite experience under NOC 111, and has not demonstrated any errors in the Officer's Decision.

[36] Further, contrary to the Applicant's submissions, the Respondent submits that the Officer did provide reasons for the Decision (*Newfoundland Nurses*, above, at paragraphs 14-23). In the CAIPS notes, the Officer explained that he or she was not satisfied that the Applicant had the requisite work experience.

Procedural Fairness

[37] The Respondent points out that procedural fairness in the context of a permanent residence application is at the low end of the spectrum (*Patel v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 55 at paragraph 10) and the Officer was not under a duty to provide the Applicant with an opportunity to address his or her concerns with the application.

[38] In deciding what the duty of fairness entails, the Court must be careful to balance the requirements of fairness with the need of the administrative immigration process in question (*Khan v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345 at paragraphs 30-32). This is an administrative decision, and thus the duty of fairness is more limited than one involving a quasi-judicial tribunal (*Khan*).

[39] The Officer is under no obligation to provide a running score to the Applicant of the weaknesses in his application (*Kamchibekov v Canada (Minister of Citizenship and Immigration)*,

2011 FC 1411 at paragraph 25). The question of whether the Applicant has the relevant experience required for the profession in which he claims to be a skilled worker is based directly on the requirements of the Act and its Regulations (*Chen v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1279 at paragraphs 20-22). Thus, the Respondent submits that the Officer was not required to provide the Applicant with an opportunity to respond to the Officer's concerns, just as he was not entitled to an interview to remedy his own shortcomings (*Kaur v Canada (Minister of Citizenship and Immigration)*, 2010 FC 442).

The Applicant's Reply

[40] The Applicant maintains that the deficiency in the Officer's reasons constitutes a breach of procedural fairness. The Applicant further maintains that the letters indicate that he held the position of accountant for years, and thus he must have performed the duties listed in NOC 1111 – this was ignored by the Officer. The Applicant says that he could not have maintained his employment as an accountant for 15 years without performing some or all of the duties outlined in the Schedule 3.

[41] The Applicant further maintains that the Officer did have a duty to give him an opportunity to address any concerns with his application. This is not a case where the Applicant failed to adduce sufficient evidence; the Applicant adduced the evidence and the Officer had concerns with it. The Applicant submits that the jurisprudence put forward in his arguments supports this position.

ANALYSIS

[42] As the CAIPS notes make clear, the reasons why the application was refused was because the Officer was not satisfied that the Applicant had provided sufficient evidence of having one year

of experience in NOC 1111. The Officer was not satisfied that the Applicant had performed the actions described in the lead statement as set out in the occupation description for NOC 1111 or that the Applicant had performed all of the essential duties and a substantial number of the main duties as set out in the occupational descriptions for NOC 1111. The Officer was not satisfied that the main duties performed by the Applicant in his employment reflected the main duties set out in NOC 1111. The Officer found that the employment letters submitted by the Applicant in support of his application did not give any descriptions of the duties performed by the Applicant in these jobs. In other words, the application was deficient and did not contain the information that the Applicant was instructed to provide. The Applicant's application was determined to be ineligible for processing.

[43] The Decision was made in accordance with the relevant Ministerial Instructions in the *Canada Gazette* and with Operational Bulletin 120 which are public documents and available to applicants, as well as Regulation 80(3). The Applicant appears to think that the deficiencies in his application (i.e. his failure to provide employer's letters that comply with the mandated requirements and details) can be disregarded and that his application should have been assessed on the basis of what he thinks was sufficient evidence of his past experience.

[44] As Justice Yvon Pinard confirmed in *Kamchibekov*, above, at paragraph 18:

> The respondent is right to emphasize that we are in the context of an eligibility determination where visa officers are told to assess an applicant's application as-is and proceed directly to a final determination of eligibility in a timely fashion (see Operational Bulletin 120, above). Therefore, the officer's decision is consistent with these guidelines. The applicant has not established that the officer erred in considering the evidence before him.

[45] In the present case, the Applicant provided an incomplete and deficient application even though he was fully aware, or reasonably ought to have been, of what was required. Justice Richard Mosley's words in *Elisha*, above, at paragraphs 10-13, are instructive:

> The applicant was provided with specific instructions as to how to complete her application. These are set out in the Overseas Processing Manual OP 6 and the Visa Office Specific Instructions, Buffalo, dated November 2010. The instructions include requirements for the information to be included in the reference letters provided by employers. As the employment letters did not contain the necessary information, the applicant sought to rectify the deficit by providing a written explanation. In such cases, the Buffalo instructions state, the applicant must also provide documentation such as employment contracts, work descriptions and performance appraisals describing job duties to support the claim to relevant employment.
>
> Here, the applicant did not provide any supporting documentation in relation to her work at the New York Presbyterian Hospital, other than her identity card, and her employment at the Duke University Hospital.
>
> The onus was on the applicant to file her application with all relevant supporting documentation and to provide sufficient credible evidence in support: *Karanja v Canada (Minister of Citizenship and Immigration)*, 2006 FC 574 at para 8; and *Oladipo v Canada (Minister of Citizenship and Immigration)*, 2008 FC 366 at para 24. She must put her "best case forward". That was simply not done.
>
> In the result, the decision to dismiss the application was well within the range of acceptable outcomes defensible in respect of the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 90 at para 47.

[46] Given the materials submitted by the Applicant and the relevant assessment instructions, I cannot say it was unreasonable for the Officer to conclude that the Applicant had not demonstrated that he had performed the main duties set out in NOC 1111. The Officer gives full reasons for this

conclusion, and there is no indication that the Officer ignored any of the evidence in the Applicant's submissions.

[47] As regards any procedural fairness requirement, I think the Respondent correctly states the law on this matter. The Officer was not required to put any concerns to the Applicant in the present case. The Officer found that the documentation submitted by the Applicant was deficient and there was insufficient evidence to demonstrate that the Applicant had the one-year work experience for the NOC code under which he applied.

[48] The content of procedural fairness is variable and contextual. In deciding what the duty of fairness entails, with respect to visa applicants, the Courts have been careful to balance the requirements of fairness with the needs of the administrative immigration process in question. See *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, paragraph 21; *Patel*, above, at paragraph 10; and *Khan*, above, at paragraphs 22, 30-32.

[49] The duty of fairness in this case, involving an administrative decision-maker, is more limited than in one involving a quasi-judicial tribunal where the obligation to confront an applicant with concerns may be more stringent. See *Khan*, above, paragraphs 31-32. The Federal Court has held that the Officer is under no obligation to provide a running score of weaknesses in an applicant's application. See *Kamchibekov*, above, paragraph 25; *Thandal v Canada (Minister of Citizenship and Immigration)* 2008 FC 489, paragraph 9; *Nabin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 200, paragraphs 7-10.

[50] The question of whether the Applicant has the relevant experience required for the profession in which he claims to be a skilled worker is based directly on the requirements of the Act

and its Regulations. See *Chen*, above, at paragraphs 20-22. Thus, the Officer was not required to provide the Applicant with an opportunity to respond to the Officer's concerns, as he was not entitled to an interview to remedy his own shortcomings. See *Kamchibekov*, above, at paragraph 26; and *Kaur*, above.

[51] This was not a case about the credibility or accuracy of the Applicant's information, as the Applicant alleges. The Applicant simply failed to provide an application in accordance with the relevant instructions, and the Officer properly followed OB 120.

[52] Neither party proposed a serious question of general importance for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. There is no question for certification.

"James Russell"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-3727-12
STYLE OF CAUSE:	**RASHPAL SINGH CHADHA; MANPINDER KAUR; ISHIKA KAUR CHADHA** - and - **THE MINISTER OF CITIZENSHIP AND IMMIGRATION**
PLACE OF HEARING:	Toronto, ON
DATE OF HEARING:	January 9, 2013
REASONS FOR JUDGMENT AND JUDGMENT:	HON. MR. JUSTICE RUSSELL
DATED:	January 31, 2013

APPEARANCES:

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Margherita Braccio	**RESPONDENT**

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