Federal Court  Cour fédérale

Date: 20140808

Docket: IMM-8011-13

Citation: 2014 FC 786

Ottawa, Ontario, August 8, 2014

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

RAJPAL SHARMA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

INTRODUCTION

[1] This is an application under s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of the decision of an Immigration Officer [Officer] at Citizenship and Immigration Canada's [CIC] Case Processing Centre [CPC] in Vegreville, Alberta, dated December 4, 2013 [Decision], which refused the Applicant's application for restoration of his temporary resident status and for a work permit.

BACKGROUND

[2] The Applicant is a Hindu priest who has been living and working in Canada since 2000, first at the Fraser Valley Hindu Temple in Abbotsford, BC, and then at the Sri Durga Bhamashwari Mandir Society in Surrey, BC.

[3] For the first several years – up until August 2008 – the CIC documents authorizing him to remain in Canada were titled "Visitor Record." The Applicant has provided eight such documents as part of his Application Record, covering the period October 2000 to August 2008. These documents include various "Remarks," including that the Applicant was authorized to perform religious duties as a priest at the above noted temples. Thus, it appears that during this time the Applicant was a temporary resident in the visitor class and was working without a work permit, as permitted by the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations] for certain persons performing religious duties.

[4] Beginning in January 2009, three successive Work Permits were issued to the Applicant by CIC, the most recent of which expired on June 21, 2013. The Applicant applied to renew this Work Permit, but his application was refused on August 19, 2013 because he had not provided a valid Labour Market Opinion and Confirmation [LMO] from (then) Human Resources and Skills Development Canada [HRSDC]. The letter advising the Applicant of that decision also advised him that his temporary resident status expired as of the date of the letter, August 19, 2013, but that he could apply to have it restored within 90 days. The Applicant applied for the restoration

of his temporary resident status and for a work permit. That application was refused on December 4, 2013 in the Decision under review here.

DECISION UNDER REVIEW

[5] The letter advising the Applicant of the Decision stated in relevant part:

> This letter refers to your application for restoration of your temporary resident status and a work permit.
>
> Your application as requested is refused.
>
> After considering all the circumstances of your case, your application for a work permit cannot be approved as requested without a valid Labour Market Opinion and Confirmation from Human Resources and Skills Development Canada. Your prospective employer is responsible for obtaining this confirmation.

[6] The letter also advised the Applicant that he was a person in Canada without temporary resident status who was not eligible for restoration under s. 182 of the Regulations, and must therefore leave Canada immediately.

[7] The notes in CIC's Global Case Management System [GCMS notes] elaborate on the reasons for refusal as follows:

> Applicant's previous work permit was valid until 21Jun2013. He submitted an application for extension, which was received by CPCV on 20June2013 and was refused for no LMO on 19Aug2013. Applicant lost temporary resident status on 19Aug2013. This application was received at CPCV on 17sep2013. Checked NESS, no LMO for this Applicant found on the system. This application is refused for no LMO. Restoration period ended on 17Nov2013. Applicant is no longer restorable and must leave Canada. Refusal letter sent advising.

ISSUES

[8] The Applicant raises two issues for the Court's consideration in this case:

a. Did the Officer err in finding that a positive LMO was required?

b. Did the Officer err by failing to properly consider the Applicant's request to have his temporary resident status restored?

STANDARD OF REVIEW

[9] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] 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 settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48 [*Agraira*].

[10] An Officer's decision on whether to issue a work permit or to restore temporary resident status, including the interpretation and application of the relevant statutory provisions, is reviewable on a standard of reasonableness: see *Arora v Canada (Minister of Citizenship and Immigration)*, 2011 FC 241 at para 23 [*Arora*]; *Kanthasamy v Canada (Minister of Citizenship*

and Immigration), 2014 FCA 113; *Lemus v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 114; *Agraira*, above.

[11] 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 para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 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."

STATUTORY PROVISIONS

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

Right of temporary residents	**Droit du résident temporaire**
29. (1) A temporary resident is, subject to the other provisions of this Act, authorized to enter and remain in Canada on a temporary basis as a visitor or as a holder of a temporary resident permit.	29. (1) Le résident temporaire a, sous réserve des autres dispositions de la présente loi, l'autorisation d'entrer au Canada et d'y séjourner à titre temporaire comme visiteur ou titulaire d'un permis de séjour temporaire.
[…]	[…]
Regulations	**Règlements**
32. The regulations may provide for any matter relating to the application of sections	32. Les règlements régissent l'application des articles 27 à 31, définissent, pour

27 to 31, may define, for the purposes of this Act, the terms used in those sections, and may include provisions respecting	l'application de la présente loi, les termes qui y sont employés et portent notamment sur :
(a) classes of temporary residents, such as students and workers;	a) les catégories de résidents temporaires, notamment les étudiants et les travailleurs;
(b) selection criteria for each class of foreign national and for their family members, and the procedures for evaluating all or some of those criteria;	b) les critères de sélection applicables aux diverses catégories d'étrangers, et aux membres de leur famille, ainsi que les méthodes d'appréciation de tout ou partie de ces critères;
[…]	[…]

[13] The following provisions of the Regulations are applicable in these proceedings:

Temporary Resident Visa	**Visa de résident temporaire**
Issuance	**Délivrance**
179. An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national	179. L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
(a) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class;	a) l'étranger en a fait, conformément au présent règlement, la demande au titre de la catégorie des visiteurs, des travailleurs ou des étudiants;
[…]	[…]
(d) meets the requirements applicable to that class;	d) il se conforme aux exigences applicables à cette

	catégorie;
[…]	[…]
181 […]	181 […]
Extension	**Prolongation**
(2) An officer shall extend the foreign national's authorization to remain in Canada as a temporary resident if, following an examination, it is established that the foreign national continues to meet the requirements of section 179.	(2) L'agent prolonge l'autorisation de séjourner à titre de résident temporaire de l'étranger si, à l'issue d'un contrôle, celui-ci satisfait toujours aux exigences prévues à l'article 179.
[…]	[…]
Restoration	**Rétablissement**
182. (1) On application made by a visitor, worker or student within 90 days after losing temporary resident status as a result of failing to comply with a condition imposed under paragraph 185(a), any of subparagraphs 185(b)(i) to (iii) or paragraph 185(c), an officer shall restore that status if, following an examination, it is established that the visitor, worker or student meets the initial requirements for their stay, has not failed to comply with any other conditions imposed and is not the subject of a declaration made under subsection 22.1(1) of the Act.	182. (1) Sur demande faite par le visiteur, le travailleur ou l'étudiant dans les quatre-vingt-dix jours suivant la perte de son statut de résident temporaire parce qu'il ne s'est pas conformé à l'une des conditions prévues à l'alinéa 185a), aux sous-alinéas 185b)(i) à (iii) ou à l'alinéa 185c), l'agent rétablit ce statut si, à l'issue d'un contrôle, il est établi que l'intéressé satisfait aux exigences initiales de sa période de séjour, qu'il s'est conformé à toute autre condition imposée à cette occasion et qu'il ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi.
[…]	[…]
No permit required	**Permis non exigé**
186. A foreign national may	186. L'étranger peut travailler

work in Canada without a work permit

[…]

(*l*) as a person who is responsible for assisting a congregation or group in the achievement of its spiritual goals and whose main duties are to preach doctrine, perform functions related to gatherings of the congregation or group or provide spiritual counselling;

[…]

Class

191. The visitor class is prescribed as a class of persons who may become temporary residents.

Visitor

192. A foreign national is a visitor and a member of the visitor class if the foreign national has been authorized to enter and remain in Canada as a visitor.

[…]

Class

194. The worker class is prescribed as a class of persons who may become temporary residents.

Worker

195. A foreign national is a

au Canada sans permis de travail :

[…]

l) à titre de personne chargée d'aider une communauté ou un groupe à atteindre ses objectifs spirituels et dont les fonctions consistent principalement à prêcher une doctrine, à exercer des fonctions relatives aux rencontres de cette communauté ou de ce groupe ou à donner des conseils d'ordre spirituel;

[…]

Catégorie

191. La catégorie des visiteurs est une catégorie réglementaire de personnes qui peuvent devenir résidents temporaires.

Qualité

192. Est un visiteur et appartient à la catégorie des visiteurs l'étranger autorisé à entrer au Canada et à y séjourner à ce titre.

[…]

Catégorie

194. La catégorie des travailleurs est une catégorie réglementaire de personnes qui peuvent devenir résidents temporaires.

Qualité

195. Est un travailleur et

worker and a member of the worker class if the foreign national has been authorized to enter and remain in Canada as a worker.

appartient à la catégorie des travailleurs l'étranger autorisé à entrer au Canada et à y séjourner à ce titre.

Work permit required

196. A foreign national must not work in Canada unless authorized to do so by a work permit or these Regulations.

Permis de travail

196. L'étranger ne peut travailler au Canada sans y être autorisé par un permis de travail ou par le présent règlement.

[…]

[…]

Application after entry

199. A foreign national may apply for a work permit after entering Canada if they

(a) hold a work permit;

(b) are working in Canada under the authority of section 186 and are not a business visitor within the meaning of section 187;

Demande après l'entrée au Canada

199. L'étranger peut faire une demande de permis de travail après son entrée au Canada dans les cas suivants :

a) il détient un permis de travail;

b) il travaille au Canada au titre de l'article 186 et n'est pas un visiteur commercial au sens de l'article 187;

[…]

[…]

Work permits

200. (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following

Permis de travail — demande préalable à l'entrée au Canada

200. (1) Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après

an examination, it is established that	sont établis :
[…]	[…]
(c) the foreign national	c) il se trouve dans l'une des situations suivantes :
(i) is described in section 206, 207 or 208,	(i) il est visé par les articles 206, 207 ou 208,
(ii) intends to perform work described in section 204 or 205 but does not have an offer of employment to perform that work,	(ii) il entend exercer un travail visé aux articles 204 ou 205 pour lequel aucune offre d'emploi ne lui a été présentée,
(ii.1) intends to perform work described in section 204 or 205, has an offer of employment to perform that work and an officer has determined, on the basis of any information provided on the officer's request by the employer making the offer and any other relevant information,	(ii.1) il entend exercer un travail visé aux articles 204 ou 205, il a reçu une offre d'emploi pour un tel travail et l'agent a conclu, en se fondant sur tout renseignement fourni, à la demande de l'agent, par l'employeur qui présente l'offre d'emploi et tout autre renseignement pertinent, que :
(A) that the offer is genuine under subsection (5), and	(A) l'offre était authentique conformément au paragraphe (5),
(B) that the employer	(B) l'employeur, selon le cas :
(I) during the six-year period before the day on which the application for the work permit is received by the Department, provided each foreign national employed by the employer with employment in the same occupation as that set out in the foreign national's offer of employment and with wages and working conditions that were substantially the same as — but not less favourable than	(I) au cours des six années précédant la date de la réception de la demande de permis de travail par le ministère, a confié à tout étranger à son service un emploi dans la même profession que celle précisée dans l'offre d'emploi et lui a versé un salaire et ménagé des conditions de travail qui étaient essentiellement les mêmes — mais non moins avantageux —

— those set out in that offer, or	que ceux précisés dans l'offre,
(II) is able to justify, under subsection 203(1.1), any failure to satisfy the criteria set out in subclause (I), or	(II) peut justifier le non-respect des critères prévus à la sous-division (I) au titre du paragraphe 203(1.1),
(iii) has been offered employment, and an officer has made a positive determination under paragraphs 203(1)(a) to (e); and	(iii) il a reçu une offre d'emploi et l'agent a rendu une décision positive conformément aux alinéas 203(1)a) à e);
[…]	[…]
Assessment of employment offered	**Appréciation de l'emploi offert**
203. (1) On application under Division 2 for a work permit made by a foreign national other than a foreign national referred to in subparagraphs 200(1)(c)(i) to (ii.1), an officer must determine, on the basis of an opinion provided by the Department of Employment and Social Development, of any information provided on the officer's request by the employer making the offer and of any other relevant information, if	203. (1) Sur présentation d'une demande de permis de travail conformément à la section 2 par tout étranger, autre que celui visé à l'un des sous-alinéas 200(1)c)(i) à (ii.1), l'agent décide, en se fondant sur l'avis du ministère de l'Emploi et du Développement social, sur tout renseignement fourni, à la demande de l'agent, par l'employeur qui présente l'offre d'emploi et sur tout autre renseignement pertinent, si, à la fois :
(a) the job offer is genuine under subsection 200(5);	a) l'offre d'emploi est authentique conformément au paragraphe 200(5);
(b) the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada;	b) le travail de l'étranger est susceptible d'avoir des effets positifs ou neutres sur le marché du travail canadien;
[…]	[…]

Canadian interests	**Intérêts canadiens**
205. A work permit may be issued under section 200 to a foreign national who intends to perform work that	205. Un permis de travail peut être délivré à l'étranger en vertu de l'article 200 si le travail pour lequel le permis est demandé satisfait à l'une ou l'autre des conditions suivantes :
[…]	[…]
(d) is of a religious or charitable nature.	d) il est d'ordre religieux ou charitable.
[…]	[…]

ARGUMENT

Applicant

LMO was not required for issuance of a work permit

[14] The Applicant submits that he was exempt from the LMO requirement under s. 205(*d*) of the Regulations, which provides an exemption for work "of a religious or charitable nature." Thus, no LMO was required in order for him to obtain a work permit to continue working as a Hindu priest for his current employer.

[15] In his restoration application, the Applicant says he clearly stated his intended occupation as a Hindu priest, and submitted an offer of employment to work as a Hindu priest made to him by his employer. The Officer was required to determine whether he was a Hindu priest, such that he would qualify for the LMO exemption under s. 205(*d*) of the Regulations. In doing so, the

Applicant says, the Officer was required to apply clause 5.39 of CIC operational manual *FW 1: Temporary Foreign Worker Guidelines* [*FW 1 Guidelines*], which states in part:

> R205(d) LMO exemption applies to charitable or religious workers who are carrying out duties for a Canadian religious or charitable organization and whose duties while in the service of the Canadian religious or charitable organization would not be competing directly with Canadian citizens or Permanent Residents in the Canadian labour market. It does not apply to religious workers who are entering to preach doctrine or minister to a congregation, as these people can be authorized to enter Canada pursuant to R186(l).

[16] The Applicant argues that the Officer made a reviewable error by failing to follow the *FW 1 Guidelines* and the Regulations: *Arora*, above. He says that neither the *FW 1 Guidelines* nor the Regulations require an LMO in order to receive a work permit to work for a religious organization as a priest whose main duties are to preach doctrine, perform functions related to gatherings of the congregation or group, or provide spiritual counselling. He was not *entering* Canada to preach doctrine, but rather was already in Canada and looking to extend his current work permit or temporary resident status to continue working as a Hindu priest. The job offer letter described his duties, establishing that he qualifies for an LMO exemption as a religious worker carrying out duties for a Canadian religious organization. He would not be competing directly with Canadian citizens or permanent residents in the Canadian labour market. The Officer's failure to consider the duties set out in the job offer letter and to determine whether they qualified for the s. 205(*d*) LMO exemption by applying clause 5.39 of the *FW 1 Guidelines* was a reviewable error.

Applicant was entitled to an extension of temporary resident status even without a work permit under s. 186(l) of the Regulations

[17] In the alternative, the Applicant argues that regardless of whether an LMO is required in order for him to receive a work permit, he was entitled at the very least to have his temporary residence status restored and to continue to work as a Hindu priest under s. 186(*l*) of the Regulations. This provision exempts religious workers such as the Applicant from the requirement for a work permit.

[18] Accordingly, the Applicant argues that in order to continue working in Canada as a priest, he was only required to maintain his temporary resident status. To do so, it was sufficient for him to advise the Officer when he applied for an extension of his temporary resident status that he was authorized to perform religious duties as a priest, which he did. He notes that he was previously authorized to perform religious duties for the same employer, and was only required to extend his visitor status and provide a job offer letter outlining his duties. He was never required to provide an LMO.

[19] The Applicant says the Respondent is wrong to state that he chose to apply for a work permit, and points to clause 5.13 of the *FW 1 Guidelines*, which states in part:

> - **At missions or ports of entry (POE)**
>
> […]
>
> If an application for a work permit is submitted without an LMO, and the applicant is not eligible for an exemption, officers should not issue a work permit. **Instead, a temporary resident visa as applicable** (at missions) **or a visitor record** (at POE) **may be issued. The applicant should be informed that they may work in Canada without a work permit under R186(l)**, and that, if

> they still want a work permit, they can apply for a work permit under R199(b) after they enter Canada and once they have obtained an LMO.
>
> [Applicant's emphasis]

The Applicant says it is obvious from this that he should have had at the very least, his temporary resident status restored and been authorized to perform his religious duties, and the Decision of the Officer not to restore his temporary resident status was unreasonable.

Respondent

LMO was required

[20] The Respondent argues first that the Applicant is estopped from arguing that no LMO was required before he could be issued a work permit. He applied for LMO's in support of his previous work permit applications, and in support of the restoration application that is the subject of the current proceeding. This repeated conduct, as well as the written representations of his former immigration consultant stating that he had applied for an LMO in support of the restoration application, mean that the Applicant must be taken to have accepted that he required an LMO in order to get a work permit. Having assumed that position before the administrative tribunal at first instance, the Respondent argues, the Applicant is now estopped from resiling from that position in seeking judicial review of the Officer's Decision.

[21] In the alternative, the Respondent argues that there is no merit in the Applicant's position. Religious workers who preach doctrine or minister to a congregation have a choice: they can choose to enter Canada as a visitor and work without a work permit under s. 186(*l*) of the

Regulations, or they can apply for a work permit, which requires an LMO because it does not fit within the LMO exemption for religious and charitable workers under s. 205(*d*) of the Regulations.

[22] A foreign national who applies for a work permit is generally required to obtain an LMO from HRSDC under s. 203 of the Regulations. The exemption to this requirement under s. 205(*d*) of the Regulations does not apply to the Applicant, the Respondent argues, since it does not apply to "religious workers who enter Canada to preach doctrine or minister to a congregation." The Respondent cites clause 5.39 of the *FW 1 Guidelines* in support of this position:

> **5.39 Canadian interests: Charitable or religious work R205(d), C50**
>
> **Includes updates from OB 64**
>
> R205(d) LMO exemption applies to charitable or religious workers who are carrying out duties for a Canadian religious or charitable organization and whose duties while in the service of the Canadian religious or charitable organization would not be competing directly with Canadian citizens or Permanent Residents in the Canadian labour market. <u>It does not apply to religious workers who are entering to preach doctrine or minister to a congregation, as these people can be authorized to enter Canada pursuant to R186(*l*).</u>
>
> [Respondent's emphasis]

[23] The Respondent also points to clause 5.13 of the *FW 1 Guidelines*, which in the Respondent's view makes it abundantly clear that the CPC in Vegreville should not issue a work permit to a religious worker in the Applicant's circumstances: that is, an individual who originally entered Canada without a work permit under s. 186(*l*) of the Regulations, and has subsequently applied for a work permit after entry to Canada without an LMO:

5.13 Work without a work permit R186(*l*) – Clergy

[…]

Processing work permit applications from religious workers (that is clergy, ministers, priests) – OB 29

- **At missions or ports of entry (POE)**

If a foreign national who is normally authorized to work under R186(*l*) applies to a mission or a POE for a work permit, the application must be considered under R200(1).

In the case of religious workers who are not described in R200(1)(c)(i) and (ii), the work permit application must be accompanied by an LMO. There is no exemption from the LMO requirement in these cases. The LMO exemption R205(a) (Canadian interests C10) does not apply in these cases. Please consult Section 5.29 for more details on the use of R205(a).

If an application for a work permit is submitted without an LMO, and the applicant is not eligible for an exemption, officers should not issue a work permit. Instead, a temporary resident visa as applicable (at missions) or a visitor record (at POE) may be issued. The applicant should be informed that they may work in Canada without a work permit under R186(*l*), and that, if they still want a work permit, they can apply for a work permit under R199(b) after they enter Canada and once they have obtained an LMO.

[Respondent's emphasis]

- **At CPC Vegreville**

Religious workers who are in Canada and who were initially authorized to preach doctrine or minister to a congregation pursuant to R186(*l*) may apply for work permits to CPC-Vegreville under R199(b) providing that they have first obtained an LMO. **If the applicant does not have an LMO, CPC-Vegreville should not issue a work permit**.

[Emphasis in original]

[24] The Respondent says that a religious worker who was initially authorized to enter to preach doctrine or minister to a congregation under s. 186(*l*) of the Regulations may apply for a

work permit under s. 199(b) after their arrival in Canada, but will require a positive LMO. As a religious worker who was initially authorized to preach doctrine or minister to a congregation under s. 186(*l*), the Applicant was required to have a valid LMO to obtain a work permit. No LMO was submitted, and so the application was properly refused.

[25] The Respondent says it was pointless for the Officer to assess the Applicant's work permit restoration application in any detail, including the job offer letter, as a fundamental requirement (the LMO) was missing and the application had to be refused on that basis.

[26] The Respondent submits that the fact that the Applicant obtained a positive LMO *after* the Decision was made is irrelevant to this application, and that this LMO is inadmissible as fresh evidence and should be disregarded: *Barlagne v Canada (Minister of Citizenship and Immigration)*, 2010 FC 547 at paras 22-23.

Restoration of temporary resident status was not warranted

[27] The Respondent argues that the restoration of temporary resident status is not a purely theoretical exercise; it must result in the issuance of some kind of authorization or status document. In this case, the Applicant sought restoration and issuance / authorization of a work permit. The Applicant did not meet the criteria for a work permit as he failed to submit an LMO.

[28] That the Applicant has previously worked as a priest without requiring a work permit is immaterial, the Respondent says. He had a choice of visitor status without a work permit under s. 186(*l*) or applying for a work permit under s. 199(b), in which case he required an LMO. The

Applicant opted to apply for a work permit, so his work permit restoration application was assessed on the basis of work permit criteria. The Applicant did not seek restoration of his status as a visitor, so the Officer did not consider his application on that basis.

ANALYSIS

[29] The Applicant has been living and working in Canada since 2000, at first as a temporary resident in the visitor class and then, beginning in 2009, under successive work permits.

[30] The problems began when the Applicant applied to renew his work permit and that application was refused on August 19, 2013 because he had not provided a valid LMO. That refusal also told him that his temporary resident status had expired, but that he could apply to have it restored in 90 days.

[31] The Applicant then applied for the restoration of his temporary resident status and for a work permit. However, this application was for "*a work permit* with the same employer" and "restoration of temporary resident status *as a worker*," [emphasis added] and he also indicated that the basis for this application was a positive LMO.

[32] This wording appears to have caused the Officer to treat the application as a "worker class" application (requiring a work permit) as opposed to a "visitor class" application to which s. 186(*l*) of the Regulations would apply.

[33] The Applicant now says that, based on the information he provided, the Officer should have assessed all other possible bases that would have allowed him to extend his temporary resident status, or at least to advise him that s. 186(*l*) was an option.

[34] It seems likely to me that the Applicant could have qualified to stay in Canada under s.186(*l*), but CIC now insists that this is not what he asked for, and that the "worker" basis for his application led inevitably to a refusal.

[35] I don't think the Applicant can argue that he was not aware he could apply to remain in Canada on the basis of s. 186(*l*) because he worked as a visitor up until August 2008. But he did not request to stay and work as a visitor; he asked for "restoration of temporary resident status as a worker," and indicated that it was on the basis of a positive LMO, which was not submitted. So I don't think it was unreasonable for the Officer to assume that the Applicant wanted worker status and not visitor status. And I don't think, on these facts, that any duty arose for the Officer to consider any other basis that would allow the Applicant to remain and extend his temporary resident status.

[36] However, there is the issue of whether the Applicant was exempt from the LMO requirements under s. 205(*d*) of the Regulations, so that no LMO was required to allow him to obtain a work permit. Obviously, at the time of his restoration application, the Applicant applied on the basis of a positive LMO, as he has done in his previous work permit applications. I don't think that the Applicant is estopped from arguing before me that an LMO was not required because of s. 205(*d*) but, once again, the Applicant did not indicate that he wanted to rely upon

s.205(*d*) rather than provide a positive LMO. And, once again, it is difficult to fault the Officer for considering the application as the Applicant indicated he wanted it to be considered.

[37] But this does raise the issue of whether the Applicant qualified for the exemption under s.205(*d*) and, if he did, whether the Officer was obliged to consider that exemption as part of his assessment of the Applicant's application.

[38] The Applicant refers the Court to clause 5.39 of CIC's *FW 1 Guidelines* and says that the Officer was obliged to apply s. 205(*d*) of the Regulations in his favour because he was not "entering [Canada] to preach doctrine or Minister to a congregation…" but was already in Canada and "carrying out duties for a Canadian religious or charitable organization…."

[39] The Respondent says that the Applicant needed an LMO to apply for a work permit because he does not fit under s. 205(*d*) which does not apply to religious workers who entered Canada to preach doctrine or minister to a congregation.

[40] The letter of the Applicant's consultant dated September 16, 2013 makes it very clear that the Applicant was applying for a "Restoration of Work Permit Extension":

> Mr. Sharma has been offered an extension for his position and he has and accepted a job offer from Shree Mata Bhameshwari Durga Devi Society. The employer has applied for LMO for the employee and was refused on 24 July 2013 due to a clerical error. The employer has again re applied for the LMO, therefore under the new HRSDC guidelines he will have to advertise for 1 month and then submit the new application so until that time he is unable to submit the LMO. We would like to extend his work permit for this employer, once we have received confirmation from Service Canada on this file we will forward it to your office immediately.

[41] This letter makes it clear that the Applicant understands that his application required a valid LMO.

[42] There is no dispute that the Applicant could have regained his visitor status by relying upon s. 186(*l*), but he clearly wanted a "Work Permit Extension" restoration.

[43] There is also no dispute that the Applicant could apply for a work permit after entering Canada and after working under s. 186(*l*). Section 199 of the Regulations provides in relevant part that:

Application after entry	**Demande après l'entrée au Canada**
199. A foreign national may apply for a work permit after entering Canada if they	199. L'étranger peut faire une demande de permis de travail après son entrée au Canada dans les cas suivants :
(a) hold a work permit;	a) il détient un permis de travail;
(b) are working in Canada under the authority of section 186 and are not a business visitor within the meaning of section 187;	b) il travaille au Canada au titre de l'article 186 et n'est pas un visiteur commercial au sens de l'article 187;
[…]	[…]

[44] The Applicant had previously applied for, and obtained, a work permit as someone who was working in Canada under s. 199(b). To obtain that work permit he had submitted a valid LMO. So, once again, he clearly knew that an LMO was required.

[45] The Applicant's principal argument in this application is that he was entitled to a work permit without an LMO by virtue of the exception contained in s. 205(*d*) of the Regulations. However, quite apart from the fact that he never applied for a work permit and restoration based upon this exemption, it is my view that s. 205(*d*) only applies to applications under s. 200 of the Regulations and so was not, in any event, available to the Applicant under s. 199. In addition, the Applicant has not demonstrated how he could have applied for a work permit under s. 199. He simply seeks to rely upon an exemption in s. 205(*d*) that only applies to applications under s.200.

[46] I believe the Applicant could have asked for and achieved restoration of his status as a visitor under s. 186(*l*). However, and for whatever reasons, on the advice of his counsel at the time, he clearly wanted restoration of his status as a worker. The fact that he may have subsequently realized that this was a mistake, does not render the Decision unreasonable.

[47] The Applicant's second argument is that, even if the s. 205(*d*) was not available to him in this case, the Officer was obliged to either restore his status under s. 186(*l*) or advise him that he should do this.

[48] In this regard, the Applicant relies heavily upon a portion of clause 5.13 of the *FW 1 Guidelines*, but when that relevant portion is quoted in full it clearly has no application to the Applicant:

> - **At missions or ports of entry (POE)**
>
> If a foreign national who is normally authorized to work under R186(l) applies to a mission or a POE for a work permit, the application must be considered under R200(1).

> In the case of religious workers who **are not** described in R200(1)(c)(i) and (ii), the work permit application **must** be accompanied by an LMO. There is no exemption from the LMO requirement in these cases. The LMO exemption R205(a) (Canadian interests **C10**) does not apply in these cases. Please consult Section 5.29 for more details on the use of R205(a).
>
> If an application for a work permit is submitted without an LMO, and the applicant is not eligible for an exemption, officers should not issue a work permit. Instead, a temporary resident visa as applicable (at missions) or a visitor record (at POE) may be issued. The applicant should be informed that they may work in Canada without a work permit under R186(l), and that, if they still want a work permit, they can apply for a work permit under R199(b) after they enter Canada and once they have obtained an LMO.
>
> ➢ **At CPC Vegreville**
>
> Religious workers who are in Canada and who were initially authorized to preach doctrine or minister to a congregation pursuant to R186(l) may apply for work permits to CPC-Vegreville under R199(b) providing that they have first obtained an LMO. **If the applicant does not have an LMO, CPC-Vegreville should not issue a work permit.**
>
> [Emphasis in original]

[49] It is clear that the Applicant was not applying at a mission or port of entry so that he could have no legitimate expectations he would be processed or informed under the third paragraph above.

[50] It is equally clear that the applicant was applying at CPC Vegreville, which means that his legitimate expectations could only have been that, without an LMO, "Vegreville should not issue a work permit." This is why the Applicant's counsel in his letter of September 16, 2013 was anxious to assure Vegreville that a new application would be forthcoming when an LMO had been obtained.

[51] If the Applicant is sincere that his intentions have been thwarted – and I have no reason to think that he is not – then a significant error has occurred. It is by no means apparent on the record before me who may be ultimately responsible, if anyone. However, I am convinced that the error cannot be laid at the feet of the Respondent or the Officer who handled the Applicant's applications. I can find no reviewable error with this Decision.

[52] Counsel agree that there is no question for certification in this case and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There is no question for certification.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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