Federal Court  Cour fédérale

Date: 20150911

Docket: IMM-796-15

Citation: 2015 FC 1072

Ottawa, Ontario, September 11, 2015

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

NADEEM AHMED CHAUDHRY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision rendered on January 6, 2015 by a visa officer of the Immigration and Medical Services Division of the High Commission of Canada in London, United Kingdom [the High Commission], refusing the application of Nadeem Ahmed Chaudhry for a permanent resident visa in the provincial nominee class [the Decision];

[2] This application is dismissed for the following reasons.

I. **Background**

[3] The applicant is a 42-year old citizen of Pakistan. He has qualifications in information technology and commerce and has been running his own computer hardware resale business since 1998.

[4] In December 2010, the applicant filed an application for a permanent resident visa under the Saskatchewan Immigrant Nominee Program [SINP]. In his application, he listed his current occupation as "Computer Hardware reseller (Technician) self empl." and his intended occupation as National Occupation Classification (NOC) 0621 (Retail Trade Manager). His uncle sponsored the application.

[5] On May 29, 2013, the Saskatchewan Ministry of the Economy contacted the applicant regarding documentation requirements, indicating that his application had to include either an offer of employment in a skilled occupation or English language testing results. If he chose to file International English Language Testing Systems [IELTS] results, the minimum requirements indicated were: Listening 4.5, Reading 3.5, Writing 4 and Speaking 4. The applicant replied that he had obtained an offer of employment. On June 21, 2013, the Saskatchewan Ministry of Economy [the Province] requested a copy of the job offer and proof that the employer had registered with the SINP, or proof of IELTS results.

[6] The applicant elected to provide his IELTS results, which were the following: Listening 5.5, Reading 3.5, Writing 5.5, Speaking 5.0, for an overall score of 5.0.

[7] On July 30, 2013, the Province approved the SINP application and issued a certificate of nomination for NOC 0621 (Retail Trade Manager). The permanent resident visa application was subsequently transferred to the High Commission for consideration.

[8] On June 13, 2014, the applicant received a letter from the High Commission expressing concerns that, despite the certificate of nomination from the Province, the applicant lacked the English language proficiency to become economically established in Canada. In particular, the High Commission stated that, although the applicant satisfied the minimum general language requirements for the SINP, the High Commission was not satisfied that the applicant's language proficiency would be sufficient to fulfill the tasks required of a Retail Trade Manager, which involved reading business manuals and workplace regulations and legislation and moderately complex speaking tasks such as giving detailed instruction to staff, dealing with unsatisfied customers, and complex negotiations. The High Commission gave the applicant and the Province 90 days to respond.

[9] On July 19, 2014 and July 31, 2014, the applicant sent letters in response, emphasizing that he had sixteen years of business experience and had scored higher than the minimum general language requirements, and that he was confident he would be able to find employment and quickly upgrade his language skills within a few months of being in an English-speaking environment.

[10] On September 11, 2014, the Province provided a letter maintaining its support of the applicant's nomination. The letter noted the low unemployment rate in Saskatchewan and high

demand for skilled workers, indicated that the applicant had demonstrated sufficient language proficiency to become economically established, that he had an (unvalidated) offer of employment, and that the Province anticipated the applicant would "…take a path to find employment in the Retail and Service trades for economic establishment."

[11] As reflected in a note entered in the Global Case Management System [GCMS] on November 20, 2014, a visa officer of the High Commission concluded that, despite the representations by the applicant and the Province, the visa officer was not satisfied that the applicant had the ability to become economically established. Regarding the Province's submissions, the visa officer remarked that the employment rates in Saskatchewan were not necessarily indicative of the applicant's individual ability to become economically established. The visa officer stated that neither the Province nor the applicant had responded directly to the concerns regarding language skills required for the applicant's particular intended occupation, and that he did not indicate having experience in any other field or indicate any intended alternative occupation.

[12] The visa officer concluded that the applicant had not demonstrated the language skills or experience to enable him to become economically established. The visa officer recommended substituting this evaluation for that of the Province, in accordance with subsection 87(3) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations], and dismissing the permanent resident visa application. Another visa officer concurred in that decision, and a letter communicating the Decision was accordingly sent to the applicant on January 6, 2015.

[13] The applicant challenges the Decision on the basis that his application satisfies all the legislative requirements and that the Decision is unreasonable.

II. **Standard of Review**

[14] The parties are in agreement, and I concur, that the standard of review applicable to the Decision is one of reasonableness (*Sran v Canada (Minister of Citizenship and Immigration)*, 2012 FC 791 at para 9 [*Sran*]; *Ijaz v Canada (Minister of Citizenship and Immigration)*, 2014 FC 920 at para 18 [*Ijaz*]).

III. **Issues**

[15] Based on the parties' submissions, this application for judicial review raises the issue whether the Decision was unreasonable in reaching the conclusion that the applicant did not have the ability to become economically established in Canada.

IV. **Submission of the Parties**

A. *Applicant's Submissions*

[16] The Applicant submits that the Decision is unreasonable. He argues that the visa officer should have given greater deference to the Province's assessment of his ability to become economically established, given that the Provincial Nominee Class is intended to give provinces some latitude in their decisions to select certain immigrants. He submits that the visa officer's

decision does not explain why the Province's reasoning, as explained in their representations to the High Commission, was deficient.

[17] Relying on the decision of Justice Russell in *Rezaeiazar v Canada (Minister of Citizenship and Immigration)*, 2013 FC 761 [*Rezaeiazar*], the applicant also argues that the visa officer erred in assessing his language proficiency solely in relation to the Retail Trade Manager classification, when nothing in the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA] or the Regulations requires that provincial nominees become economically established in their specific qualifying occupational category. Nor is there any requirement to demonstrate immediate economic self-sufficiency. The applicant also submits that the Province stated in its representations to the High Commission that he would likely find employment in the "Retail and Service trades", which is contrary to the visa officer's statement that the applicant had not indicated any alternative intended occupations.

[18] The applicant also relies on Justice Mosley's decision in *Sran*, which he argues is analogous to the present case. In *Sran*, at para 22, Justice Mosely quotes as follows from the relevant CIC manual in describing the meaning of becoming economically established:

> "[…] it is clear from the way in which the term is used throughout the economic classes, that to become economically established means to join and participate in the labour market in Canada. It is also clear that the selection criteria do not apply to the provincial nominee class in the same way they apply to federal skilled workers and that it is the overall intention of the legislation and the Federal-Provincial-Territorial agreements to allow the provinces some latitude in their nomination decisions."

[19] In *Sran*, the officer was found to have erred in relying primarily on the skilled worker classification tool to evaluate the likelihood that the applicant in that case would become economically established in Canada, to the exclusion of the other factors that had persuaded the province of Alberta to nominate the applicant. The applicant in the case at hand submits that the officer has made the same error in focusing on the NOC for the position of Retail Trade Manager and the language skills required for such a position.

[20] The applicant also argues that the visa officer did not address the specifics of the submissions received from the applicant and the Province in response to the procedural fairness letter. The officer failed to consider the applicant's offer of employment, the support of his uncle, and the fact that he had available funds of $20,000, which were relevant to his ability to become economically established. Overall, the visa officer focused unduly on his language skills to the exclusion of other evidence relevant to the applicant's ability to become economically established in a reasonable period of time.

B. *Respondent's Arguments*

[21] With respect to the Province's role and submissions, the respondent argues that it is ultimately up to the federal government to decide on permanent resident visa applications, that it is not up to the Province to suggest a change in the applicant's chosen occupation, and that the visa officer gave appropriate consideration to the Province's submissions but was not persuaded by them.

[22] With respect to occupational categories, the respondent submits that it was reasonable to assess the applicant's qualifications in relation to the Retail Trade Manager occupation, as this was his intended occupation and there was no evidence of any alternative occupation to consider or evidence that applicant had any experience in any other occupation. The respondent relies particularly on the decisions in *Ijaz* and in *Noreen v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1169 [*Noreen*]. The respondent maintains that it was reasonable to conclude that the applicant did not have sufficient language skills for the occupation in which he proposed to become economically established, and that he is simply asking this Court to reweigh the evidence that was before the visa officer.

[23] The respondent argues that *Sran* is distinguishable as relating principally to whether the officer gave sufficient consideration to the credentials of an applicant's wife, finding that using the NOC codes to refuse immigration was not justified given all the other applicable factors. In contrast, the visa officer in the case at hand took into account all the factors in determining the applicant's ability to become economically established, including his settlement funds, family support, work experience, and the applicant's own description of his job duties and tasks.

[24] The respondent also submits that *Rezaeiazar* is not on point, because it related to qualifications under a federal skilled worker application, in which the Court noted that the selection criteria do not apply to the provincial nominee class in the same way they do to federal skilled workers.

[25] Finally, the respondent argues that it was appropriate for the visa officer not to have taken the applicant's job offer into account, given that the applicant did not produce evidence that such an offer existed.

V. **Analysis**

A. *Legislative Framework*

[26] In order to immigrate to Canada as a permanent resident, a foreign national must file a permanent resident visa application within a family class or economic class or as a refugee (s. 12 of the IRPA). Economic immigrants are selected "on the basis of their ability to become economically established in Canada" (s. 12(2) of the IRPA).

[27] Part 6 – Economic Classes of the Regulations creates a number of categories of economic immigration within which foreign nationals may apply. The applicant applied for a permanent resident visa under the Provincial Nominee Class, whose criteria are prescribed at section 87 of the Regulations:

Class	Catégorie
87. (1) For the purposes of subsection 12(2) of the Act, the provincial nominee class is hereby prescribed as a class of persons who may become permanent residents on the basis of their ability to become economically established in Canada.	87. (1) Pour l'application du paragraphe 12(2) de la Loi, la catégorie des candidats des provinces est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada.

Member of the class

(2) A foreign national is a member of the provincial nominee class if

(a) subject to subsection (5), they are named in a nomination certificate issued by the government of a province under a provincial nomination agreement between that province and the Minister; and

(b) they intend to reside in the province that has nominated them

Qualité

(2) Fait partie de la catégorie des candidats des provinces l'étranger qui satisfait aux critères suivants :

a) sous réserve du paragraphe (5), il est visé par un certificat de désignation délivré par le gouvernement provincial concerné conformément à l'accord concernant les candidats des provinces que la province en cause a conclu avec le ministre;

b) il cherche à s'établir dans la province qui a délivré le certificat de désignation.

Substitution of evaluation

(3) If the fact that the foreign national is named in a certificate referred to in paragraph (2)(a) is not a sufficient indicator of whether they may become economically established in Canada and an officer has consulted the government that issued the certificate, the officer may substitute for the criteria set out in subsection (2) their evaluation of the likelihood of the ability of the foreign national to become economically established in Canada.

Substitution d'appréciation

(3) Si le fait que l'étranger est visé par le certificat de désignation mentionné à l'alinéa (2)a) n'est pas un indicateur suffisant de l'aptitude à réussir son établissement économique au Canada, l'agent peut, après consultation auprès du gouvernement qui a délivré le certificat, substituer son appréciation aux critères prévus au paragraphe (2).

Concurrence

(4) An evaluation made under subsection (3) requires the

Confirmation

(4) Toute décision de l'agent au titre du paragraphe (3) doit

concurrence of a second officer.	être confirmée par un autre agent.
[…]	[…]

B. *Reasonableness of Decision*

[28] Concerning the degree of deference the visa officer owed the Province, I agree with the respondent that there is no error in the Decision in this regard. It is certainly true that deference is owed to the Province's assessment as to whether an applicant has the ability to become economically established in that province. In *Sran*, at para 13, Justice Mosley observed that the provincial nomination must be accorded deference, but is not binding, and the visa officer is not obliged to consider the same criteria as the province.

[29] In the present case, the visa officer's GCMS notes include a summary of the Province's response to the concerns raised by the officer and provide the following analysis:

> The availability of many jobs & a strong economy in SK are not indicative in themselves of the PA's individual ability to become established. No alternative occupations have been specified by PA, and neither PA or Saskatchewan have responded directly to concerns that PA lacks the English language proficiency to perform the tasks of a retail trade manager in Canada. I note that PA does not indicate having experience in any field other than that of retail trade, and has not indicated any alternative intended occupations. The nominating province's ongoing support of the PA's appl'n & comments in response to the P/F are noted, but I am not satisfied that the province's & PA's submissions remove the concerns outlined in the P/F.

[30] In my view, the visa officer considered the Province's assessment but came to the conclusion that the concerns regarding the applicant's ability to become economically

established, given his current language proficiency, had not been addressed by the Province. In the circumstances, the visa officer gave adequate deference to the Province.

[31] Turning to the overall reasonableness of the Decision, including the particular focus by the officer upon the applicant's language proficiency in the context of employment as a Retail Trade Manager, I note that a number of recent cases on Provincial Nominee Class applications have involved provincial nominees who meet provincial minimum language requirements but were refused on the basis of language proficiency insufficient for the purposes of their intended occupation: *Parveen v Canada (Minister of Citizenship and Immigration)*, 2015 FC 473, [2015] FCJ No 497; *Jalil v Canada (Minister of Citizenship and Immigration)*, 2015 FC 113, [2015] FCJ No 90 [*Jalil*] ; *Ijaz*; *Noreen*; *Kousar v Canada (Minister of Citizenship and Immigration)*, 2014 FC 12, [2014] FCJ No 2.

[32] In *Jalil*, Justice Locke specifically addressed as follows at paragraph 18 an argument that it was inappropriate for a visa officer to focus too strictly on an applicant's intended occupation:

> [18] The third argument raised by the Applicant in an effort to show that the Decision was unreasonable is that the Officer focused too much on the Applicant's intended occupation. In my view, the Decision was reasonable in this aspect since it was in this intended occupation that the Applicant indicated she planned to become economically established. Other jobs she referred to (e.g. at Tim Hortons or McDonalds) were intended simply to fund the Applicant's efforts to become qualified in Canada. It does not appear that the Applicant's plan was to become economically established by virtue of these other jobs.

[33] The impact of alternative occupations proposed by an applicant was also considered in *Noreen*, where Justice Zinn made the following comments at paragraphs 7-8:

> [7] In my view, in assessing whether an applicant will be able to become economically established in Canada, it is not inappropriate for an officer to initially focus on that applicant's training and occupation. The ability of an applicant to perform those duties in Canada, and the job market for those skills, is where economic establishment is most likely to be found. However, I agree with the Applicant that "the Court has not found the legislation to contain a requirement that the person become economically self-sufficient in their qualifying occupation, or that a person has to join and participate in the labor market in a particular occupation when they arrive in Canada:" *Rezaeiazar v Canada (Minister of Citizenship and Immigration)*, 2013 FC 761 para 82. Accordingly, if economic establishment is not found when the person's qualifying occupation is examined, the officer must look elsewhere. I am satisfied from the passage quoted above, that the officer here did just that; he or she looked at what the Applicant said she would do -- "basic odd jobs" -- and determined that the Applicant would nevertheless be unable to become economically established.
>
> [8] In my view, it was not unreasonable for the officer to conclude that engaging in basic odd jobs, likely on a part time or casual basis since Ms. Noreen intended to attend University, is not proof of the ability to become economically established. This is explicitly stated in Manual OP 7b, which officers refer to when evaluating applications: "...part-time or casual work would not normally meet the requirement to participate in the labour market in the sense it is intended here" (emphasis added). Part-time work does not qualify as participation in the labour market because "participation in the labour market must be in a way which allows the individual to fully support themselves [sic], not merely contribute to the costs of their upkeep" (emphasis added). It is not unreasonable to conclude that Ms. Noreen would not be able to fully support herself and her three daughters, even with the assistance of her husband, if she is only working on a part-time or casual basis.

[34] I take from these decisions that a visa officer is entitled to focus primarily on the intended occupation, because that is the occupation which the applicant proposes will allow him or her to become economically established. The visa officer should also consider alternative occupations proposed by an applicant to determine whether the applicant could thereby become economically

established, in the sense of being economically self-sufficient. However, this does not assist the applicant in this case because, as the visa officer repeatedly noted, the applicant did not suggest that he might become economically established in another occupation. *Jalil* and *Noreen* both involved situations where the applicant had specifically indicated alternative employment opportunities. I would not consider these authorities to create an obligation on the visa officer to consider, of his or her own initiative, a variety of hypothetical occupations. Nor would I consider the reference in the Province's submissions, to anticipating that the applicant "… will take a path to find employment in the Retail and Services trades for economic establishment", to create such an obligation.

[35] The applicant relies heavily on *Sran*, in which Justice Mosley overturned a decision on the basis that the visa officer erred in assessing economic establishment on a Provincial Nominee Class application using the National Occupational Classifications applicable to a Federal Skilled Worker Class application. In that case, the applicant was a farmer in India and worked as a store clerk in New Zealand, while his wife worked in India as a teacher and as a qualified horticulturalist in New Zealand. In addition to finding that the visa officer erred in failing to assess his wife's qualifications in their own right, Justice Mosley made the following comments:

> [24] In my view, the officer erred in relying primarily on the skilled worker classification tool to evaluate the likelihood that the applicant would become economically established in Canada. In comparing the applicant's skills to the NOC criteria, the officer lost sight of the factors that had persuaded the Alberta government that the family could be settled including the wife's education and the parents' willingness to support the family.

[36] However, my reading of *Sran* is that the error identified by Justice Mosley was the officer's focus on whether the applicants had demonstrated the education and work experience to

show that they had the specific working skills described in the NOC, as in a Federal Skilled Worker application. I do not consider the visa officer in the case at hand to have erred in having recourse to NOC descriptions to understand which tasks the applicant might be called upon to fulfill as a Retail Trade Manger, so as to assess whether his language proficiency was sufficient for such tasks.

[37] In my view, *Ijaz* is the more applicable authority, as it addressed an argument similar to the one advanced by the applicant in the case at hand, to the effect that the visa officer focused unduly on the applicant's language skills to the exclusion of other evidence relevant to his ability to become economically established. As held by Justice Russell at paragraphs 59-60:

> [59] The fact that one factor (language ability) is singled out for particular emphasis does not mean that all other material factors were not considered in the weighing process.
>
> [60] As the Officer points out, irrespective of all other factors, the Applicant had to demonstrate that she would be able to find employment at a level that would provide the required support for the Applicant and her family and thus achieve economic establishment.

[38] The applicant argues that the visa officer failed to consider the additional factors of the offer of employment he had received, the support of his uncle, and the fact that he had available funds of $20,000, which were relevant to his ability to become economically established. However, a review of the GCMS notes indicates that the availability of settlement funds was recorded in the initial assessment that resulted in issuance of the procedural fairness letter. That letter itself referred to the fact that the applicant had the support of family members but noted that such support would not be sufficient to outweigh concern about language proficiency. Therefore, as in *Ijaz*, the record indicates these factors were taken into account but did not

alleviate the officer's concern that the applicant had not demonstrated the ability to obtain employment that would permit him to achieve economic establishment.

[39] An offer of employment might have assisted the applicant to demonstrate such ability. However, the record demonstrates that the Province was unable to validate the job offer that the applicant referred to having received. I therefore agree with the respondent that, given that the applicant did not produce evidence that such an offer existed, it was appropriate for the visa officer not to have taken this into account

VI. **Conclusion**

[40] Overall, I find no basis to conclude that the Decision is unreasonable. This application is therefore dismissed. The parties were consulted, and neither proposed any question for certification for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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