

Federal Court



Cour fédérale

Date: 20161102

Docket: IMM-923-16

Citation: 2016 FC 1219

Fredericton, New Brunswick, November 2, 2016

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

LI BIAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered orally from the Bench on October 17, 2016 in Toronto)

I. Overview

[1] This is an application for judicial review of a visa officer's [the Officer] refusal of Li Bian's [Mr. Bian] application for a permanent resident visa under the Canadian Experience Class [CEC].

[2] For the reasons herein, I would allow the application for judicial review.

II. Context

[3] Mr. Bian applied for permanent resident status on the basis that he had completed one year of work experience as an Assistant Buyer for Libra & Aquarius Inc. He applied under the National Occupation Classification [NOC] 6222 - Retail and Wholesale Buyers category, which qualifies Mr. Bian under CEC. In rejecting Mr. Bian's application, the Officer reasoned his duties more closely resembled those of NOC 1524 – Purchasing and Inventory Control Workers, which does not qualify Mr. Bian under CEC.

III. Issue and Standard of Review

[4] The sole issue before this Court is whether the Officer's decision is reasonable. That is, is the decision justified, transparent and intelligible and does it fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]).

IV. Analysis

[5] In the half-page rejection letter, the Officer advised Mr. Bian as follows:

Your application was assessed based on the occupation which you identified as part of your skilled work experience in Canada:

I am not satisfied that you meet the skilled work experience requirement because you did not provide sufficient evidence that you have performed the lead statement and performed a substantial number of the main duties for NOC 6222 while you were at the employment of Libra & Aquarius.

[6] The Officer then made the following concluding observations:

Following an examination of your application, I am not satisfied that you meet the requirements of the Act and Regulations for the reasons explained above. I am therefore refusing your application.

[My emphasis.]

[7] I note that “the reasons explained above” merely constitute three lines, in which the Officer refers to NOC 6222 and informs Mr. Bian that he does not meet the duties under that category. I am aware that the Officer’s notes are meant to complement the refusal letter. However, the notes simply list the statements made by the employer in support of Mr. Bian’s application. They make no reference to the duties associated with NOC 6222. In fact, the Officer spends considerable time explaining the duties of NOC 1524, after which he concludes that Mr. Bian more appropriately meets that category. He gives no consideration to the possibility that the duties outlined in NOC 6222 and NOC 1524 might overlap.

[8] While the Officer undertook a detailed assessment of the duties attached to NOC 1524, he conducted no such analysis in relation to NOC 6222, the very provision under which Mr. Bian applied. In the circumstances, I am of the view that neither Mr. Bian, nor this Court, is in any position to understand the reason(s) for the refusal. I therefore conclude the decision fails to meet the requirements of justification, transparency and intelligibility and would allow the application for judicial review.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed without costs. The matter is referred to another visa officer for redetermination. No question is certified.

“B. Richard Bell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-923-16

STYLE OF CAUSE: LI BIAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 17, 2016

JUDGMENT AND REASONS: BELL J.

DATED: NOVEMBER 2, 2016

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