Date: 20080114

Docket: IMM-2373-07

Citation: 2008 FC 25

BETWEEN:

IBTESSAM NISSAB

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

Pinard J.

[1] This is an application for judicial review of the decision of K. Gebirrebbi (the "visa officer"), who determined that the applicant did not qualify for a permanent resident visa as an investor.

[2] The applicant is a Syrian doctor who applied to immigrate to Canada under the investor category in 2005. She is employed as Chief Doctor and Supervisor of the Obstetrics and Gynecology Department at Al Amal Hospital, and also works part time in a private clinic as the sole

manager and director. Her application to come to Canada as an investor was denied on April 15, 2007.

[3] After setting out the legislative framework of the investor category, the visa officer determined that he was not satisfied that the applicant had the required two one-year periods of experience in the management of a qualifying business or two one-year periods of experience in the management of at least five full-time job equivalents per year in a business. In particular:

> . . . During your interview you indicated that there are 6 employees working under your supervision at Amal Hospital. You also provided a letter from the Social Security Administration showing that the hospital had a total of 6 to 8 employees registered with the social security administration in the past two years. However, you were unable to provide a satisfactory explanation on how 6 out of the 8 registered hospital employees happen to work in your department and under your supervision when there are 3 other departments in the hospital.

[4] The investor class is defined in the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "Regulations"), as follows:

88. (1) "business experience", in respect of (*a*) an investor, other than an investor selected by a province, means a minimum of two years of experience consisting of (i) two one-year periods of experience in the management of a qualifying business and the control of a percentage of equity of the qualifying business during the period beginning five years before the date of application for a permanent resident visa and ending on the day a determination is made in respect of the application, (ii) two one-year periods of experience in the management of at least five full-time job equivalents per year in a business during the	**88**. (1) *a*) S'agissant d'un investisseur, autre qu'un investisseur sélectionné par une province, s'entend de l'expérience d'une durée d'au moins deux ans composée : (i) soit de deux périodes d'un an d'expérience dans la gestion d'une entreprise admissible et le contrôle d'un pourcentage des capitaux propres de celle-ci au cours de la période commençant cinq ans avant la date où la demande de visa de résident permanent est faite et prenant fin à la date où il est statué sur celle-ci, (ii) soit de deux périodes d'un an d'expérience dans la direction de personnes exécutant au moins cinq équivalents

period beginning five years before the date of application for a permanent resident visa and ending on the day a determination is made in respect of the application, or	d'emploi à temps plein par an dans une entreprise au cours de la période commençant cinq ans avant la date où la demande de visa de résident permanent est faite et prenant fin à la date où il est statué sur celle-ci,
(iii) a combination of a one-year period of experience described in subparagraph (i) and a one-year period of experience described in subparagraph (ii);	(iii) soit d'un an d'expérience au titre du sous-alinéa (i) et d'un an d'expérience au titre du sous-alinéa (ii);
[. . .]	[. . .]
"investor" means a foreign national who	« investisseur » Étranger qui, à la fois :
(*a*) has business experience;	*a*) a de l'expérience dans l'exploitation d'une entreprise;
(*b*) has a legally obtained net worth of at least $800,000; and	*b*) a un avoir net d'au moins 800 000 $ qu'il a obtenu licitement;
(*c*) indicates in writing to an officer that they intend to make or have made an investment.	*c*) a indiqué par écrit à l'agent qu'il a l'intention de faire ou a fait un placement.

[5] The fundamental issue that arises in this application is whether the visa officer erred in determining that the applicant did not have the requisite business experience.

[6] Subsection 88(1) of the Regulations provides that, in order to be considered an investor, an applicant must have business experience, which can consist of two one-year periods of experience in the management of at least five full-time job equivalents in the five years preceding the application. The visa officer who decides whether an applicant meets this requirement is entitled to a high level of deference, and these decisions should be reviewed on the standard of patent unreasonableness (*To v. Canada (Minister of Employment and Immigration)*, [1996] F.C.J. No. 696 (C.A.) (QL)). The obligation is on the applicant to provide sufficient evidence to satisfy the visa officer that he or she meets the statutory requirements (*Lu v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1025, [2006] F.C.J. No. 1289 (T.D.) (QL)).

[7] In this case, the visa officer specifically noted his concern with the evidence provided by the applicant, and his dissatisfaction with the explanation she had provided. This evidence and this explanation appear from the applicant's own affidavit. In my opinion, this case is distinguishable from *Gupta v. Canada (Minister of Citizenship and Immigration)* (2000), 186 F.T.R. 232, cited by the applicant, in which the Federal Court took issue with the visa officer's failure, on a visitor visa application, to consider the totality of the evidence - in that case, the evidence of family and business ties in India. Here, the visa officer essentially determined that the applicant's claim, that she supervised six employees in one department when three other departments had between none and two employees, was not plausible. When the applicant failed to provide additional evidence which would counteract this determination, the visa officer decided that the applicant did not fall within the investor class. In my view, this decision was not patently unreasonable.

[8] For all the above reasons, the application for judicial review is dismissed.

"Yvon Pinard"
Judge

Ottawa, Ontario
January 14, 2008

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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