

Federal Court



Cour fédérale

Date: 20090730

Docket: IMM-4911-08

Citation: 2009 FC 788

Ottawa, Ontario, July 30, 2009

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

MOJTABA KARAMI

Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to s. 72 (1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision of an Officer of Citizenship and Immigration Canada (Officer), dated October 29, 2008 (Decision), refusing the Applicant's application because of misrepresentation or withholding proof of employment, which rendered the Applicant inadmissible under paragraph 40(1)(a) and paragraph 40(2)(a) of the Act.

BACKGROUND

[2] The Applicant was born on August 11, 1980 in Kazeroom, Iran. He presently resides in Tehran and is unmarried with no children.

[3] The Applicant says he is currently employed as a welder in Tehran by Yamgan Company, a large contractor. He has been employed with the Yamgan Company from 2001 until 2005, and then from 2006 until the present time.

[4] In 2004, the Applicant was working for Yamgan Company in Kerman. The post office in Kerman hired Yamgan Company to build an office expansion. The Applicant alleges that he never claimed to be, nor ever was, employed by the post office of Iran. At all material times he remained an employee of Yamgan Company.

[5] The Applicant was interviewed by Saskatoon Metal Manufacturing and was offered a permanent job as a welder in Saskatoon, Canada. The Applicant applied as a skilled worker to the Saskatchewan Immigrant Nominee Program and was accepted.

[6] The Applicant then applied to the Canadian Embassy in Tehran for a work permit in order to come to Canada to work for Saskatoon Metal Manufacturing in Saskatoon. The Applicant was

notified on October 29, 2008 that he had been denied entry to Canada for misrepresenting or withholding proof of employment.

[7] The Applicant asserts that, upon further investigation, he discovered that when the Officer was confirming his employment for the time he had been working in Kerman, a representative for the Canadian Embassy in Iran had in fact contacted the post office in order to verify his employment. The Applicant was not an employee of the post office, but an employee of Yamgan Company who was on contract with the post office. The Applicant alleges he was never given a chance to provide input into this matter and that, as a result, his employment situation has not been truly assessed.

DECISION UNDER REVIEW

[8] The Officer held that the Applicant did not qualify for a visa to Canada.

[9] The Officer cited paragraph 40(1)(a) of the Act stating that a foreign national is inadmissible for misrepresentation for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of the Act. The Officer also noted paragraph 40(2)(a) of the Act which specifies that a foreign national continues to be inadmissible for misrepresentation for a period of two years following an inadmissibility determination under subsection (1).

[10] The Officer noted that on September 1, 2008, the Applicant misrepresented his proof of employment at the Embassy of Canada in Tehran. The Officer reached this determination because of verifications checks carried out in relation to the Applicant's application. The Officer also says that she gave the Applicant a chance to provide input on the matter. The Officer concluded that the misrepresentation or withholding employment information induced, or could have induced, errors in the administration of the Act, as the Applicant would have been assessed as having ties to the region which he did not have.

[11] The Officer concluded that the Applicant was inadmissible to Canada for a period of two years from the date of the October 29, 2008 letter.

ISSUES

[12] The Applicant submits the following issues on this application:

- a. Did the Officer fail to contact the appropriate personnel when confirming the Applicant's employment history, or use otherwise erroneous information as the basis of her Decision?
- b. Did the Officer fail to allow the Applicant to provide an explanation for any apparent discrepancies?
- c. Did the Officer make a patently unreasonable decision in accusing the Applicant of misrepresenting himself and barring him from admissibility to Canada for a period of two years?

- d. Is the Decision based on an erroneous finding of fact made in a perverse or capricious manner?

STATUTORY PROVISIONS

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

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.

40. (1) A permanent resident or a foreign national is inadmissible for misrepresentation

(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;

(b) for being or having been sponsored by a person who is determined to be inadmissible for misrepresentation;

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.

40. (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :

a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;

b) être ou avoir été parrainé par un répondant dont il a été statué qu'il est interdit de territoire pour fausses déclarations;

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| <p>(c) on a final determination to vacate a decision to allow the claim for refugee protection by the permanent resident or the foreign national; or</p> | <p>c) l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile;</p> |
| <p>(d) on ceasing to be a citizen under paragraph 10(1)(a) of the <i>Citizenship Act</i>, in the circumstances set out in subsection 10(2) of that Act.</p> | <p>d) la perte de la citoyenneté au titre de l'alinéa 10(1)a) de la <i>Loi sur la citoyenneté</i> dans le cas visé au paragraphe 10(2) de cette loi.</p> |
| <p>(2) The following provisions govern subsection (1):</p> | <p>(2) Les dispositions suivantes s'appliquent au paragraphe (1):</p> |
| <p>(a) the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of two years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in Canada, the date the removal order is enforced; and</p> | <p>a) l'interdiction de territoire court pour les deux ans suivant la décision la constatant en dernier ressort, si le résident permanent ou l'étranger n'est pas au pays, ou suivant l'exécution de la mesure de renvoi; b) l'alinéa (1)</p> |
| <p>(b) paragraph (1)(b) does not apply unless the Minister is satisfied that the facts of the case justify the inadmissibility.</p> | <p>b) ne s'applique que si le ministre est convaincu que les faits en cause justifient l'interdiction.</p> |

STANDARD OF REVIEW

[14] The standard of review to be applied when determining whether an officer made a reviewable error in concluding that an applicant made a material misrepresentation pursuant to

paragraph 40(1)(a) of the Act is reasonableness: *Walia v. Canada (Minister of Citizenship and Immigration)* 2008 FC 486 at paragraph 6 (F.C.T.D.) and *Dunsmuir v. New Brunswick* 2008 SCC 9 (*Dunsmuir*) at paragraph 47.

[15] In *Dunsmuir*, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, “the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review”: *Dunsmuir* at paragraph 44. Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of “reasonableness” review.

[16] The Supreme Court of Canada in *Dunsmuir* also held that the standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the 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.

[17] Thus, in light of the Supreme Court of Canada’s decision in *Dunsmuir* and the previous jurisprudence of this Court, I find the standard of review applicable to the issues on this application to be reasonableness, with the exception of the procedural fairness issues. 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”: *Dunsmuir* at paragraph 47. Put another way, the Court should only intervene 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.”

[18] The Applicant has also raised a procedural fairness issue to which the standard of review is correctness: *Suresh v. Canada (Minister of Citizenship and Immigration)* 2002 SCC 1.

ARGUMENTS

Officer Failed to Contact Appropriate Personnel

[19] The Applicant submits that the Officer told him in relation to his work for Yamgan Company that “several long-term employees said that he did not work there.” The Applicant says this is untrue. Maryam Gholaminejas, secretary for the central officer of Yamgan Company, stated in her affidavit that she was contacted by the Canadian Embassy and informed them that she did know the Applicant; however, she did not have any detailed information about his job description, as she had no direct contact with anyone outside of the central office. The Applicant notes in his affidavit that he only attended the central office once or twice a year, when there had to be contact with the Executive Director or Financial Manager.

[20] The Applicant also submits that the Officer’s conclusions are also contradicted by the information in the affidavit of Mr. Elahi, Project Supervisor of the Post Officer Project for Yamgan Company. In his conversation with the Canadian Embassy, Mr. Elahi alleges that he stated he did

not know any of the workers on the project and did not have access to a list of workers. The Officer commented that she "...checked with the project manager for that project who stated that the information on that contract was not correct-that he did not know subject. That the project was not big enough for a group of welders, he named the person who had done the welding." The Applicant says that this directly contradicts the statements given in Mr. Elahi's affidavit and that it can be inferred from the interview transcript that the Officer considered this information important, and as such its falsity is highly material to the Decision.

[21] The Applicant notes that Ahmad Ahmedyar Lasboo Mahaleh, Supervisor at Yamgan Company, stated in his affidavit that he knew the Applicant well and that he had worked for Yamgan Company since 2001.

[22] The Applicant says that the Officer relied on the information provided by the staff of the Canadian Embassy in Iran. She could not have directly contacted the employers herself because of the language barrier. The Applicant alleges that the Officer made serious errors when relying on material facts. The fact that the Applicant was not given a chance to explain the Officer's findings led to false information being used in his assessment. Therefore, the Applicant was accused of misrepresentation and the Officer acted in a capricious manner. Her refusal to hear the Applicant lead to an unreasonable Decision.

Officer Failed to Allow Applicant to Explain Discrepancies

[23] The Applicant submits that he was told that the Canadian Embassy had contacted the post-office in Kerman, Iran to confirm his employment and that the post office had said they had no record of an employee with the Applicant's name. When the Applicant attempted to explain to the Officer that the company he worked for had been hired by the post office to build an expansion of their offices, he says he was interrupted and was not allowed to continue with his explanation.

[24] The Applicant says that the people contacted to confirm his employment history claimed not to know him and he attempted to explain the possible cause for the misunderstanding, but the Officer stood up and left the interview. The Applicant says that the jurisprudence relating to work experiences makes it clear that an applicant must be made aware of key issues so that they may respond. As well, the principal elements of the Officer's assessment of experience and occupation must be made clear to an applicant throughout, and an applicant must be open to questioning: *Arshi v. Canada (Minister of Citizenship and Immigration)* 2003 FCT 323.

[25] The Applicant says that he was not given a reasonable chance to provide an explanation for the discrepancies upon which the Officer based her Decision. Therefore, it is reasonable to assume that had the Applicant been allowed to explain that he had never actually been employed by the post office, the issue would have been easily resolved.

[26] The Applicant notes that the Officer stated that the verifications of supporting documents “Proof of Employment at Yamgan” and “Training Certificate for Welding” do not check out. The Applicant was told to bring these original documents to the interview, which he did, but he was never asked to present them and the Officer never mentioned anything about these documents to him in the interview. There is also no record of any discussion regarding these documents.

[27] The Officer later accused the Applicant of misrepresenting these documents; an accusation with the most serious consequence of barring the Applicant from entry to Canada for two years. The Applicant says that by coming to such a conclusion without even asking to see the documents in question constitutes a clear breach of procedural fairness and natural justice.

Officer Made Patently Unreasonable Decision

[28] The Applicant notes that the Officer relied heavily upon her interview with the Applicant in making her Decision. Therefore, it was imperative to establishing a fair procedure to allow the Applicant’s input at the interview. The Applicant cites *Mehta v. Canada (Minister of Employment and Immigration)* 2003 FC 1073 (*Mehta*) at paragraph 9:

9 It is clear from the refusal letter that the visa officer relied upon her conversation with the peon as one of the reasons for her decision. The content of that conversation was not put to the applicant and the failure to do so, in accordance with the above noted authorities, constitutes a breach of procedural fairness. It may be that the officer would have come to the same conclusion in any event, but it is not evident or certain that such would be the case. Therefore, it cannot be said that this is one of those infrequent instances in which the breach was immaterial. Thus, the application for judicial review will be

allowed. Counsel posed no question for certification. This matter raises no serious issue of general importance.

[29] The Applicant submits that it is settled law that where a decision is based primarily on extrinsic evidence, an applicant must be given an opportunity to respond to such evidence. By not giving the Applicant an opportunity to respond in this case, incorrect information was used to make the Decision and therefore the Decision is erroneous. See: *Sorkhabi v. Canada (Secretary of State)*, [1994] F.C.J. No. 1976 (F.C.T.D.); *John v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 52 (F.C.T.D.) and *Chow v. Canada (Minister of Citizenship and Immigration)* 2001 FCT 996.

[30] The Applicant says that this Court should consider and admit the evidence of Mr. Elahi and Ms. Maryam Gholaminejad and Mr. Ahmad Ahmedyar Lasboo Mahaleh in the form of affidavits in the Applicant's record, as it is the only way that the Applicant can bring to the Court's attention the breach of procedural fairness and natural justice that has occurred in this case. The Applicant notes that the Officer made her Decision by relying on extrinsic evidence without giving him an opportunity to reply in a proper manner. Therefore, the Decision is based on an erroneous finding of fact made in a perverse or capricious manner.

The Respondent

Preliminary Issue

[31] The Respondent submits that the Applicant refers throughout his Memorandum to the CAIPS notes as a transcript of the interview. The Respondent clarifies that the CAIPS notes are an electronic system to gather and update information from applicants and to make notes on the status of an application's progress. They are not an actual transcript of the interview.

Issue One

[32] The Respondent submits that significant efforts were made and appropriate personnel were contacted in relation to the Applicant's application, and none of the verifications conducted corroborated the Applicant's employment history as disclosed in his application.

[33] The Respondent argues that the persons contacted for verification were not "peons" as considered in *Mehta* at paragraph 5. Rather, multiple verifications were conducted regarding the Applicant's employment, including long-term employees of Yamgan Company.

[34] The Respondent stresses that the Officer was open to accepting the information provided by the Applicant. The Applicant's training certificate for welding studies between June 2006 and December 2006 in Jagrood, Iran was initially questioned. However, following verifications conducted prior to his interview, the authenticity of the training certificate was confirmed.

[35] The Respondent notes that two long-term employees of Yamgan Company were contacted for verifications of the Applicant's employment. The employees separately provided a physical description to confirm the identity of the Applicant and stated that the Applicant did not work for Yamgan Company. Rather, the employees each volunteered that the Applicant was a relative (nephew) of the head of the company.

[36] The additional verifications conducted regarding the contract which Yamgan Company had with the Kerman post office construction project involved interviews with the project manager and the individual who was head of the workshop for three years. Neither knew the Applicant or could confirm that he worked on the project. As well, the head of the workshop provided details regarding the parameters of the project, including the different electrodes used. He said that the project was largely concrete and not metal and was not large enough to require a group of welders. The head of the workshop also provided the name of the welder on the project.

[37] The Respondent concludes on this issue that the Officer clearly understood that the Applicant claimed to be under a contract for the construction project and was not an employee of the Kerman post office.

Issues Two and Three

[38] The Respondent submits that the purpose of paragraph 40(1)(a) of the Act is to ensure that applicants provide complete, honest and truthful information in every manner when applying for

entry into Canada: *Bodine v. Canada (Minister of Citizenship and Immigration)* 2008 FC 848 at paragraph 44.

[39] The Respondent notes that to make a finding of inadmissibility under paragraph 40(1)(a) of the Act, two factors must be present: (1) there must be a misrepresentation by the Applicant; and (2) the misrepresentation must be material in that it could induce an error in the administration of the Act. Relevant information becomes material when it affects the process undertaken or the final decision: *Bellido v. Canada (Minister of Citizenship and Immigration)* 2005 FC 452 (*Bellido*) at paragraph 27 and *Koo v. Canada (Minister of Citizenship and Immigration)* 2008 FC 931 (*Koo*) at paragraph 19.

[40] The Respondent submits that the Officer's practice is to only consider paragraph 40(1)(a) of the Act if the refutations provided on verifications are credible and material to the application. The Officer informed the Applicant of the discrepancies and provided the Applicant with an opportunity to explain.

[41] The Respondent states that it is settled law that there is no duty on an Officer to inform an applicant of concerns regarding an application, or to provide an applicant with an opportunity to respond before concluding an assessment. However, there is an exception when an Officer relies on extrinsic evidence in coming to his/her decision. In such a case, the Officer is required to provide the applicant with an opportunity to respond to the extrinsic evidence. See: *Mehta* at paragraphs 7-8 and *Bellido* at paragraph 36.

[42] The Respondent notes that the onus was on the Applicant to provide the Officer with all of the relevant information and documentation necessary to demonstrate that he meets the requirements of the Act. The Canadian Embassy contacted employees of the company he claimed to be employed by, as well as project managers who would have knowledge of the projects the Applicant claimed to have been contracted to, in order to verify the Applicant's employment experience. None of these persons confirmed the information provided by the Applicant and, in fact, many provided evidence that directly refuted the Applicant's information. See: *Tran v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C. 1377 at paragraphs 4 and 36.

[43] The Respondent notes that, during the interview, the Officer explained to the Applicant the verifications that had been done. She explained who had been contacted and the specifics of the information they had provided to refute the Applicant's information. The Officer informed and made clear to the Applicant the issues raised by the verifications. Further, the Officer provided the Applicant with several open-ended opportunities to provide an explanation. Other than indicating it was a mistake, the Applicant provided no explanation.

[44] The Respondent points out that the CAIPS notes from the interview reflect that the Officer gave the Applicant several opportunities to respond to the evidence obtained in the verifications.

The notes state in relevant part as follows:

- “Asked subj if he had an explanation as to why several long term employees would say he was not employed there”;
- “Asked subj for explanation”; and
- “I also gave subj a chance to provide input on the matter.”

[45] The Respondent states that the Officer reviewed the employment contracts and other documentation provided by the Applicant. Her notes from the interview state as follows:

- “Explained to subj that we had checked the various employment & other supporting documents”;
- “Explained to subj that we also checked the information on the employment contracts that he presented as proof of his employment”;
- “Asked subj about the details of another contract”; and
- “Subj has provided fraudulent employment documents.”

[46] The Respondent says that the Officer also considered the inconsistencies within the documents presented in support of the application. She noted that the welder approval test certificate was issued in December 2006 and she did not believe, based on her experience, that the Applicant would be contracted as a master welder from November 2003 to November 2005 without training.

[47] The Respondent also states that the Applicant completed a Map Reading Profession Training Course and Job Skills Evaluation on November 17, 2007 that required 180 hours of training, which was noted by the Officer. However, the course was completed at the same time the Applicant claimed to be working as a welder for Yamgan Company.

[48] The Respondent points out that the information provided by the Applicant at the interview respecting the dates during which he worked with Yamgan Company was not consistent with the information in his application. The Applicant stated in the interview that he had not been working for the past 1.5 years, which contradicts the employment information in his application that he was employed by Yamgan Company from December 2006 to the time of the interview.

[49] The Respondent contends that the Applicant's misrepresentations with respect to his employment are clearly material to his application for a work permit and that the misrepresentations made by the Applicant would affect the Officer's final decision. This is particularly so since they could induce a misapplication of the Act. The misrepresentations mean that the Applicant would have been assessed as having work experience that he does not have.

[50] The Respondent notes that, while an officer is obligated to consider the totality of the information before her, it is clear that the Officer in the present case weighed and considered all the information available to her in concluding that the Applicant had misrepresented his employment experience and that this induced, or could induce, a misadministration of the Act. This included information provided in the Applicant's application and supporting documents, information gathered from verifications and the interviews with the Applicant during which he was given opportunities to explain the conflicting information. No information was overlooked or ignored by the Officer.

[51] The Respondent points out that the Officer gave the Applicant numerous opportunities at the interview to explain the discrepancies in the information before her, but he failed to do so. Therefore, it was reasonable for the Officer to conclude that the Applicant was misrepresenting his work experience and that these misrepresentations were material to his work permit application and could induce an error in the administration of the Act.

[52] The Officer did not find the Applicant to be credible and determined that he had misrepresented his work experience and credentials. This conclusion was properly founded on, and supported by the evidence. The Officer did not ignore evidence. Therefore, the Respondent suggests that the Court should refuse to interfere with the assessment of the Applicant's credibility and plausibility. See: *Nsombo v. Canada (Minister of Citizenship and Immigration)* 2004 FC 505 at paragraphs 18-19.

[53] The Respondent concludes by submitting that the Applicant has not established that the conclusions reached by the Officer were perverse or capricious or so unreasonable that the Decision should be set aside. The Respondent says that the Decision of the Officer was reasonable and should be upheld.

ANALYSIS

[54] At the centre of this Decision are the verification procedures that were conducted in order to determine the accuracy of the Applicant's employment documents and other records. In the end, as a result of what the Officer decided where discrepancies between the record of employment presented by the Applicant and the information gleaned from the verification process, the Officer concluded that the Applicant had provided fraudulent employment documents.

[55] The Officer says that she gave the Applicant an opportunity to explain the discrepancies but he provided no acceptable explanation.

[56] As regards the Applicant's employment with Yamgan Company, the Officer's CAIPS notes reveal the following:

Explained the results of the verifications to subj. The information in the job letter from "Yamgan" was not corroborated by several people working in that office. Asked subj. if he had an explanation as to why several longterm employees would say he was not employed there. Subj. said that they are mistaken. Subj. also said that he was not related to the owners of the company.

[57] We know very little about how the verifications were conducted. It is obvious that the Officer did not do them herself because she does not speak the language and evidence on the record suggests they were carried out by Mr. Afkhami, who works at the Canadian Consulate in Tehran. We have no affidavit from Mr. Afkhami as to the procedures he followed and/or how he reported his findings to the Officer. Nor was the Applicant told at the interview who the company employees were who had said he was not employed there.

[58] We now have affidavits from people who work for the company who say that they were contacted for information concerning the Applicant. Ms. Gholaminejad is a secretary at the Yamgan central office in Tehran. She knows little about company employees who do not work at the central office. Yet she is one of the employees who received a phone call from the Canadian Embassy concerning the Applicant. She was asked if she knew the Applicant and whether he worked at Yamgan. This is what she says she said:

I replied that yes, he works for the company, but I know nothing about his job description. I was asked if he was employed full-time and I replied that I didn't know. I then informed them that all I knew of him was that he occasionally came in for an appointment with one of the managers. This was the end of the conversation.

[59] Besides providing confirmation that the Applicant has indeed worked for Yamgan, Ms. Gholaminejas' evidence shows that at least one of the company employees contacted by the Canadian Embassy said nothing that called into question the Applicant's documentation and his account of working for Yamgan as a welder.

[60] We also have an affidavit from Mr. Mahaley who has worked with Yamgan for over 10 years and who is a supervisor and foreman in charge of the working crews on different sites. He says he has a full knowledge of all workers who work under his supervision. He also says that he has known the Applicant since he started work for the company in 2001. He confirms that the Applicant is a welder and worked on the post office project in the city of Kerman in 2001.

[61] Mr. Mahaleh was also contacted by the Canadian Consulate in Tehran as part of the verification process. This is his account of what took place:

On or about week (*sic*) of October 19-24 of 2008, I was contacted by Canadian Consulate in Tehran. A person introduced himself as Mr. Afkhami asked me few questions regarding Mr. Karami's work experience. I confirmed that Mr. Karami works in our company in the capacity of a welder in different projects including Kerman post office. Further, I informed him that Mr. Karami is presently working as a welder and he supervises other welders at the present moment.

[62] Once again, it becomes evident that someone else who was contacted by the Canadian Embassy for verification purposes confirms a great deal of the Applicant's own account of his employment experience.

[63] The Officer tells us so little about the verification process and how it was conducted in this case, and there is no evidence from Mr. Afkhami or whoever it was who made the verification contacts, that it is impossible to question the evidence of these two witnesses who say they were contacted and who confirm the Applicant's own information.

[64] Their evidence suggests that, when the Officer questioned the Applicant at the interview, she was either acting in error or she had not received a complete report from those who had conducted the verification interviews of employees of Yamgan. This is hardly a basis upon which to conclude that the Applicant was lying and that his employment documents were fraudulent.

[65] The Officer also placed significant emphasis in her Decision on the verifications carried out with regard to the post office contract:

Explained to subj that we also checked the information on the employment contracts that he presented as proof of his employment. Asked if subj was working as a master welder and head of welder's team 2003-2005 as per the contract. Said yes. Explained that we had checked with the project manager for that project who stated that the information on that contract was not correct – that he did not know subj, that the project was not big enough for a group of welders, he named the person who had done the welding.

[66] We now have an affidavit from Mr. Mohammad Elahi who is a civil engineer and was the project manager on the post office project. This is the very person referred to by the Officer in her Decision and whose advice she used in her Decision to conclude that the Applicant's documents were fraudulent and his account of his experience was a misrepresentation.

[67] Mr. Elahi confirms that the post office project was contracted out to Yamgan Company and that he oversaw the technicalities and the quality of the work in progress, but he never had any direct contact with any of the workers on the site and he hardly ever met or talked with workers on the site.

[68] Mr. Elahi also received a call from the Canadian Embassy as part of the verification process for the Applicant. He was asked if he knew the Applicant:

Further I was asked, if I knew a person by the name Mojtaba Karami that worked in that project. My reply was that, “the project was finalized four years ago and I don’t have a memory of or the names of the people that work there. Further, I explained that I don’t have a direct contact with the workers in projects that I oversee.

I was asked by the Canadian Embassy to check the list of the employees from the Employment Insurance Office and to see if Mr. Karami’s name was on the list. That was our conversation for the first call.

I contacted the Employment Insurance Office but I can not access to the list of employees.

I received a second call from Canadian Embassy few days later asking me if I had a chance to check with the Employment Insurance Office. My reply was that, ‘I could not access to the list of employees.’”

That was the end of my conversation regarding the job experience. I never said to the Canadian Embassy that I have personal knowledge that Mr. Karami did not work at the Post Office Project as I would not have personal knowledge at all for this subject.

[69] Once again, we have no affidavit from the Embassy official who contacted Mr. Elahi. We do not know what safeguards were in place. We do not know if a record of the conversation was made. We do not know how the official reported the conversation to the Officer. We do not know

how the Officer came to know that “the project was not big enough for a group of welders, he named the person who had done the welding.”

[70] The Officer would not accept the Applicant’s explanation that there must be some mistake “especially given the number of people in different positions who had refuted the information on the subj’s documents – especially given that they were in different offices and the detail that they had provided to refute his document.”

[71] The Court has no idea who is being referred to by the Officer, what they said, and what the convincing detail was. All the Court has seen are affidavits from three people who were contacted for verification and they provide no support for the Officer’s assertions and, in fact, support the Applicant’s account.

[72] Without any information to counter what the Applicant had produced from the people who conducted the verification interviews, and without some reassurances about who was contacted, precisely what was said, and how it was recorded and conveyed to the Officer, I have to conclude that the Officer acted in error, that the verification process was flawed, and that the Officer’s Decision cannot stand, either because it is incorrect and/or unreasonable. As Justice MacKay pointed out in *Arshi*, I have to conclude that the assessment carried out by this Officer and her conclusions were unreasonable because they were “based on the visa officer’s understanding of a key element for assessing his experience and his occupation, an understanding which is open to question and which was not made clear to the applicant on the course of his interview.”

[73] The Applicant raises other issues, but my conclusion that the Decision is completely flawed and unreasonable on these fundamental issues means that it cannot stand. Had the verification process been conducted properly and accurately, there is no telling what the Officer may have decided about the Applicant's documentation and his overall credibility. The matter must be returned for reconsideration.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. This application is allowed. The Decision is quashed and the matter is returned for reconsideration by a different officer.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO.: IMM-4911-08

STYLE OF CAUSE: *MOJTABA KARAMI*
v.
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: SASKATOON

DATE OF HEARING: July 16, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** RUSSELL J.

DATED: July 30, 2009

WRITTEN REPRESENTATIONS BY:

Haidah Amirzadeh FOR THE APPLICANT

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