

Federal Court



Cour fédérale

Date: 20110902

Docket: IMM-5570-10

Citation: 2011 FC 1038

Ottawa, Ontario, September 2, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

MATHEW JOSEPH BRIENZA

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Matthew Brienza, a citizen of the United States, applied for permanent residence in Canada as a skilled worker, namely, a Computer and Information Systems Manager. He tendered an application, along with a supporting letter of reference from his employer, but an immigration

officer denied it because Mr. Brienza's experience did not line up with the occupational requirements of the position he sought.

[2] Mr. Brienza maintains that the officer rendered an unreasonable decision, treated him unfairly, and failed to provide adequate reasons for his refusal. He asks me to quash the officer's decision and order a reassessment by another officer.

[3] I cannot find any basis for overturning the officer's decision. In my view, the officer's decision was reasonable, the officer did not treat Mr. Brienza unfairly, and the officer's reasons adequately explained why his application was turned down. I must, therefore, dismiss this application for judicial review.

[4] There are three issues:

1. Was the officer's decision unreasonable?
2. Did the officer treat Mr. Brienza unfairly?
3. Were the officer's reasons inadequate?

II. Factual Background

[5] Mr. Brienza has a Bachelor's of Science degree from Drexel University. From July 2006 until March 2009, he worked at a firm called Aerotek Inc. in Chesterbrook, Pennsylvania. He started out as a recruiter in the Engineering Division, then, in January 2007, he was promoted to

Account Recruiting Manager. His employer described Mr. Brienza's duties in the latter position as follows:

- assisting with the integration of recruiter workspace [RWS];
- assisting with debugging efforts of RWS software;
- working with managers to develop new recruiting software goals for RWS;
- organizing manager and recruiter feedback on RWS;
- preparing Excel spreadsheets on the pros and cons of new software; and
- presenting reports to communicate systems feedback.

[6] In his application, Mr. Brienza described his duties as follows:

- organizing and operating information systems;
- preparing and presenting reports;
- analyzing systems requirements and performance;
- assisting in recruiting and training of analysts; and
- assisting in developing policies and procedures.

III. The Officer's Decision

[7] The officer compared the information provided by Mr. Brienza against the National Occupational Classification code for a Computer and Information Systems Manager [NOC 0213] and concluded that Mr. Brienza was ineligible. The main duties for NOC 0213 are:

- Plan, organize, direct, control and evaluate the operations of information systems and electronic data processing departments and companies;
- Develop and implement policies and procedures for electronic data processing and computer systems operations and development;
- Meet with clients to discuss system requirements, specifications, costs and timelines;
- Assemble and manage teams of information systems personnel to design, develop, implement, operate and administer computer and telecommunications software, networks and information systems;
- Control the budget and expenditures of the department, company or project;
- Recruit and supervise computer analysts, engineers, programmers, technicians and other personnel and oversee their professional development and training.

[8] The officer concluded that he was not satisfied that Mr. Brienza was a Computer and Information Systems Manager. He had not provided sufficient evidence of work experience in that occupation and, therefore, was ineligible.

[9] The officer's notes provide further insight into his decision. The officer compared the duties Mr. Brienza had listed in his application, and those in his letter of reference, against NOC 0213. He found that Mr. Brienza's responsibilities did not accord with the requirement in the lead statement for the position to "plan, organize, direct, control and evaluate activities" of organizations involved in developing and operating computer software and information systems. Further, among other stipulations, NOC 0213 requires an applicant to be primarily responsible for the recruitment of personnel and the development of policies; Mr. Brienza had merely assisted with these tasks. As such, he had not performed the duties listed under the lead statement for NOC 0213 or any of the main duties of the position.

IV. Was the Officer's Decision Unreasonable?

[10] The officer had to decide whether Mr. Brienza had performed the actions in the lead statement for NOC 0213, as well as some or all of the main duties. Mr. Brienza submits that the officer's decision was unreasonable because he had presented evidence showing he had performed most of the duties of NOC 0213.

[11] However, as I see it, Mr. Brienza had actually provided very little evidence about his responsibilities, leaving it to the officer to determine whether the brief description of his work experience fit within the requirements of NOC 0213. As mentioned, the officer found that Mr. Brienza's experience did not fit within the lead statement. He went on to consider whether Mr. Brienza met the requirement of performing some or all of the main duties of the position, and found that he had only satisfied part of some of those duties – not enough to be eligible.

[12] Comparing the information provided by Mr. Brienza against the requirements of NOC 0213, the officer's conclusion was not unreasonable. Mr. Brienza's experience simply does not line up with the duties of NOC 0213.

V. Did the Officer Treat Mr. Brienza Unfairly?

[13] Mr. Brienza argues that the officer had a duty to give him a chance to address any concerns the officer had about his application, and that the failure to do so breached the duty of fairness.

[14] The burden lies on an applicant to present sufficient evidence to satisfy the applicable criteria. As mentioned, Mr. Brienza simply failed to provide information that would demonstrate that he met the requirements of NOC 0213.

[15] In some cases, an officer may have a duty to give an applicant a chance to clarify something in an application; for example, where an officer doubts the contents of an applicant's supporting documents or relies on extrinsic evidence: *Sandhu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 759; *Gandhi v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1054; *Huyen v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 904. However, officers do not have to give applicants an opportunity to supplement deficient applications.

[16] A guideline for officers appears to set out a broader duty to give applicants an opportunity to respond to concerns about whether they have performed the required duties of a position (OP 6 Federal Skilled Workers, 12.13), but that is not a legal requirement.

VI. Were the Officer's Reasons Inadequate?

[17] Mr. Brienza argues that the officer's reasons were inadequate because they do not explain why his application was unsuccessful.

[18] Taken together, the officer's decision letter and notes explain that Mr. Brienza's application was dismissed because his letter of reference and his own description of his experience did not accord with the required duties of NOC 0213. In my view, the officer provided an intelligible and transparent justification for his decision.

VII. Conclusion and Disposition

[19] The officer treated Mr. Brienza fairly and rendered a reasonable decision based on the evidence before him. His conclusion was also adequately explained. Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5570-10

STYLE OF CAUSE: BRIENZA
v
THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: Toronto, ON.

DATE OF HEARING: April 20, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: September 2, 2011

APPEARANCES:

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