

Federal Court



Cour fédérale

Date: 20130501

Docket: IMM-7430-12

Citation: 2013 FC 453

Vancouver, British Columbia, May 1, 2013

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

ALIREZA SHARIFI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] There are two aspects to this judicial review. The first is the reasonableness of the decision of the visa officer denying Mr. Sharifi's application for permanent residence in Canada as a Federal Skilled Worker. The visa officer decided that the applicant had not provided sufficient evidence that he had adequate work experience within National Occupational Classification (NOC) Code 7312- Heavy-Duty Equipment Mechanics. The bulk of Mr. Sharifi's work experience was as a fourth engineer or a third engineer on board ocean-going ships.

[2] The second aspect is whether in forming the view that the decision was unreasonable I was not simply basing myself on the record before me and on the law, but also on personal knowledge. I practiced maritime law before my elevation to the bench and had the occasion to conduct on-board interviews, attend inquiries and represent parties in litigation relating to just about every type of ship imaginable. To the extent I might be relying on special knowledge, counsel for the Minister invited me to recuse myself.

[3] Having thought the matter through, I am satisfied that I am not relying on any special knowledge but only on the record and on the law. Therefore, I am not recusing myself and shall grant this judicial review.

THE FACTS

[4] Mr. Sharifi applied under three occupations:

- a. 7312-Heavy Equipment Inspector-Repairer;
- b. 2274-Marine Engineer; and
- c. 1774-Technical purchaser.

[5] In terms of his work experience, he stated that his duties included the maintenance and repairs of mechanical equipment, diesel engines and electric generators, repairs and maintenance of generators, and maintenance of hydraulic systems such as cranes and diesel engine mechanics.

[6] The record includes evidence from an employer, Iran Shipping Line Co., that he was certified as a second engineer and sailed as a third engineer.

[7] He served as watchkeeper with respect to Hitachi and B&W diesel engines, single screw, and with respect to various auxiliary boilers, exhaust boilers and auxiliary engines on various ships which were named. The Master of the M.V. "Iran Daleer" reported that he was in charge of maintaining the main engines, air compressors and the auxiliary boiler, full particulars which were given.

[8] This is not a case where the officer demanded more and better particulars from the employer, or a case where the employer simply identified the applicant by title, such as vice-president. He was identified by position, and by the type of work he did. (*Monteverde v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1402, 211 ACWS (3d) 210, [2011] FCJ No 1710 (QL))

[9] While he was obviously qualified to be employed as a marine engineer, that position was not open in Canada. However, his latest employer, Kish Shipping Line, also stated that he served them as a "heavy equipment inspector-repairer and diesel engine mechanic".

[10] It was unreasonable to hold that Mr. Sharifi had not demonstrated that he had performed any of the duties in the lead statement of NOC 7312 or the main duties of a heavy-duty equipment mechanic. NOC 7312 indicates that "heavy-duty equipment mechanics repair, troubleshoot, adjust overall and maintain mobile heavy-duty equipment used in ...transportation."

[11] Some of their duties include checking cranes, adjusting, repairing and testing equipment, cleaning, lubricating and performing other routine maintenance work on equipment, engine overhaul, power shift transmissions, fuel injection, hydraulics or electronics.

[12] It seems to me that a qualified marine engineer who holds a second engineer certificate and who has sailed as a third engineer inherently is able to carry out the duties of a heavy-duty equipment mechanic, and much, much more.

[13] There is a great deal of material in the record as to his work experience which led away from the visa officer's decision. The presumption that the record was fully considered is rebutted because at the very least one would have to explain why this material was insufficient. (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, 83 ACWS (3d) 264, [1998] FCJ No 1425 (QL)).

[14] Furthermore, decision-makers are entitled to deference because of their expertise. The visa officer should be taken to know the functions of a third engineer, even if they had not been spelled out.

[15] Consequently, the visa officer is taken to know the *Marine Personnel Regulations* issued under the *Canada Shipping Act, 2001*. He would know that a fourth class engineer has at least six months of sea service as an engineer in charge of machinery on vessels that have a propulsive power of at least 500 kW, has attended various training courses and has successfully been examined with

respect to applied mechanics, thermodynamics, electro technology, engineering knowledge of motor vessels and steamships and, once again, much, much more.

[16] Apart from not considering the record, the visa officer did not bring to bear the knowledge he was required to have in order to assess the application. The decision was patently unreasonable.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that:

1. The application for judicial review is granted.
2. The matter is referred back to another visa officer for reconsideration.
3. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7430-12

STYLE OF CAUSE: ALIREZA SHARIFI v MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 24, 2012

**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: MAY 1, 2013

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