

Federal Court



Cour fédérale

**Date: 20140211**

**Docket: IMM-3600-13**

**Citation: 2014 FC 141**

**Vancouver, British Columbia, February 11, 2014**

**PRESENT: The Honourable Mr. Justice Barnes**

**BETWEEN:**

**PEDRAM SAMADI DINANI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review by Pedram Samadi Dinani challenging a decision by a Visa Officer to deny his application for a skilled worker visa. The parties agree that the standard of review is reasonableness.

[2] Mr. Dinani is a PhD student in the Department of Electrical and Computer Engineering at the University of British Columbia. He applied for a skilled worker visa in the post-secondary teaching and research assistants employment category. Under subsection 75(2)(b) of the

*Immigration and Refugee Protection Regulations*, SOR/2002-227, it was incumbent upon Mr. Dinani to establish that he performs the actions of a research and teaching assistant as described in the lead statement for that occupation found in the applicable National Occupation Classification [NOC]. The NOC Unit Group that applied to Mr. Dinani's application was "4012 Post-Secondary Teaching and Research Assistants". It described the duties of the position as follows:

Post-secondary teaching and research assistants assist university professors, community college and CEGEP teachers and other faculty members in teaching and research activities at universities and colleges.

...

### **Main duties**

Post-secondary teaching assistants perform some or all of the following duties:

- Organize reference materials, visual aids and other materials as required by university professors or college teachers for lectures
- Conduct seminars, discussion groups and laboratory sessions to supplement lectures
- Assist in the preparation and administration of examinations
- Grade examinations, term papers and laboratory reports.

Research assistants perform some or all of the following duties:

- Conduct literature reviews, surveys, laboratory experiments and other research for use in scholarly publications
- Compile research results and assist professors in the analysis of results and the preparation of journal articles or papers.

*Post-secondary teaching and research assistants specialize in a subject matter based on their field of study.*

[3] Mr. Dinani provided letters of reference from three members of the Engineering faculty setting out the nature of his employment duties. The letters referred to his employment as either a graduate teaching assistant or a graduate research assistant in the Electrical and Computer Engineering Department. His faculty supervisor, Dr. Vincent Wong, described the work as follows:

This is to certify that **Mr. Pedram Samadi Dinani** has been employed as a full-time Graduate Research Assistant (RA) under my supervision with the working hours of 40 hours per week in the Department of Electrical & Computer Engineering at the University of British Columbia (UBC) since September 2009 and is expected to complete his degree requirements by December 2013.

Mr. Samadi Dinani is working in the broad area of smart grid, especially demand side management that is of great interest to Canadian industry and society at large. As a research assistant, his main responsibilities and duties are conducting literature reviews, developing efficient algorithms, mathematical analysis of the proposed models, compilation of research results, and preparation of journal articles and conference papers. In addition to his graduate work, Mr. Samadi Dinani has been appointed the following positions in our department:

Position	From	To	Monthly Stipend
Graduate Research Assistant	September 8 <sup>th</sup> , 2009	August 31 <sup>st</sup> , 2010	\$1583.00 CAD
Graduate Research Assistant	September 1 <sup>st</sup> , 2010	August 31 <sup>st</sup> , 2011	\$1583.00 CAD
Graduate Research Assistant	September 1 <sup>st</sup> 2011	August 31 <sup>st</sup> , 2012	\$2000.00 CAD

...

There is no doubt that Mr. Samadi Dinani's competence in conducting research in smart grid will enable him to make solid contributions to Canadian society should he be granted Canadian permanent resident status. I strongly support his application for Canadian permanent residency.

[4] A second reference letter confirmed that, in the role of graduate teaching assistant, Mr. Dinani was responsible for the supervision of examinations, marking and holding office hours.

[5] The basis for the Visa Officer's decision as expressed in the Departmental Global Case Management System was only that Mr. Dinani's letters of reference failed "to list job duties or responsibilities that match the actions described in the lead statement under [NOC 4012]." No details were provided as to what requirements were absent. In an affidavit filed in this proceeding, the Visa Officer justified the decision on the basis that the letters of reference failed to expressly state that Mr. Dinani was assisting other members of the Engineering faculty when performing the otherwise described tasks.

[6] The use of *ex post facto* affidavits to bolster or to explain poorly justified decisions has been the subject of considerable criticism. In *Sellathurai v Canada (Minister of Citizenship and Immigration)*, [2008] FCJ No 1267, 208 FCA 255, the Court described the problem as follows:

**46** The judges of the Federal Court have previously stated that a tribunal or a decision-maker cannot improve upon the reasons given to the applicant by means of the affidavit filed in the judicial review proceedings. In *Simmonds v Canada (Minister of National Revenue)*, 2006 FC 130, 289 FTR 15, Dawson J. wrote at paragraph 22 of her reasons:

I observe the transparency in decision-making is not promoted by allowing decision-makers to supplement their reasons after the fact in affidavits.

**47** See to the same effect *Kalra v Canada (Minister of Citizenship and Immigration)*, 2003 FC 941, 29 Imm LR (3d) 208, at para 15; *Yue v Canada (Minister of Citizenship and Immigration)*, 2006 FC 717, [2006] FCJ No 914, at para 3; *bin Abdullah v Canada (Minister of Citizenship and Immigration)*, 2006 FC 118, [2006] FCJ No 1482, at para 13. Any other approach to this issue allows tribunals to remedy a defect in their decision by filing further and better reasons in the form of an affidavit. In those circumstances, an applicant for judicial review is being asked to hit a moving target.

Also see *Ghirmatsion v Canada (Minister of Citizenship and Immigration)*, [2013] 1 FCR 261, 2011 FC 519 at para 7.

[7] I do not accept the Visa Officer's belated explanation for the decision to reject Mr. Dinani's visa application and I give it no weight. The descriptions of Mr. Dinani's employment duties in the reference letters closely conform to the main duties set out in NOC 4012. The after-the-fact justification that required the references to expressly state that Mr. Dinani was "assisting" other members of the faculty appears to be a colourable attempt to rationalize a decision that was not otherwise justifiable.

[8] Although attaching a job label may not be a determinative consideration, surely it means something when three references from the Department of Electrical and Computer Engineering described Mr. Dinani as a graduate research assistant or a graduate teaching assistant. Visa officers have an obligation to bring at least a modicum of common sense and rationality to the exercise of comparing actual job descriptions to NOC employment criteria. It seems quite obvious to me that assistance to other members of the faculty is being provided when a PhD student is teaching, setting and supervising examinations, marking and conducting supervised research. In the absence of that assistance, the work would necessarily need to be carried out by others in the Department. Furthermore, any fair reading of Dr. Wong's reference letter would lead to the conclusion that the described tasks were of direct assistance to Dr. Wong. I do not accept the contrary view expressed by counsel for the Minister that the rationale for the decision, whatever it was, was reasonably open to the Visa Officer on the evidence before him. The decision is not reasonable and the reasons given for it are insufficient. The decision is, therefore, set aside. The matter is remitted for reconsideration

by another decision-maker on the merits and in accordance with these reasons. Given the passage of time, Mr. Dinani is entitled to submit current employment references in support of his application.

[9] Neither party proposed a certified question and no issue of general importance arises on this record.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is allowed with the matter to be re-determined on the merits and in accordance with these reasons by a different decision-maker.

“R.L. Barnes”

---

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-3600-13

**STYLE OF CAUSE:** PEDRAM SAMADI DINANI v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** FEBRUARY 10, 2014

**REASONS FOR JUDGMENT  
AND JUDGMENT:** BARNES, J.

**DATED:** FEBRUARY 11, 2014

**APPEARANCES:**

PEDRAM SAMADI DINANI

FOR THE APPLICANT  
(ON HIS OWN BEHALF)

François Paradis

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

PEDRAM SAMADI DINANI  
Vancouver, British Columbia

FOR THE APPLICANT  
(ON HIS OWN BEHALF)

William F. Pentney  
Deputy Attorney General of Canada  
Vancouver, British Columbia

FOR THE RESPONDENT