Federal Court  Cour fédérale

Date: 20250507

Docket: IMM-7198-24

Citation: 2025 FC 835

Toronto, Ontario, May 7, 2025

PRESENT: Madam Justice Go

BETWEEN:

GERALDINE GUITANG

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Geraldine Guitang [Applicant] is a citizen of Philippines who entered Canada as a temporary worker in June 2023. In January 2024, the Applicant submitted an application for a work permit as a personal support worker under the Labour Market Impact Assessment [LMIA] based work permit program. Her application was supported by a statutory declaration [Declaration], which indicated that she had “ample experience working as domestic helper” in

Hong Kong, and that she had "profound caregiving background as [she] raised three children" on her own as a single mother.

[2] By way of a letter dated April 16, 2024, an Immigration, Refugees and Citizenship Canada [IRCC] officer [Officer] refused the Applicant's work permit application [Decision]. The Officer was not satisfied that the Applicant met the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[3] The Officer found the Applicant failed to demonstrate that she met the job requirements for the position. In reaching this conclusion, the Officer relied on the National Occupational Classification [NOC] employment requirements for the Applicant's NOC code, NOC 44101.

[4] The Applicant brings this application for judicial review of the Decision. For the reasons set out below, I find the Decision unreasonable and I grant the application.

II. Issues and Standard of Review

[5] The Applicant raises the following issues:

a. Did the Officer err by applying the optional requirements of NOC 44101 instead of the specific requirements outlined in the LMIA?

b. Did the Officer err in their assessment of the Applicant's qualifications by disregarding her caregiving experience detailed in her Declaration?

c. Did the Officer err by treating the "may be required" requirements listed in the NOC description as mandatory?

[6] The parties agree, as do I, that the standard of review for issues regarding the merits of a decision is reasonableness. As per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], a reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker:" *Vavilov* at para 85. The onus is on the Applicant to demonstrate that the decision is unreasonable: *Vavilov* at para 100.

III. Analysis

[7] I find two reviewable errors arising from the Decision. First, the Officer erred by conflating the general NOC occupational requirements with the specific job requirements listed in the LMIA. Second, the Offer erred by treating the general, non-mandatory requirements in NOC 44101 as mandatory requirements and on that basis, unreasonably determined that the Applicant did not meet the job requirements.

[8] The Officer's reasons can be found in the Global Case Management System [GCMS] notes, where the Officer stated, in part:

> … **As per the LMIA, the job requirements states [*sic*] that**, "Some secondary school education is usually required. / Home management experience may be required. / College or other courses in home support may be required. / First aid certification may be required. / Completion of a training program in care of the elderly, care of persons with disabilities, convalescent care or in a related field may be required." …
>
> [Emphasis added]

[9] After citing the Applicant's job experiences, and noting that the Applicant has not provided proof of completion of a training program for care of persons with disabilities, the Officer concluded: "I am not satisfied that the client meets this job requirements as per R200(3)."

[10] The Applicant asserts that the job requirements cited by the Officer are not stipulated in her LMIA, but are instead sourced from the NOC 44101 description, which serves as a broad occupational framework rather than a prescriptive list of mandatory qualifications for every job captured under that NOC code.

[11] Having reviewed the record, I agree with the Applicant.

[12] The NOC 44101 code applies to several occupations including attendant for persons with disabilities, family caregiver, home support worker, live-in caregiver, live-in caregiver – seniors, personal aide – home support, personal care attendant – home care, and respite worker – home support.

[13] With respect to the employment requirements, NOC 44101 stipulates as follows:

> Employment requirements
>
> - Some secondary school education is usually required.
> - Home management experience may be required.
> - College or other courses in home support may be required.
> - First aid certification may be required.
> - Completion of a training program in care of the elderly, care of persons with disabilities, convalescent care or in a related field may be required.

[14] By contrast, the only requirements contained in the LMIA submitted by the Applicant's prospective employer are as follows:

Education Requirements:	Secondary school
Verbal Language Requirements:	English
Written Language Requirements:	English

[15] Other than "secondary school," the LMIA does not include any of the employment requirements listed in NOC 44101.

[16] While in the above-quoted passage, the GCMS notes began by stating "as per the LMIA," the job requirements referenced in the GCMS notes mirror those requirements set out in NOC 44101, but not those in the LMIA.

[17] The Respondent argues the Officer's reference to the LMIA as opposed to the NOC is "a difference without distinction" given that the LMIA itself references the NOC. The Respondent points to the opening paragraph of the letter dated November 17, 2023 from the Government of Canada to the Applicant's prospective employer informing them that Service Canada has completed the processing of their LMIA application for "a personal support worker NOC 2021 44101(s)."

[18] I find this single reference to NOC does not mean, either explicitly or implicitly, that the LMIA has thereby incorporated all the general employment requirements in the NOC 44101 as the specific requirements for the LMIA.

[19] Further, as the Applicant submits, and I agree, that there is a wide spectrum of requirements for the NOC job occupations.

[20] In an online document entitled "Labour Market Impact Assessment Review – Temporary Foreign Worker Program" [LMIA Review Document], the Government of Canada sets out the policy, procedures and guidance that are used by IRCC staff. The LMIA Review Document specifically states that:

> While some occupations have very specific employment requirements, others have a wide range of acceptable requirements. The following terminology is used to indicate the level of the requirement:
>
> - "Is required" indicates a mandatory requirement.
> - "Is usually required" means that the qualification is generally expressed as required by a majority of employers, but not always mandatory.
> - "May be required" describes requirements that some employers may impose but are not universal.

[21] The LMIA Review Document thus makes clear that not all employment requirements are universally applied. By delineating among the different levels of requirement, I find that the LMIA Review Document acknowledges that not all occupations within the same NOC code have the same employment requirements, and that individual prospective employer will set the specific requirements that are best suited to the position they are seeking to fill.

[22] By conflating the NOC general employment requirements that may or may not apply to the position in question with the specific requirements found in the LMIA, the Officer erred.

[23] Turning now to the second reviewable error, I find the Officer erred by treating requirements that are not mandatory as mandatory, and on that basis, unreasonably found the Applicant did not meet the job requirements.

[24] As noted in the LMIA Review Document, some, but not all, of the job requirements are considered mandatory. Of the three levels stipulated in the LMIA Review Document, “may be required” is not considered “universal:” LMIA Review Document.

[25] Further, in *Singh v Canada (Citizenship and Immigration)*, 2024 FC 1165 [*Singh*], the Court held that it was unreasonable for the visa officer to have refused the application for the applicant’s failure to provide a secondary school diploma, which was listed as optional under the NOC and LMIA.

[26] Following *Singh*, I recently found in *Taheri v Canada (Citizenship and Immigration),* 2025 FC 520 [*Taheri*] that the officer committed a reviewable error when they imposed an obligation on the applicant to provide a language assessment when no such requirement existed in the LMIA.

[27] *Singh* is consistent with a line of caselaw that cautions against adopting a rigid interpretation of NOC requirements, particularly when it comes to qualifications that are not expressed in mandatory terms.

[28] In *Mazumder v Canada (Citizenship and Immigration)*, 2000 CanLII 16632, the Court distinguished the phrase "usually required" in the description of educational requirements under the then immigration regulations which was to be read "always required," from how the words "usually required" were to be read in assessing the employment requirements described in the NOC handbook. The Court noted: "… for the purpose of considering the number of units to be awarded for the occupational factor. In assessing an applicant under the occupational factor, the words 'usually required' mean something which is usually, but not always, required by employers:" *Mazumder* at para 9.

[29] Similarly in *Mohamed v Canada (Citizenship and Immigration)*, 2000 CanLII 16305 [*Mohamed*] at para 11, the Court found the officer erred by interpreting "usually required" as mandatory and by failing to assess whether the applicant's education, training and experience would compensate for his not having the "usually required" education found in the employment requirements for his intended occupation. Likewise, the Court found an officer erred by interpreting "is usually required" under the employment requirements in NOC handbook as mandatory in *Chaudhary v Canada (Citizenship and Immigration)*, 2000 CanLII 15397 at para 22.

[30] By extension, I find the term "may be required" as contained in NOC 44101, like the term "usually required," should not be read as "always required."

[31] The Respondent argues that visa officers must undertake their own review of an applicant's abilities. Citing M*ohamed* at para 9, the Respondent submits that officers must be

satisfied that there are “persuasive reason for thinking that the applicant will be able to hold employment in the intended occupation” despite the fact that the “usual” job requirements are not present. The Respondent also submits that the jurisprudence confirms officers are not bound by the LMIA.

[32] The Respondent further notes that the Applicant’s prospective employment involves the caring of a person with disability, but little information about the precise nature of the disability was provided by the Applicant. As such, the Respondent argues it was reasonable for the Officer to find the Applicant has failed to provide proof of completion of a training program for care of persons with disabilities.

[33] Despite counsel’s able submission, I am not persuaded by the Respondent’s arguments.

[34] I do not take issue with the principles that the Respondent put forth as I agree that ultimately, an officer has the sole responsibility to issue a visa or not, and the officer is entitled to exercise discretion whether to grant the application: *Liu v Canada (Citizenship and Immigration)*, 2018 FC 527 [*Liu*].

[35] However, in the context of this case, the Officer did not, as the Respondent submits, deny the Applicant’s work permit due to their concerns about the nature of the disability and/or the level of care required by the person the Applicant is hired to look after. Rather, the Officer refused to issue the work permit based on the Applicant’s failure to meet a non-mandatory

requirement under the NOC code, a requirement that the Applicant's employer themselves do not find necessary to impose.

[36] As such, I find the Officer's error is analogous to those found in *Singh* and *Taheri*. By contrast, *Liu*, cited by the Respondent, dealt with an officer's discretion in applying the *IRPR* and did not speak to an officer's discretion in interpreting the NOC requirements.

[37] For these reasons, I find the Decision unreasonable.

IV. Conclusion

[38] The application for judicial review is granted.

[39] There is no question for certification.

JUDGMENT in IMM-7198-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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