

TIPS FOR SUPPORTING AN EMPLOYEE'S APPLICATION FOR PROVINCIAL NOMINATION FROM RECENT BC PNP DECISION

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In one of the first decisions regarding the BC Provincial Nominee Program (the “PNP”), the British Columbia Supreme Court ruled this month that the PNP’s refusal to grant nomination to an applicant who was being offered a higher than market wage rate was not unreasonable.^[1]

Background Facts

Mr. Raturi had accepted permanent full-time employment as a cook. In his PNP application, he included a letter of support from the employer and evidence of the employer’s efforts to advertise the position locally.

The PNP advisor contacted Mr. Raturi as there was concern that the offered wage (\$21.80/hour) was “significantly” higher than the high end of the market rate (\$20.00/hour) for that particular job classification, resulting in suspicion that the offered wage was provided for the sole purpose of meeting the income threshold of the PNP.

Mr. Raturi provided additional documentation to verify his qualifications and a statutory declaration from the employer to explain the wage offered. The PNP advisor determined that nothing in the application materials suggested that Mr. Raturi was offered the position of head cook or had any experience as a head cook, that he was more qualified than the employer’s current cooks, that he was equally qualified as the current head cook or that the employer had a need for two head cooks. Based on these “discrepancies and inconsistencies” in the application, the PNP advisor concluded that the PNP’s requirements had not been met. Mr. Raturi applied for reconsideration but the PNP manager agreed with the advisor’s decision.

Decision

Mr. Raturi sought judicial review of the PNP’s decision, arguing that too much weight was given to the higher wage and that he should be classified as a speciality cook who could potentially help his employer expand his business. He argued that:

- the PNP advisor incorrectly classified him as a “cook” instead of a “chef” and should have assessed his wages as a chef;

- the PNP advisor was wrong in relying on Statistics Canada’s wage information and miscalculated his salary;
- the PNP advisor’s reasoning for the refusal was insufficient because it was not clear as to what the “discrepancies and inadequacies” were;
- he did not have a chance to respond to the PNP advisor’s concerns about the employer’s past staffing efforts;
- the PNP advisor made an error in failing to explain the connection between the offered wage and the bona fides of the job offer; and
- the PNP advisor’s decision was contrary to the PNP’s policy objectives.

The Court applied the reasonableness standard in reviewing the PNP decision (the parties also agreed that this was the appropriate standard of review). Reasonableness means that a court will give due consideration and deference to the determinations of the decision-maker and is concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. The Court considered each of Mr. Raturi’s arguments and determined that the PNP’s decision was reasonable and that it did not violate principles of procedural fairness.

What This Means for Employers

When supporting foreign workers’ provincial nomination applications, employers should keep in mind the following:

- titles, duties and offer details may be analysed to determine the job classification;
- an employer’s previous advertising to fill positions will be considered;
- decision-makers may rely on wage statistics collected by the federal government when determining whether the wage rate falls within the market rate to ensure that it is comparable to similar jobs;
- the minimum income requirement is only one of the many factors taken into consideration;
- when there is conflicting information in the B.C. PNP Policy and Procedures Manual and on the B.C. PNP website, the website prevails;
- decision-makers may look into applications of previous PNP applicants that have been supported by the employer; and
- decision-makers may consider the wages of the employer’s current employees in assessing the genuineness of the offer.

The provincial government is responsible for determining whether an applicant is able and likely to succeed in becoming economically established in B.C. This enables decision-makers to conduct extensive due diligence. In this case, the Court confirmed that decision-makers do not need to make specific findings on each element of

a decision. It is sufficient if the final decision is one within the range of reasonably accepted outcomes and the Court can understand the reasoning behind it.

If you have any questions regarding this decision or immigration to Canada, do not hesitate to contact a member of our business immigration group.

by Linda G. Yang and Gurleen Randhawa (Articled Student)

[1] Raturi v. British Columbia, [2017 BCSC 9](#)[ps2id id='1' target='']

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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