

AT AUCKLAND

Appellant: JT (Skilled Migrant)

Before: P Fuiava (Member)

Representative for the Appellant: The appellant represents himself

Date of Decision: 18 December 2017

RESIDENCE DECISION

[1] The appellant is a 46-year-old citizen of the Philippines whose application for residence under the Skilled Migrant category was declined by Immigration New Zealand. The application included his 46-year-old wife and their two children, aged 18 and 16 years, also citizens of the Philippines.

THE ISSUE

[2] Immigration New Zealand declined the appellant's residence application because it was not satisfied that his employment as a joiner/factory worker substantially matched the *Australian and New Zealand Standard Classification of Occupations* (ANZSCO) descriptions, including core tasks, of a Glazier or a Joiner. Without points for skilled employment, the appellant did not meet the minimum selection criteria of the Skilled Migrant category.

[3] For the reasons that follow, the Tribunal finds that Immigration New Zealand was correct to decline the application. The principal issue for the Tribunal is whether the appellant has special circumstances, arising from his employment and his active involvement with his local church, such that warrant consideration by the Minister of Immigration of an exception to residence instructions. For the reasons that follow, the Tribunal finds that the appellant does not have special circumstances. The appeal is unsuccessful.

BACKGROUND

[4] In April 2015, the appellant was offered employment as a curtain wall installer by a New Zealand labour-hire recruitment agency. In June 2015, he arrived in New Zealand as the holder of a work visa that has since expired. He remained in New Zealand and has recently been issued a three-year work visa valid to 1 December 2020.

[5] In July 2015, the appellant commenced employment as a joiner/factory worker for one of the recruitment agency's clients that specialised in curtain wall installation on commercial sites. He worked 50 hours per week and he was paid a salary of \$45,760 per annum.

[6] On 21 November 2016, the appellant made his application for residence under the Skilled Migrant category. He claimed 130 points, including 60 points for skilled employment which he claimed substantially matched the ANZSCO occupation and core tasks of a Glazier.

[7] In support of his application, the appellant provided Immigration New Zealand with his individual employment agreement with the recruitment agency and a job description, which was on a plain piece of paper. Among other things, the job description recorded that he was required to:

- Read and interpret blueprints and specifications to determine size, shape, color (sic), type, and thickness of glass, location of framing, installation procedures, and staging and scaffolding materials required.
- ...
- Cut and remove broken glass prior to installing replacement glass.
- Cut, fit, install, repair, and replace glass and glass substitutes, such as plastic and aluminium, in building interiors or exteriors and in furniture or other products.
- ...
- Measure, cut, fit and press anti-glare adhesive film to glass, or spray glass with tinting solution to prevent light glare.
- ...

[8] As requested by Immigration New Zealand, a managing consultant of the recruitment agency provided it with a completed employer questionnaire and a second job description, which the consultant had obtained from the curtain wall business for whom the appellant was working. That job description recorded that the appellant was employed as a joiner/factory worker and that he was required,

among other things, to fabricate aluminium joinery, including cutting, assembly, cutting and fixing liners, fixing hardware, and glazing.

[9] The consultant advised Immigration New Zealand that, on average, the appellant worked 50 hours per week and that he was paid a salary of \$45,760 per annum. When asked whether the appellant performed the following tasks, namely:

- determining type and dimensions of glass required
- laying glass over patterns on padded tables and in jigs
- measuring and marking glass for cutting
- examining glass and marking defective areas
- cutting along patterns and templates
- breaking off sheets and excess glass with notched tools and glass pliers
- installing glass and mirrors in windows, skylights, display cases, interior walls and ceilings
- smoothing rough edges using belt sanders and smoothing wheels
- may coat, cut, etch, trim and treat glass to achieve special effects

the consultant advised Immigration New Zealand that the appellant did not perform any of them.

Immigration New Zealand's Concerns

[10] On 7 April 2017, Immigration New Zealand advised the appellant in writing that, based on verification checks with the recruitment agency, and its assessment of the appellant's job description, it did not appear his employment substantially matched the ANZSCO description and core tasks of a Glazier. When the consultant of the recruitment agency was asked whether the appellant performed the relevant ANZSCO core tasks of a Glazier, the consultant advised that the appellant performed none of them.

[11] Immigration New Zealand reviewed the appellant's job description for his current role, which recorded that he was a "Joiner/Factory Worker" and that the purpose of the role was to fabricate aluminium windows and doors to meet shop drawings and specifications for clients for whom the business built facades and curtain walls. Given the appellant's job description, Immigration New Zealand had also assessed his role against the ANZSCO occupation of a Joiner, which was

someone who “[c]uts, shapes and fits timber parts in workshops to form structures and fittings, ready for installation”. However, it did not appear the appellant studied drawings and specifications to determine the materials and installation procedures (ANZSCO task one).

[12] Further, tasks two to six for the ANZSCO description of a Joiner (described later in this decision) related to working with timber and wood, which was not relevant to the type of work the appellant performed in his daily routine. As for the last three core tasks, Immigration New Zealand offered no comment on these tasks because there was insufficient information for it to determine whether he performed them. Based on the information before Immigration New Zealand, it did not appear that the appellant’s role substantially matched the ANZSCO description of a Joiner.

[13] Immigration New Zealand’s overall summary of the appellant’s employment was that it was not satisfied he performed the ANZSCO core tasks of a Glazier. Immigration New Zealand also expressed concern regarding the credibility of the job description that accompanied his residence application, due to discrepancies between that document and the job description provided by the consultant.

Appellant’s Response

[14] On 19 April 2017, the appellant emailed Immigration New Zealand his response to its concerns. His email included nine photographs, including photographs of the appellant holding and installing a pane of glass into a metallic frame. In addition, Immigration New Zealand was provided with a letter (18 April 2017) from the operation manager of the curtain wall business.

[15] The above letter recorded that the appellant had worked for the company for about two years as a glazier and curtain wall installer. The employer stated that the role “instantaneously pertains façade aluminium and glazing works” and that the appellant was expected to perform the following tasks:

1. Cutting of frames
2. Assembly of frames
3. Fixing of Hardware
4. Cutting and fixing liners
5. Clean down for delivery
6. Setting out from site opening
7. Aluminium frame installation and finally
8. Glazing/Glass panel installation

Immigration New Zealand Decision

[16] By letter dated 12 June 2017, Immigration New Zealand declined the appellant's application because it was not satisfied that his employment substantially matched the ANZSCO descriptions, and core tasks, of either a Glazier or a Joiner. Having considered the additional information provided by the operation manager, Immigration New Zealand accepted only that the appellant performed two core tasks of a Glazier: task five (cutting along patterns and templates) and task seven (installing glass in windows, interior walls and ceilings).

[17] While the appellant's photographs appeared to show him placing glass in aluminium frames and joining the aluminium frames, there was no description or explanation provided regarding the work he undertook while the photographs were taken. As such, the photographs did not alleviate Immigration New Zealand's concern that the appellant's current role did not substantially match the ANZSCO description of a Glazier, and he did not perform core tasks one, two, three, four, six, and eight, of a Glazier.

[18] For completeness, Immigration New Zealand assessed the appellant's role against the ANZSCO occupation of a Joiner. However, he did not provide Immigration New Zealand with any further information that he performed the relevant ANZSCO core tasks of a Joiner. In addition, the appellant had not responded to Immigration New Zealand's concern regarding the credibility of the job description document he provided as part of his residence application.

[19] Immigration New Zealand advised the appellant that it had not assessed his and his wife's medical reports because his application had been declined. In addition, because he had not lived with his wife for the last 12 months, Immigration New Zealand was not satisfied that they were still living together in a genuine and stable relationship. Nor was it satisfied that the appellant met the English requirements of residence instructions because he was not in skilled employment. Without points for skilled employment, he was entitled to only 30 points (10 points for his age, 15 points for work experience, and 5 bonus points for New Zealand work experience), which did not meet the minimum selection criteria of the Skilled Migrant category.

STATUTORY GROUNDS

[20] The appellant's right of appeal arises from section 187(1) of the Immigration Act 2009 (the Act). Section 187(4) of the Act provides:

- (4) The grounds for an appeal under this section are that—
 - (a) the relevant decision was not correct in terms of the residence instructions applicable at the time the relevant application for the visa was made; or
 - (b) the special circumstances of the appellant are such that consideration of an exception to those residence instructions should be recommended.

[21] The residence instructions referred to in section 187(4) are the Government residence instructions contained in Immigration New Zealand's Operational Manual (see www.immigration.govt.nz).

THE APPELLANT'S CASE

[22] On 21 July 2017, the appellant lodged this appeal on the ground that his circumstances are special such that an exception to the residence instructions should be considered.

[23] The appellant makes submissions (undated). In addition to information already on the Immigration New Zealand file, the appellant has provided: information from various websites regarding the duties and responsibilities of commercial glaziers/installers; additional relationship evidence regarding his marriage; and photographs of the appellant with his wife and their two children.

[24] The appellant's submissions can be summarised as follows:

- (a) Due to a lack of understanding, the appellant failed to include the joinery part of his work in his Expression of Interest (EOI). The job description provided by his current employer emphasised the work he did inside the factory. It did not include the work he undertook on building sites.
- (b) He was employed primarily because of his extensive work experience and knowledge in curtain wall installation, which involves the combination of knowledge and skills in the installation and fabrication of glass and aluminium.

- (c) To perform his job, he is expected to be able to install, measure, cut, and trim or replace broken glass if necessary. He must also be able to determine the type and dimensions of the glass to determine the correct installation process. In curtain wall installation, “either in unitised or stick system”, he is expected to fabricate and install aluminium frameworks, mouldings, and all kinds of panels, and be able to read plans to fabricate and determine the measurement of glass and framework.
- (d) A commercial glazer or curtain wall installer is involved in the installation and fabrication of both glass and aluminium. The appellant has the skills required of a glazier, which is why he was selected from many other applicants from the Philippines.
- (e) The appellant is in a genuine and stable relationship with his wife and he satisfies the English language requirements of instructions.

ASSESSMENT

[25] The Tribunal has considered the submissions and documents provided on appeal and the file in relation to the appellant’s residence application which has been provided by Immigration New Zealand. While the appellant appeals solely on the ground that his special circumstances are such that consideration of an exception to residence instructions should be recommended, the Tribunal must first determine whether Immigration New Zealand’s decision to decline his residence application was correct. That assessment is set out below and is followed by an assessment of the appellant’s special circumstances.

Whether the Decision is Correct

[26] The application was made on 21 November 2016 and the relevant criteria are those in residence instructions as at that time. Immigration New Zealand declined the application because it was not satisfied that the appellant’s employment as a joiner/factory worker substantially matched the ANZSCO description, including core tasks, of a Glazier or a Joiner.

Relevant instructions

[27] Paragraph SM7.10 of instructions states that skilled employment requires specialist, technical or management expertise, and the assessment of whether an occupation is skilled is primarily based on the ANZSCO:

SM7.10 Skilled Employment

- a. Skilled employment is employment that requires specialist, technical or management expertise obtained through:
 - i. the completion of recognised relevant qualifications; or
 - ii. recognised relevant work experience (see SM7.10.15 below); or
 - iii. the completion of recognised relevant qualifications and work experience.
- b. Assessment of whether an occupation is skilled for the purposes of the Skilled Migrant Category (SMC) is primarily based on the Australian and New Zealand Standard Classification of Occupations (ANZSCO) which associates skill levels with each occupation.

Note: The ANZSCO is available at www.immigration.govt.nz/ANZSCO

Effective 14/05/2013

[28] For an applicant to be awarded points for his or her employment, SM7.10.1.b requires that their employment substantially match the ANZSCO description, including core tasks, of an occupation on the List of Skilled Occupations at Appendix 6 of instructions:

SM7.10.1 Assessment of whether employment is skilled

An offer of employment or current employment in New Zealand will be assessed as skilled if it meets the requirements of (a), (b) or (c) below.

...

- b. The occupation is included in part B of the List of Skilled Occupations held at Appendix 6 and the principal applicant can demonstrate that their offer of employment or current employment substantially matches the description for that occupation (including core tasks) as set out in the ANZSCO and:
 - i. the applicant holds a relevant recognised qualification which is at, or above, level four on the NZQF (see SM14.5) (a qualification at level four on the NZQF must be a National Certificate or a New Zealand Certificate); or
 - ii. has the relevant recognised work experience that the ANZSCO indicates may substitute the required qualification; or
 - iii. the employment is in an occupation included on the Long Term Skill Shortage List and the applicant meets the relevant requirements specified in column three of the Long Term Skill Shortage List for that occupation.

...

Effective 14/05/2013

ANZSCO requirements of a Glazier

[29] The ANZSCO occupation of a Glazier (333111) is described in the ANZSCO Unit Group 3331 Glaziers. The occupation is included in Part B of the List of Skilled Occupations at Appendix 6 of instructions. The specialisations of a Glazier comprise a Glass Beveller, Glass Embosser, Glass Etcher, and a Glass Silverer. The ANZSCO describes a Glazier as someone who:

Measures, cuts, finishes, fits and installs flat glass and mirrors.

[30] The core tasks for the Unit Group 3331 Glaziers are as follows (numbered for ease of reference):

1. determining type and dimensions of glass required
2. laying glass over patterns on padded tables and in jigs
3. measuring and marking glass for cutting
4. examining glass and marking defective areas
5. cutting along patterns and templates
6. breaking off sheets and excess glass with notched tools and glass pliers
7. installing glass and mirrors in windows, skylights, display cases, interior walls and ceilings
8. smoothing rough edges using belt sanders and smoothing wheels
9. may coat, cut, etch, trim and treat glass to achieve special effects

The appellant's employment

[31] The appellant works on behalf of a labour-hire recruitment agency and he is currently working as a joiner/factory worker for a New Zealand commercial company that specialises in curtain wall installation for commercial buildings. From the Tribunal's own research, a curtain wall is the outer wall or covering of a building. It is non-structural and is designed to not only keep the weather out and the occupants in, but to allow more light into a building. As the curtain wall is not load bearing, it can be made of lightweight materials, such as aluminium, thereby reducing construction costs.

[32] The appellant's role requires him to fabricate aluminium joinery, which involves cutting, assembling, cutting and fixing liners, fixing hardware, and glazing. The photographs provided to Immigration New Zealand show the appellant holding a piece of glass above what appears to an aluminium frame. Another photograph showed the glass in the frame and the appellant fixing the glass and the frame

together. It is clear that the appellant works with glass, and Immigration New Zealand accepted that he performed ANZSCO core tasks five and seven. However, it was not satisfied that his current role required him to perform tasks one, two, three, four, six and eight. The Tribunal agrees. While the appellant may well have the skills and work experience to perform these tasks, there is no evidence that his current role requires him to do so.

[33] As for task nine, this is an activity that a Glazier *might* perform as part of his or her employment. As such, the appellant's non-performance of this task was not determinative of his application.

[34] The appellant installs glass into window frames or doors made primarily of aluminium or other light metals. His current role may require him to trim or replace broken glass, if necessary. Even so, it has not been established that he is required to measure, cut, finish, fit and install flat glass and mirrors as envisaged by the ANZSCO description for a Glazier. For the above reasons, the Tribunal agrees with Immigration New Zealand that the appellant's employment did not substantially match the ANZSCO occupation and core tasks of a Glazier.

Whether the appellant's employment substantially matched that of a Joiner

[35] The ANZSCO occupation of a Joiner (331213) is included in ANZSCO Unit Group 3312 Carpenters and Joiners, and is also in Part B of the List of Skilled Occupations at Appendix 6 of instructions. The specialisations of a Joiner consist of a Joinery Machinist, Joinery Patternmaker, and Joinery Setter-out. The ANZSCO describes a Joiner as someone who:

Cuts, shapes and fits timber parts in workshops to form structures and fittings, ready for installation. Registration or licensing may be required.

[36] The core tasks for the Unit Group 3312 Carpenters and Joiners are as follows (numbered for ease of reference):

1. studying drawings and specifications to determine materials required, dimensions and installation procedures
2. ordering and selecting timbers and materials, and preparing layouts
3. cutting materials, and assembling and nailing cut and shaped parts
4. erecting framework and roof framing, laying sub-flooring and floor boards and verifying trueness of structures
5. nailing fascia panels, sheathing roofs, and fitting exterior wall cladding and door and window frames
6. assembling prepared wood to form structures and fittings ready to install
7. cutting wood joints

8. may construct concrete formwork
9. may repair existing fittings
10. may work with plastic laminates, perspex and metals

[37] From what is known of the appellant's employment, he worked either in his employer's factory or at a commercial building site. The photographs that were provided to Immigration New Zealand were of him working on a commercial building site with window frames comprised of glass and what appears to be aluminium. There were no photographs of the appellant working with either timber or wood. Despite this, the Tribunal acknowledges that task 10 states that a Joiner may work with plastic laminates, perspex and metals. As such, it would appear that the appellant's current role may have more in common with the ANZSCO description of a Joiner than it does to a Glazier. However, for reasons which only the appellant will know, he failed to provide Immigration New Zealand with any additional information and evidence to show that his role substantially matched that of a Joiner. This may have to do with the fact that he is unrepresented. Even so, as an applicant, it is his responsibility to establish that his employment is skilled within the meaning of this category of instructions.

[38] Based on the paucity of information before Immigration New Zealand, it could not have been satisfied that the appellant's employment substantially matched the ANZSCO occupation and core tasks of a Joiner and, consequently, he was not eligible for points for skilled employment as a Joiner.

Conclusion on correctness

[39] The Tribunal finds that Immigration New Zealand's decision to decline the appellant's application was correct because the appellant had not shown that his employment as a joiner/factory worker substantially matched the ANZSCO description, and core tasks, of either a Glazier or a Joiner. Without points for skilled employment, he did not meet the minimum selection criteria of the Skilled Migrant category.

[40] For completeness, the Tribunal has considered whether the appellant's employment was a substantial match to the ANZSCO occupation, and core tasks, of a Metal Fabricator (322311). While the appellant fabricates aluminium windows and doors, he does not, as the ANZSCO description requires of a Metal Fabricator, work with structural steel and other metal stock to make or repair metal products and structures such as boilers and pressure vessels.

[41] The Tribunal has also considered whether the managing consultant of the recruitment agency was the correct person to have completed the appellant's employer questionnaire. Even if he was the incorrect person, considering all the information that was provided to Immigration New Zealand, including the additional information provided by the operation manager of the curtain wall business, it could not be said, for the reasons given above, that the appellant was in skilled employment as a Glazier or a Joiner.

[42] Finally, the Tribunal notes that the appellant did not respond to Immigration New Zealand's credibility concerns regarding the job description that accompanied his residence application. While there may be a good explanation for this document being provided to Immigration New Zealand, the Tribunal records that the document appears to be an inaccurate description of the appellant's current employment.

Whether there are Special Circumstances

[43] The Tribunal has power pursuant to section 188(1)(f) of the Act to find, where it agrees with the decision of Immigration New Zealand, that there are special circumstances of an appellant that warrant consideration by the Minister of Immigration of an exception to the residence instructions.

[44] Whether an appellant has special circumstances will depend on the particular facts of each case. The Tribunal balances all relevant factors in each case to determine whether the appellant's circumstances, when considered cumulatively, are special.

[45] Special circumstances are "circumstances that are uncommon, not commonplace, out of the ordinary, abnormal"; *Rajan v Minister of Immigration* [2004] NZAR 615 (CA) at [24] per Glazebrook J.

Personal and family circumstances

[46] The appellant is a 46-year-old married citizen of the Philippines. He first arrived in New Zealand in April 2015 as the holder of a work visa. He has not departed the country since then. He currently holds a work visa valid to 1 December 2020.

[47] The appellant's wife, aged 46 years, and their two children, aged 18 and 16 years, live in the Philippines. His wife and children have not visited New Zealand. He has no immediate family in New Zealand.

[48] The appellant's application was declined because he was not awarded points for skilled employment and, consequently, he did not meet the minimum selection criteria for the Skilled Migrant category.

Health, character and English language

[49] Immigration New Zealand was satisfied that the appellant and his wife met the character requirements of instructions. Because the appellant was not in skilled employment, Immigration New Zealand was not satisfied he met the English language requirements of instructions. The Tribunal notes that, from his employer's point of view, there have been no issues with the appellant's standard of English.

[50] Because the appellant's residence application was declined, it was not necessary for Immigration New Zealand to determine whether he and his wife were both of an acceptable standard of health.

Work experience

[51] The appellant worked in Philippines in the early to mid-2000s. From late 2008 to early 2015, he worked in Qatar as an aluminium installer. From June 2015 onwards, he has worked in New Zealand for his current employer.

[52] One of the appellant's previous employers described him as a hard-working, honest and highly-skilled individual.

Settlement and contribution

[53] The appellant has lived in New Zealand since July 2015. He lives and works in a city outside of Auckland. He is actively involved with his local church and has been commended by his pastor for his commitment, reliability and stability, which has benefited the church.

Discussion of special circumstances

[54] The appellant is a married man from the Philippines who has lived in New Zealand since June 2015, which is not a significantly long period of time. He

currently holds a work visa valid to 1 December 2020 and works as a joiner/factory worker for his current employer for whom he has been employed for the last two-and-a-half years.

[55] The appellant has no immediate family living in New Zealand. His familial nexus is to the Philippines where his wife and two children reside. His two teenaged children have never been to New Zealand. They have lived all their lives in the Philippines with their mother and are financially supported by the appellant from New Zealand. He will be able to continue to do so as the holder of a three-year work visa.

[56] The appellant may prefer to live in New Zealand permanently with his wife and children. However, such a preference does not constitute special circumstances in the sense anticipated by the Court of Appeal in *Rajan*. Should the appellant reapply for residence in the future, he may benefit from being represented by a competent immigration advisor or lawyer.

[57] When all the appellant's circumstances are considered, including his current employment and his active involvement with his local church, the Tribunal finds that his circumstances are not special such as to warrant a recommendation to the Minister for a consideration of an exception to residence instructions.

DETERMINATION

[58] This appeal is determined pursuant to section 188(1)(a) of the Immigration Act 2009. The Tribunal confirms the decision of Immigration New Zealand to decline the appellant's application for residence as correct in terms of the applicable residence instructions. The Tribunal does not consider that the appellant has special circumstances which warrant consideration by the Minister of Immigration as an exception to those instructions under section 188(1)(f) of the Immigration Act 2009.

[59] The appeal is unsuccessful.

Order as to Depersonalised Research Copy

[60] Pursuant to clause 19 of Schedule 2 of the Immigration Act 2009, the Tribunal orders that, until further order, the research copy of this decision is to be

depersonalised by removal of the appellant's name and any particulars likely to lead to the identification of the appellant, his wife and their children.

"P. Fuiava"
P Fuiava
Member

Certified to be the Research
Copy released for publication.

P Fuiava
Member