DECISION
Managers Certificate
Decision No. [2018] WDL 171

IN THE MATTER of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER of an application by Karan Joshi for the granting of a new Manager’s Certificate pursuant to Section 219 of the Sale and Supply of Alcohol Act 2012.

BEFORE THE WAIMAKARIRI DISTRICT LICENSING COMMITTEE
Chairman: Neville Atkinson.
Members: Wendy Doody
           Paul Williams

HEARING at Rangiora on Friday 29 June 2018

APPEARANCES
For the applicant – Karan Joshi
Raj Deo – Alcohol Licensing Inspector – to assist
Genevieve Craddock – NZ Police – to assist

Introduction

1. Before the Waimakariri District Licensing Committee is an application by Karan Joshi for a new manager’s certificate. He applied for his certificate on 13 October 2017.

2. The applicant obtained his Licence Controller Qualification Certificate on 16 April 2017. The applicant is an Indian national who holds an open work visa, which expires in October 2019. He is currently working as a waiter at Himalayas Restaurant in Rangiora.

Reporting Agencies

3. Licensing Inspector Raj Deo gave evidence at the hearing. The inspector identified concerns in relation to the applicant’s knowledge around the Sale and Supply of Alcohol Act 2012 along with the language difficulties experienced by the applicant. The inspector stated the applicant was initially interviewed in October 2017. He completed a written test which he failed. He noted the applicant struggled significantly with the English language. The application was put on hold for 3 months to enable the applicant to gain more experience and knowledge and improve his communication skills.
4. The applicant was re-interviewed in April 2018. Again his knowledge of the Act was found to be below the level expected. The licensing inspector stated the applicant had limited knowledge and understanding of the requirements for managing a licensed premises. He also believed the applicant had very poor communication skills and was difficult to understand.

5. The Licensing Inspector stated the applicant had been working part time at Himalayas Restaurant since July 2017 as assistant manager and had also worked part time doing twenty hours per week at Coriander's Restaurant in Christchurch in 2016. The inspector stated the applicant was at work when the restaurant had failed a controlled purchase operation on Saturday 12 August 2017 telling the Inspector he had served the minors on the instructions of his duty manager.

6. Police did not initially oppose the application. Constable Genevieve Craddock from Christchurch Police gave evidence. She stated that had Police being aware of the language difficulties of the applicant that Police would have opposed the application. The Constable's evidence was that the applicant would have difficulty in communicating with customers.

The Applicant

7. The applicant gave evidence at the hearing. The applicant spoke of his work experience including how long he had been in New Zealand. In relation to the failed CPO in August 2017 the applicant stated that it was his first day at work at the restaurant and was told to serve the persons by his Duty Manager.

8. The applicant outlined his training that he had undertaken including passing his LCQ test. He also stated that he was still looking to upskill himself with the Act and also working on improving his communication skills.

9. The Committee noted the language difficulties with the applicant.

Committee's Decision and Reasons

10. The Committee must be satisfied that the applicant meets the criteria outlined below in Section 222 of the Act. This section spells out the suitability criteria required for a manager's certificate.

Criteria for manager's certificates Section 222

In considering an application for a manager's certificate, the licensing committee or licensing authority, as the case may be, must consider the following matters:

a. the applicant's suitability to be a manager:
b. any convictions recorded against the applicant:
c. any experience, in particular recent experience, that the applicant has had in controlling any premises for which a licence was in force:
d. any relevant training, in particular recent training, that the applicant has undertaken and evidence that the applicant holds the prescribed qualification required under section 218:
e. any matters dealt with in any report made under section 220.
The committee's attention is drawn to the Authorities decision in EE Heap LLA PH 513/2003, in which it was stated;

"a manager's certificate is a privilege. In a way it shows that the Authority or Agency is satisfied that this person who can manage any licensed premises at any time on his or her own.

Without the criteria having been satisfied, it is our view that to issue such a certificate without experience is akin to issuing a reference without the knowledge that the person does have the true capacity to operate as envisaged in the reference."

In a later decision, Sharon Teresa PLUMBRIDGE LLA PH 1197/2008, the Authority made the following comments;

"We are on record as stating that we do not issue certificates in a vacuum. We firmly believe that they should be working documents and that it is important for any applicant to have at least six months experience working on licensed premises.

Additionally the applicant should be trained on the job and have an employer prepared to come before us (or write a reference in effect) and say that he or she would like the applicant to run the business in a sole capacity and is sufficiently trustworthy to do so."

He is not confident and does not have good communication skills. The Authority has stated that ability to communicate adequately in English is essential to have a manager's certificate.

The applicant's attention is drawn to the Authorities decisions in which it was stated;

In Mojo Group Ltd LLA decisions PH406-407/03, the Authority stated;

"An applicant who cannot demonstrate an ability to communicate in English, and thus demonstrate to the relevant authorities that they can understand and uphold the law, is unlikely to be suitable to hold a general managers certificate."

In Young Ran Yun LLA Decision PH264/04, the Authority said;

"The Inspector took the view that although Mrs. Yun could not speak English, he believed that she had a good knowledge of her responsibilities as a manager under the Sale of Liquor Act. This is the dilemma faced by the Authority.

It is accepted that she may well understand the basic requirements of the Act.
But if she cannot communicate with the patrons or the Inspectors or with the Police, then it is our view that she cannot properly fulfill the functions that are expected managers.

Because she fulfills most of the criteria, it could be argued that to decline her General Managers Certificate Manager's Certificate is in some way discriminatory. But if we were to make an exception for her, then in our opinion we could be placing a gloss on the integrity of the system.

It is vital to the administration of the Act that managers are person who can immediately deal with any problems associated with liquor abuse. It is
probable that in this particular restaurant, such issues may arise very infrequently.

Nevertheless, as we have said, if we allow exception then eventually the integrity of the system will be considerably diminished. We are therefore not prepared to do so.”

12. This has been an evaluative exercise. The Committee has stood back and evaluated the evidence of the applicant and weighed that in terms of the evidence provided by the licensing inspector. We are not satisfied that the applicant meets the criteria set down in Section 222(a) of the Act.

13. Accordingly, the Committee has decided to adjourn the hearing until 25 January 2019, at which time the Committee will expect the applicant to have passed the Waimakariri Manager’s Certificate Test and demonstrated more effective communication skills.

14. If the Committee are satisfied that these two commitments have been met by the applicant, then it is possible that a decision will be issued granting the application on the papers.

DATED at Rangiora this 13th day of July 2018.

Chairperson
Waimakariri District Licensing Committee