

Date: 20080125

Docket: IMM-2327-06

Citation: 2008 FC 100

Toronto, Ontario, January 25, 2008

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

TERVINDER SINGH TIWANA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Tervinder Singh Tiwana (the “Applicant”) seeks judicial review of the decision of Visa Officer Myriam Morin Dupras (the “Visa Officer”), dated April 3, 2006. In her decision, the Visa Officer refused the Applicant’s application for permanent residence in Canada as a member of the skilled workers class.

[2] The Visa Officer based her decision upon an assessment of the Applicant pursuant to both the provisions of the former *Immigration Act*, R.S.C. 1985, c. I-2 (the “former Act”) and the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”). The Applicant failed to obtain sufficient points under either Act to give rise to the issuance of a permanent resident visa.

[3] The Applicant is a citizen of India. He submitted his application for a permanent resident visa in 2000. He was called for an interview and was interviewed on April 3, 2006. He was assessed pursuant to the former Act and the *Immigration Regulations, 1978, SOR/78-172* and awarded 60 points. In order to be eligible for a visa, he required a minimum of 70 points.

[4] The Applicant was also assessed pursuant to the Act and the *Immigration and Refugee Protection Regulations, SOR/2002-227* (the “IRPA Regulations”) and was awarded 59 points. The required threshold for the issuance of a permanent residence visa is 67 points.

[5] In her decision letter, the Visa Officer reviewed the two assessments and set out the points awarded to the Applicant. She expressed the opinion that she was not satisfied that the Applicant would be able to become economically established in Canada and refused his application.

[6] The Applicant challenges the decision with reference made pursuant to the Act and the IRPA Regulations. He argues that the Visa Officer erred by failing to award units of assessment under the adaptability factor when there was evidence before her to justify the award of points in that regard. In this regard, the Applicant refers to the evidence that his father is a permanent resident in Canada. He argues that this fact should have led the Visa Officer to award 5 points.

[7] Next, the Applicant refers to evidence that his wife’s educational attainments should have led to the award of at least 4 points. Relying on subparagraph 78(2)(d)(ii) of the IRPA Regulations, the Applicant submits that there was evidence before the Visa Officer to show that she had

completed two years of a university level bachelor's program and a total of at least 14 years of completed full-time studies.

[8] He refers to section 83 of the IRPA Regulations which allows for the award of points for the presence of close family members in Canada and for the educational qualifications of an accompanying spouse. Paragraphs 83(1)(a) and 83(1)(d) are relevant and provide as follows:

<p>83(1) A maximum of 10 points for adaptability shall be awarded to a skilled worker on the basis of any combination of the following elements:</p> <p>(a) for the educational credentials of the skilled worker's accompanying spouse or accompanying common-law partner, 3, 4 or 5 points determined in accordance with subsection (2);</p> <p>...</p> <p>(d) for being related to a person living in Canada who is described in subsection (5), 5 points; and</p>	<p>83(1) Un maximum de 10 points d'appréciation sont attribués au travailleur qualifié au titre de la capacité d'adaptation pour toute combinaison des éléments ci-après, selon le nombre indiqué :</p> <p>(a) pour les diplômes de l'époux ou du conjoint de fait, 3, 4 ou 5 points conformément au paragraphe (2);</p> <p>...</p> <p>d) pour la présence au Canada de l'une ou l'autre des personnes visées au paragraphe (5), 5 points;</p>
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[9] The Minister of Citizenship and Immigration (the "Respondent") filed an affidavit from the Visa Officer in response to this application for judicial review. The Visa Officer deposed that she was not satisfied with the evidence submitted by the Applicant relating to the presence of his father in Canada. She also deposed that the Applicant's wife was not entitled to credit for any education beyond completion of grade 12 since two years of study towards a B.A. "does not entitle an

application [sic] to any additional points”.

[10] The first issue to be addressed is the applicable standard of review. This is to be determined following a pragmatic and functional analysis based upon the following four factors: the presence or absence of a privative clause; the expertise of the tribunal; the statutory purpose; and the nature of the question.

[11] The first factor is neutral since the Act contains neither a privative clause nor a full right of appeal. Judicial review is available, pursuant to section 72 of the Act, if leave is granted.

[12] The Visa Officer is authorized to make decisions relative to the issuance of visas. The Visa Officer has greater expertise in this regard than the Court and that expertise attracts deference.

[13] The broad purpose of the Act is to regulate the admission of immigrants and protected persons into Canada. This involves consideration of many interests that may conflict with each other. Decisions made in a polycentric context tend to attract judicial deference.

[14] Finally, there is the nature of the question. In this case, the Visa Officer was required to determine if the Applicant had met the statutory requirements for the award of points relative to the presence of his father in Canada and the educational qualifications of his wife. Although an element of statutory interpretation is involved, the Visa Officer was primarily engaged in factual determinations. Determinations of fact by a specialized decision-maker attract deference.

[15] On balance, the four factors tend toward granting a high degree of deference to the Visa Officer. I conclude that the applicable standard of review in this case is patent unreasonableness.

[16] The Tribunal Record includes the Applicant's IMM-008 form in support of his visa application. This document records that his father lives in British Columbia. The Visa Officer made the following entry in the CAIPS notes in respect of the assessment done under the Act and the IRPA Regulations:

PA sates [sic] that his father lives in Canada, no proof of relationship and status provided. 0 points awarded.

[17] In my view, these observations are not supported by the evidence. In addition to the statement in the IMM-008 form concerning the residence of the Applicant's father in British Columbia, there are references in other documents to the fact that the Applicant is the son of Hardev Singh. The Visa Officer has apparently ignored the evidence that was provided in reaching her conclusion. However, the matter does not end here.

[18] The CAIPS notes include the following entry under the heading "Adaptability":

Spouse's education (accompanying): she only completed grade 12 and BA part 2. Original degree seen – documentation on file is satisfactory.

[19] In her affidavit, the Visa Officer said the following:

The Applicant's spouse was not given credit for any education beyond her completion of Grade 12. Her IMM8 application form refers to completion of Grade 12 and two years of study towards a B.A. The Applicant's spouse did not identify any other educational qualifications in her IMM8 form. Partial completion of a Bachelor's

degree does not entitle an application [sic] to any additional points. At the interview, I reviewed the IMM8 forms with the Applicant and his spouse to confirm that the education and other information was accurate. The Applicant's spouse did not mention that she had any additional educational qualifications. I have reviewed our file and it does not appear that the Applicant submitted any document showing any additional educational qualifications for his wife. The Applicant did not refer me to any such document during the interview.

[20] The Applicant argues that the Visa Officer erred in assessing the qualifications of the Applicant's spouse. The Applicant argues that his wife should have been awarded 4 points because she was eligible to receive 20 points for her educational qualifications, pursuant to subparagraph 78(2)(d)(ii) and paragraph 83(2)(b) of the IRPA Regulations, as follows:

78(2) A maximum of 25 points shall be awarded for a skilled worker's education as follows:

...

(d) 20 points for

...

(ii) a two-year university educational credential at the bachelor's level and a total of at least 14 years of completed full-time or full-time equivalent studies;

83(2) For the purposes of paragraph (1)(a), an officer shall evaluate the educational credentials of a skilled worker's accompanying spouse or accompanying common-law partner as if the spouse or common-law partner were a skilled worker, and shall award points to the skilled worker as follows:

78(2) Un maximum de 25 points d'appréciation sont attribués pour les études du travailleur qualifié selon la grille suivante :

...

d) 20 points, si, selon le cas :

...

(ii) il a obtenu un diplôme universitaire de premier cycle nécessitant deux années d'études et a accumulé un total d'au moins quatorze années d'études à temps plein complètes ou l'équivalent temps plein;

83 (2) Pour l'application de l'alinéa (1)a), l'agent évalue les diplômes de l'époux ou du conjoint de fait qui accompagne le travailleur qualifié comme s'il s'agissait du travailleur qualifié et lui attribue des points

...	selon la grille suivante :
(b) for a spouse or common-law partner who would be awarded 20 or 22 points, 4 points; and	... b) dans le cas où l'époux ou le conjoint de fait obtiendrait 20 ou 22 points, 4 points;

[21] The Visa Officer awarded no points for the two-years university level studies completed by the Applicant's spouse. This decision is consistent with the definition of "educational credential" found in section 73 of the IRPA Regulations as follows:

73 The definitions in this section apply in this Division.	Les définitions qui suivent s'appliquent à la présente section.
...	...
"educational credential" means any diploma, degree or trade or apprenticeship credential issued on the completion of a program of study or training at an educational or training institution recognized by the authorities responsible for registering, accrediting, supervising and regulating such institutions in the country of issue.	«diplôme» Tout diplôme, certificat de compétence ou certificat d'apprentissage obtenu conséquemment à la réussite d'un programme d'études ou d'un cours de formation offert par un établissement d'enseignement ou de formation reconnu par les autorités chargées d'enregistrer, d'accréditer, de superviser et de réglementer les établissements d'enseignement dans le pays de délivrance de ce diplôme ou certificat.

[22] The Applicant's wife filed an affidavit, as part of the Applicant's record in this judicial review proceeding, deposing that she had completed a programme in home science. However, this

evidence was not before the Visa Officer and cannot be taken into account in this proceeding.

[23] The definition of “educational credential” in the IRPA Regulations makes it clear that an award of points in that regard, pursuant to subparagraph 78(2)(d)(ii), requires completion of a programme and the grant of a diploma or degree.

[24] I am satisfied that the Visa Officer did not commit a reviewable error in assessing the educational qualifications of the Applicant’s spouse, having regard to the combined effect of section 73, subparagraph 78(2)(d)(ii), paragraph 83(1)(a) and paragraph 83(2)(b) of the Regulations. This means that even if she erred in assessing the evidence with respect to the Applicant’s father, the Applicant is still short of the necessary number of points to qualify for the issuance of a permanent residence visa.

[25] In the result, the application for judicial review is dismissed. There is no question for certification arising.

ORDER

The application for judicial review is dismissed. There is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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STYLE OF CAUSE: TERVINDER SINGH TIWANA and
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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**REASONS FOR ORDER AND
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