

Date: 20080130

Docket: IMM-6468-06

Citation: 2008 FC 121

Ottawa, Ontario, January 30, 2008

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

ALI IRFAN KHAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] A single issue is raised in this application for judicial review: did a visa officer breach the duty of fairness she owed to Mr. Khan by failing to provide him with the opportunity to address her concerns that his university degrees were not issued by accredited institutions? I have found that the officer did comply with the duty of fairness and so the application for judicial review is dismissed.

[2] Matters of procedural fairness are said to be reviewable on the standard of correctness. This is because it is for the Court to determine whether the decision-maker adhered to the principles of procedural fairness. No deference is owed to the decision-maker.

[3] The issue of procedural fairness in this case arises in the following context.

[4] Mr. Khan applied for a permanent resident visa as a member of the federal skilled worker class.

[5] Applicants in the federal skilled worker class are assessed on the basis of the minimum requirements set out in subsection 75(2) and the criteria set out in subsection 76(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations). The criteria deal with age, education, language, experience, arranged employment, and adaptability requirements. With respect to the criteria of education, a maximum of 25 points is available and subsection 78(2) of the Regulations sets forth the scale of points available for specified "educational credential". These provisions of the Regulations are set out in the appendix to these reasons.

[6] The phrase "educational credential" used in subsection 78(2) of the Regulations is defined in section 73 of the Regulations to mean:

[...] 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.

[7] In his visa application, Mr. Khan sought points for his Bachelor of Business Administration in Marketing degree which he obtained from the Newport University, Dubai campus, and his Master of Business Administration in Marketing degree which he obtained from the American University of Hawaii, Dubai campus.

[8] On March 24, 2006, after Mr. Khan's visa application was received and reviewed, the visa officer wrote to Mr. Khan's consultant seeking additional information. With respect to Mr. Khan's educational qualifications, the officer asked the consultant to "provide evidence that the institution issuing the degree is accredited by the Government of the issuing country."

[9] Mr. Khan's consultant responded, conceding that the American University of Hawaii was not then recognized by any accrediting body in the United States. With respect to the Newport University, the consultant provided:

- A letter from the Newport University which stated that it was approved by the State of California Bureau for Private Postsecondary and Vocational Education (BPPVE) to grant degrees.
- A BPPVE certificate in respect of Newport University which certified that it "has received approval to operate from the Bureau for Private Postsecondary and Vocational Education ("Bureau"). An approval to operate means that the Bureau has determined and certified that the institution meets the minimum standards for integrity, financial stability, and educational quality, including the offering of bona

vide instruction by qualified faculty and the appropriate assessment of students' achievement prior to, during, and at the end of its programs."

- Three printed screens from the BPPVE website which included advice that the "Bureau establishes educational standards that are intended to serve as the minimum standard for instructional quality and institutional stability for private postsecondary schools in California. The Bureau responds to student complaints and oversees a fund designed to help reimburse a student's tuition if a school closes unexpectedly." Information was also provided that "[e]ffective January 1, 2004, schools that are accredited by specified regional accrediting agencies recognized by the U.S. Department of Education may offer new degree, diploma or certificate programs without further 'review and investigation' by the Bureau."

[10] The Computer Assisted Immigration Processing System notes record the officer's consideration of this information as follows:

NEITHER OF APPLICANT'S UNIVERSITIES – NEWPORT AND AMERICAN UNIVERSITY OF HAWAII MEET R73. NEITHER ARE LISTED ON THE CHEA DATABASE OF INSTITUTIONS AND PROGRAMS ACCREDITED BY RECOGNIZED UNITED STATES ACCREDITING ORGANIZATIONS. NOTE THAT NEWPORT UNIVERSITY APPEARS TO BE A RECOGNIZED PRIVATE EDUCATION INSTITUTION (CONSULTANT HAS PROVIDED INFORMATION INDICATING UNIVERSITY IS ON DATABASE OF THE BUREAU FOR PRIVATE POSTSECONDARY AND VOCATIONAL EDUCATION. THIS BUREAU IS PART OF CALIFORNIA DEPT OF CONSUMER AFFAIRS, AND ESTABLISHES ED STANDARDS THAT ARE INTENDED TO SERVE AS MINIMUM STANDARD FOR INSTRUCTIONAL QUALITY AND INSTITUTIONAL STABILITY FOR PRIVATE POSTSECONDARY SCHOOLS IN CALIFORNIA). THIS DOES NOT SHOW THAT INSTITUTION MEETS REQUIREMENTS OF R73. 5 POINTS AWARDED FOR EDUCATION.

[11] "CHEA", which is referred to in the officer's notes, is the acronym for the United States Council for Higher Education Accreditation. CHEA maintains a database that contains information

about over 7,000 degree-granting and non-degree granting institutions and over 17,000 programs that are accredited by American accrediting organizations that have been recognized either by CHEA, or by the United States Department of Education, or by both of those entities.

[12] During oral argument, Mr. Khan's counsel was clear that the reasonableness of the officer's decision is not in issue. The sole issue is the fairness of the process. Counsel argued that the officer's request for further information from Mr. Khan was not sufficiently clear; that is, the request did not explain that the officer's specific concern was whether Mr. Khan's degrees were obtained from institutions that had been accredited. Once the further information was received, it was argued that the officer should have advised Mr. Khan that Newport University was not listed in the CHEA database so as to afford him the opportunity to disabuse the officer of her concerns.

[13] In my view, the officer did comply with the requirements of procedural fairness. Her March 24, 2006, correspondence was sufficient to put Mr. Khan on notice that concern existed as to whether his degrees were conferred by "accredited" institutions. The information Mr. Khan provided in response was, in the officer's view, insufficient to establish that Newport University was accredited within the meaning of section 73 of the Regulations, particularly in view of the fact that it was not listed in a recognized database of accredited institutions and programs.

[14] There is a long line of jurisprudence from this Court to the effect that procedural fairness does not oblige a visa officer to provide an applicant with a "running score" with respect to his or her application. Nor does procedural fairness require "notice of an officer's concerns where these arise directly from the Act and Regulations that the officer is bound to follow in his or her assessment of the applicant." See, for example, *Parmar v. Canada (Minister of Citizenship and*

Immigration) (1997), 139 F.T.R. 203 at paragraph 36. In my view, this reasoning applies in this case.

[15] For these reasons, the application for judicial review is dismissed.

[16] Counsel posed no question for certification, and I agree that no question arises on this record.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.

“Eleanor R. Dawson”

Judge

SCHEDULE

Subsections 75(2), 76(1) and 78(2) of the Regulations read as follows:

75(2) A foreign national is a skilled worker if

(a) within the 10 years preceding the date of their application for a permanent resident visa, they have at least one year of continuous full-time

75(2) Est un travailleur qualifié l'étranger qui satisfait aux exigences suivantes :

a) il a accumulé au moins une année continue d'expérience de travail à temps plein au sens du paragraphe 80(7), ou l'équivalent s'il travaille à

employment experience, as described in subsection 80(7), or the equivalent in continuous part-time employment in one or more occupations, other than a restricted occupation, that are listed in Skill Type 0 Management Occupations or Skill Level A or B of the National Occupational Classification matrix;

(b) during that period of employment they performed the actions described in the lead statement for the occupation as set out in the occupational descriptions of the National Occupational Classification;

(c) during that period of employment they performed a substantial number of the main duties of the occupation as set out in the occupational descriptions of the National Occupational Classification, including all of the essential duties.

[...]

76(1) For the purpose of determining whether a skilled worker, as a member of the federal skilled worker class, will be able to become economically established in Canada, they must be assessed on the basis of the following criteria:

(a) the skilled worker must be awarded not less than the minimum number of required points referred to in subsection (2) on the basis of the following

temps partiel de façon continue, au cours des dix années qui ont précédé la date de présentation de la demande de visa de résident permanent, dans au moins une des professions appartenant aux genre de compétence 0 Gestion ou niveaux de compétences A ou B de la matrice de la Classification nationale des professions — exception faite des professions d'accès limité;

b) pendant cette période d'emploi, il a accompli l'ensemble des tâches figurant dans l'énoncé principal établi pour la profession dans les descriptions des professions de cette classification;

c) pendant cette période d'emploi, il a exercé une partie appréciable des fonctions principales de la profession figurant dans les descriptions des professions de cette classification, notamment toutes les fonctions essentielles.

[...]

76(1) Les critères ci-après indiquent que le travailleur qualifié peut réussir son établissement économique au Canada à titre de membre de la catégorie des travailleurs qualifiés (fédéral) :

a) le travailleur qualifié accumule le nombre minimum

factors, namely,

- (i) education, in accordance with section 78,
- (ii) proficiency in the official languages of Canada, in accordance with section 79,
- (iii) experience, in accordance with section 80,
- (iv) age, in accordance with section 81,
- (v) arranged employment, in accordance with section 82, and
- (vi) adaptability, in accordance with section 83; and

(b) the skilled worker must

- (i) have in the form of transferable and available funds, unencumbered by debts or other obligations, an amount equal to half the minimum necessary income applicable in respect of the group of persons consisting of the skilled worker and their family members, or
- (ii) be awarded the number of points referred to in subsection 82(2) for arranged employment in Canada within the meaning of subsection 82(1).

[...]

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

- (a) 5 points for a secondary school educational credential;
- (b) 12 points for a one-year post-secondary educational credential, other than a university educational credential, and a total of at least 12 years of completed full-time or full-time equivalent studies;

de points visé au paragraphe (2), au titre des facteurs suivants :

- (i) les études, aux termes de l'article 78,
- (ii) la compétence dans les langues officielles du Canada, aux termes de l'article 79,
- (iii) l'expérience, aux termes de l'article 80,
- (iv) l'âge, aux termes de l'article 81,
- (v) l'exercice d'un emploi réservé, aux termes de l'article 82,
- (vi) la capacité d'adaptation, aux termes de l'article 83;

b) le travailleur qualifié :

- (i) soit dispose de fonds transférables — non grevés de dettes ou d'autres obligations financières — d'un montant égal à la moitié du revenu vital minimum qui lui permettrait de subvenir à ses propres besoins et à ceux des membres de sa famille,

- (ii) soit s'est vu attribuer le nombre de points prévu au paragraphe 82(2) pour un emploi réservé au Canada au sens du paragraphe 82(1).

[...]

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

- a) 5 points, s'il a obtenu un diplôme d'études secondaires;
- b) 12 points, s'il a obtenu un

(c) 15 points for
 (i) a one-year post-secondary educational credential, other than a university educational credential, and a total of at least 13 years of completed full-time or full-time equivalent studies,
 or

(ii) a one-year university educational credential at the bachelor's level and a total of at least 13 years of completed full-time or full-time equivalent studies;

(d) 20 points for
 (i) a two-year post-secondary educational credential, other than a university educational credential, and a total of at least 14 years of completed full-time or full-time equivalent studies,
 or

(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;

(e) 22 points for
 (i) a three-year post-secondary educational credential, other than a university educational credential, and a total of at least 15 years of completed full-time or full-time equivalent studies,
 or

(ii) two or more university educational credentials at the

diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant une année d'études et a accumulé un total d'au moins douze années d'études à temps plein complètes ou l'équivalent temps plein;

c) 15 points, si, selon le cas :

(i) il a obtenu un diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant une année d'études et a accumulé un total de treize années d'études à temps plein complètes ou l'équivalent temps plein,

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

d) 20 points, si, selon le cas :

(i) il a obtenu un diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant deux années d'études et a accumulé un total de quatorze années d'études à temps plein complètes ou l'équivalent temps plein,

(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;

e) 22 points, si, selon le cas :

(i) il a obtenu un diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant trois années

bachelor's level and a total of at least 15 years of completed full-time or full-time equivalent studies; and

(f) 25 points for a university educational credential at the master's or doctoral level and a total of at least 17 years of completed full-time or full-time equivalent studies.

d'études à temps plein et a accumulé un total de quinze années d'études à temps plein complètes ou l'équivalent temps plein,

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

f) 25 points, s'il a obtenu un diplôme universitaire de deuxième ou de troisième cycle et a accumulé un total d'au moins dix-sept années d'études à temps plein complètes ou l'équivalent temps plein.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6468-06

STYLE OF CAUSE: ALI IRFAN KHAN, Applicant

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION, Respondent

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 17, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** DAWSON, J.

DATED: JANUARY 30, 2008

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