

**Date: 20080229**

**Docket: IMM-2383-07**

**Citation: 2008 FC 271**

**Ottawa, Ontario, February 29, 2008**

**PRESENT: The Honourable Orville Frenette**

**BETWEEN:**

**SAQUIB HAMEED &  
ADEELA BASHIR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision of the Canadian High Commission dated April 2, 2007 wherein the Officer reviewed the Applicant's request for reconsideration of the prior refusal of his application for permanent residence in Canada under the skilled worker category dated February 20, 2007 as it was determined that he had not satisfied the requirements for immigration to Canada as set out in the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations).

## I. Facts

[2] The Applicant, Mr. Saquib Hameed, is a citizen of Pakistan. In October 2001, he applied as a Federal Skilled worker under the occupation of “Purchasing Agent”, National Occupational Classification (NOC) 1225. The Applicant did not indicate that his wife or children would accompany him to Canada and he did not pay a processing fee for any of them. As such, none of his wife’s information was considered in regards to the Applicant’s application.

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

[4] On August 2, 2006, the Officer gave the Applicant a score of 5 points for his education. The Officer found that the Applicant completed his Bachelor’s degree as a private student, which meant it could not be considered. He also found that the Applicant completed his M.B.A. degree at an institution that was not accredited with the Higher Education Commission of Pakistan, which meant it also could not be considered (Applicant’s Record, CAIPS notes, pp. 91-92).

[5] The Applicant was interviewed on February 1, 2007. Prior to the commencement of the interview, the Applicant advised that he wished his wife to be considered at the interview despite not having paid the requisite fees. The Applicant advised that he wished to know the result of the

interview prior to paying. The Applicant was informed that the fees must be paid if the wife's information is to be considered at the interview and was given an opportunity to pay at that time. The Applicant stated that he could pay but he did not have enough money with him. The officer refused to wait for two hours as requested to obtain the money. (Applicant's Record, CAIPS notes, p. 93).

[6] During the interview, the Officer arrived at the same conclusion regarding the Applicant's educational credentials as was previously found and explained his concerns to the Applicant. The Applicant did not agree with the Officer's explanation. The Applicant also questioned why his wife's information was not considered in the assessment and was advised that he had not paid any fees for his wife. The Applicant was also advised that even if his wife's information had been considered, he still would not have qualified for a skilled worker visa (Applicant's Record, CAIPS notes, pp. 93-94).

[7] A refusal letter, dated February 6, 2007, was sent to the Applicant. On March 12, 2007, a request for reconsideration was received by the Visa Officer.

[8] Shortly after receiving his negative decision, the Applicant's new counsel wrote to the processing office in Islamabad, Pakistan. It was submitted that the Applicant had erroneously received only 5 points out of a total of 25 for education, whereas in reality he should have received an additional 15 points under this category. Based on a review of the Applicant's diplomas and

transcript, counsel submitted that Mr. Hameed should have been awarded 20 point for the study and not 5.

[9] By letter dated April 2, 2007, a Visa Officer responsible for reviewing requests for reconsideration advised that the Applicant's application had been reconsidered but that his application had been considered on its merits in a letter dated February 6, 2007 and that despite the additional information submitted he still did not qualify and the refusal stood. The Visa Officer reiterated that the Applicant's Bachelor's degree did not merit any points being awarded. The Visa Officer also advised that there would be no further correspondence regarding the Applicant's present application (Applicant's Record, p. 43).

[10] On April 20, 2007, counsel for the Applicant wrote to the Visa Officer and submitted that this conclusion failed to take into account the means by which degrees were conferred by the University of Punjab, as well, was not relevant to the assessment of points that the Applicant should be awarded (Affidavit of Lynda DeBraga, Applicant's Record, Tab 5, Exhibit F).

[11] No further correspondence was received from the Visa Office, resulting in the filing of this application for judicial review in June 2007.

## II. The impugned decision

[12] In a letter dated February 6, 2007, the Visa Officer informed the Applicant that after having assessed the Applicant's application for a Permanent Resident Visa of the transitional Federal

Skilled Worker class, as prescribed in Section 85.1 of the *Regulations*, above, he determined that Mr. Hameed did not meet the requirements for immigration Canada and consequently refused his application.

[13] The Visa Officer's assessment under the Immigration Act, above, is as follows:

	Points Assessed	Maximum
Age	10	10
Occupational Factor	01	10
Education & Training Factor	15	18
Experience	06	08
Arranged Employment	00	10
Demographic Factor	08	08
Education	10	16
Knowledge of English	02	09
Knowledge of French	00	06
Bonus	00	05
Personal Suitability	03	10
<b>Total</b>	<b>55</b>	<b>100</b>

As 70 units were required under the former Act, the Applicant was considered to not have met the minimum requirement.

Subsequently, the Visa Officer assessed the Applicant's application pursuant to the IRPA. His assessment is as follows:

	Points Assessed	Maximum
Age	10	10
Education	05	25
Experience	21	21
Arranged Employment	00	10
Official Language Proficiency	07	24
English		
French		

Adaptability	00	10
Education of Spouse/Partner		
Prior Work/Study in Canada		
Arranged Employment		
Close Relative in Canada		
<b>Points</b>	43	100

[14] Having obtained a total of 43 points, where in the minimum number of points required is of 67, the Applicant was equally found to not have satisfied the requirement under IRPA.

[15] Consequently, the Visa Officer concluded that he was not satisfied that the Applicant would be able to become economically established in Canada and ultimately refused the Applicant's application for Permanent Residence (Canadian High Commission's Reasons, Applicant's Record, p. 3-4).

[16] Furthermore, by letter dated April 2, 2007, a reviewing officer confirmed the original determination and indicated to the Applicant that despite the additional information that was submitted, the applicant could not be awarded any points for his Bachelors in Arts degree as he completed the course as a private candidate (Canadian High Commission letter dated April 2, 2007, Affidavit of Lynda DeBraga, Exhibit E, Applicant's Record, p. 43).

### III. Parties submissions

#### *Applicant's submissions*

[17] The Applicant submits that the Visa Officer failed to take into account the means by which degrees are conferred by the University of Punjab and consequently placed irrelevant weight on such when assessing the points that Mr. Hameed should be awarded.

[18] Furthermore, they argue that the University of Punjab, which conferred the degree, is not an attending institution for undergraduate students. Rather it administers exams for those who have attended other institutions and confers degrees accordingly. This does not mean, however that Mr. Hameed did not receive a two-year university educational credential at the bachelor's level nor does it mean that he did not complete a total of 14 years of schooling. Mr. Hameed's diploma and transcript confirm that he received the university credential by attending Islamia College Civil Lines Lahore and the letter of the Higher Education Commission of Pakistan confirms that the granting of the credential recognizes that Mr. Hameed took 14 years of completed schooling – thus the requirements of subparagraph 79(1)(d)(ii) of the Regulations are met (Exhibit F to Lynda DeBraga's Affidavit).

#### *Respondent's submissions*

[19] The Respondent submits that the Applicant failed to achieve enough points under either scheme to qualify for a permanent resident visa as a member of the skilled worker category. As a result, his application was rejected (Respondent's Memorandum of Argument, para. 10).

[20] Furthermore they contend that the Applicant provided evidence that he obtained his Bachelor of Arts degree from the University of the Punjab as an external student. They note that an external student is someone who takes an examination for a degree or certificate as a private candidate. This means that the person was not in full-time attendance at the educational institution granting the degree or at a recognized affiliated college of that degree-granting institution at the time that person took the final examination (Affidavit of Georges Ménard, para. 2).

#### IV. Issue

[21] The sole issue before the Court is the following:

- (1) Did the Visa Officer err in relying on irrelevant or extraneous information when he determined that the Applicant's Bachelor of Arts degree could not be considered because he had completed it as a private student?

#### V. Analysis

##### *Standard of review*

[22] 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 educational qualifications of the Applicant. 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.

[23] In *Hua*, below, the Court concluded that the appropriate standard of review to apply in the context of a visa officer's general decision was patent unreasonableness (*Hua v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 2106, para. 28 (QL)).

[24] The Court also discussed this issue in *Kniazeva*, below, stating:

**15** [...] This Court has consistently held that the particular expertise of visa officers dictates a deferential approach when reviewing their decisions. There is no doubt in my mind that the assessment of an Applicant for permanent residence under the Federal Skilled Worker Class is an exercise of discretion that should be given a high degree of deference. To the extent that this assessment has been done in good faith, in accordance with the principles of natural justice applicable, and without relying on irrelevant or extraneous considerations, the decision of the visa officer should be reviewed on the standard of patent unreasonableness. [citations removed]

(*Kniazeva v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 336, para. 15 (QL))

[25] Justice Elizabeth Heneghan also determined, following a pragmatic and functional analysis that much deference should be granted to a Visa Officer's in respect to the issuance of visas. She explains that:

[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.

(*Tervinder Singh Tiwana v. The Minister of Citizenship and Immigration*, 2008 FC 100)

[26] In this particular case, I must take into account the fact that the visa officer who rendered the decision, Sean Carey of April 2, 2007, was inexperienced in this field. The transcript of the cross-

examination on his affidavit showed that he had only 1 ½ days of training and a short period of experience at the time he wrote the decision (January to March 2007, on a temporary basis and resumed his functions on August 13, 2007).

[27] I must also acknowledge that after a demand of reconsideration, Georges Menard, an experienced officer confirmed the decision but it remains that the determination was made by Mr. Carey, an inexperienced officer.

*Legislation framework*

[28] Section 12 of IRPA governs applications for permanent residence on economic grounds. It states:

**12.** (2) Economic immigration – A foreign national may be selected as a member of the economic class on the basis of their ability to become economically established in Canada.

**12.** (2) Immigration économique – La sélection des étrangers de la catégorie « immigration économique » se fait en fonction de leur capacité à réussir leur établissement économique au Canada.

[29] Sections 73 through 85 of the *Immigration and Refugee Protection Regulations*, above, govern the assessment of applications for permanent residence under the Federal Skilled Worker Class.

[30] The relevant portions of those *Regulations* are those that relate to the assessment of education.

[31] Section 73 of the *Regulations* states:

**73.** The definitions in this section apply in this Division.

“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*)

**73.** Les définitions qui suivent s’appliquent à la présente section.

« 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. (*educational credential*)

[32] Paragraph 78(2)(d) of the *Regulations* states :

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

[...]

(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

**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 :

(i) il a obtenu un diplôme postsecondaire — autre qu’un diplôme universitaire — nécessitant deux années d’études et a accumulé un

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;

[...]

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;

[...]

(1) *Did the Visa Officer err in relying on irrelevant or extraneous information when he determined that the Applicant's Bachelor of Arts degree could not be considered because he had completed it as a private student?*

[33] The Visa Officer determined that the Applicant completed his Bachelor's degree as a 'private or external student' and therefore had not satisfied the "at least 14 years of completed full-time or full-time equivalent studies" as required by paragraph 78(2)(ii) of the *Regulations*, above.

[34] The Respondent has not however argued that the Applicant did not complete fourteen years of studies. The Applicant's studies may be broken down as follows:

- High School credential (10 years) (Applicant's Record, p. 30);
- College - Government College, Baghbanpura, Lahore (2 years) (Applicant's Record, p. 31);
- Bachelor of Arts (conferred by the University of Punjab) (2 years) (Applicant's Record, p. 33).

[35] Furthermore, a letter from the Higher Education Commission of Pakistan that was brought before the Visa Officer following the Applicant's interview confirmed that the Applicant's Bachelor of Arts degree from the University of Punjab corresponded to a Bachelor's degree in the relevant field involving 14 years of schooling (Applicant's Record, p. 41).

[36] The Visa Officer however awarded zero points for the two-years university level studies completed by the Applicant and awarded only 5 points for his education. The Visa Officer based his conclusion on the fact that the Applicant was a private or external student and therefore had not completed the 14 years of full-time studies. This decision is inconsistent with the definition of "educational credential" found in section 73 of the *Regulations* as follows:

**73** The definitions in this section apply in this Division.

...

"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.

**73** Les définitions qui suivent s'appliquent à la présente section.

...

«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.

[37] In regards to the Respondent's allegation, the Applicant notes that the Visa Officer's failed to take into account the means by which degrees were conferred by the University of Punjab (Applicant's counsel letter dated April 20, 2007, Applicant's Record, p. 46).

[38] First it was submitted that the University of Punjab, which conferred the degree, was not an 'attending' institution for undergraduate students. Rather, it administered exams for those who have attended other institutions and conferred degrees accordingly. However, this did not mean that the Applicant did not receive a two-year university educational credential at the bachelor's level nor did it mean that he did not complete a total of fourteen years of schooling (Applicant's counsel letter dated April 20, 2007, Applicant's Record, p. 46).

[39] Contrary to Justice Danièle Tremblay-Lamer's conclusion in *Cela v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 1324 (QL) wherein the officer refused the applicant's application for permanent residence in Canada on the grounds that she was not satisfied that the applicant met the statutory requirement, the Applicant in the case at bar has provided the Respondent with evidence as to his credential for his Bachelor's degree. Justice Tremblay-Lamer notes that:

[8] The officer acknowledged that the applicant had taken an adult education course in accounting while living in Canada. However, given the applicant's failure to establish that the course was a course described in subsection 78(2) of the Regulations, the officer did not find that the accounting course justified the award of additional points.

[9] I do not find that the officer erred in her assessment of the applicant's education. The applicant provided student transcripts from the Yorkdale Adult Learning Centre attesting to the

accounting courses she had taken. However, none of these documents indicate that the applicant was awarded a credential for her studies. Thus, I find that the officer reasonably evaluated the evidence presented and awarded the applicant a sufficient number of points for her education.

(*Cela*, above, paras. 8-9).

[40] Furthermore, the Respondent does not dispute the fact that the Applicant has a Bachelor's Degree nor do they contend that the Applicant has completed 14 years of schooling. The Respondent argue that the Applicant was not a full-time student at the time his degree was conferred and that the Applicant was a private student. The Applicant however explained during the interview the following:

[...] I disagreed with the visa officer. I had the degree with me and I attempted to show him this degree (found at page 33 of the application record). I also attempted to show the officer my transcript from the University of Punjab (found at page 32 of the application record) and my character certificate from the Government of Islamia College, Civil Lined, Lahore (found at page 49 of the application record), which confirmed that I had taken my Bachelor of Arts studies at the College from 1981 to 1983. I took those studies prior to writing my Bachelor of Arts examinations at the University of Punjab in 1984. This is a completely normal occurrence as the University of Punjab is not an attending institution or undergraduate students. Rather, undergraduate students take their studies at a recognized affiliated institution of the University of Punjab (such as the one I attended – The Government Islamia College, Civil Lines, Lahore) and then write their B.A. exams at the University of Punjab.

(Affidavit of Sean Carey, para. 4; Affidavit of Saqib Hameed, sworn December 14, 2007, para. 3).

[41] Moreover, the Applicant explains that :

6. I note that my degree from the University of Punjab stated that I was an 'external student' whereas that of my spouse does not indicate this. Georges Ménard, in his affidavit dated August 8, 2007,

indicates that that my designation as an external student meant that I was not in full-time attendance at an affiliated college at the time I took my final examinations. This is correct in that my full-time studies were completed in or about June 1983 and I took my final examinations one year later in order to prepare more fully for the exams. This is why I was considered an external student whereas my spouse was not considered an external student because she took her B.A. exams at the University of Punjab in the same year that she completed her studies at the Queen Mary College, Lahore (another recognized affiliates institution of the University of the Punjab).

(Affidavit of Saqib Hameed, sworn December 14, 2007, para. 6)

[42] During cross-examination, the Visa Officer confirms the Applicant's assertion as to how an individual would be described as an "private or external student". The officer explained:

**17. Q.** And if an individual attended at that specific affiliated college on a full time basis and then wrote his exams through the University of the Punjab, would that person be considered a private or external student, or not?

A. It depends on when they wrote their exams.

**18. Q.** Okay, explain that to me.

A. So if a candidate attends the college full time, competes all his courses, takes time off in between and writes the exams at the end, he still writes the exams as a private candidate because he wasn't in full time attendance at the time he completed his courses.

(Cross-Examination of Sean Carey, p. 4-5)

[43] Thus the Applicant has satisfied the two criteria for being awarded 20 points under the educational heading: 1) he had a two-year university educational credential at the bachelor's level; and 2) as confirmed by the letter from the Higher Education Commission and by Sean Carey during his cross-examination and the Applicant's educational credential, the Applicant had completed 14 years of full-time studies despite being described as a private or external student on his degree.

[44] Mr. George Ménard, reviewing officer, alleges that the Applicant simply registered to write the final examinations required to obtain his B.A. degree from the University of the Punjab and did not complete the full-time study required for his Bachelor degree at the institution which granted the degree or at a recognized affiliates institution. The evidence provided by the Applicant however demonstrates the opposite. The Applicant's character certificate from the Government Islamia College, Civil Lines, Lahore, which was provided to the Visa Officer, confirmed that he was a university registered student in a Bachelor of Arts studies program from 1981 to 1983. In addition, as confirmed by the Higher Education Commission, the Applicant's Bachelor of Arts degree conferred by the University of the Punjab was recognized as the equivalent to a corresponding Bachelor's degree involving 14 years of schooling as awarded by other chartered universities/institutions (Affidavit of Georges Ménard, para. 2; Affidavit of Saqib Hameed, sworn December 14, 2007, para. 8).

[45] Based on the foregoing, this Court finds that the determination by the Visa Officer that the Applicant's degree was taken as a private student was completely irrelevant to the determination required to be made by subparagraph 78(2)(d)(ii) of the *Regulations*: this subparagraph requires only that the applicant demonstrate that he has a two-year university educational credential at the bachelor's level and a total of at least 14 years of completed full-time equivalent studies.

[46] This determination also appears to be completely at odds with the Federal Skilled Workers Program Manual (OP6) which sets out that:

Officers should assess programs of study and award points based on the standards that exist in the country of study. The Regulations do not provide comparisons to Canadian educational standards.

(Citizenship and Immigration Canada, OP6 Federal Skilled Workers Manual, [www.cic.gc.ca/english/resources/manuals/op/op06e.pdf](http://www.cic.gc.ca/english/resources/manuals/op/op06e.pdf))

[47] As Justice Heneghan of the Federal Court noted in her recent decision that:

[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.

(*Tiwana v. Canada (Minister of Citizenship and Immigration*, 2008 FC 100)

[48] It is clear that the standards in Pakistan for granting of a university bachelor’s degree where met, regardless of whether the Applicant attended the University of Punjab as a private candidate or otherwise.

[49] In summary the officer in misinterpreting or failing to give effect to documents and a letter of explanation by a competent education authority, whose authenticity had not been challenged, committed a reviewable error.

[50] Furthermore, failure by an administrative decision maker to use rationality or common sense in a decision can be characterized as a patently unreasonable error, see *Zhang v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 550, [2006] F.C.J. No. 692 (QL) at para 31; *Lim. v.*

*Canada (Minister of Citizenship and Immigration)*, 2005 FC 657, [2005] F.C.J. No. 810 at para. 21-22.

#### V. Conclusion

[51] Based on the foregoing, this Court finds that the Visa Officer erred when he refused the Applicant's application for permanent residence in Canada. Therefore, this application for judicial review is allowed. No question is certified.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application for judicial review is allowed.

No question need be certified.

"Orville Frenette"

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Deputy Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2383-07

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**DATED:** February 29, 2008

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