

Federal Court



Cour fédérale

Date: 20090608

Docket: IMM-2700-08

Citation: 2009 FC 591

Ottawa, Ontario, June 8, 2009

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**SAQIB HAMEED &
ADEELA BASHIR**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

SUPPLEMENTARY REASONS AND ORDER

[1] Having issued a judgment allowing Mr. Hameed's application for judicial review on May 21, 2009, I invited counsel to make submissions on the issues of certification of a question of general importance and costs.

I. Potential Questions:

[2] Counsel for Mr. Hameed submits that no questions of general importance arise. Counsel for the Minister proposes the following three questions:

1. Does the Federal Court have the jurisdiction under s. 18.1(3)(b) of the *Federal Courts Act* to direct the Minister to grant an individual a specified number of points under the Skilled Worker category of the Immigration and Refugee Protection Regulations?
2. Does the visa officer have the authority under s. 78 of the *Immigration and Refugee Protection Regulations* to determine what constitutes “full-time” or “full-time equivalent” enrolment in a program of study?
3. Does the Federal Court have the authority to substitute its own assessment of foreign documentation for that of the visa officer?

[3] In respect of Question 1, counsel’s written submissions make clear that the Court does have the jurisdiction to issue directions under s. 18.1(3)(b). However, she questions whether the Court ought to have done so in this case. In my view, that does not amount to a question of general importance. I would also point out that the Court clearly has the authority under s. 18.1(3)(a) to make a decision that the officer ought to have made. In Mr. Hameed’s case, the Court simply wished to ensure that the assessment of his educational credentials did not give rise to yet a third application for judicial review.

[4] In respect of Question 2, it is obvious that visa officers have the authority to make decisions under s. 78 of the Regulations. However, those decisions are amenable to judicial review. This is not a question of general importance.

[5] In respect of Question 3, again it is obvious that the Court, on judicial review, must consider the reasonableness of an officer's assessment of the evidence. This is not a question of general importance.

II. Costs:

[6] Counsel for the Minister submits that no special reasons justify an award of costs in this case. Counsel for Mr. Hameed argues that special reasons arise from the fact that Mr. Hameed had to come to the court twice on essentially the same question.

[7] In my reasons for judgment, I made clear that the issues arising in the two judicial reviews were somewhat different. In my view, therefore, the circumstances do not warrant an award of costs. However, the circumstances did merit the particular order that I issued directing the assessment of Mr. Hameed's educational credentials. In light of that order, there will be no order as to costs.

ORDER

THIS COURT ORDERS that:

1. No question of general importance is stated.
2. There is no order as to costs.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2700-08

STYLE OF CAUSE: SAQIB HAMEED AND ADEELA BASHIR v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 14, 2009

**SUPPLEMENTAL REASONS
FOR ORDER:** O'REILLY J.

DATED: June 8, 2009

APPEARANCES:

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