Federal Court Cour fédérale

Date: 20110615

Docket: IMM-4974-10

Citation: 2011 FC 704

Toronto, Ontario, June 15, 2011

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

DURAIRATNAM GNANASEELAN
DAVID NIROSHAN GNANASEELAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>REASONS FOR ORDER AND ORDER</u>

[1] The present Application concerns a Visa Officer's decision with respect to an Application by the Applicant Durairatnam, a Convention Refugee and an applicant for permanent residence, that his son, Niroshan Gnanaseelan, be landed as a dependent child.

[2] Under s. 2 of the *Immigration and Refugee Protection Regulations*, for a "child" over the age of 22 years of age to qualify as a dependent he or she must not only be financially dependent on his or her parent but also "continually enrolled in and attending a post-secondary institution that is

accredited by the relevant government authority and actively pursuing a course of academic professional or vocational training on a full-time basis”.

[3] The challenged decision of August 5, 2010 states that that “our overseas office [in Delhi] has determined that [Niroshan] has not been in full time studies since attaining the age of 22” (Tribunal Record, p. 45). The reason for the rejection is expressed by the overseas office is as follows:

> Gnanaseelan Niroshan, turned 22 on November 09, 2008. After turning 22 years of age, he enrolled himself for a distant education program in Bachelor of Science (Mathematics) from Tamil Nadu Open University. Persons studying privately or through correspondence are not deemed to be in full time attendance. Since becoming 22 years of age, he has not been actively pursuing a course of academic, professional or vocational training on a full-time basis.
>
> [Emphasis added]
>
> (Tribunal Record, p. 47)

[4] Counsel for the Applicants argues that the overseas office made a critical unfounded finding of fact; there is no evidence on the record that the Tamil Nadu Open University’s distance education program offers education by “correspondence”, and, indeed, there is no evidence on the record to define the meaning of the word “correspondence”. I agree with this argument.

[5] As a result, I find that the decision is not defensible on the facts, and is, therefore, unreasonable.

ORDER

THIS COURT ORDERS that:

1. The decision under review is set aside and the matter is referred back for redetermination by a different visa officer.

2. There is no question to certify.

"Douglas R. Campbell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4974-10
STYLE OF CAUSE:	DURAIRATNAM GNANASEELAN, DAVID NIROSHAN GNANASEELAN v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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DATED:	JUNE 15, 2011

APPEARANCES:

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