

Federal Court



Cour fédérale

Date: 20111116

Docket: IMM-994-11

Citation: 2011 FC 1314

Ottawa, Ontario, November 16, 2011

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

MD GOLAM AZAM KHAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the decision of the Immigration Officer (Officer) stationed at the High Commission of Canada in Singapore (High Commission). The decision, dated 14 January 2011 (Decision), refused the Applicant's application for a permanent resident visa as a member of the Federal Skilled Worker class under subsection 75(1) of the *Immigration and Refugee Protection Regulations* SOR/2002-227 (Regulations).

BACKGROUND

[2] The Applicant is a citizen of Bangladesh. On 20 December 2009, he received an offer of employment (Offer) as vice-principal of A+ Academy of Advancement in Toronto (Employer). On the strength of the Offer, the Applicant applied for permanent residence in Canada under the Federal Skilled Worker program on 20 December 2009 (Application). The High Commission received the full Application on 12 February 2010. The Applicant's wife and two sons were included in the Application, but they are not parties to this proceeding.

[3] On 26 July 2010, Service Canada issued a positive Arranged Employment Opinion (AEO) on the Offer. The AEO verified that the Offer was genuine and indicated that the position required written and spoken English and Bengali. The High Commission received the AEO on 11 August 2011.

[4] The Applicant submitted documentation to prove his educational qualifications. He also submitted form IMM-0008 – Application for Permanent Residence, including the Schedule 1 – Background/Declaration form (Schedule 1). In Schedule 1, he indicated that he had completed: an MBA at Green University, Bangladesh; a Bachelor of Business Administration degree (BBA) also at Green University; a Civil Engineering Diploma from the Bogra Technical Institute; and primary and secondary school. In total, he had completed ten years of primary school, three years of secondary school, and five years of university, for a total of eighteen years. He also provided certified copies of his transcripts and certificates for his MBA, BBA, and Diploma and a certified copy of his secondary school transcript.

[5] The Applicant also indicated on form IMM5406 that he has a brother in Canada, MD Badsha Alam.

[6] To prove his financial means, the Applicant completed and submitted form IMM0008 Schedule 3 – Economic Classes – Federal Skilled Workers. On this form he indicated that he had \$33,300 in unencumbered, transferable funds. He also submitted a personal balance sheet which indicated that he had a personal net worth of \$193,967, including real property in Singapore worth approximately \$160,000. On the balance sheet, he indicated that \$33,000 would accompany him to Canada immediately and \$160,000 in assets was to be transferred later.

[7] The Applicant also submitted an IELTS certificate. This certificate shows his English abilities rated at 4.5 in speaking, 4.5 in writing, 4.0 in reading, and 3.5 in listening. He had an overall score of 4.0.

[8] The Officer was concerned that the Applicant's Offer was not genuine and sent the Applicant letters requesting additional documentation from the Employer to address these concerns on 11 August, 17 September and 26 November 2010. In response, the Employer sent tax documents, the faculty list for the A+ Academy of Advancement, and documents showing the addresses of its branches, the number of students enrolled, and the tuition fees charged.

[9] After receiving documentation from the Employer, the Officer was still concerned about the genuineness of the Offer. On 14 January 2011, the Officer telephoned the Employer and asked about the Offer. The Officer also asked the Employer about its financial situation. The Employer said that its financial situation had recently improved, so it would be able to pay the Applicant's salary. The Officer further asked the Employer about the Applicant's ability to do the job, given his

low level of English proficiency. The Employer said most of the parents and faculty at the school were Bangladeshi “or at least Asian” so the Applicant would be able to communicate with them.

[10] The Officer made his final assessment of the Application on 14 January 2011. He awarded 65 points, which is less than the minimum 67 points required for a permanent resident visa under the Federal Skilled Worker Program. The Officer sent a letter to the Applicant dated 14 January 2011 informing him that his Application had been refused.

DECISION UNDER REVIEW

[11] The Decision consists of the Officer’s letter to the Applicant, dated 14 January 2011 and his CAIPS notes on the file. In the letter, the Officer informed the Applicant that he had been awarded 64 points. However, the points awarded in each category as shown in the Officer’s letter do not add up to 64 points. The Officer actually awarded the Applicant a total of 65 points as follows:

Category	Points Assessed	Maximum
Age	10	10
Education	22	25
Official language proficiency	03	24
Experience	21	21
Arranged employment	0	10
Adaptability	9	10
TOTAL	65	100

[12] At issue in this case are the Officer’s awards of points in the education and arranged employment categories.

Education

[13] The Officer found that the Applicant's MBA in marketing from Green University in Bangladesh and a total of 16 years of full-time education qualified him for 22 points for education.

Arranged Employment

[14] The Officer concluded that the Applicant would not be able to perform the tasks required in the Offer. He said that the job description included proficiency in written and spoken English and required the Applicant to liaise with the Provincial Ministry of Education to ensure the school met the Ministry's standards. The Officer noted that the Employer had assured him that the Applicant would be able to communicate with parents and faculty members, even though he lacked strong English skills. In spite of the Employer's assurances, the Officer found that the Applicant's lack of English meant that he did not meet the requirements of the Offer and would not be able to perform the tasks required. The Officer therefore awarded no points for arranged employment.

RELEVANT LEGISLATION

[15] The following provisions of the Act are applicable in this proceeding:

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

[16] The following provisions of the Regulations are also applicable in this proceeding:

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 factors, namely,

(i) education, in accordance with section 78,

...

(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).

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

(i) les études, aux termes de l'article 78,

...

(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 légal 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).

(3) Whether or not the skilled worker has been awarded the minimum number of required points referred to in subsection (2), an officer may substitute for the criteria set out in paragraph (1)(a) their evaluation of the likelihood of the ability of the skilled worker to become economically established in Canada if the number of points awarded is not a sufficient indicator of whether the skilled worker may become economically established in Canada.

...

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

(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 fulltime or full-time equivalent studies, or

(ii) two or more university educational credentials at the 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

(3) Si le nombre de points obtenu par un travailleur qualifié — que celui-ci obtienne ou non le nombre minimum de points visé au paragraphe (2) — n'est pas un indicateur suffisant de l'aptitude de ce travailleur qualifié à réussir son établissement économique au Canada, l'agent peut substituer son appréciation aux critères prévus à l'alinéa (1)a.

...

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

e) 22 points, si, selon le cas:

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

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.

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.

(3) For the purposes of subsection (2), points

(3) Pour l'application du paragraphe (2), les points sont accumulés de la façon suivante :

(a) shall not be awarded cumulatively on the basis of more than one single educational credential; and

a) ils ne peuvent être additionnés les uns aux autres du fait que le travailleur qualifié possède plus d'un diplôme;

(b) shall be awarded

b) ils sont attribués :

(i) for the purposes of paragraphs (2)(a) to (d), subparagraph (2)(e)(i) and paragraph (2)(f), on the basis of the single educational credential that results in the highest number of points, and

(i) pour l'application des alinéas (2)a) à d), du sous-alinéa (2)e)(i) et de l'alinéa (2)f), en fonction du diplôme qui procure le plus de points selon la grille,

(ii) for the purposes of subparagraph (2)(e)(ii), on the basis of the combined educational credentials referred to in that paragraph.

(ii) pour l'application du sous-alinéa (2)e)(ii), en fonction de l'ensemble des diplômes visés à ce sous-alinéa.

...

...

78 (4) For the purposes of subsection (2), if a skilled worker has an educational credential referred to in paragraph (2)(b), subparagraph (2)(c)(i) or (ii), (d)(i) or (ii) or (e)(i) or (ii) or paragraph (2)(f), but not the total number of years of full-time or fulltime equivalent studies required by

78 (4) Pour l'application du paragraphe (2), si le travailleur qualifié est titulaire d'un diplôme visé à l'un des alinéas (2)b), des sous-alinéas (2)c)(i) et (ii), (2)d)(i) et (ii) et (2)e)(i) et (ii) ou à l'alinéa (2)f) mais n'a pas accumulé le nombre d'années d'études à temps plein ou l'équivalent temps

that paragraph or subparagraph, the skilled worker shall be awarded the same number of points as the number of years of completed full-time or full-time equivalent studies set out in the paragraph or subparagraph.

plein prévu à l'un de ces alinéas ou sous-alinéas, il obtient le nombre de points correspondant au nombre d'années d'études à temps plein complètes — ou leur équivalent temps plein — mentionné dans ces dispositions.

...

...

82. (2) Ten points shall be awarded to a skilled worker for arranged employment in Canada in an occupation that is listed in Skill Type 0 Management Occupations or Skill Level A or B of the *National Occupational Classification* matrix if they are able to perform and are likely to accept and carry out the employment [...]

82. (2) Dix points sont attribués au travailleur qualifié pour un emploi réservé appartenant aux genre de compétence 0 Gestion ou niveaux de compétences A ou B de la matrice de la *Classification nationale des professions*, s'il est en mesure d'exercer les fonctions de l'emploi et s'il est vraisemblable qu'il acceptera de les exercer [...]

ISSUES

[17] The Applicant formally raise the following issues:

- a. Whether the Officer erred in awarding no points for arranged employment;
- b. Whether the Officer erred in only awarding 22 points for education; and
- c. Whether the Officer erred when he did not consider a substitute evaluation under subsection 76(3) of the Regulations.

[18] The Applicant also raises the following issue in his written argument:

- d. Whether the Officer breached the Applicant's right to procedural fairness by denying him the opportunity to respond to concerns about his ability to perform the job requirements.

STANDARD OF REVIEW

[19] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis

[20] In *Kniazeva v Canada (Minister of Citizenship and Immigration)* 2006 FC 268, Justice Yves de Montigny held that the assessment of an application for permanent residence under the Federal Skilled Worker Class is an exercise of discretion that should be given a high degree of deference. Further, in *Persaud v Canada (Minister of Citizenship and Immigration)* 2009 FC 206, Justice John O'Keefe held that the appropriate standard of review for a determination under the Federal Skilled worker class is reasonableness. See also *Tong v Canada (Minister of Citizenship and Immigration)* 2007 FC 165. The standard of review on the first two issues is reasonableness.

[21] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph

47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59.

Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

[22] The Applicant challenges the Officer’s failure to consider a substitute evaluation under subsection 76(3) of the Regulations. In *Fernandes v Canada (Minister of Citizenship and Immigration)* 2008 FC 243, Justice Barry Strayer had this to say on the issue, at paragraph 8:

What is being alleged here is the failure of the Visa Officer to consider the question of whether the discretion should be exercised, not that it was exercised wrongly. While a failure to exercise the discretion has often been treated as a breach of procedural fairness (see e.g. *Nayyar*, [[2007] F.C.J. No. 342], at para. 8) it appears to me to involve a question of law: namely has the Visa Officer taken every step that the law requires? In either case the standard of review is correctness and that is a standard I will apply to this issue.

[23] Justice David Near, in *Miranda v Canada (Minister of Citizenship and Immigration)* 2010 FC 424 relied on *Fernandes* and held at paragraph 9 that the standard of review with respect to an officer’s consideration of a request for a substituted evaluation under subsection 76(3) of the regulations is correctness. Where an applicant requests a substituted evaluation under subsection 76(3) of the Regulations, the officer processing the application must consider that request. I am satisfied that the standard of review on the third issue in this case is correctness.

[24] The opportunity to respond is also an issue of procedural fairness. In *Canadian Union of Public Employees (C.U.P.E.) v Ontario (Minister of Labour)*, 2003 SCC 29, the Supreme Court of Canada held that the standard of review with respect to questions of procedural fairness is correctness. Further, the Federal Court of Appeal in *Sketchley v*

Canada (Attorney General) 2005 FCA 404 at paragraph 53 held that the “procedural fairness element is reviewed as a question of law. No deference is due. The decision-maker has either complied with the content of the duty of fairness appropriate for the particular circumstances, or has breached this duty.” The standard of review with respect to the fourth issue is correctness.

[25] Also in *Dunsmuir*, above, the Supreme Court of Canada held at paragraph 50 that

When applying the correctness standard, a reviewing court will not show deference to the decision maker’s reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal’s decision was correct.

ARGUMENTS

[26] The Applicant and the Respondent agree that the Officer made an error in adding the points he awarded and that the Officer awarded 65 points.

The Applicant

The Officer’s Award of no Points for Arranged Employment was Unreasonable

[27] The Officer’s award of no points for arranged employment was unreasonable because it was made in ignorance of the evidence before him and based on a denial of procedural fairness.

The Officer Ignored Evidence

[28] The Officer ignored the Employer's confirmation over the telephone that he would be able to do the job even though his IELTS scores were low. The Applicant says that his case is analogous to *Choi v Canada (Minister of Citizenship and Immigration)* 2008 FC 577 [*Choi*] where Justice Michael Kelen held that it was an error when the assessing officer failed to take into account a letter from the employer which said he had no concerns about the applicant's ability to fulfil the requirements of the position offered to her. The Applicant says that his case is identical to *Choi* and so should be decided in the same way.

The Applicant was Denied Procedural Fairness

[29] The Applicant also says that, following *Choi*, above, the Officer in this case denied the Applicant an opportunity to respond to his concerns when he did not send the Applicant a letter detailing his concerns about the Applicant's language ability. The Applicant notes that the Citizenship and Immigration Canada's (CIC) manual *OP-6: Federal Skilled Workers* at section 12.15 says that, "If [Officers] have any concerns about the applicant's ability or likelihood to accept and carry out the employment, they will communicate these to the applicant and provide the opportunity to respond." Though the manual is not binding, it strongly suggests that the Officer should have written a letter and allowed the Applicant an opportunity to address his concerns.

The Officer's Award of 22 Points for Education was Unreasonable

[30] The Applicant also argues that the Officer's award of 22 points for education was unreasonable because it was not based on the evidence before him. The Applicant says that his form IMM0008 clearly discloses that he has a Master's degree and at least 17 years of full-time studies. He says that his Primary and Secondary education were ten years, his Civil Engineering Diploma was three years, his BBA was three years and his MBA was one year for a total of 17 years. The Officer accepted that the Applicant had a Master's degree, so he should have awarded the Applicant 25 points under paragraph 78(2)(f) of the Regulations. With the additional three points above the Officer's original award of 22 points for education, this would bring the Applicant's total to 68 points, which is above the threshold for a granting a permanent resident visa.

The Officer Unreasonably Failed to Consider a Substituted Assessment Under Subsections 76(3) and (4) of the Regulations

[31] Finally, the Applicant argues that, given the evidence that was before him, the Officer erred by not conducting a substitute assessment under subsections of the Regulations. The Applicant says that *Choi* (above) allows for settlement funds to be considered in a substitute assessment in addition to the criteria listed in paragraph 76(1)(a) of the Regulations. He says he had settlement funds of \$200,000. The Applicant's offer of employment, settlement funds of \$200,000, his brother in Canada, and his award of 68 points all indicate that his was the kind of case that warranted a substitute assessment. It was impossible to conclude other than that a person having all these characteristics would be able to successfully establish himself economically in Canada. The Applicant says that his is the kind of case that falls within the *Silva v Canada (Minister of*

Citizenship and Immigration) 2007 FC 733 standard of “cases that present unusual facts or where the applicant has come close to obtaining [the required] units of assessment.

[32] The Applicant also notes that in *Lackhee v Canada (Minister of Citizenship and Immigration)* 2008 FC 1270, at paragraph 20, Justice Yvon Pinard held that

The officer’s failure to make any reference to the considerable assets available to the applicant in either her decision or her notes constitutes a reviewable error warranting this Court’s intervention

The Applicant says he submitted evidence showing that he had CDN \$200,000 in settlement funds.

The Officer’s failure to consider this was an error.

The Respondent

The Award of 22 Points for Education was Reasonable

[33] The Respondent argues that the Officer was reasonable in awarding 22 points under the education category and that this conclusion was based on evidence before him. The Applicant clearly indicates in IMM0008 Schedule 1 – Background/Declaration that he has only 16 years of full-time instruction. This does not meet the threshold under paragraph 78(2)(f) for an award of 25 points.

The Award of no Points for Arranged Employment was Reasonable

[34] The Respondent argues that the Officer’s award of no points for arranged employment was reasonable because he was required to investigate whether the Applicant could perform the tasks

required of him in the Offer and reasonably concluded he could not. Relying on *Bellido v Canada (Minister of Citizenship and Immigration)* 2005 FC 452 at paragraph 21, the Respondent says that an AEO does not remove the obligation for an officer to assess whether an applicant is able to perform the job described in the AEO. It is clear from the CAIPS notes that the Officer considered the information provided by the Employer, though he ultimately decided that it was not sufficient to overcome his concerns. The Officer was entitled to put little weight on the evidence of the Employer. It is not for the Court to question the weight put on each piece of evidence, so long as the Officer's findings were rationally based on the material before him.

[35] The Respondent also says that the Officer found that the job description included liaising with the Province to ensure that standards were being met by the school. The Applicant would not be able to perform this aspect of the job because he lacked proficiency in English as shown by his low IELTS scores. This was a reasonable conclusion based on the facts before the Officer.

The Officer's Decision Not to Conduct a Substitute Assessment was Reasonable

[36] Finally, the Respondent argues that the Officer's decision not to conduct a substitute assessment under subsections 76(3) and (4) was reasonable because the Officer was under no duty to do so. The Applicant did not specifically request a substitute assessment so the Officer had no obligation to make one. The Respondent relies on *Miranda*, above, and *Eslamieh v Canada (Minister of Citizenship and Immigration)* 2008 FC 722. The Respondent distinguishes *Choi* (above), saying that in *Choi* the applicant requested that the officer engage in a substitute assessment where here the Applicant did not make such a request.

[37] The Respondent also says that *Xu v Canada (Minister of Citizenship and Immigration)* 2010 FC 418 and *Tokuda v Canada (Minister of Citizenship and Immigration)* 2011 FC 483, hold that a substituted assessment under subsection 76(3) may only be used to consider the factors in paragraph 76(1)(a) of the Regulation. These cases specifically exclude from the 76(3) substituted assessment the amount of settlement funds held by an applicant. It was not open to the Officer to consider the Applicant's \$200,000 in settlement funds in a substituted evaluation.

ANALYSIS

Did the Officer Err in Awarding 22 Points Instead of 25 Points Under the Education Category?

[38] In my view, the first issue regarding the appropriate points awarded under the education category is determinative in this case. The Officer found that the Applicant had a Master's degree, but only 16 years of full-time education which only entitled the Applicant to 22 points.

[39] The Applicant submits that he completed 17 years of full-time education in addition to a Master's degree, thus entitling him to the full 25 points.

[40] What is important for this case is the Applicant's Schedule 1 (Background/declaration) form where the Applicant sets out his education. This can be found at page 188 of the Certified Tribunal Record.

[41] Unfortunately, this page creates some confusion. The Applicant claims that he completed 10 years of elementary/primary school, three years of secondary/high school and five years of university/college. If correct, this would equal 18 years of full-time education.

[42] The first problem is that it is not possible to tell from the Decision (including the CAIPS notes) how the Officer calculated the number of full-time years of education completed by the Applicant. This was conceded by Respondent's counsel at the judicial review. She led the Court through her own calculation, but she arrived at a lesser number than the 16 years used by the Officer. Applicant's counsel also demonstrated how she had calculated the number of years of full-time education and her figure was 17.

[43] But the important point is that no one knows how the Officer calculated the number of years of full-time education (conceded by the Respondent) so it really is not possible to understand this aspect of the Decision or to determine whether it is reasonable. Hence, there is a procedural fairness issue. In this kind of situation the Officer does not need to provide elaborate reasons, but it is still necessary to know the basis of the calculation. When Respondent's counsel cannot explain the basis of the Officer's calculation I think it would be unfair to expect the Applicant to be able to do so. In other words, without some explanation for the calculation, the reasons are totally inadequate on this issue. See *Jogiat v Canada (Minister of Citizenship and Immigration)* 2009 FC 815 at paragraphs 36 to 44, *Healey v Canada (Minister of Citizenship and Immigration)* 2009 FC 355, at paragraphs 58-60 and *bin Abdullah v Canada (Minister of Citizenship and Immigration)* 2006 FC 1185.

[44] The concern over this point is compounded by the fact that the Officer told the Applicant he had awarded a total of 64 points. In fact, when his points for each category are added up they come to 65 points. This could be a simple error in addition, but it suggests to the Court that the Officer has been a little slap-dash and this matter needs to be returned for reconsideration.

[45] The Applicant has raised a number of further issues, but unless the parties and the Court can understand how the Officer went about calculating the points award, I see little point in reviewing issues.

[46] For reasons set out above, I conclude that this matter must be returned for reconsideration.

[47] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is allowed. The Decision is quashed and the matter is returned for reconsideration.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-994-11

STYLE OF CAUSE: MD GOLAM AZAM KHAN

- and -

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 5, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** HON. MR. JUSTICE RUSSELL

DATED: November 16, 2011

APPEARANCES:

Chayanika Dutta **APPLICANT**

Nimanthika Kaneira **RESPONDENT**

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