

Federal Court



Cour fédérale

**Date: 20111206**

**Docket: IMM-2391-11**

**Citation: 2011 FC 1420**

**Ottawa, Ontario, December 6, 2011**

**PRESENT: The Honourable Mr. Justice Mandamin**

**BETWEEN:**

**VIJAY VICTOR BARBOZA**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Vijay Victor Barboza applies for judicial review of the decision made by the Program Manager (the Officer) to refuse his application for permanent residence as a member of the skilled worker class.

[2] The Officer accepted Mr. Barboza was employed as a Senior Relationship Manager for the period of August 2008 to November 2009 with Lloyds TSB but not thereafter, giving Mr. Barboza only credit for more than one year but less than two years employment in the position.

[3] Moreover, the Officer decided he could not determine how many years of education it took for the Applicant's spouse to achieve her Bachelor of Commerce Degree because the Applicant had not submitted a Schedule 1 form for his spouse. As a result, the Officer awarded Mr. Barboza a total of 66 points, one point short of qualifying for a permanent residence visa as a member of the skilled worker class.

[4] Mr. Barboza submits the Officer erred in not considering evidence of continued employment submitted in August 2010, and that the Officer also erred in not considering submitted immigration forms that recorded his spouse had achieved her Bachelor's Degree after 15 years of education. Mr. Barboza submits in either circumstance, had the Officer considered the additional evidence or forms, the Officer would have awarded Mr. Barboza additional points. The additional points would have qualified Mr. Barboza for a permanent residence visa as a member of the skilled class.

[5] I conclude the application for judicial review succeeds for reasons that follow.

### **Background**

[6] The Applicant, Mr. Vijay Victor Barboza, is a citizen of India who worked in Dubai, United Arab Emirates. He applied for permanent residence in Canada under the Federal Skilled Worker category on or around September 11, 2007.

[7] In September 2010, the High Commission of Canada informed the Applicant by letter advising that his application for permanent residence was being transferred to the Case Processing Pilot-Ottawa office to speed up the processing of his application. This Case Processing Pilot in effect was a project to speed up processing and involved making a new submission to the Ottawa centre. Mr. Barboza was requested to submit updated application forms and supporting documents, in particular:

1. Updated Application Forms

Please send the following completed forms: IMM 0008; IMM 0008 Schedule 1; IMM 5406; IMM 5476; and IMM 0008 schedule 3. These forms can be downloaded from the Citizenship and Immigration website: [www.cic.gc.co/English/information/applications/skilled.asp](http://www.cic.gc.co/English/information/applications/skilled.asp). The Visa Office Specific instructions which apply to your application can be found at [www.cic.gc.ca/english/pdfkits/guides/E37023.pdf](http://www.cic.gc.ca/english/pdfkits/guides/E37023.pdf).

...

3. Educational qualifications

Provide copies of educational credentials and marks sheets/transcripts for you and your spouse. ... the educational qualifications review will be based solely on the documentation initially provided.

4. Work experience documents

Provide employment letters, contracts, pay-slips and job descriptions endorsed by your employer's personnel department covering the period from 10 years prior to your application date until today. Please make sure that the employment letters have details of your duties and clearly show the start and end dates (if relevant) of your employment....

[8] On October 2, 2010, the Applicant submitted additional documentation reflecting his understanding of the required documents.

[9] On February 11, 2011 the Program Manager in Case Processing Pilot-Ottawa informed the Applicant that his application had been refused.

[10] The Applicant emailed the Officer and submitted further documents. The Program Manager refused to reconsider the application for permanent residence under the skilled worker class.

### **Decision Under Review**

[11] The Officer refused the Applicant's permanent residence application because he did not achieve the minimum 67 points required to qualify under the Federal Skilled Worker Class. The Officer awarded the Applicant a total of 66 points as follows:

<u>Category</u>	<u>Points Assessed</u>	<u>Maximum</u>
Age	10	10
Education	20	25
Experience	15	21
Arranged employment	0	10
Official language proficiency	16	24
Adaptability	5	10
<b>TOTAL</b>	<b>66</b>	<b>100</b>

[12] The relevant portion of the Officer's letter providing the reason for awarding Mr. Barboza 66 points is as follows:

You have not obtained the minimum number of points, currently 67, required for a permanent resident visa. **I gave you 15 points for Experience. You only provided evidence of employment from August 2008 (letter of job offer) to November 2009 (description of duties), more than 1 year but less than 2. You provided no Schedule 1 form for your spouse. As a result I cannot determine how many years of education was taken to obtain the Bachelor's degree, hence 0 point was awarded for Spousal education.** You have therefore not satisfied me that you will be able to become economically established in Canada.

[Emphasis in original]

[13] The CAIPS notes state in part:

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without spouse's Sched. 1 form, there is no evidence on file as to how many years was taken to obtain the degree – 0 points. PA now has 66 points in all, less than the 67 points required to qualify. ERfused [sic]

[Date created 2011/02/11/09:58]

PA has a bachelor's degree from KJ Somya college of Sciences and Com dated 1995 – ok SP has a bachelor's degree from ??? – No Schedule 1 form for SP provided ... Detailed LOR from Lloyds TBS for work between Aug2008 and Nov2009 – 1 year only – 15 points ... [sic]

[14] This is the entirety of the Officer's reasoning for the decision to award 66 points and refuse Mr. Barboza's application. The Officer provided an affidavit on September 2, 2011 explaining his reasons and was cross-examined on this affidavit on November 16, 2011.

## Relevant Legislation

[15] The *Federal Courts Act*, RSC 1985, c F-7 provides:

<p>18.1(4) <u>The Federal Court may grant relief</u> under subsection (3) if it is satisfied that the federal board, commission or other tribunal</p> <p>...</p> <p>(d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or <u>without regard for the material before it;</u></p> <p>[Emphasis added]</p>	<p>18.1(4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas:</p> <p>...</p> <p>d) a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;</p>
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[16] The *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] provides:

<p>12.</p> <p>...</p> <p>(2) <u>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.</u></p> <p>[Emphasis added]</p>	<p>12.</p> <p>...</p> <p>(2) La sélection des étrangers de la catégorie « immigration économique » se fait en fonction de leur capacité à réussir leur établissement économique au Canada.</p>
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[17] The *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*] provides:

75. (1) For the purposes of subsection 12(2) of the Act, the federal skilled worker class is hereby prescribed as a class of persons who are skilled workers and who may become permanent residents on the basis of their ability to become economically established in Canada and who intend to reside in a province other than the Province of Quebec.

75. (1) Pour l'application du paragraphe 12(2) de la Loi, la catégorie des travailleurs qualifiés (fédéral) est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada, qui sont des travailleurs qualifiés et qui cherchent à s'établir dans une province autre que le Québec.

(2) A foreign national is a skilled worker If

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

(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 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;

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 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) 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;  
And

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) during that period of employment they performed a

c) pendant cette période

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 factors, namely,

...

(iii) experience, in accordance with section 80,

...

78. (1) The definitions in this subsection apply in this section.

“full-time” means, in relation to a program of study leading to an educational credential, at least 15 hours of instruction per week during the academic year, including any period of training in the workplace that forms part of the course of instruction.

“full-time equivalent” means, in

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

...

(iii) l’expérience, aux termes de l’article 80,

...

78. (1) Les définitions qui suivent s’appliquent au présent article.

« équivalent temps plein » Par rapport à tel nombre d’années d’études à temps plein, le nombre d’années d’études à temps partiel ou d’études accélérées qui auraient été nécessaires pour compléter des études équivalentes.

« temps plein » À l’égard d’un programme d’études qui conduit à l’obtention d’un



respect of part-time or accelerated studies, the period that would have been required to complete those studies on a full-time basis.

(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 fulltime 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 fulltime or full-time equivalent studies, or

...

80. (1) Up to a maximum of 21 points shall be awarded to a skilled worker for full-time work experience, or the full-time equivalent for part-time

diplôme, correspond à quinze heures de cours par semaine pendant l'année scolaire, et comprend toute période de formation donnée en milieu de travail et faisant partie du programme.

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

work experience, within the 10 years preceding the date of their application, as follows:

(a) for one year of work experience, 15 points;

(b) for two years of work experience, 17 points;

(c) for three years of work experience, 19 points; and

(d) for four or more years of work experience, 21 points.

[Emphasis added]

...

80. (1) Un maximum de 21 points d'appréciation sont attribués au travailleur qualifié en fonction du nombre d'années d'expérience de travail à temps plein, ou l'équivalent temps plein du nombre d'années d'expérience de travail à temps partiel, au cours des dix années qui ont précédé la date de présentation de la demande, selon la grille suivante :

a) pour une année de travail, 15 points;

b) pour deux années de travail, 17 points;

c) pour trois années de travail, 19 points;

d) pour quatre années de travail, 21 points.

## Issues

[18] The Applicant essentially raises five issues between both his Memorandum of Fact and Law and the Applicant's Further Memorandum of Argument. Combining the two, the Applicant frames the issues as follows:

1. Did the Officer err in his assessment of the Applicant's work experience?
2. Did the Officer err in his assessment of the Applicant's Spouse's education credential?

3. Did the Officer err by assessing the merits of an incomplete package contrary to sections 10 and 12 of the *Regulations*?
4. Did the Officer err by not considering the Application after the refusal in light of the evidence that was already on file and the Applicant's further documents?
5. Did the Officer err by failing to provide the Applicant an opportunity to respond to the Officer's concerns?

[19] In my view, the determinative issue is:

*Was the Officer's decision unreasonable with respect to the determination of the Applicant's work experience or with the education qualifications of the Applicant's spouse?*

### **Standard of Review**

[20] The Supreme Court of Canada has held that there are only two standards of review:

correctness for questions of law and reasonableness involving questions of mixed fact and law and fact: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [Dunsmuir] at paras 50 and 53.

The Supreme Court has also held that where the standard of review has been previously determined, a standard of review analysis need not be repeated: *Dunsmuir* at para 62.

[21] This Court has previously held that the standard of review on applications for permanent residence under the skilled worker category is reasonableness and that an officer's decision is entitled to a high degree of deference: *Kaur v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1189 at para 17.

## Analysis

*Was the Visa Officer's decision unreasonable in that he decided without considering evidence before him?*

[22] The Applicant submits that the Officer erred in his assessment of the Applicant's work experience by failing to consider evidence that he has been working continuously with Lloyds TSB since 1995 and that his employment continued after November 2009.

[23] The Respondent submits that the record before the Court validates the Officer's assessment of Mr. Barboza's work experience. The Respondent relies heavily on the affidavit of the Officer. The Respondent quotes the following from the Officer's affidavit regarding the Officer's assessment of Mr. Barboza's work experience:

5. In a covering letter to his updated application and document (Certified Tribunal Record, at pp. 9 – 10), Mr. Barboza stated that he is currently employed with Lloyd's TSB in Dubai in the capacity of "Senior Corporate Relationship Manager" and that he had attached a recently issued job description. I reviewed Mr. Barboza's work experience documents (Certified Tribunal Record, at pp. 55 – 67). These consisted of a letter dated August 5, 2008, from Jennifer O'Gara, HR consultant, to Mr. Barboza congratulating him on his new position of Senior Relationship Manager and confirming his remuneration as of August 1, 2008; a generic "Role Specification" for "Relationship Manager" dated November 2009; a contract of employment dated March 25, 2010 between Mr. Barboza and Lloyd's TSB; a copy of a pay slip for Mr. Barboza's salary for September 2010; and a letter dated June 2010 from Vivek Vohra, Head of Corporate Banking, Lloyd's TSB, Middle east, congratulating Mr. Barboza on achieving 15 years of service with Lloyd's TSB Group, with a length of service certificate attached.

6. Mr. Barboza had been directed to provided job descriptions endorsed by his employer's personnel department covering the period from 10 years prior to his application date up to the present

and that the employment letters contain details of his duties and clearly show the start and end dates (if relevant) of his employment. I noted that apart from Mr. Barboza's own assertions, the only document which provided details of his job duties and responsibilities was the generic "Role Specification" for a Relationship Manager dated November 2009. The contract of employment as a banking operations manager dated March 25, 2010, provided no details about the duties of the position, or confirmation that Mr. Barboza actually worked as such. Although the "Role Specification" for a Relationship Manager was a generic document that did not contain Mr. Barboza's name and that related to a different position to the one specified in the letter of August 1, 2008 from Jennifer O'Gara, I gave Mr. Barboza the benefit of the doubt and, pursuant to paragraph 80(1)(a) of the *Regulations*, awarded him 15 points for one year but less than two years of work experience in his designated occupation. I was not satisfied that Mr. Barboza's documentation constituted sufficient evidence for an award of any additional points in the category of work experience.

[Emphasis added]

[24] The Respondent submits the Officer had questions about the Applicant's actual position with Lloyds TBS but gave him the benefit of the doubt as explained in his affidavit. The Respondent submits the Officer had reason not to accept that the Applicant worked in the same position after November 2009 since the contract of employment as a banking operations manager dated March 25, 2010 provided no details about the duties of the position or confirmation that the Applicant actually worked in the position of banking operations manager. The Respondent submits the Officer is providing an explanation, not supplemental reasons, in his affidavit.

[25] I can accept that the Officer explains in his affidavit why he accepted the Applicant worked in the position of relationship manager. I can also accept that the Officer referenced the Applicant's principal documents, the Letter of Offer of August 1, 2008 and the Role Specification dated November 9, 2009, by indicating those dates in the decision letter. However, neither the Officer's

letter nor the accompanying CAIPS notes make any reference whatsoever to the additional documentation supporting the Applicant's claim that he had worked for Lloyds TSB after November 9, 2009. This documentation is now listed in the Officer's affidavit being:

- Mr. Barboza's Employment Contract dated March 25, 2010 for the position of banking operations manager.
- Letter dated June 2010 from Vivek Vohra, Head of Corporate Banking, Lloyds TSB, Middle East congratulating Mr. Barboza on achieving 15 years with the Lloyds TSB group.
- A Length of Service Certificate recognizing Mr. Barboza's employment with Lloyds TSB Middle East for 15 years. This certificate is dated June 14, 2010.
- Corporate Banking Payslip dated September 2010.

[26] In *Khatun v Canada (Citizenship and Immigration)*, 2011 FC 3 at paragraphs 9-10, Justice Pinard of this Court commented on a respondent's ability to rely on an immigration officer's affidavit supplementing the officer's reasons provided in the decision letter. As Justice Pinard stated:

[9] The respondent submitted an affidavit from the deciding Officer, Patricia Brown. In this affidavit, Ms. Brown explains her decision in detail.

[10] The respondent relies on this affidavit, as well as the Computer Assisted Immigration Processing System (CAIPS) notes that repeat a portion of these reasons, as evidence of sufficient reasons. However, in my opinion, the respondent cannot use this affidavit to supplement the reasons provided in the decision letter. There has been consistent jurisprudence from this Court to the effect that the respondent cannot submit an affidavit during the judicial review proceedings in an attempt to buttress the reasons provided in the decision: *Kalra v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1199, paragraph 15; *Du v. Canada (Minister of Citizenship and Immigration)* (2001), 15 Imm. L.R. (3d) 64 (F.C.T.D.); *Adil v.*

*Canada (Minister of Citizenship and Immigration)*, [2010] F.C.J. No. 1228, paragraph 35.

[Emphasis added]

[27] On reading the Officer's affidavit and comparing it with the reasons given in the letter and the CAIPS notes, I am satisfied the Officer is providing additional reasons to support his decision. By listing the additional documents and then questioning the Applicant's employment of banking operations manager, the Officer engaged in supplementing his reasons.

[28] Accordingly, I disregard the additional reasons offered in the Officer's affidavit.

[29] In my view, the Applicant's evidence could support his contention that he continued in essentially the same position of manager with Lloyds TBS. After all, the Officer accepted he occupied a position that met the requirements for the skilled worker position for the period August 2008 to November 2009 and there is no evidence that the Applicant left the position in November 2009. The Officer was required to assess the Applicant's post November 2009 documentation in coming to a determination about the Applicant's work experience. The Officer did not do so.

[30] In the oft-cited *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ no 1425, 157 FTR 35, Justice Evans (now of the Federal Court of Appeal) stated:

[15] The Court may infer that the administrative agency under review made the erroneous finding of fact "without regard to the evidence" from the agency's failure to mention in its reasons some evidence before it that was relevant to the finding, and pointed to a different conclusion from that reached by the agency. Just as a court will only defer to an agency's interpretation of its constituent statute

if it provides reasons for its conclusions, so a court will be reluctant to defer to an agency's factual determinations in the absence of express findings, and an analysis of the evidence that shows how the agency reached its result.

[16] On the other hand, the reasons given by administrative agencies are not to be read hypercritically by a court (*Medina v. Canada (Minister of Employment and Immigration)* (1990), 12 Imm. L.R. (2d) 33 (F.C.A.)), nor are agencies required to refer to every piece of evidence that they received that is contrary to their finding, and to explain how they dealt with it (see, for example, *Hassan v. Canada (Minister of Employment and Immigration)* (1992), 147 N.R. 317 (F.C.A.)). That would be far too onerous a burden to impose upon administrative decision-makers who may be struggling with a heavy case-load and inadequate resources. A statement by the agency in its reasons for decision that, in making its findings, it considered all the evidence before it, will often suffice to assure the parties, and a reviewing court, that the agency directed itself to the totality of the evidence when making its findings of fact.

[17] However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains v. Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 312 (F.C.T.D.). In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

[Emphasis added]

[31] The evidence listed in paragraph 25 above contradicts the Officer's finding that the Applicant ceased being employed in the position on November 2009. The Officer was obliged to address this evidence in coming to a decision yet failed to do so.



[32] I conclude the Officer made an unreasonable finding of fact without regard for the material before him. The Officer relied on this finding of fact to base his decision to reject the Applicant's permanent residence application.

### *Education Qualifications*

[33] The Applicant submits the Officer failed to properly assess his spouse's education credential which led the Officer to award zero points to him under the adaptability criteria for selection as a federal skilled worker. The Applicant submits the Officer accepted his spouse's education credential but decided against awarding points because he could not assess the number of years it took his wife to attain her Bachelor's degree because there was no IMM 0008 Schedule 1 form.

[34] The Respondent submits there was no evidence that the spouse had obtained her degree after the completion of either full-time or a full-time equivalent of the mandatory associated years (15) of education as required by subsection 78(1) and 78(2)(d)(ii) of the *Regulations*.

[35] The Respondent submits the requirement for the spouse to complete the IMM 0008 Schedule 1 form is contained in a list of updated applications forms set out at the beginning of the letter to the Applicant which states:

Please send the following completed forms: IMM 0008; IMM 0008 Schedule 1; IMM 5406; IMM 5476; and IMM 0008 schedule 3. These forms can be downloaded from the Citizenship and Immigration website:

[www.cic.gc.co/English/information/applications/skilled.asp](http://www.cic.gc.co/English/information/applications/skilled.asp). The Visa Office Specific instructions which apply to your application can be found at [www.cic.gc.ca/english/pdfkits/guides/E37023.pdf](http://www.cic.gc.ca/english/pdfkits/guides/E37023.pdf). ...

[Emphasis added]

[36] I note the letter goes on to request proof of education:

Provide copies of educational credentials and marks sheets/transcripts for you and your spouse. ... the educational qualifications review will be based solely on the documentation initially provided.

[37] The Officer wrote “You provided no Schedule 1 form for your spouse [presumably IMM 0008 Schedule 1]. As a result I cannot determine how many years of education was taken to obtain the Bachelor’s degree, hence 0 point was awarded for Spousal education.”

[38] The Officer in his affidavit declared:

“While Mr. Barboza submitted a copy of a Bachelor of Commerce degree, dated December 12, 1997, awarded to his spouse from the University of Mumbai, he failed to submit a completed Schedule 1 for his spouse setting out in detail her education history. The instructions in the application specifically directed that the principal applicant, his or her spouse and all dependent children aged 18 years of older listed in the application for permanent residence must complete their own copy of this form.”

[Emphasis added]

[39] The difficulty I have is the Respondent has not provided me with evidence of those instructions. The affidavit provides new evidence which is not reflected in the record.

[40] In *Huang v Canada (Minister of Citizenship & Immigration)*, 2009 FC 135 at paragraph 18, J. Zinn of this Court discussed the issue of new evidence brought forward in an officer's affidavit:

As noted, the respondent put in evidence an affidavit sworn December 15, 2008 by the visa officer whose decision is under review. I concur with the observations of Justice Gauthier in *Jesurobo v. Canada (Minister of Citizenship & Immigration)*, [2007] F.C.J. No. 1680 (F.C.), at paragraph 12, that the respondent cannot rely on new evidence from the officer to change, explain or add to the refusal letter and the CAIPS notes. It is an attempt by the officer to pull himself up by his bootstraps where his CAIPS notes may be deficient or too summary in nature.

[Emphasis added]

[41] I find I am referred to "Schedule 1" which is not in evidence and I decline to go to the indicated website as it would take me beyond what I am bound to consider.

[42] The Applicant complied with the directions without the aid of an immigration consultant. He was reliant on the clarity of the instructions received and I find those instructions were not all that clear.

[43] The Applicant had provided a certificate from the University of Mumbai conferring the Applicant's spouse with a Bachelor's Degree of Commerce (Three-year Integrated Course). In addition, he indicated in his own application for permanent residence form IMM-0008 that his spouse's years of education totalled 15 years. In result, the Officer had the information, albeit on the wrong form, of the spouse's 15 years of education in addition to evidence of her Degree which, contrary to the Officer's CAIPS notes, indicates the Bachelor's Degree was from the University of Mumbai.

[44] Since I have decided the Officer erred in assessing the Applicant's employment experience, I need not decide whether a missing form, by itself, is reasonable grounds for awarding zero points for someone's education notwithstanding evidence of having a Bachelor's Degree in Commerce.

[45] As I observed the instructions are not the clearest, I consider this circumstance one as appropriate to provide a direction: the Applicant may submit the necessary form and additional documentation on reconsideration of his application.

### **Conclusion**

[46] The application for judicial review is granted. The matter will be remitted back with a direction that the Applicant may provide further documentation for reconsideration by a different decision maker.

[47] The parties have not proposed a question for certification and I do not certify any question.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted. The matter is to be remitted back with a direction that the Applicant may provide further documentation for reconsideration by a different decision maker.
2. No question of general importance is certified.

**"Leonard S. Mandamin"**

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-2391-11

**STYLE OF CAUSE:** VIJAY VICTOR BARBOZA v. MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 28, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** MANDAMIN J.

**DATED:** DECEMBER 6, 2011

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