

Federal Court



Cour fédérale

**Date: 20121205**

**Docket: IMM-3268-12**

**Citation: 2012 FC 1426**

**Vancouver, British Columbia, December 5, 2012**

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

**BETWEEN:**

**MANISH MOHAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Overview**

[1] In addition to that of immediate-family reunification cases, a need also exists in the immigration framework to ensure who, in fact, is related to whom when considering relatives of potential immigrants living in Canada. Precision, thus attention to details, is essential to ensure *bona fide* relatives if said to exist, do. Such relatives are significant in view of the recognized assistance (or greater facility in adaptability for settlement or acculturation for economic success) they provide to new would-be immigrants. When such “relatives” would have, in fact, previously settled in

Canada or would have been born therein, they are, presumably, established enough to provide some such assistance.

## II. Introduction

[2] The Applicant seeks judicial review of the decision of an Immigration Officer in the New Delhi visa office rejecting his application to be selected as a member of the economic class on the basis of his ability to become economically established in Canada under subsection 12(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The Applicant argues that he should have received five points under paragraph 83(1)(d) of the *Immigration and Refugee Protection Regulations* [*Regulations*] for being related to a person living in Canada.

## III. Judicial Procedure

[3] This is an application under subsection 72(1) of the *IRPA* for judicial review of the decision of the Officer, dated February 1, 2012.

## IV. Background

[4] The Applicant, Mr. Manish Mohan, is a citizen of India who was born in 1979.

[5] The Applicant has completed sixteen years of full-time formal educational training including a Bachelor of Commerce Degree.

[6] The Applicant has more than four years work experience in an occupation classified under National Occupation Classification Code 1111, "Financial auditors or accountants" [NOC 1111].

[7] On March 11, 2010, the Applicant applied for permanent residence in Canada under the skilled worker category [PR Application] on the basis of his work experience.

[8] On Schedule 3 of the PR Application, the Applicant indicated that his spouse had an uncle who was living in Canada or was a permanent resident in Canada; however, the Applicant did not indicate that he himself had such a relative.

[9] On Schedule 1 of his PR Application, the Applicant indicated his father's name as Madan Lal Mohan and that his father had passed away on October 25, 1989.

[10] On March 30, 2010, the Federal Skilled Worker Centralized Intake Office advised the Applicant that his PR Application would be recommended to the visa office on the basis of his NOC 1111 work experience and requested him to submit a completed application to the New Delhi visa office [CIO Approval Letter].

[11] On July 26, 2010, the Applicant made submissions in response to the CIO Approval Letter and stated that his paternal uncle was Subhash Chander Mehta [Subhash Mehta], a permanent resident of Canada [Response to CIO Letter].

[12] In the Response to the CIO Letter, the Applicant included: (i) a family tree indicating that his father's name as Madan Lal Mehta and that Subhash Mehta was his father's brother; (ii) a Death Certificate for a Madan Lal Mehta who passed away on October 25, 1990; (iii) the Applicant's marriage certificate indicating his father's name as Madan Lal Mohan; (iv) affidavits by the Applicant and his spouse stating that he is the son of Madan Lal Mehta; and, (v) the birth certificate of the Applicant's son, Arnav Mohan, indicating that Arnav's paternal grandfather's name was Madan Lal Mehta.

[13] On July 31, 2010, the Applicant submitted an affidavit by Subhash Mehta, stating that the Applicant is the son of Subhash Mehta's brother, Madan Lal Mehta.

#### V. Decision under Review

[14] The Officer rejected the Applicant's application to be selected for permanent residence as a member of the economic class on the basis of his ability to become economically established in Canada under subsection 12(2) of the *IRPA*.

[15] The Officer found that the Applicant had insufficient points to qualify for permanent residence. The Officer applied the selection criteria in subsection 76(2) of the *Regulations*, SOR/2002-227, as am SC 2002, c 8, to determine if the Applicant met the minimum requirements set out in subsection 75(2) of the *Regulations*.

[16] The Applicant received ten points for age, twenty for education, eight for language proficiency, twenty-one for experience, zero for arranged employment, and five for adaptability.

This made for a total of sixty-four points, three points short of the required sixty-seven points established by the Minister under subsection 76(3) of the *Regulations* as the minimum number of points required of a skilled worker.

[17] Under paragraph 83(1)(d) and subparagraph 83(5)(a)(vi) of the *Regulations*, an applicant under the skilled worker category shall be awarded five points for an aunt or uncle living in Canada. The Officer did not award the Applicant these points because the Applicant had not provided sufficient evidence of his relationship to a stated relative in Canada (his spouse's aunt or uncle and his paternal uncle).

[18] The Officer did not accept the Applicant's claim on Schedule 3 of his PR Application that his spouse had an aunt or uncle residing in Canada or that Subhash Mehta was his paternal uncle. According to the case notes, an affidavit submitted in support of the latter claim was not supported by documentation and did not satisfy the Officer that Subhash Mehta was the Applicant's paternal uncle, especially since the Applicant had indicated on Schedule 3 of his PR Application that his relative in Canada was related to his spouse and not to himself.

#### VI. Issues

- [19] (1) Was the Officer reasonable in finding that the Applicant could not be awarded five points under paragraph 83(1)(d) of the *Regulations* for his relationship to Subhash Mehta, his alleged paternal uncle?
- (2) Did procedural fairness require the Officer to provide the Applicant with an opportunity to respond?

VII. Relevant Legislative Provisions

[20] Please see Annex “A” for the relevant legislative provisions of the *IRPA* and the *Regulations*.

VIII. Position of the Parties

[21] The Applicant submits that the Officer was unreasonable in refusing to award him five points for adaptability under paragraph 83(1)(d) and subparagraph 83(5)(a)(vi) of the *Regulations* since Subhash Mehta is a child of the father of the Applicant’s father.

[22] The Applicant argues that he submitted sufficient documentation to establish that Madan Lal Mohan (also known as Madan Lal Mehta) was his father, including copies of his Indian passport, marriage certificate, and school, employment, and tax records.

[23] The Applicant also argues that he submitted sufficient documentation to establish that Madan Lal Mohan (or Mehta) and Subhash Mehta were brothers, notwithstanding the unavailability of their birth certificates. The documentation includes the death certificate of Madan Lal Mohan, the Indian passport of Subhash Mehta, the statutory declaration of Subhash Mehta, and a diagram illustrating the Mehta family tree.

[24] According to the Applicant, his father and Subhash Mehta were born in an era and region of India in which the registration of births and other vital statistics was unusual. The Applicant claims that the legislative requirement to register births and deaths did not come into effect until the 1970s.

[25] Citing *Wang v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 58, the Applicant argues that the applicable standard of proof in assessing an application for permanent residence is the balance of the probabilities standard. The Applicant, relying on *R v Layton*, 2009 SCC 36, [2009] 2 SCR 540, argues that this standard required him to establish that it was more probable than not that Subhash Mehta is his paternal uncle.

[26] The Applicant submits that, given the documents described above, it was more probable than not that his father and Subhash Mehta were brothers and that the requirements of paragraph 83(1)(d) and subparagraph 83(5)(a)(vi) of the *Regulations* were met. The Applicant contends that he was not obliged to present a birth or marriage certificate to establish this relationship and that he provided the best available evidence in the absence of these records.

[27] The Applicant argues that the Officer also breached procedural fairness by failing to provide adequate reasons and an opportunity to respond. The Applicant argues that he received no notice that the documentation he submitted (in particular, the statutory declaration of Subhash Mehta) was insufficient to establish that Subhash Mehta was his paternal uncle. The Applicant submits that his inability to obtain birth certificates of his father and paternal uncle and the evidence he submitted in substitution of the birth certificates required the Officer to raise his concerns with the Applicant. Moreover, the Applicant claims that the Officer's rejection of the statutory declaration of Subhash Mehta amounts to an adverse credibility assessment to which the Applicant should have had the opportunity to respond.

[28] The Respondent submits that the Officer was reasonable in finding that the Applicant had failed to establish that Subhash Mehta is his paternal uncle and, consequently, that the Applicant could not satisfy the requirements of paragraph 83(1)(d) and subparagraph 83(5)(a)(vi) of the *Regulations*.

[29] In particular, the Respondent argues that this finding was reasonable because the Applicant had produced confusing and inconsistent evidence to establish that Subhash Mehta was his uncle. First, the Applicant initially stated in Schedule 3 of his PR Application that it was his wife who had a relative living in Canada. Second, the Applicant's Response to the CIO Letter stated that Subhash Mehta was living in India and not Canada. Third, the Applicant provided documents that indicated that his father was Madan Lal Mohan rather than Madan Lal Mehta. Fourth, the death certificate of Madan Lal Mehta stated the name of the father of the deceased as Sham Sunder Mehta (as opposed to the name of Sham Sunder Mehta given on the Indian passport of Subhash Mehta). Fifth, the copy of the Applicant's Bachelor's Degree in Commerce states the name of his father as Madan Lal Mahita. Finally, the statutory declaration of Subhash Mehta did not include any supporting exhibits and contradicted the Applicant's initial statements on Schedule 3 of his PR Application.

[30] The Respondent argues that the Applicant's application for judicial review effectively asks this Court to reweigh the evidence.

[31] In response to the Applicant's submissions on the unavailability of birth certificates for his father and Subhash Mehta, the Respondent contends that: (i) the Officer did not find that the Applicant was required to provide such documentation; (ii) the unavailability of this documentation



was irrelevant to the question of the sufficiency of the evidence actually submitted; and (iii) the Applicant did not inform the Officer that such documentation was unavailable.

[32] Citing *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, the Respondent submits that adequacy of reasons is not a stand-alone ground for judicial review.

[33] The Respondent further argues that the Officer was not required to give the Applicant an opportunity to respond because the Applicant had the onus of providing sufficient documentation to establish that paragraph 83(1)(d) and subparagraph 83(5)(a)(vi) of the *Regulations* applied. Citing *Tahir v Canada (Minister of Citizenship and Immigration)* (1998), 159 FTR 109, the Respondent argues the Officer had no “duty to request supporting documentation or to grant an interview in order to substantiate the application” (at para 8). The Respondent claims, relying on *Oei v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 466, 221 FTR 112, that an applicant’s failure to provide adequate, sufficient or credible evidence does not trigger a duty to give an opportunity to respond.

[34] In further submissions, the Respondent submits that the only documentary evidence that the Applicant adduces to support the inference that Subhash Mehta is his paternal uncle cannot be considered by this Court since it was not considered by the Officer. The Respondent observes that the only documentary evidence of Subhash Mehta’s parentage, an additional page of a copy of the Indian passport of Subhash Mehta [additional passport page], does not appear in the Certified Tribunal Record [CTR].

[35] According to the Respondent, the Applicant has not established that he submitted the additional passport page in support of his PR Application because his affidavit only states that he submitted a copy of the Indian passport of Subhash Mehta to the Officer but (i) does not specify the number of pages of the passport that he submitted, or (ii) attach as an exhibit what he submitted in support of his application.

[36] The Respondent claims that the affidavit of Cindy Sran (to which the additional passport page was attached as an exhibit) does not assist the Applicant because that affidavit does not depose (i) that the additional passport page was submitted in support of the Applicant's PR Application, and (ii) how the affiant would have personal knowledge of whether the additional passport page was submitted to the Officer. The Respondent notes that the Applicant did not tender an affidavit from his counsel to establish what he submitted in support of his PR Application. The Respondent cites *Moldeveanu v Canada (Minister of Citizenship and Immigration)* (1999), 235 NR 192 (FCA), wherein the Federal Court of Appeal struck the affidavit of a paralegal from counsel's firm because it was not confined to facts within the paralegal's personal knowledge.

## IX. Analysis

### *Standard of Review*

[37] A decision to award an applicant points for adaptability for being related to a person living in Canada is a question of mixed fact and law reviewable on the standard of reasonableness (*Lee v Canada (Minister of Citizenship and Immigration)*, 2011 FC 617). The standard of correctness applies to questions of procedural fairness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 129). The content of the duty of procedural fairness will, however, vary according to the

circumstances and the legislative and administrative context of a decision (*Mavi v Canada (Attorney General)*, 2011 SCC 30, [2011] 2 SCR 504).

[38] Where the standard of reasonableness applies, the Court may only intervene if the Board's reasons are not "justified, transparent or intelligible". To satisfy this standard, the decision must also fall in the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para 47).

[39] Although the Applicant has challenged the adequacy of the Officer's reasons, the Supreme Court of Canada has held that if reasons are given, a challenge to the reasoning or result is addressed in the reasonableness analysis. According to *Newfoundland and Labrador Nurses Union*, above, "reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (at para 14). A reviewing court may not "substitute [its] own reasons" but may "look to the record for the purpose of assessing the reasonableness of the outcome" (at para 15).

(1) Was the Officer reasonable in finding that the Applicant could not be awarded five points under paragraph 83(1)(d) of the Regulations for his relationship to Subhash Mehta, his alleged paternal uncle?

[40] The Officer was not reasonable in finding, on a balance of probabilities, that the Applicant could not be awarded five points under paragraph 83(1)(d) and subparagraph 83(5)(a)(vi) of the *Regulations* on the basis of his relationship to Subhash Mehta, his alleged paternal uncle.

[41] A decision-maker assesses whether a person is related to a person living in Canada on a balance of probabilities (*Dhillon v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1049). Pursuant to *Layton*, above, this required the Officer to ask if it was more probable than not that the Applicant was the nephew of Subhash Mehta and that paragraph 83(1)(d) and subparagraph 83(5)(a)(vi) of the *Regulations* should apply.

[42] The Applicant submitted several documents to support his claim that his father was Madan Lal Mehta, that Madan Lal Mehta was the son of Sham Sunder Mehta, and that Subhash Mehta was also the son of Sham Sunder Mehta. Those documents found in the CTR released pursuant to Rules 15 and 17 of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22, as am SOR/98-235, ss 1-6,7 (Fr) [*Rules*] include:

- A translated copy of the birth certificate of the Applicant's daughter identifying her father as the Applicant and her paternal grandfather as Madan Lal Mehta, dated July 15, 2011 (CTR at p 30);
- A copy of a police clearance certificate for the Applicant identifying his father as Madan Lal Mehta, dated April 9, 2010 (CTR at p 95);
- A copy of the Applicant's Indian passport, issued March 5, 2010, identifying his father as both Madan Lal Mehta (CTR, above at 98) and Madan Lal Mohan (CTR at p 115);
- A copy of the Applicant's Indian passport, issued April 28, 2005, identifying his father as both Madan Lal Mehta (CTR, above at 122) and Madan Lal Mohan (CTR at p 134);

- A translated copy of the marriage certificate of the Applicant and his spouse, dated August 30, 2006, identifying the Applicant's father as Madan Lal Mohan (CTR at p 195);
- Affidavits of the Applicant and his spouse stating that the Applicant is the son of Madan Lal Mehta (CTR at pp 196 and 198);
- A translated copy of the birth certificate of the Applicant's son identifying his father as the Applicant and his paternal grandfather as Madan Lal Mehta, dated April 23, 2007 (translation, dated May 17, 2010) (CTR at p 200);
- A translated copy of the death certificate of Madan Lal Mehta identifying his father as Sham Sundar Mehta, dated October 25, 1990 (CTR at p 203);
- A copy of the Applicant's election identity card identifying his father as the Late Madan Lal (CTR at p 204);
- A translated copy of a salary slip of the Applicant identifying his father as Madan Lal Mehta, dated May 5, 2010 (CTR at p 209);
- A copy of an employer's letter of recommendation identifying the Applicant's father as Madan Lal Mehta, dated June 15, 2004 (CTR at p 211);
- A copy of a letter of appointment for the Applicant identifying the Applicant's father as Madan Lal Mehta, dated June 1, 2004 (CTR at p 212);
- A copy of a letter of confirmation of employment for the Applicant identifying the Applicant's father as Madan Lal Mehta, dated May 27, 2010 (CTR at p 214);
- Copies of letters advising the Applicant of salary increases and identifying the Applicant's father as Madan Lal Mehta, dated April 1, 2007, March 28, 2008, and March 31, 2009 (CTR at pp 215 – 217);

- A copy of the tax records identifying the Applicant's father as Madan Lal Mehta (CTR at p 222);
- A bilingual copy of the Applicant's Bachelor of Commerce Degree identifying the Applicant's father as Madan Lal Mahita, dated June 23, 1999 (CTR at p 236);
- Translated copies of the Applicant's academic record at Guru Nanak Dev University identifying his father as Madan Lal Mehta, dated May 22, 1997, June 3, 1998, June 23, 1999 (translations, dated May 17, 2010, May 21, 2010, and May 21, 2010 respectively) (CTR at pp 239, 244, and 245);
- Copies of the Applicant's secondary school records identifying his father as Madan Lal Mehta, dated 1997, March 6, 1996, 1994, 1994, and June 14, 1994 (CTR at pp 246, 248, 250, 304, and 252);
- An affidavit of Subhash Mehta identifying himself as the son of Sham Sunder Mehta and the paternal uncle of the Applicant, dated May 25, 2010 (CTR at p 68);
- A diagram of the Applicant's family tree alleging that the Applicant's father was the brother of Subhash Mehta (CTR at p 192); and,
- A copy of the first page of the Indian passport of Subhash Mehta, issued May 25, 2005 (CTR at p 194).

[43] The Application Record [AR] contains an affidavit of Cindy Sran [Sran Affidavit], dated June 7, 2012, that purports to reproduce in Exhibit B the Response to the CIO Letter submitted by the Applicant. The Response to the CIO Letter contains an additional page of the Indian passport of Subhash Mehta identifying his father as Sham Sunder Mehta (AR at p45).

[44] The Respondent argues that this additional page is not contained in the CTR and that the Applicant is required to establish that he submitted the additional page of the Indian passport of Subhash Mehta to the Officer. This Court finds that the Applicant has established that he submitted the additional page of the Indian passport of Subhash Mehta to the Officer in the Response to the CIO Letter.

[45] First, the Sran Affidavit attaches as Exhibit B a “Letter from Gurpreet Khaira, with the following selected enclosures ... viii. Passport copy of the Subhash Chander Mehta (*pages 44 – 45 of the Applicant’s Application Record*)” (at pp 13-14). The Letter from Gurpreet Khaira described in the Sran Affidavit is the Response to the CIO Letter that was sent to the Officer on July 26, 2010 and is included in the CTR (at pp 328-330); the passport copy described in the Sran Affidavit includes the additional page of the Indian passport of Subhash Mehta. Since the Sran Affidavit describes the additional page of the Indian passport of Subhash Mehta as an enclosure to the Response to the CIO Letter, it follows that the Sran Affidavit does depose that the additional page of the Indian passport of Subhash Mehta was submitted to the Officer as an enclosure to the Response to the CIO Letter.

[46] Second, affiant of the Sran Affidavit does depose how she would have personal knowledge of whether the additional passport page was submitted to the Officer. According to the Sran Affidavit, the affiant had “reviewed the Applicant’s file” and was “familiar with its contents” (AR at p 13). From this one can infer that the affiant reviewed the Response to the CIO Letter submitted to the Officer and would have personal knowledge of what was contained as an enclosure to that document, including the additional passport page of Subhash Mehta’s Indian passport.

[47] Rule 12 of the *Rules* states that affidavits filed in connection with an application for leave shall be confined to such evidence as the deponent could give if testifying as a witness before the Court. In *Samuel v Canada (Minister of Citizenship and Immigration)*, 2010 FC 223, Justice John O’Keefe applied Rule 12 in the context of a visa officer decision, stating that the corollary of Rule 12 was that it incorporates “the usual common law rules of evidence ... including the twin requirements of necessity and reliability for the admissibility of hearsay evidence” (at para 21). The Sran Affidavit only deposes on what was included in the Response to the CIO Letter, the contents of which the deponent would have had personal knowledge by reviewing the Applicant’s file. A hearsay problem does not arise with respect to the Sran Affidavit because the affiant can be cross-examined on what was contained as an enclosure to the Response to the CIO Letter when the affiant reviewed it.

[48] Having addressed this preliminary matter and before disposing of the essential question in this application for judicial review, this Court recognizes the following three principles.

[49] First, an applicant is not necessarily limited to a prescribed list of documents (i.e. birth, marriage, and death certificates) in establishing family relationships for the purposes of paragraph 83(1)(d) and subparagraph 83(5)(a)(vi) of the *Regulations*. In *Singh v Canada (Minister of Citizenship and Immigration)*, 2012 FC 855, Justice O’Keefe did not accept Canadian passports and permanent residence cards as evidence of a family relationship because these documents did not actually state that the applicant was related to alleged family members. In *Singh*, this Court was concerned with documents that did not contain sufficient genealogical information. It follows that certain records that give such information but are outside in the category of birth, marriage, and



death certificates may be probative of a family relationship in certain circumstances. It must be stressed, as the Respondent argues, that the Officer does not appear to have limited the Applicant to a particular category of document.

[50] Second, an affidavit unsupported by corroborating evidence often has limited probative value in assessing whether an applicant meets the requirements of paragraph 83(1)(d) and subparagraph 83(5)(a)(vi) of the *Regulations*. In *Singh*, Justice O’Keefe held that affidavits from self-interested parties may not be sufficient to show that a person is related to a person living in Canada if the affidavits lack corroborating evidence (at para 30).

[51] Third, the decision of Justice Judith Snider in *Canada (Minister of Citizenship and Immigration) v Skomatchuk*, 2006 FC 994 is useful in assessing identity documents that have been translated or transliterated from another language or script. In *Skomatchuk*, Justice Snider determined that an individual was a concentration camp guard notwithstanding variations in the spelling of his name in the record:

[102] As a general observation, I would note that the record shows different spellings of the surname “Skomatchuk”. Even documents produced by the Defendant provide a variation on the spelling; for example, “Skomaczuk”. I am satisfied that these differences can be explained by the translation of the name from Cyrillic writing to either English or German. Phonetically, “Skomatchuk”, “Skomatschuk”, “Skomachuk” and “Skomaczuk” are identical; use of a different spelling does not necessarily indicate a different person.

[52] The general corollary of Justice Snider’s comments in *Skomatchuk* is that translated or transliterated identity documents ought to be assessed in light of the fact that they have been translated or transliterated.

[53] Applying these principles to this application for judicial review leads to the conclusion that the Officer was unreasonable in finding that Subhash Mehta was not, on a balance of probabilities, the paternal uncle of the Applicant.

[54] Even though the Applicant's marriage certificate identified his father as Madan Lal Mohan and his Bachelor of Commerce Degree identified his father as Madan Lal Mahita, several of his documents (including his police clearance record, the birth certificates of his son and daughter, his employment records, his school records, and his tax records) identified his father as Madan Lal Mehta. The name of Madan Lal Mahita on the Applicant's Bachelor of Commerce Degree can be rationalized as a problem of transliteration since Mahita and Mehta are phonetically similar.

[55] The death certificate of Madan Lal Mehta identifies the father of Madan Lal Mehta as Sham Sunder Mehta. It is more probable than not that the Madan Lal Mehta who is the subject of this death certificate is the father of the Applicant because the address of the deceased is stated as ES-188, Makhdoompura, Jalandhar (CTR at p 203); this same address is stated as the address of the Applicant on other documentation. On a balance of probabilities, Sham Sunder Mehta was the Applicant's grandfather.

[56] Finally, the Indian passport of Subhash Mehta identifies Subhash Mehta's father as Sham Sunder Mehta. Since this passport also states that Subhash Mehta comes from Jalandhar, the balance of probabilities also points in the Applicant's favor. The spelling difference between Sham Sunder Mehta (on Madan Lal Mehta's death certificate) and Sham Sunder Mehta (on Subhash Mehta's Indian passport) is immaterial, given the problems that may arise in transliteration.

[57] The Officer's conclusion did not become reasonable simply because the Applicant stated in Schedule 3 that it was his spouse who had a relative living in Canada. Such a conclusion might have been reasonable if the Applicant had not provided documentary evidence establishing that Subhash Mehta was his paternal uncle but is not supportable in the face of documentary evidence to the opposite effect.

(2) Did procedural fairness require the Officer to provide the Applicant an opportunity to respond?

[58] Since this Court has disposed of the application for judicial review on its merits, it is not necessary to consider the question of whether procedural fairness required the Officer to provide the Applicant an opportunity to respond.

[59] Nonetheless, it should be noted that, through jurisprudence of this Court, it has been established that a decision-maker is not required to notify an applicant for a skilled worker visa under subsection 12(2) of the *IRPA* that he or she has produced insufficient documentation. In *Chowdhury v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1315, Justice James Russell held that procedural fairness did not require an immigration officer give an applicant an opportunity to address concerns about an alleged family relationship if the concerns "arose directly from the documentation, or lack thereof, submitted by the [a]pplicant" (at para 45). Citing *Oladipo v Canada (Minister of Citizenship and Immigration)*, 2008 FC 366, Justice Russell reasoned that the applicant had the onus of preparing and filing an application with relevant, sufficient, and credible supporting documentation.

X. Conclusion

[60] For all of the above reasons, the Applicant's application for judicial review is granted and the matter is returned for determination anew (*de novo*) before another Immigration Officer.

**JUDGMENT**

**THIS COURT ORDERS that** the Applicant's application for judicial review be granted and the matter be returned for determination anew (*de novo*) before another Immigration Officer. No question of general importance for certification.

"Michel M.J. Shore"

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Judge

ANNEX "A"

Relevant legislative provisions of the *Immigration and Refugee Protection Act*, SC 2001, c 27:

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|---|--|
| <p><b>12.</b> ...</p> <p>(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.</p> | <p><b>12.</b> [...]</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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Relevant legislative provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227:

- |   |   |
|---|---|
| <p><b>75.</b> ...</p> <p>(2) A foreign national is a skilled worker if</p> <p>(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;</p> | <p><b>75.</b> [...]</p> <p>(2) Est un travailleur qualifié l'étranger qui satisfait aux exigences suivantes :</p> <p>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;</p> |
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(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 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.

c) pendant cette période 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) 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:

**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) 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,

a) le travailleur qualifié accumule le nombre minimum de points visé au paragraphe (2), au titre des facteurs suivants :

(i) education, in accordance with section 78,

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

(ii) proficiency in the official languages of Canada, in accordance with section 79,

(ii) la compétence dans les langues officielles du Canada, aux termes de l'article 79,

(iii) experience, in accordance with section 80,

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

(iv) age, in accordance with section 81,

(iv) l'âge, aux termes de l'article 81,

(v) arranged employment, in accordance with section 82, and

(v) l'exercice d'un emploi réservé, aux termes de l'article 82,

(vi) adaptability, in accordance with section 83; and

(vi) la capacité d'adaptation, aux termes de l'article 83;

(b) the skilled worker must

b) le travailleur qualifié :

(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

(i) soit dispose de fonds transférables — non grevés de dettes ou d'autres obligations financières — d'un montant égal 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) be awarded the number of points referred to in subsection 82(2) for arranged employment in Canada within the meaning of subsection 82(1).

(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).

(2) The Minister shall fix and make available to the public the minimum number of points required of a skilled worker, on the basis of

(2) Le ministre établit le nombre minimum de points que doit obtenir le travailleur qualifié en se fondant sur les éléments ci-après et en informe le public :

(a) the number of applications by skilled

a) le nombre de demandes, au titre de la catégorie des



workers as members of the federal skilled worker class currently being processed;

travailleurs qualifiés (fédéral), déjà en cours de traitement;

(b) the number of skilled workers projected to become permanent residents according to the report to Parliament referred to in section 94 of the Act; and

b) le nombre de travailleurs qualifiés qui devraient devenir résidents permanents selon le rapport présenté au Parlement conformément à l'article 94 de la Loi;

(c) the potential, taking into account economic and other relevant factors, for the establishment of skilled workers in Canada.

c) les perspectives d'établissement des travailleurs qualifiés au Canada, compte tenu des facteurs économiques et autres facteurs pertinents.

**83.** (1) A maximum of 10 points for adaptability shall be awarded to a skilled worker on the basis of any combination of the following elements:

**83.** (1) Un maximum de 10 points d'appréciation sont attribués au travailleur qualifié au titre de la capacité d'adaptation pour toute combinaison des éléments ci-après, selon le nombre indiqué :

(a) for the educational credentials of the skilled worker's accompanying spouse or accompanying common-law partner, 3, 4 or 5 points determined in accordance with subsection (2);

a) pour les diplômes de l'époux ou du conjoint de fait, 3, 4 ou 5 points conformément au paragraphe (2);

(b) for any previous period of study in Canada by the skilled worker or the skilled worker's spouse or common-law partner, 5 points;

b) pour des études antérieures faites par le travailleur qualifié ou son époux ou conjoint de fait au Canada, 5 points;

(c) for any previous period of work in Canada by the skilled worker or the skilled

c) pour du travail antérieur effectué par le travailleur qualifié ou son époux ou

worker's spouse or common-law partner, 5 points;

conjoint de fait au Canada, 5 points;

(d) for being related to a person living in Canada who is described in subsection (5), 5 points; and

d) pour la présence au Canada de l'une ou l'autre des personnes visées au paragraphe (5), 5 points;

(e) for being awarded points for arranged employment in Canada under subsection 82(2), 5 points.

e) pour avoir obtenu des points pour un emploi réservé au Canada en vertu du paragraphe 82(2), 5 points.

...

[...]

(5) For the purposes of paragraph (1)(d), a skilled worker shall be awarded 5 points if

(5) Pour l'application de l'alinéa (1)d), le travailleur qualifié obtient 5 points dans les cas suivants :

(a) the skilled worker or the skilled worker's accompanying spouse or accompanying common-law partner is related by blood, marriage, common-law partnership or adoption to a person who is a Canadian citizen or permanent resident living in Canada and who is

a) l'une des personnes ci-après qui est un citoyen canadien ou un résident permanent et qui vit au Canada lui est unie par les liens du sang ou de l'adoption ou par mariage ou union de fait ou, dans le cas où il l'accompagne, est ainsi unie à son époux ou conjoint de fait :

(i) their father or mother,

(i) l'un de leurs parents,

(ii) the father or mother of their father or mother,

(ii) l'un des parents de leurs parents,

(iii) their child,

(iii) leur enfant,

(iv) a child of their child,

(iv) un enfant de leur enfant,

(v) a child of their father or mother,

(v) un enfant de l'un de leurs parents,

(vi) a child of the father or mother of their father or mother, other than their father or mother, or

(vi) un enfant de l'un des parents de l'un de leurs parents, autre que l'un de leurs parents,

(vii) a child of the child of their father or mother; or

(vii) un enfant de l'enfant de l'un de leurs parents;

(b) the skilled worker has a spouse or common-law partner who is not accompanying the skilled worker and is a Canadian citizen or permanent resident living in Canada.

b) son époux ou conjoint de fait ne l'accompagne pas et est citoyen canadien ou un résident permanent qui vit au Canada.

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

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**APPEARANCES:**

Puneet Khaira FOR THE APPLICANT

François Paradis FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Lindsay Kenney LLP FOR THE APPLICANT  
Langley, British Columbia

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Vancouver, British Columbia