

**Date: 20070501**

**Docket: IMM-2561-06**

**Citation: 2007 FC 441**

**BETWEEN:**

**MAHENDRAKUMAR MANILAL PATEL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT**

**Pinard J.**

[1] This is a judicial review of a decision of Jyotsana Sethi, an immigration officer (the “Officer”), dated March 2, 2006, refusing Mahendrakumar Manilal Patel’s application for permanent residency in the skilled worker category on the basis that he did not meet the requirements under subsection 11(2) the *Immigration Regulations 1978*, SOR/78-172 (the Former Regulations) or the requirements under paragraphs 75(2)(a), (b) and (c) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the IRP Regulations).

[2] On July 12, 2000, Mahendrakumar Manilal Patel, the applicant, submitted an application for permanent residence in Canada under the skilled worker category with an intended occupation of Librarian, Code 5111 of the National Occupational Classification (NOC).

[3] In a letter dated December 5, 2003, the applicant was informed that his application would be assessed under the selection criteria of either the Former Regulations or the IRP Regulations, whichever was more favourable to him.

[4] On March 1, 2006, the applicant attended an interview at the High Commission in New Delhi, India. The applicant brought a variety of documents with him, including a letter from the head master of the school the applicant had worked at which stated that the applicant had served as a librarian there from December 15, 1994 to June 9, 2002. He also brought a letter from his current employer confirming his duties as the librarian at a high school.

[5] In a letter dated March 2, 2006, the applicant was informed that the Officer had determined that he did not meet the requirements under the Former Regulations nor under the IRP Regulations.

\* \* \* \* \*

[6] The relevant portions of the Former Regulations read:

**11.** (2) Subject to subsections (3) and (4), a visa officer shall not issue an immigrant visa pursuant to section 9 or 19 to an immigrant

**11.** (2) Sous réserve des paragraphes (3) and (4), l'agent des visas ne délivre un visa en vertu de l'article 9 ou 10 à un immigrant autre

other than an entrepreneur, an investor, a provincial nominee, a retired person or a self-employed person unless

qu'un entrepreneur, un investisseur, un candidat d'une province, un retraité ou un travailleur autonome, que si l'immigrant :

(a) the units of assessment awarded to that immigrant include at least one unit of assessment for the factor set out in item 4 of column I of Schedule I;

a) a obtenu au moins un point d'appréciation pour le facteur visé à l'article 4 de la colonne I de l'annexe I;

Item 4 of column I of Schedule I reads:

(1) Units of assessment shall be awarded on the basis of employment opportunities in Canada in the occupation

(a) for which the applicant meets the employment requirements for Canada set out in the *National Occupational Classification*;

...

[7] The relevant provisions of the IRP Regulations follow:

**75. (2)** A foreign national is a skilled worker if

**75. (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 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.

(3) If the foreign national fails to meet the requirements of subsection (2), the application for a permanent resident visa shall be refused and no further assessment is required.

**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 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.

...

(3) For the purposes of subsection (1), a skilled worker is considered to have experience in an occupation, regardless of whether they meet the occupation's employment requirements of the occupation as set out in the occupational descriptions of the *National Occupational Classification*, if they performed

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.

(3) Si l'étranger ne satisfait pas aux exigences prévues au paragraphe (2), l'agent met fin à l'examen de la demande de visa de résident permanent et la refuse.

**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.

...

(3) Pour l'application du paragraphe (1), le travailleur qualifié, indépendamment du fait qu'il satisfait ou non aux conditions d'accès établies à l'égard d'une profession ou d'un métier dans la *Classification nationale des professions* est considéré comme ayant acquis de l'expérience dans la profession ou le métier :

(a) the actions described in the lead statement for the occupation as set out in the *National Occupational Classification*; and

(b) at least a substantial number of the main duties of the occupation as set out in the occupational descriptions of the *National Occupational Classification*, including all the essential duties.

a) s'il a accompli l'ensemble des tâches figurant dans l'énoncé principal établi pour la profession ou le métier dans les descriptions des professions de cette classification;

b) s'il a exercé une partie appréciable des fonctions principales de la profession ou du métier figurant dans les descriptions des professions de cette classification, notamment toutes les fonctions essentielles.

[8] The National Occupation Classification for code 5111 – Librarians states that the employment requirement for this occupation is a master's degree in library science.

\* \* \* \* \*

[9] The applicant's primary argument is that the Officer erred in her analysis under the IRP Regulations by failing to award the applicant occupational experience points on the ground that he couldn't be awarded any occupational experience points unless he met the employment requirements set out in the NOC of Librarians.

[10] Although not framed as such by the applicant, in my view, the alleged error is that the Officer prematurely ended her analysis under the IRP Regulations because she mistakenly imported a criterion from the Former Regulations into the IRP Regulations.

[11] It is a reviewable error to rely on extraneous criteria (*Maple Lodge Farms Limited v. Government of Canada et al.*, [1982] 2 S.C.R. 2).

[12] In order to immigrate to Canada as a skilled worker, an applicant must meet the definition of skilled worker set out in subsection 75(2) of the IRP Regulations and be awarded the required number of points. Once it has been determined that an applicant does not meet the definition of a skilled worker, the application is refused and no further assessment is required.

[13] The applicant claims that the Officer erred by bringing an extraneous criterion into the assessment for awarding occupational experience points under subsection 80(1) and as a result erroneously failed to award the applicant points under subsection 81(3).

[14] It is clear from the Computer Assisted Immigration Processing System (CAIPS) notes that the Officer didn't even consider awarding the applicant points for experience because she stopped her analysis under the IRP Regulations once she had concluded that the applicant did not meet the definition of a skilled worker in subsection 75(2) of the Regulations. The CAIPS notes state "PA does not meet the employment requirements for NOC 5111 Librarians since he does not have a Master s degree in Library Science. Cannot assess the PA as a Librarian."

[15] The Officer's affidavit supports this conclusion. She states, at paragraph 21, "I explained to the applicant at the end of the interview, that since he did not make the qualifying pass mark under the Immigration Act and did not meet the definition of a skilled worker under IRPA, he did not meet the requirements for immigration to Canada."

[16] Therefore, the issue before the Court is whether the Officer's determination that the applicant did not meet the definition of a skilled worker was based on an extraneous criterion.

[17] Both parties agree that whether or not an applicant meets the employment requirements in the NOC is not relevant to an assessment under the IRP Regulations although it was a relevant consideration under the Former Regulations.

[18] The letter from the Officer informing the applicant of the decision referred to subsection 75(2) of the IRP Regulations and concludes:

I am not satisfied that you meet part: (a), (b) and (c) of these requirements, since you do not meet the requirements of NOC 5111, Librarian in that you do not have a Master's degree in Library Sciences and therefore cannot be assessed under this NOC.

[19] In her CAIPS notes under the section assessing the applicant under IRP Regulations the Officer wrote:

PA does not meet the employment requirements for NOC 5111 Librarians since he does not have a Master s degree in Library Science. Cannot assess the PA as a Librarian.

[20] In my opinion, both the decision letter and the CAIPS notes indicate that the Officer determined that the applicant could not even be assessed under the IRP Regulations because he did not meet the employment requirement under the occupational category Librarians, i.e. have a Master's in Library Sciences.

[21] Moreover, the Officer's affidavit supports this conclusion. She states at paragraphs 19 and 20:

In addition to the above, I noted in my CAIPS notes that the applicant does not meet the employment requirements of NOC 5111 since he does not have a Master's degree in Library Science.

I considered the above two factors in my assessment of this applicant's eligibility under IRPA. I note that the fact that this applicant does not meet the employment requirements is not relevant under IRPA, however, in addition to not meeting the employment requirements, the applicant did not satisfy me that he had performed a substantial number of the main duties of NOC 5111. [Emphasis added.]

[22] The respondent submits that the fact that the Officer referred to the lack of a Master's degree is not sufficient to overturn the decision given that at another part of the CAIPS notes the Officer found that the applicant did not meet paragraph 75(2)(a) when she stated that the applicant does not meet the definition of skilled worker under IRPA since he does not have a minimum of one year's experience in a 0, A or B occupation and because she found that he did not performed a substantial number of the main duties of NOC 5111.

[23] In my opinion, this is not sufficient to save the Officer's decision. The Officer's determination that the applicant did not have a minimum one year's experience is entirely unsupported by the reasons. Such a conclusion by the Officer would require an explanation given that the applicant submitted evidence that he has worked as a librarian since 1994.

[24] I am of the opinion that the Officer made a reviewable error by finding that the applicant was ineligible to be assessed under the IRP Regulations as a skilled worker in the occupational



group, Librarians, because he did not satisfy a criteria in the employment requirements in the NOC of that occupation.

[25] Consequently, the application for judicial review is allowed and the matter is sent back to a different immigration officer for reconsideration.

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“Yvon Pinard”

Judge

Ottawa, Ontario  
May 1, 2007

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-2561-06

**STYLE OF CAUSE:** MAHENDRAKUMAR MANILAL PATEL v. THE  
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**APPEARANCES:**

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