Date: 20081209

Docket: IMM-4701-07

Citation: 2008 FC 1362

Montréal, Quebec, December 9, 2008

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

ALI AKBAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*) of the decision of a visa officer at the Canadian High Commission in London (CHC), United Kingdom, dated September 24, 2007, to refuse for insufficient points the applicant's request for permanent residence visa as a member of the Federal Skilled Worker Class (FSWC).

I. Facts

[2] The applicant, Ali Akbar, a citizen of Pakistan and resident of Saudi Arabia, applied for permanent residence as a member of the Federal Skilled Worker Class. In his application, he included his spouse, Shahnila Akbar, and three dependant children. He declared that he completed a Bachelor of Science from the University of Karachi in 1976. His spouse indicated that she completed a Bachelor's Degree from Saint Joseph's College for Women, University of Karachi (UK).

[3] The applicant's application for permanent residence was received by the CHC and after an initial paper screen by a program assistant (PA), a designated immigration officer (DIO) reviewed the applicant's file and agreed with the PA's findings that further documentation was required to proceed. A letter was sent to the applicant, wherein he was given 90 days to submit amongst other documents the original academic degrees and transcripts for the applicant and spouse from the University of Karachi.

[4] The DIO reviewed the applicant's documentation received by the CHC in response to the request and advised the applicant in writing that she had "reasonable grounds to believe that the degree for [his] wife [was] fraudulent". The applicants were asked to provide any evidence to the contrary within 30 days from the date of this letter.

[5] In response to the CHC's additional request, the applicant's agent submitted two letters written by himself stating that, in his opinion, the diploma was genuine, as well as a letter by the

applicant stating that he thought the degree was genuine, a photocopy of the university documents (mark sheet and diploma) and a letter by the applicant's wife which stated that she was shocked that she was suspected of fraud. No further documents from the UK were submitted nor any objective evidence that the degree was genuine.

[6] Not satisfied of the response to his request and of the genuineness of the wife's degree, the DIO determined that a personal interview was necessary to determine if the criteria for admission to Canada were met. The applicants appeared at the interview and were advised that its purpose was to review all selection criteria and discuss in particular the education of the applicant's wife. They were also informed that the CHC had received numerous fraudulent documents from Pakistan, including the University of Karachi.

[7] During the interview, the applicant's spouse was questioned on her academic credentials. When asked what she studied, the spouse first indicated she completed a science degree in "chemistry, physics, and microbiology" and then corrected herself stating "chemistry, zoology, and microbiology". The applicant's spouse was also asked specific question as to the length of her studies and the subject matter of her alleged degree; however, based on the interview, it was apparent, to the DIO that the applicant's spouse could not answer basic questions about the subject matter of her stated academic training. Accordingly, the DIO was not satisfied that the applicant's spouse had obtained the stated academic credential and therefore gave no points to the applicant received no points for "Adaptability" under paragraph 83(1)(*a*) of the *Immigration and Refugee Protection Regulations,* SOR/2002-227 (*Regulations*).

[8] Before leaving the interview, the DIO told the couple that she was not satisfied that the degree was genuine and, therefore, she could not assess any points for it under "Adaptability". As a consequence, they did not meet the minimum pass mark. This was subsequently confirmed by a refusal letter dated September 24, 2007.

[9] On October 30, 2007, over one month after the refusal, the CHC received an unsolicited envelope from the UK. However, given the problems of fraudulent documents having been received by the CHC in the past and given her personal interview with the applicant's spouse, the DIO was not satisfied that the applicant's spouse completed a degree at the UK. Accordingly, the applicant's submissions did not change the reasons for refusal. The applicant was advised by letter that the refusal stood.

II. Issue

[10] Was the visa officer's decision unreasonable?

III. Analysis

Standard of review

[11] The particular expertise of visa officers dictates a deferential approach when reviewing their decision. The assessment of an applicant for permanent residence under the FSWC is an exercise of discretion that should be given a high degree of deference. To the extent that this assessment has been done in good faith, in accordance with the principles of natural justice applicable, and without relying on irrelevant or extraneous considerations, the decision of the visa officer should be

reviewed on the standard of unreasonableness (*Kniazeva v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 268 at para. 15; *Dunsmuir v. New Brunswick*, 2008 SCC 9).

[12] The DIO is authorized to make decisions relative to the issuance of visas. He has greater expertise in this regard than the Court and that expertise attracts deference (*Singh Tiwana v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 100).

The reasonableness of the impugned decision

[13] Pursuant to subsection 11(1) of the *IRPA*, a foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirement of the Act (*IRPA*, s.11 (1)).

[14] Section 16(1) of *IRPA* provides that:

A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.	L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.

[15] The onus is therefore on the applicant seeking permanent residence under FSWC to provide all supporting documentation and sufficient credible evidence in support of his application. The onus does not shift to the DIO. Albeit the DIO determined that a personal interview was necessary

here to determine if the criteria for admission to Canada were met, the applicant was not entitled to one if his application was ambiguous or supporting material was not included or was unreliable. There is no general obligation on the officer to gather or seek additional evidence or make further inquiries. (*Lam v. Canada (Minister of Citizenship and Immigration)* (1985), 152 F.T.R. 316 (T.D.); *Silva v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 733).

[16] In all circumstances, the onus lies on persons, such as the applicant herein, who rely on documentary evidence originating from Pakistan or other countries in support of their claims, to be prepared to demonstrate the authenticity of the documentation presented. (*Uddin v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 451 (T.D.) at para. 10).

[17] The sole issue being challenged in the present application for judicial review is the DIO's assessment of adaptability with regard to the applicant's spouse's level of education. Under the adaptability factor, the applicant sought points for family member in Canada, which he obtained; he also sought points for his spouse's educational credentials, and those he did not obtained since after a personal interview the DIO was still not satisfied that the spouse's degree from the UK was genuine. At the interview the applicant's spouse offered the DIO "…no other information related to her course of study nor any answer that at least showed her that she knew something related to the material studied during her bachelor's degree".

[18] The DIO's concern here was not without cause. The Canadian High Commission in London had been processing all Permanent Resident Applications for those residing in the Gulf since the

1990s, including many with Pakistani education. They have consequently developed an expertise on the diplomas issued within that region. Having received in the past a significant number of fraudulent diplomas purportedly issued by the UK, the DIO had good reasons to challenge the applicant's spouse's educational credentials.

[19] The Court acknowledges that past history of fraudulent diplomas should only be considered as a red flag to alert the DIO, but not an evidentiary factor. But given the anomalies noted by the DIO in the spouse's degree and her lack of knowledge demonstrated at a personal interview, it was open to the DIO to disallow the request for adaptability points under section 83(1)(*a*) of the *Regulations*.

[20] The applicant and his spouse were advised of the DIO's concerns and given the opportunity to response both in writing and at a personal interview. There was no breach of procedural fairness here. There was no breach of procedural fairness also with regard with the DIO's consideration of the unsolicited documentation he received over one month after the application refusal. The DIO considered the new documentation but concluded that it did not change her decision and gave ample reasons for her "no reconsideration" decision.

[21] The DIO benefits over this Court of the undisputed advantage of having interviewed the applicant and his spouse. As a consequence and in view of his expertise in the matter in issue, the Court concludes that the DIO's assessment of the applicant's spouse's diplomas warrants deference.

[22] Recognizing that the applicable standard in this case is that of reasonableness, and despite the fact that this Court might have assessed the applicant's file differently in view of the fact that the applicants were merely a point shy of obtaining a passing mark, still the Court does not think, based on the particular facts in issue, that its intervention is justified. It is not for this Court to decide what the DIO has the responsibility to decide.

[23] This Court will only vacate a decision if it is perverse, capricious, not based on the evidence or based on an important mischaracterization of material facts, or if there was a breach of procedural fairness. This is not the case here even if the decision does not satisfy the applicant.

[24] The Court is satisfied that the decision is transparent and intelligible and justified according to the facts and the law. Seeing as a consequence that the decision is reasonable, the application for judicial review will be dismissed.

[25] The Court agrees with the parties that there is no serious question of general importance to certify.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application is dismissed.

"Maurice E. Lagacé"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

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