

Date: 20090303

Docket: IMM-3892-08

Citation: 2009 FC 220

Toronto, Ontario, March 3, 2009

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

Jiaqi NIE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Jiaqi Nie (the “Applicant”) seeks judicial review of the decision of Visa Officer Raymond Gabin (the “Officer”) of the Canadian Consulate in Detroit, Michigan, United States of America. In his decision dated August 12, 2008, the Officer refused the Applicant’s application for permanent residence in Canada as a member of the skilled worker class.

[2] The Applicant applied for permanent residence, requesting assessment in the occupation of Budget Analyst, National Occupation Classification 1112. He was assessed according to the criteria

set out in the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”)

and was awarded 62 points as follows:

Age	10
Education	25
Official Language Proficiency	10
Experience	17
Arranged Employment	0
Adaptability	0
TOTAL	62

[3] The refusal decision from the Officer contained the following:

...In addition you were not given any points for studying in Canada, since you did not study in Canada for at least 2 years while under a valid Study Permit. You have not obtained sufficient points to satisfy me that you will be able to become economically established in Canada.

[4] The Computer Assisted Input System (“CAIPS”) notes record the following entry:

Adaptability – None (Did not study in Canada fr [sic] at least 2 years while under a valid study permit).

[5] The failure to obtain five points under the adaptability factor, pursuant to paragraph 83(1)(b)

of the Regulations negatively impacted the Applicant’s application. Paragraph 83(1)(b) of the Regulations provides as follows:

83.(1) A maximum of 10 points for adaptability shall be awarded to a skilled worker on	83. (1) Un maximum de 10 points d’appréciation sont attribués au travailleur qualifié
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<p>the basis of any combination of the following elements:</p> <p>...</p> <p>(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;</p>	<p>au titre de la capacité d'adaptation pour toute combinaison des éléments ci-après, selon le nombre indiqué :</p> <p>...</p> <p>b) pour des études antérieures faites par le travailleur qualifié ou son époux ou conjoint de fait au Canada, 5 points;</p>
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[6] The Applicant submits that the Officer committed a reviewable error in denying the award of five points for adaptability since he had provided evidence that he had been issued three study permits, as well as evidence that he had attended the University of Western Ontario from September 2001 to May 2002 in London, Ontario. He also provided a certificate from the Huron-Liaoning North American Studies Program, issued by Huron University College dated May 23, 2002, showing successful completion of seven courses. The Applicant also submitted transcripts from Xincon Technology College, Canada, showing his status as a full-time student and showing completion of courses from September 2002 through December 2003.

[7] The Minister of Citizenship and Immigration (the "Respondent") submits that the Officer did not commit a reviewable error.

[8] Pursuant to the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the Officer's decision is reviewable on the standard of reasonableness since it involves an assessment of facts against the statutory conditions set out in the Regulations, particularly paragraph 83(1)(b).

[9] In my opinion, the decision of the Officer does not meet the applicable standard of review. There was evidence submitted by the Applicant that shows that he was in possession of three study permits issued by agents of the Respondent. There was evidence that he was a student in Canada, pursuant to those study permits. The Officer could not reasonably say, as he did, that there was no evidence provided by the Applicant to show that he had studied for at least two years under a valid study permit.

[10] For this reason, the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to another officer for a decision. There is no question for certification arising.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to another officer for a decision. There is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3892-08

STYLE OF CAUSE: Jiaqi NIE v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 26, 2009

REASONS FOR JUDGMENT: HENEGHAN J.

DATED: March 3, 2009

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