

**Date: 20091119**

**Docket: IMM-1009-09**

**Citation: 2009 FC 1188**

**Ottawa, Ontario, November 19, 2009**

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

**BETWEEN:**

**LYNN MEPHAM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Act*, S.C. 2001, c. 27 (the Act), by Lynn Mepham (the Applicant), of a decision of an Immigration Officer (the Officer) at the Canadian High Commission in London, dated December 22, 2008, where the Officer rejected her application for permanent residence as a member of the skilled worker class.

**Issues**

[2] The questions at issue are as follows:

- a. What is the appropriate standard of review of the Officer's assessment of education points?
- b. Did the Officer err in assessing the points for education?

[3] The application for judicial review shall be allowed for the following reasons.

[4] The Applicant is a citizen of the United Kingdom and made an application for permanent residence in Canada as a member of a skilled worker class.

[5] The Applicant submitted information pertaining to her education. She listed that she had a total of 12 years of education for both her primary and secondary school. She also indicated that she has completed a number of post-secondary programs. She holds a certificate in horticulture obtained between September 1987 and June 1988, a B.T.E.C. National Diploma earned from September 1989 to July 1992, a certificate of Level 1 – Understanding for studies from September 2006 to January 2007 and a diploma in Pre-School Practice for studies from January 2007 to October 2008. She provided details and evidence of the post-secondary diplomas and studies.

[6] The refusal letter sets out the total number of points assessed as follows:

	Points Assessed	Maximum Possible
AGE	10	10
EDUCATION	15	25
FIRST OFFICIAL LANGUAGE PROFICIENCY	16	16
SECOND OFFICIAL LANGUAGE PROFICIENCY	00	8
EXPERIENCE	21	21
ARRANGED EMPLOYMENT	00	10
ADAPTABILITY	00	10
TOTAL	62	100

[7] The current pass mark is 67 points.

### **Relevant Legislation**

[8] The relevant legislation is attached as an Appendix.

### **Analysis**

#### *Standard of Review*

[9] Both of the parties agree that the Officer's assessment of the number of education points allotted is a highly factual determination to be reviewed on a standard of reasonableness. This finding is consistent with the jurisprudence of this Court (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraphs 57 and 62; *Persaud v. Canada (Minister of Citizenship and*

*Immigration*), 2009 FC 206, [2009] F.C.J. No. 229 (QL); *Hameed v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 271, [2008] F.C.J. No. 341 (QL)).

[10] As such, a high degree of deference is required and the Court will not interfere with the decision unless it does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, at paragraph 47).

*Did the Officer err in assessing the points for education?*

[11] As the question at issue clearly demonstrates, the sole issue here is the number of points awarded by the Officer under the education selection criteria. No other part of the assessment is contested.

[12] The Applicant submits that the Officer erred in assessing the number of points awarded for education. She claims that she should have received a minimum of 20 points out of 25. She urges that her diplomas fall within the meaning of an “education credential” at section 73 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations).

[13] The Respondent submits that the number of points assessed for the Applicant’s education is reasonable. The Respondent relies on the affidavit evidence and the Computer Assisted Immigration Processing System (CAIPS) notes of the Officer who conducted the assessment. The Respondent argues that the Applicant has a total of 13 years of completed studies. This because compulsory education in England consists of 11 years of schooling and the highest diploma obtained by the

Applicant is the two-year B.T.E.C. National Diploma. The Officer's decision is based on two considerations: only the highest level diploma will be considered in assessing points and only the years of study required to obtain an education credential are included in the calculation; extra years being excluded.

[14] The Officer assessed the Applicant on the basis of her B.T.E.C. National Diploma. In the CAIPS notes, she writes that although the Applicant took three years to earn her degree, she has only awarded points for a two-year diploma as the credential is not a Higher National Diploma. In her affidavit, she explains that the former is a diploma of two-year scholarship while the latter is a diploma of three-year scholarship. The Officer also explains that the secondary school credential obtained by the Applicant only requires eleven years of education. Accordingly, she assessed 15 points pursuant to subparagraph 78(2)(c)(i) of the Regulations.

[15] The CAIPS notes are very succinct:

Applicant requesting NOC code for a preschool supervisor as opposed to helper though indicates preschool asst or helper on the forms. This is not an eligible profession (6473) however she has experience in another profession and full points awarded for experience

Applicant has a BTEC diploma, states took her three years however this is not a HND (higher national diploma) but a national diploma, 15 points awarded (have given for two years)

Applicant also has some other certificates on file but none on NARIC and none meet requirements of an educational credential. BTEC is highest diploma

62 points total and I believe points reflect the capacity to establish in CDA.

Applicant refused.

Refusal letter sent this day, copy on file

[16] The Court is of the opinion that there is a reviewable error here. The CAIPS notes do not indicate why the Officer granted only 11 years for the General Certificate of Education diplomas that the Applicant had provided (pages 79, 80 and 81 of the tribunal's record).

[17] The explanation can be found in the Officer's affidavit attached to the Respondent's memorandum of arguments. This goes well beyond an elaboration of the reasons and provides an after-the-fact rationale for the central issue in this application concerning the way that the points for education were calculated *Healey v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 355, [2009] F.C.J. No. 439 (QL), at paragraph 43 where Justice Russell cites *bin Abdullah v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1185, [2006] F.C.J. No.1482 (QL), at paragraphs 12-15.

[18] At the hearing, the Respondent made an objection on the Applicant's oral submission on this point.

[19] It is evident from the record, particularly at page 40, that the primary and secondary school years obtained by the Applicant are 12 years and not 11. This is also confirmed at paragraph 7 of the Applicant's affidavit.

[20] Although it could have been better articulated in the Applicant's memorandum of arguments, the Court accepts that paragraphs 32, 33, 34 and 35 read as a whole can be tied to the applicant's oral submissions at the hearing.

[21] The Court is of the opinion that the matter should be remitted to another Officer for redetermination.

[22] The parties do not propose question for certification and none arise.

**JUDGMENT**

**THIS COURT ORDERS that** the application for judicial review be allowed. The matter is remitted back to a different visa Officer for re-determination. No question is certified.

“Michel Beaudry”

---

Judge



## APPENDIX

### *Immigration and Refugee Act, S.C. 2001, c. 27*

12. (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.

14. (1) The regulations may provide for any matter relating to the application of this Division, and may define, for the purposes of this Act, the terms used in this Division.

(2) The regulations may prescribe, and govern any matter relating to, classes of permanent residents or foreign nationals, including the classes referred to in section 12, and may include provisions respecting

(a) selection criteria, the weight, if any, to be given to all or some of those criteria, the procedures to be followed in evaluating all or some of those criteria and the circumstances in which an Officer may substitute for those criteria their evaluation of the likelihood of a foreign national's ability to become economically established in Canada;

12. (2) La sélection des étrangers de la catégorie « immigration économique » se fait en fonction de leur capacité à réussir leur établissement économique au Canada.

14. (1) Les règlements régissent l'application de la présente section et définissent, pour l'application de la présente loi, les termes qui y sont employés.

(2) Ils établissent et régissent les catégories de résidents permanents ou d'étrangers, dont celles visées à l'article 12, et portent notamment sur :

a) les critères applicables aux diverses catégories, et les méthodes ou, le cas échéant, les grilles d'appréciation et de pondération de tout ou partie de ces critères, ainsi que les cas où l'agent peut substituer aux critères son appréciation de la capacité de l'étranger à réussir son établissement économique au Canada;

### *Immigration and Refugee Protection Regulations, SOR/2002-227*

73. The following definitions apply in this Division, other than section 87.1.

“educational credential” means any diploma, degree or trade or apprenticeship credential issued on the completion of a program of study or training at an educational or training institution recognized by the authorities responsible for registering, accrediting, supervising and regulating such institutions in the country of issue.

73. Les définitions qui suivent s'appliquent à la présente section, à l'exception de l'article 87.1.

« diplôme » Tout diplôme, certificat de compétence ou certificat d'apprentissage obtenu conséquemment à la réussite d'un programme d'études ou d'un cours de formation offert par un établissement d'enseignement ou de formation reconnu par les autorités chargées d'enregistrer, d'accréditer, de superviser et de réglementer les établissements d'enseignement

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.

Skilled workers

(2) A foreign national is a skilled worker if  
(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;

(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

(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.

Minimal requirements

(3) If the foreign national fails to meet the requirements of subsection (2), the application

dans le pays de délivrance de ce diplôme ou certificat.

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.  
Qualité

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

Exigences

(3) Si l'étranger ne satisfait pas aux exigences prévues au paragraphe (2), l'agent met fin à

for a permanent resident visa shall be refused and no further assessment is required.  
SOR/2004-167, ss. 27, 80(F).

l'examen de la demande de visa de résident permanent et la refuse.  
DORS/2004-167, art. 27 et 80(F).

#### Selection criteria

#### Critères de sélection

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,
- (ii) proficiency in the official languages of Canada, in accordance with section 79,
- (iii) experience, in accordance with section 80,
- (iv) age, in accordance with section 81,
- (v) arranged employment, in accordance with section 82, and
- (vi) adaptability, in accordance with section 83; and

- (i) les études, aux termes de l'article 78,
- (ii) la compétence dans les langues officielles du Canada, aux termes de l'article 79,
- (iii) l'expérience, aux termes de l'article 80,
- (iv) l'âge, aux termes de l'article 81,
- (v) l'exercice d'un emploi réservé, aux termes de l'article 82,
- (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
- (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).  
Number of points

- (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) 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).  
Nombre de points

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

a) le nombre de demandes, au titre de la catégorie des 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.  
Circumstances for Officer's substituted evaluation

c) les perspectives d'établissement des travailleurs qualifiés au Canada, compte tenu des facteurs économiques et autres facteurs pertinents.  
Substitution de l'appréciation de l'agent à la grille

(3) Whether or not the skilled worker has been awarded the minimum number of required points referred to in subsection (2), an Officer may substitute for the criteria set out in paragraph (1)(a) their evaluation of the likelihood of the ability of the skilled worker to become economically established in Canada if the number of points awarded is not a sufficient indicator of whether the skilled worker may become economically established in Canada.

(3) Si le nombre de points obtenu par un travailleur qualifié — que celui-ci obtienne ou non le nombre minimum de points visé au paragraphe (2) — ne reflète pas l'aptitude de ce travailleur qualifié à réussir son établissement économique au Canada, l'agent peut substituer son appréciation aux critères prévus à l'alinéa (1)a).

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

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

Education (25 points)

Études (25 points)

(2) A maximum of 25 points shall be awarded for a skilled worker's education as follows:

(2) Un maximum de 25 points d'appréciation sont attribués pour les études du travailleur qualifié selon la grille suivante :

(a) 5 points for a secondary school educational credential;

a) 5 points, s'il a obtenu un diplôme d'études secondaires;

(b) 12 points for a one-year post-secondary educational credential, other than a university educational credential, and a total of at least 12

b) 12 points, s'il a obtenu un diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant une année d'études

years of completed full-time or full-time equivalent studies;

(c) 15 points for

(i) a one-year post-secondary educational credential, other than a university educational credential, and a total of at least 13 years of completed full-time or full-time equivalent studies, or

(ii) a one-year university educational credential at the bachelor's level and a total of at least 13 years of completed full-time or full-time equivalent studies;

(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 full-time 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 full-time or full-time equivalent studies, or

(ii) two or more university educational credentials at the bachelor's level and a total of at least 15 years of completed full-time or full-time equivalent studies; and

et a accumulé un total d'au moins douze années d'études à temps plein complètes ou l'équivalent temps plein;

c) 15 points, si, selon le cas :

(i) il a obtenu un diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant une année d'études et a accumulé un total de treize années d'études à temps plein complètes ou l'équivalent temps plein,

(ii) il a obtenu un diplôme universitaire de premier cycle nécessitant une année d'études et a accumulé un total d'au moins treize années d'études à temps plein complètes ou l'équivalent temps plein;

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

(ii) il a obtenu au moins deux diplômes universitaires de premier cycle et a accumulé un total d'au moins quinze années d'études à temps plein complètes ou l'équivalent temps plein;

(f) 25 points for a university educational credential at the master's or doctoral level and a total of at least 17 years of completed full-time or full-time equivalent studies.

Multiple educational achievements

(3) For the purposes of subsection (2), points

(a) shall not be awarded cumulatively on the basis of more than one single educational credential; and

(b) shall be awarded

(i) for the purposes of paragraphs (2)(a) to (d), subparagraph (2)(e)(i) and paragraph (2)(f), on the basis of the single educational credential that results in the highest number of points, and

(ii) for the purposes of subparagraph (2)(e)(ii), on the basis of the combined educational credentials referred to in that paragraph.

Special circumstances

(4) For the purposes of subsection (2), if a skilled worker has an educational credential referred to in paragraph (2)(b), subparagraph (2)(c)(i) or (ii), (d)(i) or (ii) or (e)(i) or (ii) or paragraph (2)(f), but not the total number of years of full-time or full-time equivalent studies required by that paragraph or subparagraph, the skilled worker shall be awarded the same number of points as the number of years of completed full-time or full-time equivalent studies set out in the paragraph or subparagraph.

f) 25 points, s'il a obtenu un diplôme universitaire de deuxième ou de troisième cycle et a accumulé un total d'au moins dix-sept années d'études à temps plein complètes ou l'équivalent temps plein.

Résultats

(3) Pour l'application du paragraphe (2), les points sont accumulés de la façon suivante :

a) ils ne peuvent être additionnés les uns aux autres du fait que le travailleur qualifié possède plus d'un diplôme;

b) ils sont attribués :

(i) pour l'application des alinéas (2)a) à d), du sous-alinéa (2)e)(i) et de l'alinéa (2)f), en fonction du diplôme qui procure le plus de points selon la grille,

(ii) pour l'application du sous-alinéa (2)e)(ii), en fonction de l'ensemble des diplômes visés à ce sous-alinéa.

Circonstances spéciales

(4) Pour l'application du paragraphe (2), si le travailleur qualifié est titulaire d'un diplôme visé à l'un des alinéas (2)b), des sous-alinéas (2)c)(i) et (ii), (2)d)(i) et (ii) et (2)e)(i) et (ii) ou à l'alinéa (2)f) mais n'a pas accumulé le nombre d'années d'études à temps plein ou l'équivalent temps plein exigé par l'un de ces alinéas ou sous-alinéas, il obtient le nombre de points correspondant au nombre d'années d'études à temps plein — ou leur équivalent temps plein — mentionné dans ces dispositions.

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-1009-09

**STYLE OF CAUSE:** **LYNN MEPHAM**  
**and**  
**THE MINISTER OF CITIZENSHIP**  
**AND IMMIGRATION**

**PLACE OF HEARING:** Montreal, Quebec

**DATE OF HEARING:** November 17, 2009

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

**DATED:** November 19, 2009

**APPEARANCES:**

Vonnie E. Rochester FOR APPLICANT

Evan Lyosis FOR RESPONDENT

**SOLICITORS OF RECORD:**

Vonnie E. Rochester FOR APPLICANT

John H. Sims, Q.C. FOR RESPONDENT  
Deputy Attorney General of Canada  
Montreal, Quebec