

Federal Court



Cour fédérale

**Date: 20151110**

**Docket: IMM-1847-15**

**Citation: 2015 FC 1263**

**Toronto, Ontario, November 10, 2015**

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

**BETWEEN:**

**SADAF ZAHID**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Ms. Zahid's application for a permanent resident visa was denied. This is the judicial review of the visa officer's decision.

[2] Ms. Zahid, who is a teacher in Pakistan, was nominated under the Saskatchewan Immigrant Nominee Program in its Family Stream. Her intention is to immigrate to Saskatchewan together with her husband and their three minor children. The visa officer was not

satisfied that she could economically establish herself as required by the Regulations. More particularly, he was of the view that she could not succeed in her intended profession of school teacher as her knowledge of the English language was insufficient. Furthermore, she provided no evidence that she had the skill sets to successfully perform other employment.

[3] Section 95 of the *Constitution Act, 1867* provides that immigration is a shared responsibility between the federal and provincial governments. However, the federal government has the last word.

[4] Ms. Zahid was nominated pursuant to the *Canada-Saskatchewan Immigration Agreement, 2005*. Among other things, the agreement and its schedule relate to the composition of immigrants to Saskatchewan, call for cooperation in achieving family reunification (both Ms. Zahid and her husband have family in Saskatchewan and other provinces) and provide Saskatchewan with the opportunity to address its particular social, demographic, economic development and labour market needs.

[5] As a provincial nominee, her application fell within the Federal Skilled Worker Class of the *Immigration and Refugee Protection Regulations*. Section 87 thereof provides that this class is "... a class of persons who may become permanent residents on the basis of their ability to become economically established in Canada." Section 87(3) of the Regulations goes on to provide that the certificate, in this case the one issued by Saskatchewan, may not be a sufficient indicator of economic establishment. The visa officer, with the concurrence of another visa officer, may substitute his or her own evaluation after consulting with the provincial government

in question. The visa officer expressed his concerns in a Fairness Letter to Ms. Zahid, and received a very detailed reply. He also consulted with the Saskatchewan Government which maintained it wanted to welcome Ms. Zahid and her family into Saskatchewan.

[6] This is not a case in which the Saskatchewan Government specifically stated there was an opening for teachers and that Ms. Zahid was nominated in order to help fill that void. Although she was required to provide particulars of her education and background, and knowledge of at least one of our two official languages, she was not called upon to specifically state she intended to become a teacher, and so she was not nominated on that basis. However, it is reasonable to infer, given her background in Pakistan as a teacher, that this profession would be her first choice.

[7] It was only after she was nominated, when she filled in the federal application forms, that she gave her intended profession as that of teacher.

[8] The visa officer reviewed Ms. Zahid's English language skills as reported under the *International English Language Testing System* and determined, quite reasonably in my view, that she lacked the language skills to teach in Saskatchewan. He shared that concern with Ms. Zahid.

[9] Saskatchewan accepted that she might never make it as a teacher because of her language skills, but they were certainly adequate enough to allow her to perform other jobs. She was highly educated and there was a labour shortage in Saskatchewan at the time.

[10] In Ms. Zahid's reply to the Fairness Letter, while hopeful that she could become a teacher, she accepted that she might only be able to be employed as a teacher's assistant or indeed in other areas, such as the food and beverage industry. She also emphasized that her husband had a job offer in hand, through his brother. Her husband could not apply himself under the program as he was beyond the cut off age of 49.

[11] Unfortunately, neither the Act nor the Regulations nor the various relevant operation manuals explain what it means to be "economically established". There is no reference to the cost of living generally, to the cost of housing, and income thresholds. These matters are apparently left to the expertise of the visa officer.

[12] It is clear that the visa officer must take into account such matters as age, education, qualifications, past employment experience, the province's views and the applicant's own initiative (*Wai v Canada (Minister of Citizenship and Immigration)*, 2009 FC 780). Although the prime focus is obviously on the applicant, other matters should be taken into account such as an accompanying spouse and dependent children. The standard of review is that of reasonableness (*Singh Sran v Canada (Minister of Citizenship and Immigration)*, 2012 FC 791).

[13] Although thoughtful, I find the visa officer's decision unreasonable in two respects.

- a. He found that, although Ms. Zahid was highly educated, it did not follow that she could establish herself in a lower level job.
- b. He gave short shrift to her husband's employment opportunities.

[14] Ms. Zahid has referred to information from Human Resources and Skills Development Canada's various unit groups, such as food counter attendants, kitchen helpers and related support occupations, retail sales persons and elementary and secondary school teacher assistants. The main duties in the first would be to take customer orders, prepare food, make coffee, stock refrigerators, peel potatoes and washing dishes. It is said that usually on the job training is provided. There is absolutely no factual basis to suggest that Ms. Zahid would be unable to carry out these tasks, or to act as a retail sales person or as a teacher's assistant, supervising students at lunch and at recess, for example. This is not a case like *Abid v Canada (Citizenship and Immigration)*, 2015 FC 1160, in which it was not unreasonable for the visa officer to conclude that at the salary that Ms. Abid, a single mother, was going to be paid she would be unable to be sufficiently economically established so as to support herself and her two minor children.

[15] The other error relates to the husband. Manual OP-7B refers to overaged dependents. The visa officer considered that Ms. Zahid's husband was not an overaged dependent as the section only referred to children. Although the text does refer to children who do not meet the definition of "dependent child", the heading is titled "Overaged Dependents".

[16] However, in *Singh Sran*, above, after noting that department policy documents such as operation manuals are not law, but nevertheless may be of great assistance to the Court in determining the reasonableness of the decision, Mr. Justice Mosley then applied the remarks of the manual with respect to overage dependents to a spouse. He said at paragraphs 18 and 19:

[18] Section 7.7 of the Overseas Processing Manual OP 7b states that overaged dependants named in a provincial nomination certificate should, on a case by case basis, be carefully evaluated in their own right. The officer should refuse the application if they

have strong reason to believe that the applicant is very unlikely to become economically established even with the assistance of their other family members. It is consistent with the legislation, the policy states, to approve cases where there is some likelihood of successful settlement within a reasonable time.

[19] In the present case, it is clear from the reasons that the officer did not evaluate the spouse in her own right but simply as a relevant factor in considering her husband's settlement prospects. The officer's reasons are clear that he only considered the spouse's credentials as "relevant". The fact that she was not interviewed is another indication that her potential contribution was discounted. This was problematic in two ways: first it was contrary to the AINP Family Stream and, therefore, the ability of Alberta to determine its needs in economic immigration; and, secondly, it did not respect Citizenship and Immigration Canada's own policy to examine overage dependents in their own right.

[17] Husbands and wives are required to mutually support each other. No matter how much deference a court should accord a visa officer in interpreting an operations manual, I am following Mr. Justice Mosley, not the visa officer, who did not even refer to the *Singh Sran* case.

**JUDGMENT**

**FOR REASONS GIVEN;**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review of the decision of the visa officer of the High Commission of Canada in London, United Kingdom, dated March 13, 2015, is allowed.
2. The matter is remitted to another visa officer for redetermination.
3. There is no serious question of general importance to certify.

“Sean Harrington”

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Judge

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

**DOCKET:** IMM-1847-15

**STYLE OF CAUSE:** SADAF ZAHID v MCI

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