Date: 20080402

Docket: IMM-1743-07

Citation: 2008 FC 419

Vancouver, British Columbia, April 2, 2008

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

MUNIRUL ALAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Munirul Alam (the "Applicant") seeks judicial review of the decision of Stella Sweetman-Griffin, First Secretary at the High Commission of Canada in London, England. In her decision, dated February 14, 2007, the Applicant's application for permanent residence, as a member of the federal skilled worker class, was rejected. The Applicant challenges the decision on the grounds that it was made in the absence of procedural fairness.

[2] The Applicant submitted his application for permanent residence in July 2004. In his letter dated July 11, 2004, the Applicant provided an assessment of his qualifications, including an assessment of his language abilities.

[3] On September 19, 2006, an entry was made in the Computer Assisted Immigration Processing System ("CAIPS") notes as follows:

> PA requested to update all docs. PA claims proficiency in both English and French. I am not satisfied that PA has proficiency claimed, IELTS and TEF required.

[4] By letter dated January 10, 2007, the Applicant advised that if the IELTS certificate is required, it "will be procured end of this month". According to the CAIPS notes entry for January 11, 2007, the Applicant was advised by email that the failure to provide the results of the IELTS English language tests would likely result in the award of zero units for English proficiency. The writer also pointed out that the English language test results were requested in September 2006 and the Applicant had been advised, at that time, that the assessment of his application would proceed after 90 days.

[5] The Applicant sent an email on January 16, 2007, advising that he hoped to provide the IELTS test results in April 2007.

[6] On February 14, 2007, the Applicant's application for permanent residence was rejected on the grounds that he had failed to obtain sufficient points to quality for immigration to Canada. The Applicant was awarded a total of 62 points with 2 points awarded for "official languages proficiencies".

[7] The CAIPS notes entered on February 14, 2007 show that the decision-maker recorded the following:

> I am not satisfied that PA [the Applicant] has any proficiency in English for which points can be assessed. PA indicated high proficiency in all competencies, but he has not lived/worked/studied in a country where English is the first official language. He claims basic French proficiency in two competencies. As we did not request TEF, I will assess these points-2.

[8] The Applicant now argues that the decision-maker committed a breach of procedural fairness by failure to extend the time within which he could submit the IELTS test results. He also argues that the High Commission breached the duty of fairness for not providing a clearer answer to his request that a decision on his application be deferred until he undertook the IELTS test in April 2007.

[9] The issue of a breach of procedural fairness is reviewable upon the standard of correctness; see *Ha v. Canada (Minister of Citizenship and Immigration)*, [2004] 3 F.C.R. 195 (F.C.A.). Did the High Commission commit a breach of procedural fairness in the manner in which the decision of February 14, 2007 was made? In my opinion, the question must be answered in the negative,

having regard to the statutory framework set out in the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act") and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "Regulations").

[10] Subsection 71(1) of the Act imposes the burden upon an applicant to show that he or she meets the requirements for admission into Canada as an immigrant. Section 75 of the Regulations describes the skilled worker class. Subsection 76(1) of the Regulations sets out the applicable selection criteria, including the assessment of language proficiency in accordance with section 79 of the Regulations. Subsection 79(1) of the Regulations provides as follows:

79. (1) A skilled worker must specify in their application for a permanent resident visa which of English or French is to be considered their first official language in Canada and which is to be considered their second official language in Canada and must (a) have their proficiency in those languages assessed by an organization or institution designated under subsection (3); or (b) provide other evidence in writing of their proficiency in those languages.	79. (1) Le travailleur qualifié indique dans sa demande de visa de résident permanent la langue — français ou anglais — qui doit être considérée comme sa première langue officielle au Canada et celle qui doit être considérée comme sa deuxième langue officielle au Canada et : a) soit fait évaluer ses compétences dans ces langues par une institution ou organisation désignée aux termes du paragraphe (3); b) soit fournit une autre preuve écrite de sa compétence dans ces langues.

[11] The Applicant, in this case, purported to conduct a self-assessment of his English language proficiency, on the basis of his multi-year employment with a multinational company. He did not undertake testing pursuant to paragraph 79(1)(a) of the Regulations. The Visa Officer did not share the Applicant's view of his English language proficiency. The assessment of the Visa Officer was reasonably open to him, having regard to the Regulations.

[12] In my opinion, the Visa Officer was under no legal obligation to provide a further extension of time to allow the Applicant to take the IELTS testing in light of the advice given in September 2006 that IELTS tests were required within 90 days. Although the Visa Officer could have granted a further extension, he was not obliged to do so and no breach of procedural fairness resulted from the decision to proceed with assessing the Applicant's application in January-February 2007.

[13] In the result, this application for judicial review is dismissed. There is no question for certification arising.

JUDGMENT

This application for judicial review is dismissed. There is no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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