

Date: 20080502

Docket: IMM-2929-07

Citation: 2008 FC 545

Ottawa, Ontario, May 2, 2008

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

SHAILESH DAHYABHAI PATEL

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 Protection Act*, S.C. 2001, c. 27 (the Act), of the decision of Immigration Officer R. Wiseman, (the Officer) dated June 21, 2007, refusing the applicant's application for permanent residence in Canada under the skilled workers class, on the grounds that the applicant did not obtain the minimum points required under either the *Immigration Regulations, 1978*, SOR/78-172, or under the *Immigration and Refugee Protection Regulations, SOR/2002-227* (Regulations).

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

[3] The applicant is a citizen of India. He was born on March 3, 1954. He made an application for permanent residence in Canada under the skilled worker class in July 2001. The applicant applied to be assessed in the category of Investment Analyst NOC – 1112. His application was also assessed based upon the occupation of Investment Dealer NOC – 1113.

[4] The record demonstrates that the applicant worked as a Stock Dealer between February 1994 and February 1997 for Pravin Ratilal Share and Stock Brokers, and subsequently became employed as an Investment Advisor in April 1997 with Amishree Stock Broking Pvt. Ltd. The applicant obtained a Bachelor of Commerce degree in Advanced Accounting and Auditing from C.U. Shah Commerce College in 1975. Prior to 1994, he had worked as an accountant for approximately 20 years.

[5] The applicant described the following duties he had at Amishree as an Investment Advisor: reviewing investment information, advising clients on how and where to invest, collecting investment information about companies, stocks and bonds, reading daily stock and bond reports, trading volumes, financial periodicals, securities manuals and other publications, monitoring funds, stocks and bonds, providing investment recommendations, verifying commissions, charges and guarantees, making payments for securities, maintaining account records, and watching market trends of foreign and emerging markets.

[6] The Officer refused the applicant's application for permanent residence as a member of the skilled worker class. She assessed his claim under both the *Immigration Regulations, 1978*, and the current Regulations.

[7] In her assessment under the *Immigration Regulations, 1978*, the Officer applied the criteria pertaining to immigrants other than members of the family class, Convention refugees seeking settlement, provincial nominees, and applicants intending to reside in the Province of Quebec. Pursuant to paragraph 8(1)(a) of the *Immigration Regulations, 1978*, the criteria used for assessment of the applicant's ability to become economically established in Canada were education, the education and training factor, experience, the occupational factor, arranged employment or designated occupation, the demographic factor, age, knowledge of the English and French languages, and personal suitability.

[8] Following these criteria, the Officer awarded the applicant 49 units under NOC Code 1113.1 (Investment Dealer), and 55 units under NOC Code 1112 (Investment Analyst), both of which fell short of the 65 units required. The Officer further noted that the applicant must have received at least one unit for the Occupational Factor, unless he had arranged employment in Canada. The applicant did not have arranged employment, nor did he receive any units under the occupational factor, having failed to satisfy the Officer that he had performed a substantial number of the main duties of an Investment Analyst – NOC 1112, including the essential ones. The Officer attributed no units under the Occupational Factor as an Investment Dealer – NOC 1113.1, because there was no occupational demand for the position.

[9] In her assessment under the current Regulations, the Officer assessed the applicant under the federal skilled worker class on the basis of the criteria set out in subsection 76(1) of the Regulations, in order to determine whether the applicant could become economically established in Canada. The criteria assessed are age, education, proficiency in the official languages of Canada, experience, arranged employment and adaptability.

[10] The Officer awarded the applicant 45 points for the occupation of Investment Analyst – NOC 1112, and 66 points for the occupation of Investment Dealer – NOC 1113. She noted that the applicant did not obtain the 67 points required for a permanent resident visa, and was therefore not satisfied that he would become economically established in Canada.

[11] The Officer concluded her letter by stating that she was not satisfied that the applicant met the requirements of the Act and Regulations, and refused the application.

[12] The letter is supported by Computer Assisted Immigration Processing System (CAIPS) notes. On March 16, 2005 an important note was entered into the system stating the following:

Will attempt to verify PI s most recent employer reference. If the reference appears genuine will give benefit of the doubt and give full points for experience as Investment Analyst, 1112.0. This would cause PI to score 66 on paper-screen. I would then presume that PI would earn a least an average for Pers. Sui., of 5. This would produce a selection score of 71 so I could then waive int.

[13] The Officer writes a letter dated March 17, 2005 to the applicant (procedural fairness letter re: apparent false reference) and receives a reply from him (April 28, 2005) that provides full details of his employment. Following the receipt of this letter, the Officer decides to interview the applicant.

[14] In the course of his application, the applicant has provided seven reference letters that set out the duties that he had performed over the last 27 years in his occupation in various investment and accounting firms.

[15] The Court does not have the benefit of an affidavit signed by the Officer and is not in a position to know if the reference letters were rejected or accepted by the Officer.

[16] In view of the March 16, 2005 note, the Court has no other alternative but to remit the matter to a different Visa Officer for redetermination.

[17] The parties did not submit questions for certification and none arise.

JUDGMENT

THIS COURT ORDERS that the application for judicial review is allowed. The matter is remitted to a different visa officer for redetermination. No question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-2929-07

STYLE OF CAUSE: **SHAILESH DAHYABHAI PATEL
and THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 24, 2008

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

DATED: May 2, 2008

APPEARANCES:

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