

**Date: 20081008**

**Docket: IMM-1210-08**

**Citation: 2008 FC 1144**

**Ottawa, Ontario, October 8, 2008**

**PRESENT: The Honourable Orville Frenette**

**BETWEEN:**

**PICKTON ALFANSO EARL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of a decision of a Visa officer dated January 21, 2008, wherein the Officer found that the Applicant did not meet the requirement for residence as a skilled worker and declined to substitute her own evaluation of the Applicant's ability to become economically established in Canada.

**BACKGROUND**

[2] The Applicant, his wife and son are all citizens of Jamaica. They have been in Canada since 2001 on temporary resident visas. The Applicant is a pastor for a congregation in Scarborough, for

which he does not require a work permit by the operation of paragraph 186(1) of the *Immigration and Refugee Protection Regulations*.

[3] The Applicant sought permanent resident status as a skilled worker in April 2006. He requested in submissions that his wife's education be considered in assessing the points to be awarded. In February 2008, he further requested that a substituted evaluation pursuant to subsection 76(3) of the *Regulations*.

### **DECISION**

[4] The Officer noted that the Applicant's wife had a Diploma of Biblical Studies from International School of Ministry and an Associate of Biblical studies from Vision International University. The Officer explained that neither met the definition of "educational credential" set out in section 73 of the *Regulations* and awarded no points for them in the adaptability factor in section 83.

[5] The Officer then addressed the substituted evaluation and noted that the evidence about this employment as pastor, including the appropriate name of the church at which he claims to be a preacher, was unclear. The Officer therefore declined to make a positive substitution of the Applicant's ability to establish himself economically.

## **STANDARD OF REVIEW**

[6] Given that the Officer's decision for a substitute consideration of the Applicant's likelihood of successful economic establishment is discretionary, considerable deference is due and the decision will only set aside if it falls outside the range of reasonably acceptable outcomes (*Dunsmuir v. New Brunswick*, (2008) 1 S.C.R. 190).

## **Issue A – Applicant's Wife's education**

[7] The Applicant submits that his wife obtained an associate Degree of Biblical studies from Vision International University and a Diploma of Biblical Studies from the International School of Ministry.

[8] The Applicant alleges the Officer committed an error in this respect because he did not complete a thorough research on that education before concluding that there was no evidence these institutions were accredited.

[9] The Respondent pleads that the officer made an appropriate search to verify these institutions in official websites which are generally recognized as accurate.

## **ANALYSIS**

[10] The evidence shows that the officer used verifiable and credible government sources which are regularly used to verify whether educational institutions are accredited by the country where the documents were issued.

[11] In particular, the officer performed a search of the above institutions using the websites “U.S. Department of Education Database of accredited Post secondary Institutions and Programs” and “Service Ontario Website”, and Vision International University’s own website ([www.vision.edu](http://www.vision.edu)).

[12] The above institutions did not appear on the searches except in the Vision International University’s website.

[13] The last institution is not accredited by an accrediting agency recognized by the U.S.A. Department of Education or the council for Higher Education accreditations.

[14] There was no evidence adduced by the Applicant to contradict the above search results. It is possible to argue that “newspapers and materials from sources as the U.A.A. Department of State Reports” are not necessarily “best evidence” but they can be considered and their reliability and weight decided by a court (*Beloya v. Canada (MCI)* 2005 FC 1092 at para. 16).

[15] However, such documentation, even if challenged, cannot simply be ignored unless it has no reliability or probative value.

[16] In the present case, the officer’s verification through official and recognized websites cannot be ignored. The officer’s assessment is based on this verification that the above educational

institutions are not accredited and therefore cannot satisfy under Rule 73 of IRP reputations, being uncontradicted are therefore not challenged.

[17] The officer's decision not to award any points for the education credentials of the spouse falls within the range of acceptable or reasonable outcomes from the evidence (*Dunsmuir, supra*).

### **Issue B – Substituted evaluation methodology “section 76(3) of the Regulations”**

#### *Legislation*

#### *Circumstances for officer's substituted evaluation*

*(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.*

#### *Substitution de l'appréciation de l'agent à la grille*

*(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).*

[18] The Applicant submits that the officer failed to address the evidence presented in the permanent resident application and in the request for a substituted evaluation to complete the number of points lacking. An applicant can invoke a substitutional education of his or her score less than the required 67 points, if there is the likelihood of the ability of the skilled whether to become

economically established in Canada, despite the point shortage. The Applicant argues that the officer failed to consider the evidence on this matter and therefore made a reviewable error (*Lam v. Canada (MCI)* (1998), F.T.R. 316 No. 1239 and *Yan v. Canada (MCI)* (2003) F.C.J. No. 655 at para. 24).

[19] The Respondent answers that the officer did consider the evidence, particularly the Applicant's experience as a pastor in Canada.

[20] She concluded that his employment was not an "accurate reflection of his ability to establish economically and therefore did not recommend a positive substitution of education" (CAIPS' notes, Applicant's Record, pp. 1042).

[21] The decision falls well within the exercise of the officer's discretion and follows *Dunsmuir's* direction, being one of the reasonable outcomes from the facts; therefore it is not a valid ground for justifying a judicial review.

## **DISCUSSION**

[22] As mentioned before, the officer used verifiable and credible government sources which are regularly used to assess whether institutions are accredited by the country where the documents are issued.

[23] In this technological era, information found on official websites is routinely invoked by government, commerce, industry and by educational institutions. Therefore, Visa officers or officials of the Immigration Division are justified to use these facilities otherwise the processing of

claims would be unduly delayed. Evidently, this information could be challenged however, if unchallenged, it can be relied upon.

[24] In the instant case, the officer's search was acceptable, remains unchallenged and the exercise of her discretion in considering the evidence to verify the validity and authenticity of the establishment diplomas and for the purpose of assessing whether to substitute the evolution in the points actually awarded, is justifiable.

### **CONCLUSION**

[25] In summary, the officer's decision falls within the range of possible outcomes emanating from the evidence and must be respected according to *Dunsmuir (supra)*.

[26] Therefore the application must be dismissed.

**JUDGMENT**

**THIS COURT ORDERS that**

1. The application for judicial review is dismissed.
2. No question was submitted to be certified.

"Orville Frenette"  
\_\_\_\_\_  
Deputy Judge



**SOLICITORS OF RECORD**

**DOCKET:** IMM-1210-08

**STYLE OF CAUSE:** **PICKTON ALFANSO EARL v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**PLACE OF HEARING:** Toronto, Ontario

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