

Date: 20081014

Docket: IMM-895-08

Citation: 2008 FC 1157

Ottawa, Ontario, October 14, 2008

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

SHAHROKH MOHAMMADI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Shahrokh Mohammadi, originally from Iran, now lives in Indonesia where he works for the United Nations Development Program. In 2004, Mr. Mohammadi applied to become a permanent resident of Canada under the federal skilled workers program. An immigration officer in Singapore reviewed his application and assessed him 64 points on the applicable scale, three points short of the 67 he needed to succeed. Mr. Mohammadi argues that the officer erred in her assessment of his educational credits by granting him only 22 points in that category when he deserved 25. Had the officer assessed him correctly, he argues, he would have obtained the three extra points that he needed to qualify for permanent residence. Mr. Mohammadi asks me to overturn the officer's decision and order that his application be re-assessed by another officer.

[2] I agree with Mr. Mohammadi that the officer erred and will, therefore, grant this application for judicial review.

[3] The sole question to be decided is whether the officer's assessment of Mr. Mohammadi's education credits was unreasonable.

I. Factual Background

[4] Mr. Mohammadi attended the American University of Beirut after completing twelve years of primary and secondary education. He was enrolled at AUB for a total of six years from 1967 to 1973. He started out in natural sciences then switched to political science which, he says, explains why it took longer than the usual four years to complete his BA. Later, in 1985, he obtained an MA from New York University after pursuing five years of part time studies while working for the United Nations.

[5] To obtain 25 points for education, Mr. Mohammadi had to show that he had obtained an MA and had completed at least 17 years of full-time study (*Immigration and Refugee Protection Regulations*, SOR/2002-227, s. 78(2); see Annex). The officer accepted that Mr. Mohammadi had spent 12 years in primary and secondary school and granted him an additional year for his MA. However, the officer only credited Mr. Mohammadi for two of the six years that he had spent at AUB. That left him two years short of the 17 he needed to qualify for 25 education points.

[6] The officer's notes indicate that, on reviewing Mr. Mohammadi's AUB transcript, she concluded that some of the courses he had followed were not part of the BA program, but were credits that he needed to acquire before he could gain entry to it. She felt that "if his primary and secondary studies were not up to level for him to enter directly to a regular BA program in the university, this is not to be counted as extra years."

II. Was the Officer's Decision Reasonable?

[7] The Minister argues that the officer's conclusion was reasonable because, looking carefully at Mr. Mohammadi's AUB transcript, it is clear that he had to repeat some of the courses that he took during his first two years. He should not be able to obtain credit for courses he took a second or third time.

[8] True, it appears that Mr. Mohammadi repeated a total of four courses: Physics 101, Math 201, Chemistry 218 and Chemistry 219. In fact, he took Math 201 a total of three times. In all cases where he repeated a course, he was able to elevate his grades from Ds to Cs or higher.

[9] I see two problems with the Minister's submission on this point. First, it is not at all clear that the officer was concerned about courses Mr. Mohammadi had repeated. Rather, her notes suggest that she thought many of the courses Mr. Mohammadi took were not university-level courses at all. There is nothing in the record to support that conclusion. The officer noted that some

of the courses were labeled on the transcript as “special” or “junior”, but the former were courses taken during the summer and the latter were second-year courses. There appears to be no basis for excluding them. Second, even if the officer felt that the repeated courses should not be counted as post-secondary credits, she should still have granted him more than a total of two years. She only counted the two years of upper-year courses he had taken after switching from natural sciences to political science.

[10] In my view, therefore, the officer’s conclusion was unreasonable as it was out of keeping with the evidence before her.

III. Conclusion

[11] The officer’s basis for denying Mr. Mohammadi 25 education points is not supported by the evidence. Therefore, I will grant this application for judicial review and order that another officer re-assess his application. Given that it is only the education credits that are in issue, the re-assessment should be confined to that part of his application.

[12] Neither party proposed a question for certification, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT IS that :

1. The application for judicial review is allowed. The matter is referred back to another officer for a re-assessment of the education credits that are in issue;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annexe "A"

*Immigration and Refugee Protection Regulations, SOR/2002-227**Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227*

Education (25 points)

Études (25 points)

78(2) A maximum of 25 points shall be awarded for a skilled worker's education as follows:

- (a) 5 points for a secondary school educational credential;
- (b) 12 points for a one-year post-secondary educational credential, other than a university educational credential, and a total of at least 12 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,

78(2) Un maximum de 25 points d'appréciation sont attribués pour les études du travailleur qualifié selon la grille suivante :

- a) 5 points, s'il a obtenu un diplôme d'études secondaires;
- b) 12 points, s'il a obtenu un diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant une année d'études 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;

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

(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.

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, 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.

FEDERAL COURT
SOLICITORS OF RECORD

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AND JUDGMENT:** O'REILLY J.

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