

Date: 20090123

Docket: IMM-792-08

Citation: 2009 FC 68

Ottawa, Ontario, January 23, 2009

Present: The Honourable Mr. Justice Shore

BETWEEN:

BARAR HANIF

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary

[1] Evidence is not a toy to be manipulated any which way. Its meaning should be clear, precise and unambiguous. Examining a piece of evidence from all angles reveals its inner weakness. Like a transparent crystal, it will cast light, as well as shadows, when observed over time. Therefore, with the passage of time, evidence in and of itself should not turn into something it never was to begin with; it should not be a toy to be manipulated one way or another, depending on the parties involved, to become, ultimately, meaningless.

[2] [9] I do not find that the officer erred in her assessment of the applicant's education. The applicant provided student transcripts from the Yorkdale Adult Learning Centre attesting to the accounting courses she had taken. However, none of these documents indicate that the applicant was awarded a credential for her studies. Thus, I find that the officer reasonably evaluated the evidence presented and awarded the applicant a sufficient number of points for her education.

(*Cela v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1092, 133 A.C.W.S. (3d) 166).

II. Judicial proceeding

[3] This is an application for judicial review of the decision dated January 17, 2008, by a visa officer of the Canadian High Commission in Islamabad, Pakistan, rejecting the applicant's application for permanent residence under the skilled workers class. The visa officer rejected the application on the basis that the applicant failed to obtain the 67 points required for the issuance of a visa under the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations).

III. Facts

[4] The applicant, Barar Hanif, is a political science specialist in Pakistan. He is married to Samina Choudhry, and they have two children. On January 10, 2002, he applied to the Canadian High Commission in Islamabad, Pakistan, for permanent residency under the skilled workers class.

[5] The (federal) skilled worker class is evaluated on the basis of the minimal requirements set out in subsection 75(2) and the criteria set out in subsection 76(1) of the Regulations. The criteria refer to the following factors: age, education, language proficiency, experience, arranged employment and adaptability. A maximum of 25 points may be awarded for education, and

subsection 78(2) of the Regulations indicates the number of points that may be awarded for specific “educational credentials”.

[6] The applicant’s application for permanent residence was refused in a letter dated January 17, 2008. That decision is the subject of this application.

IV. Decision under review

[7] The visa officer made the following evaluation under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA):

	Points awarded	Maximum
Age	10	10
Education	05	25
Experience	21	21
Arranged employment	00	10
Proficiency in the official languages of Canada: English French	05	24
Adaptability: Educational credentials of the skilled worker’s accompanying spouse or accompanying common-law partner Previous study in Canada Arranged employment		
Close relatives in Canada	05	10
Total	46	100

[8] As Mr. Hanif obtained a total of only 46 points, whereas the minimum number required is 67, the visa officer refused the application for permanent residence because she was not satisfied that he would be able to become economically established in Canada.

[9] Mr. Hanif provided evidence that he had obtained four post-secondary educational credentials, namely, a Bachelor of Arts from the University of the Punjab, a Bachelor of Laws from the University of Karachi, a Master of Arts in political science from the University of the Punjab and a Master of Arts in Punjabi from the University of the Punjab. The visa officer awarded him only 5 points out of 25 points for education. In her refusal letter, she explained that Mr. Hanif's post-secondary studies do not meet the requirements of subsection 78(1) of the Regulations because he is considered to be an external or private candidate.

V. Issues

- [10] (1) Did the visa officer err in determining that she could not consider the applicant's post-secondary credentials because he had completed his studies as an external student?
- (2) Did the visa officer err in failing to consider, in her decision, the education of the applicant's spouse?
- (3) Did the visa officer base her decision on an erroneous finding of fact that she made in a capricious manner, without regard for the material and evidence before her?

VI. Analysis

Standard of review

[11] The visa officer had to determine whether Mr. Hanif met the statutory requirements for obtaining points for his studies: “. . . the Visa Officer was primarily engaged in factual determinations. Determinations of fact by a specialized decision-maker attract deference” (*Hameed v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 271, 165 A.C.W.S. (3d) 516 at paragraph 22). In *Tiwana v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 100, 164 A.C.W.S. (3d) 145 at paragraphs 10-15, Justice Elizabeth Heneghan concluded, following a pragmatic and functional analysis, that the applicable standard of review is patent unreasonableness. Therefore, before *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S. C. R. 190, the appropriate standard of review to apply in the context of a visa officer’s discretionary decision was patent unreasonableness (also: *Hameed*, above, at paragraphs 22-25; (*Kniazeva v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 268, 288 F.T.R. 282 at paragraph 15).

[12] *Dunsmuir*, at paragraphs 57 and 62, states that, if a standard of review has already been determined, the four factors of the former pragmatic and functional analysis should not be applied. In this case, since the visa officer’s decision is one based on an analysis of the facts, the standard of review is reasonableness.

Legislation

[13] Subsection 12(2) of the IRPA governs the selection of permanent residents based on economic reasons:

Economic immigration

12. (2) A foreign national may be selected as a member of the economic class on the basis of their ability to become economically established in Canada.

Immigration économique

12. (2) La sélection des étrangers de la catégorie « immigration économique » se fait en fonction de leur capacité à réussir leur établissement économique au Canada.

[14] Sections 73 to 85 of the Regulations govern the evaluation of applications for permanent residence in the (federal) skilled worker class. The relevant provisions of the Regulations are those relating to the evaluation of studies.

[15] The definition of “educational credential” in the Regulations is as follows:

73. The definitions in this section apply in this Division.

“educational credential” means any diploma, degree or trade or apprenticeship credential issued on the completion of a program of study or training at an educational or training institution recognized by the authorities responsible for registering, accrediting, supervising and regulating such institutions in the country of issue. (*diplôme*)

73. Les définitions qui suivent s’appliquent à la présente section.

« diplôme » Tout diplôme, certificat de compétence ou certificat d’apprentissage obtenu conséquemment à la réussite d’un programme d’études ou d’un cours de formation offert par un établissement d’enseignement ou de formation reconnu par les autorités chargées d’enregistrer, d’accréditer, de superviser et de réglementer les établissements d’enseignement dans le pays de délivrance de ce diplôme ou certificat. (*educational credential*)

[16] The definitions of “full-time” and “full-time equivalent” are as follows:

78. (1) The definitions in this subsection apply in this section.

“full-time” means, in relation to a program of study leading to an educational credential, at least 15 hours of instruction per week during the academic year, including any period of training in the workplace that forms part of the course of instruction. (*temps plein*)

“full-time equivalent” means, in respect of part-time or accelerated studies, the period that would have been required to complete those studies on a full-time basis. (*équivalent temps plein*).

78. (1) Les définitions qui suivent s’appliquent au présent article.

« équivalent temps plein » Par rapport à tel nombre d’années d’études à temps plein, le nombre d’années d’études à temps partiel ou d’études accélérées qui auraient été nécessaires pour compléter des études équivalentes. (*full-time equivalent*)

« temps plein » À l’égard d’un programme d’études qui conduit à l’obtention d’un diplôme, correspond à quinze heures de cours par semaine pendant l’année scolaire, et comprend toute période de formation donnée en milieu de travail et faisant partie du programme (*full-time*).

[17] The selection criteria for studies are at subsection 78(2) of the Regulations:

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

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

university educational credential, and a total of at least 12 years of completed full-time or full-time equivalent studies;

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 for

c) 15 points, si, selon le cas:

(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

(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) 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;

(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 for

d) 20 points, si, selon le cas:

(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

(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

equivalent studies, or	plein complètes ou l'équivalent temps plein,
(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;	(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;
(e) 22 points for	e) 22 points, si, selon le cas:
(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, or	(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) 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	(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 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	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

full-time equivalent studies.

complètes ou l'équivalent temps plein.

[18] The selection criteria for adaptability related to the education credentials of the applicant's accompanying spouse or accompanying common-law partner are found at subsections 83(1) and (2) of the Regulations:

Adaptability (10 points)

Capacité d'adaptation (10 points)

83. (1) A maximum of 10 points for adaptability shall be awarded to a skilled worker on the basis of any combination of the following elements:

83. (1) Un maximum de 10 points d'appréciation sont attribués au travailleur qualifié au titre de la capacité d'adaptation pour toute combinaison des éléments ci-après, selon le nombre indiqué:

(a) for the educational credentials of the skilled worker's accompanying spouse or accompanying common-law partner, 3, 4 or 5 points determined in accordance with subsection (2);

a) pour les diplômes de l'époux ou du conjoint de fait, 3, 4 ou 5 points conformément au paragraphe (2);

...

[...]

(2) For the purposes of paragraph (1)(a), an officer shall evaluate the educational credentials of a skilled worker's accompanying spouse or accompanying common-law partner as if the spouse or common-law partner were a skilled worker, and shall award points to the

(2) Pour l'application de l'alinéa (1)a), l'agente évalue les diplômes de l'époux ou du conjoint de fait qui accompagne le travailleur qualifié comme s'il s'agissait du travailleur qualifié et lui attribue des points selon la grille suivante:

skilled worker as follows:

(a) for a spouse or common-law partner who would be awarded 25 points, 5 points;	a) dans le cas où l'époux ou le conjoint de fait obtiendrait 25 points, 5 points;
(b) for a spouse or common-law partner who would be awarded 20 or 22 points, 4 points; and	b) dans le cas où l'époux ou le conjoint de fait obtiendrait 20 ou 22 points, 4 points;
(c) for a spouse or common-law partner who would be awarded 12 or 15 points, 3 points.	c) dans le cas où l'époux ou le conjoint de fait obtiendrait 12 ou 15 points, 3 points.

(1) Did the visa officer err in determining that she could not consider the applicant's post-secondary credentials because he had completed his studies as an external student?

[19] First, it should be mentioned that, even if Mr. Hanif were to be awarded 20 additional points for his studies, he would have a total of only 66 points, which falls short of the 67 points required; therefore, to attain the points required, Mr. Hanif must also obtain points for the second question regarding the eligibility of his spouse's studies. Otherwise, subsection 76(3) of the Regulations grants the visa officer the discretion to substitute for the criteria set out in paragraph (1)(a) his or her evaluation of the likelihood of the ability of the skilled worker to become economically established in Canada. This Court does not have to rule on that last question.

[20] Mr. Hanif provided evidence that he had obtained his degrees from the University of the Punjab. The following is the list of Mr. Hanif's studies:

- Primary and secondary school diplomas;
- Bachelor of Arts conferred by the University of the Punjab;

- Bachelor of Laws conferred by the University of Karachi;
- Master of Arts in political science conferred by the University of the Punjab;
- Master of Arts in Punjabi conferred by the University of the Punjab.

Mr. Hanif claims that he completed 10 years of primary and secondary schooling and 11 years of post-secondary studies, totalling more than 20 years of formal training.

[21] Mr. Hanif claims that, according to paragraph 78(2)(f) of the Regulations, he should have been awarded 25 points because he had a university educational credential at the master's or doctoral level and a total of at least 17 years of full-time studies.

[22] However, the Minister claims that the evidence showed that Mr. Hanif was an external or private student. Notes in the Computer Assisted Immigration Processing System (CAIPS) indicate that the visa officer determined that the diplomas submitted seemed to be legitimate (Record at page 156). She also wrote in the CAIPS:

EDUCATION: FN'S POST SECONDARY EDUCATION FROM U OF PUNJAB
TAKEN AS A PRIVATE STUDENT PER TRANSCRIPTS. THESE DEGREES
ARE OBTAINED AFTER PASSING THE REQUIRED EXAMS WITHOUT
ATTENDING CLASS. THEREFORE, DOES NOT MEET THE DEFINITION OF
FULL TIME STUDENT AS SET OUT IN R78(1). POINTS AWARDED FOR
EDUCATION WHERE FN WAS A FULL TIME STUDENT.
(05 POINTS)

(Record at page 156).

[23] In her affidavit, the visa officer explained her reasons for determining that Mr. Hanif had obtained his degrees as an external candidate:

9. First, the introductory statement of both degrees reads: “of the Sheikhpura district”. This means that the Applicant approached the University of Punjab as a resident of the Sheikhpura district and applied to write the final exam for each degree at the University of Punjab.
10. Second, both degrees contain a “z” in the registration number. If a person is in full-time attendance at the University of Punjab, the registration number contains the initials of the college or high school that the person applied from, instead of the letter “z”.

(Affidavit of Janice Molsberry).

The visa officer found that, according to the facts, Mr. Hanif, as an external or private student, had never taken any classes at the University of the Punjab. Consequently, Mr. Hanif was not a regular full-time student as required by subsection 78(1) and paragraph 78(2)(d) of the Regulations.

[24] The definition of educational credential at section 73 of the Regulations does not indicate whether the applicant must have obtained the credential as an internal or external candidate.

However, paragraph 78(2)(f) of the Regulations requires that the skilled worker must have obtained a university educational credential at the master’s or doctoral level and a total of at least 17 years of full-time studies. The two statements in this paragraph are separated by “and”, but it is not clear whether a university educational credential must have been obtained at the institution where the full-time studies were done. Consequently, the provision allows for the possibility of studying full time in one university while receiving a university degree from another.

[25] The recent decision *Hameed*, above, rules on the same provisions with similar facts.

Justice Orville Frenette found that the University of the Punjab was not an “attending” institution for undergraduate students:

[38] . . . Rather, [the University of the Punjab] administered exams for those who have attended other institutions and conferred degrees accordingly. However, this did not mean that the Applicant did not receive a two-year university educational credential at the bachelor's level nor did it mean that he did not complete a total of fourteen years of schooling

[26] Moreover, in *Hameed*, the Court found that the Higher Education Commission of Pakistan confirmed that Mr. Hameed's Bachelor of Arts degree conferred by the University of the Punjab was recognized as the equivalent to a corresponding bachelor's degree involving 14 years of schooling as awarded by other chartered universities/institutions (*Hameed* at paragraph 44). Even though this practice does not correspond exactly with Canadian standards, the guidelines do not call for comparisons to the Canadian educational system: "Officers should assess programs of study and award points based on the standards that exist in the country of study" (Citizenship and Immigration Canada, Overseas Processing, OP6 Federal Skilled Workers Manual at section 10.2).

[27] The visa officer's determination that Mr. Hameed's degree was taken as a private student was completely irrelevant to the determination required to be made by subsection 78(2) of the Regulations:

[45] [The provisions at subsection 78(2) of the Regulations require] only that the applicant demonstrate that he has a two-year university educational credential at the bachelor's level and a total of at least 14 years of completed full-time equivalent studies.

(*Hameed*, above).

[28] In *Hameed*, Justice Frenette ultimately found that the standards in Pakistan for granting a university bachelor's degree were met, regardless of whether the applicant attended the University of the Punjab as a private candidate or otherwise (*Hameed* at paragraph 48).

[29] The major difference between *Hameed* and this case is that Mr. Hameed submitted evidence confirming that he was a university-registered student in a Bachelor of Arts studies program recognized by the Higher Education Commission of Pakistan.

[30] In *Cela*, above, Justice Danièle Tremblay-Lamer was not satisfied that the applicant met the conditions set out in subsection 78(2) of the Regulations, as the applicant had not submitted any documents indicating that she had been awarded a credential for her studies:

[8] The officer acknowledged that the applicant had taken an adult education course in accounting while living in Canada. However, given the applicant's failure to establish that the course was a course described in subsection 78(2) of the Regulations, the officer did not find that the accounting course justified the award of additional points.

[9] I do not find that the officer erred in her assessment of the applicant's education. The applicant provided student transcripts from the Yorkdale Adult Learning Centre attesting to the accounting courses she had taken. However, none of these documents indicate that the applicant was awarded a credential for her studies. Thus, I find that the officer reasonably evaluated the evidence presented and awarded the applicant a sufficient number of points for her education.

[31] It is trite law that only information that was before the administrative tribunal can be considered by a reviewing court on judicial review. In this case, Mr. Hanif submitted no attendance record or transcript indicating that he was a full-time student. Therefore, to succeed, Mr. Hanif would require confirmation from the Higher Education Commission of Pakistan that the Bachelor of Arts conferred to Mr. Hanif by the University of the Punjab was recognized as the equivalent to a corresponding bachelor's degree as awarded by other chartered universities/institutions. In other

words, Mr. Hanif would need to provide an attendance record or a transcript indicating that he was a full-time student at another accredited university.

[32] Since Mr. Hanif has not provided this type of evidence, the Court finds that the visa officer did not err in determining that she could not consider the applicant's post-secondary educational credentials.

(2) Did the visa officer err in failing to consider, in her decision, the education of the applicant's spouse?

[33] In the CAIPS notes, the visa officer writes:

FN IS MARRIED WITH TWO CHILDREN. SPOUSE AND CHILDREN ARE NOT ACCOMPANYING.

...

SPOUSE HOLDS BACHELORS DEGREE BUT NOT ACCOMPANYING AND NO FEES PAID. HOWEVER, SPOUSE WAS EXTERNAL STUDENT SO EVEN IF FEES PAID, NO POINTS WOULD BE AWARDED.

(Record at pages 155-156).

[34] In the visa officer's affidavit, she states that Mr. Hanif's spouse was added as the worker's accompanying spouse. Therefore, the education of Mr. Hanif's spouse was considered. Mr. Hanif received no points because his wife's studies were not considered, since she was an external or private candidate. In following the above-mentioned analysis, the visa officer did not err in determining that she could not consider the post-secondary educational credentials of Mr. Hanif's

spouse. There is no evidence in the record that Mr. Hanif's spouse was a full-time student at another accredited university.

(3) Did the visa officer base her decision on an erroneous finding of fact that she made in a capricious manner, without regard for the material and evidence before her?

[35] Within its jurisdiction, the Court has the discretion to quash the visa officer's decision if it was based on an erroneous finding of fact that she made in a perverse or capricious manner or without regard for the material before her (paragraph 18.1(4)(d) of the *Federal Courts Act*, R.S.C. 1985, c. F-7).

[36] The visa officer made a number of findings regarding Mr. Hanif's post-secondary educational credentials, but the Court cannot disturb these findings absent unreasonableness. The CAIPS notes and the visa officer's affidavit provided a detailed explanation for her findings of fact relating to the documents submitted as proof of education. In this case, there is no unreasonable error.

VII. Conclusion

[37] For all these reasons, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that

1. The application for judicial review be dismissed;
2. No serious question of general importance be certified.

“Michel M.J. Shore”

Judge

Certified true translation
Tu-Quynh Trinh

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-792-08

STYLE OF CAUSE: BABAR HANIF
v. MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 19, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** THE HONOURABLE MR. JUSTICE SHORE

DATED: January 23, 2009

APPEARANCES:

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Agnieszka Zagorska FOR THE RESPONDENT

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