

Federal Court



Cour fédérale

Date: 20090723

Docket: IMM-4409-08

Citation: 2009 FC 752

Ottawa, Ontario, July 23, 2009

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

H. JAYAWEERA MUHANDIRAMGE

Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision of the First Secretary (Immigration) of the Canadian High Commission (Officer) in Colombo, Sri Lanka, dated July 22, 2008 (Decision) that refused the Applicant's application for permanent residence in Canada under the federal skilled worker category.

BACKGROUND

[2] The Applicant applied for permanent residence in Canada under the federal skilled worker category of Financial Manager on December 28, 2005 in Colombo, Sri Lanka.

[3] The Applicant indicated that he had completed 18 years of full-time school, including four years of study at the Institute of Chartered Accountants, Sri Lanka.

[4] The Applicant was assessed by the Officer on May 29, 2008.

DECISION UNDER REVIEW

[5] The Officer concluded that the Applicant did not meet the requirements for immigration to Canada under the skilled worker category.

[6] The Officer cited subsection 12(2) of the Act, which provides that 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. Subsection 75(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations) provides that the federal skilled worker class is a class of persons who are skilled workers and who may become permanent residents on the basis of their ability to become economically established in Canada. Pursuant to the Regulations, skilled worker applications are

assessed on the basis of the criteria set out in subsection 76(1). The assessment determines whether a skilled worker will be able to become economically established in Canada. The Officer assessed the Applicant in the category of NOC-0111-Financial Manager and awarded the following points:

	Points Assessed	Maximum Possible
Age	8	10
Experience	21	21
Arranged Employment	0	10
Education	15	25
Official Language Proficiency	10	24
Adaptability	4	10

Total	58	100

[7] The Officer disregarded the Applicant's four years of study at the Institute of Chartered Accountants because he felt it was not accredited with the Tertiary and Vocational Education Commission (TVEC) in Sri Lanka.

[8] This resulted in a score of 15 under the Education factor and a total score of 58. The pass mark is 67.

ISSUES

[9] The Applicant submits the following issue for consideration on this application:

1. Did the Officer err in her interpretation of section 73 of the Regulations when determining that the authority responsible for registering, accrediting, supervising and regulating the Institute of Chartered Accountants in Sri Lanka was the TVEC, rather than the Institute of Chartered Accountants, Sri Lanka?

STATUTORY PROVISIONS

[10] The following provisions of the Act are applicable in this proceeding:

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.

[11] The following provisions of the Regulations are also applicable to this proceeding:

73. "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

73. «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

issue.

d'enseignement dans le pays de délivrance de ce diplôme ou certificat.

Class

75. (1) For the purposes of subsection 12(2) of the Act, the federal skilled worker class is hereby prescribed as a class of persons who are skilled workers and who may become permanent residents on the basis of their ability to become economically established in Canada and who intend to reside in a province other than the Province of Quebec.

Catégorie

75. (1) Pour l'application du paragraphe 12(2) de la Loi, la catégorie des travailleurs qualifiés (fédéral) est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada, qui sont des travailleurs qualifiés et qui cherchent à s'établir dans une province autre que le Québec.

Skilled workers

(2) A foreign national is a skilled worker if

(a) within the 10 years preceding the date of their application for a permanent resident visa, they have at least one year of continuous full-time employment experience, as described in subsection 80(7), or the equivalent in continuous part-time employment in one or more occupations, other than a restricted occupation, that are listed in Skill Type 0 Management Occupations or Skill Level A or B of the *National Occupational Classification* matrix;

Qualité

(2) Est un travailleur qualifié l'étranger qui satisfait aux exigences suivantes :

a) il a accumulé au moins une année continue d'expérience de travail à temps plein au sens du paragraphe 80(7), ou l'équivalent s'il travaille à temps partiel de façon continue, au cours des dix années qui ont précédé la date de présentation de la demande de visa de résident permanent, dans au moins une des professions appartenant au genre de compétence 0 Gestion ou niveaux de compétences A ou B de la matrice de la *Classification nationale des professions* — exception faite des professions

d'accès limité;

(b) during that period of employment they performed the actions described in the lead statement for the occupation as set out in the occupational descriptions of the *National Occupational Classification*; and

b) pendant cette période d'emploi, il a accompli l'ensemble des tâches figurant dans l'énoncé principal établi pour la profession dans les descriptions des professions de cette classification;

(c) during that period of employment they performed a substantial number of the main duties of the occupation as set out in the occupational descriptions of the *National Occupational Classification*, including all of the essential duties.

c) pendant cette période d'emploi, il a exercé une partie appréciable des fonctions principales de la profession figurant dans les descriptions des professions de cette classification, notamment toutes les fonctions essentielles.

Minimal requirements

Exigences

(3) If the foreign national fails to meet the requirements of subsection (2), the application for a permanent resident visa shall be refused and no further assessment is required.

(3) Si l'étranger ne satisfait pas aux exigences prévues au paragraphe (2), l'agent met fin à l'examen de la demande de visa de résident permanent et la refuse.

Selection Criteria

Critères de sélection

76. (1) For the purpose of determining whether a skilled worker, as a member of the federal skilled worker class, will be able to become economically established in Canada, they must be assessed on the basis of the following criteria:

76. (1) Les critères ci-après indiquent que le travailleur qualifié peut réussir son établissement économique au Canada à titre de membre de la catégorie des travailleurs qualifiés (fédéral) :

(a) the skilled worker must be awarded not less than the

a) le travailleur qualifié accumule le nombre minimum

minimum number of required points referred to in subsection (2) on the basis of the following factors, namely,	de points visé au paragraphe (2), au titre des facteurs suivants :
(i) education, in accordance with section 78,	(i) les études, aux termes de l'article 78,
(ii) proficiency in the official languages of Canada, in accordance with section 79,	(ii) la compétence dans les langues officielles du Canada, aux termes de l'article 79,
(iii) experience, in accordance with section 80,	(iii) l'expérience, aux termes de l'article 80,
(iv) age, in accordance with section 81,	(iv) l'âge, aux termes de l'article 81,
(v) arranged employment, in accordance with section 82, and	(v) l'exercice d'un emploi réservé, aux termes de l'article 82,
(vi) adaptability, in accordance with section 83; and	(vi) la capacité d'adaptation, aux termes de l'article 83;
(b) the skilled worker must	b) le travailleur qualifié :
(i) have in the form of transferable and available funds, unencumbered by debts or other obligations, an amount equal to half the minimum necessary income applicable in respect of the group of persons consisting of the skilled worker and their family members, or	(i) soit dispose de fonds transférables — non grevés de dettes ou d'autres obligations financières — d'un montant égal à la moitié du revenu vital minimum qui lui permettrait de subvenir à ses propres besoins et à ceux des membres de sa famille,
(ii) be awarded the number of points referred to in subsection 82(2) for arranged employment in Canada within the meaning of subsection 82(1).	(ii) soit s'est vu attribuer le nombre de points prévu au paragraphe 82(2) pour un emploi réservé au Canada au sens du paragraphe 82(1).

Number of points

(2) The Minister shall fix and make available to the public the minimum number of points required of a skilled worker, on the basis of

(a) the number of applications by skilled workers as members of the federal skilled worker class currently being processed;

(b) the number of skilled workers projected to become permanent residents according to the report to Parliament referred to in section 94 of the Act; and

(c) the potential, taking into account economic and other relevant factors, for the establishment of skilled workers in Canada.

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

Nombre de points

(2) Le ministre établit le nombre minimum de points que doit obtenir le travailleur qualifié en se fondant sur les éléments ci-après et en informe le public :

a) le nombre de demandes, au titre de la catégorie des travailleurs qualifiés (fédéral), déjà en cours de traitement;

b) le nombre de travailleurs qualifiés qui devraient devenir résidents permanents selon le rapport présenté au Parlement conformément à l'article 94 de la Loi;

c) les perspectives d'établissement des travailleurs qualifiés au Canada, compte tenu des facteurs économiques et autres facteurs pertinents.

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

Canada if the number of points awarded is not a sufficient indicator of whether the skilled worker may become economically established in Canada.

- | | |
|---|---|
| <p>78. «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.</p> | <p>78. "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.</p> |
|---|---|

[12] The following provisions of the Citizenship and Immigration Canada Overseas Processing (OP-6-Federal Skilled Workers) Operational Manual (Manual) are applicable in this proceeding:

10.2 Education

For definition of terms, see [Section 6.3](#). Officers should assess programs of study and award points based on the standards that exist in the country of study. The Regulations do not provide for comparisons to Canadian educational standards;

...

A distance learning credential is eligible for points as long as it meets the definition of a credential as outlined in R73. If the credential is not

10.2 Études

Pour la définition des termes, voir la section 6.3. L'évaluation des programmes d'études et l'attribution des points sont basées sur les normes existantes dans le pays où les études ont été faites. Le *Règlement* ne prévoit pas de comparaisons avec le système scolaire canadien.

...

Un demandeur ayant obtenu un diplôme à la suite d'une formation à distance peut obtenir des points à condition que le diplôme en question soit

described in terms of number of years duration (i.e., three-year bachelor's degree), officers should apply the definition of full-time equivalent study and knowledge that the visa office has acquired on local education institutions and credentials.

visé par la définition de diplôme énoncée au R73. Si le diplôme ne répond pas au critère de durée (p. ex. baccalauréat obtenu après trois années d'étude), la définition d'équivalent temps plein doit être appliquée et l'on doit tenir compte des connaissances acquises par le bureau des visas au sujet des établissements d'enseignements locaux et des diplômes qu'ils décernent.

STANDARD OF REVIEW

[13] The Respondent submits that the Officer's decision to award the Applicant points under the education factor involves a question of mixed fact and law and that the standard of review is reasonableness: *Dunsmuir v. New Brunswick*, 2008 SCC 9 (*Dunsmuir*) and *Saleem v. Canada (Minister of Citizenship and Immigration)* 2008 FC 389 at paragraph 11. I agree with the Respondent.

[14] Discretionary decisions of an officer attract a high degree of deference: *Li v. Canada (Minister of Citizenship and Immigration)* 2001 FCT 837 at paragraph 11; *Bellido v. Canada (Minister of Citizenship and Immigration)* 2005 FC 452 at paragraph 5 and *Hua v. Canada (Minister of Citizenship and Immigration)* 2004 FC 1647 at paragraphs 25-28.

[15] In *Dunsmuir*, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, “the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review”: *Dunsmuir* at para. 44. Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of “reasonableness” review.

[16] The Supreme Court of Canada in *Dunsmuir* also held that the standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[17] In light of the Supreme Court of Canada's decision in *Dunsmuir* and the previous jurisprudence of this Court, I find the standard of review applicable to the issue raised to be reasonableness. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”: *Dunsmuir* at paragraph 47. Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

ARGUMENTS

The Applicant

[18] The Applicant submits that the Officer interpreted the definition of “educational credential” to mean that the only authority in the entire country of Sri Lanka relevant for the assessment of education was the TVEC.

[19] The Applicant submits that, based on section 10.2 of the Manual, visa officers should award units of assessment for the education factor based on how the credential is considered in the country where the study was acquired. The Officer was of the view that the TVEC accreditation was determinative on the matter of whether the education administered by the Institute of Chartered Accountants, Sri Lanka, should attract points under the education factor. However, the TVEC does not govern courses administered by the Institute of Chartered Accountant, Sri Lanka, because the ICA is self-governing and its courses are not within the mandate of the TVEC.

[20] The Applicant notes that chartered accountants in Sri Lanka are autonomously governed by the Institute of Chartered Accountants of Sri Lanka. This institution has set the requirements and standards for its practitioners since the consolidation of its act of incorporation, the Act of Parliament No. 23 of 1959. The Institute of Chartered Accountants of Sri Lanka educates its members in the same way as the Law Society of Upper Canada. Section 3(a)(ii) of the Act of 1959 sets out one of the objectives of the Institute:

(The objects of the Institute shall be) to enroll, educate and train members who are desirous of learning or improving their skills and

knowledge, in disciplines such as auditing, financial management and taxation.

[21] The Applicant submits that sections (1) through (33) of the Institute of Chartered Accountants of Sri Lanka Amendment Law No. 34 of 1975 clearly set out the nature of the Examinations of the Institute and the Practical Training requirement, and meticulously details the examination process. Section 3 describes the structure of the examination process as follows:

The Qualifying examinations for membership of the Institute shall consist of:

- a. an Intermediate Examination; and
- b. a Final Examination.

[22] The Applicant says that, given the mandate and scope of the responsibility of the Institute of Chartered Accountants, Sri Lanka, it is clear that the Institute itself, as per section 73 of the Regulations, has “the authorit[y] responsible for registering, accrediting, supervising and regulating such institutions in the country of issue.”

[23] The Applicant submits that it was an error for the Officer to require that the Applicant’s chartered accountancy courses be registered with TVEC, given the self-regulation of the Institute of Chartered Accountants, Sri Lanka.

[24] The Applicant points out that the autonomous regulation of the Institute of Chartered Accountants, Sri Lanka, is analogous to the self-regulation of lawyers in Ontario by the Law Society of Upper Canada. The Applicant contends that the Officer’s analysis would be more applicable to

vocational and technical courses that are administered in Sri Lanka, not chartered accountancy courses.

[25] The Applicant also refers to some of the objectives of the TVEC posted on that organization's website at http://www.tvec.gov.lk/English/about_us.htm:

To implement the national system of quality assurance through registration of institutes and accreditation of training courses.

To ensure the establishment and maintenance of standards by TVET institutions.

To develop and maintain a national system of vocational qualifications.

To develop TVET institutes through management development programmes and financial assistance.

[26] The Applicant relies upon an affidavit of the President of the Institute of Chartered Accountants, Sri Lanka, who states that requiring TVEC registration for recognition purposes is "tantamount to putting the Act of Parliament to subservience."

[27] The Applicant also submits that the Respondent has conceded that his education should have been considered by the Officer. However, the Respondent's assertion that, even if the Officer had considered it, it would only have led to a score of 22 points under the education factor, is not relevant because the basis for the assertion is not in the record. Rather, the record contains the assessment of education by the officer. In the record, the Officer accepted that the Applicant required a Masters degree but did not complete at least 17 years of education as per regulation 78(2)(f) :

78(2) *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.

78(2) *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.

[28] The Applicant submits that the Officer did not make the two findings that the Respondent now asserts in submissions: (1) that the Chartered Accountant education should not be considered by the Officer as it is not a university credential; and (2) that the education was not a prerequisite to a Master's degree acquired by the Applicant.

[29] The Applicant states that paragraphs 78(3)(*a*) and 78(3)(*b*)(*i*) of the Regulations are not relevant because they deal with cases where an applicant has acquired two Master's degrees, or two Bachelor's degrees, and the Regulations ensure that the Applicant cannot collect double points in such situations. However, paragraph 78(3)(*b*)(*i*) of the Regulations says that points should be awarded on the basis of the single educational credential that results in the highest number of points, which in this case would be a Master's degree, irrespective of the prerequisites of that masters degree (contrary to the Respondent's assertion).

The Respondent

Immaterial Error

[30] The Respondent submits even if the Applicant obtained education points below the maximum education points available, this would not assist the Applicant in obtaining a permanent residence visa.

[31] The Respondent concedes that the Officer made an error by not considering the education received by the Applicant from the Institute of Chartered Accountants, Sri Lanka; however, even if the Officer had accepted that education, the Applicant would not have enough education points. The Respondent alleges that there was no evidence before the Officer that the Institute of Chartered Accountants, Sri Lanka, is a university; therefore, the education obtained through the Institute of Chartered Accountants, Sri Lanka, would be considered a non-university credential and the maximum years that could be recognized is 3, according to paragraph 78(2)(e)(i) of the Regulations, making a total of 15 years of education for the Applicant. Hence, the maximum number of education points that the Applicant could obtain is 22 points, which would place the Applicant at 65 points. This is 2 points shy of the required number of 67.

[32] The Respondent also submits that the Applicant could not obtain the maximum amount of education points because the education obtained through the Institute of Chartered Accountants, Sri Lanka, was not a prerequisite to his Masters degree. The prerequisite program to complete the Masters was the Diploma in Professional Shipping. Therefore, the Institute of Chartered

Accountants, Sri Lanka, education would not be included in the calculation of education years pursuant to subsection 78(3) of the Regulations, which prohibits a cumulative calculation. The calculation is based on the highest degree obtained. Based on his Masters degree the Applicant would not have obtained 17 years of full-time or full-time equivalent study, but 15 years of study. Paragraph 78(2)(e)(i) of the Regulations indicates that the maximum amount of education points obtained would be 22 points. This amounts to 65 overall points on the skilled worker application, which is still not enough points to grant the application. See: *Bhuiya v. Canada (Minister of Citizenship and Immigration)* 2008 FC 878.

[33] The Respondent concludes that the Officer's error is immaterial. The Applicant would not have had sufficient points to qualify for a permanent residence visa. Errors related to matters which are not material to a decision do not justify setting the decision aside. See: *Yassine v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 949 (F.C.A.) at paragraphs 3-5; *Miranda v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 437 (F.C.T.D.); *Nyathi v. Canada (Minister of Citizenship and Immigration)* 2003 FC 1119 at paragraphs 18 and 24 and *N'Sungani v. Canada (Minister of Citizenship and Immigration)* 2004 FC 1759 at paragraph 25. Therefore, the Applicant's application should be dismissed.

ANALYSIS

[34] The Respondent concedes that the Officer did make an error in not considering the education received by the Applicant from ICASL but contends that the error was immaterial

because, even if the Officer had accepted the ICASL education, it would still not have yielded sufficient education points to bring the Applicant's overall score to 67.

[35] The Officer's notes make clear that he accepted that the Applicant had a Master's degree. This would mean that, under Regulation 78(2)(f), the Applicant needed to show "a total of at least 17 years of completed full-time or full-time equivalent studies."

[36] However, as the Respondent points out, the education obtained by the Applicant through ICASL was not a pre-requisite to the Master of Science in Shipping Management, which the Applicant was awarded in 1998 from the World Maritime University of Sweden. This would mean that the Applicant only has 15 years, and not 17 years, of pre-requisite studies leading to the Master's degree. His maximum points in education would be 22, which would not take him to the 67 points needed overall.

[37] The Applicant says it is undisputed that he had at least 17 years of education prior to his Master's degree, so that he qualifies for 25 points under Regulation 78(2)(f), which brings his total to the required 67 points.

[38] The disagreement between the parties appears to be whether the years spent by the Applicant at ICASL could count towards the computation of the "17 years of completed full-time or full-time equivalent studies" under Regulation 78(2)(f). The Applicant says that they do count or, at least, it is not appropriate for the Court to decide this issue and the matter should be returned for re-

consideration by a different officer. In essence, the Applicant says that, in computing the 17 years, he does not need to show a related course of study and merely has to show that the years of education progressed to the Master's degree.

[39] The Respondent says there is no point in sending this matter back for reconsideration because it is obvious that the ICASL years cannot be used in this case. They were not a pre-requisite to the Master degree but were part of an extraneous and parallel education.

[40] I think the Respondent is correct in saying that if, notwithstanding the error in the Officer's not considering the ICASL education, no purpose is served by sending the matter back for re-determination (because the Applicant has no possibility of having his skilled work application accepted) then I should dismiss the application. See *Persaud v. Canada (Minister of Citizenship and Immigration)*, [2009] F.C.J. No. 229 at paragraph 40. So the issue before me is whether there is no possibility of the Applicant being awarded 25 points for education because his ICASL education cannot count in the computation of years of completed full-time study under Regulation 78(2)(f).

[41] As Justice MacTavish held in *Bhuiya* at paragraph 13, subsection 78(3) of the Regulations provides that points are to be awarded on the basis of the single educational credential that results in the highest number of points. The parties in the present case agree that the Applicant's highest educational credential is his Master's degree.

[42] On the facts of *Bhuiya*, Justice MacTavish concluded, at paragraph 19, that the “fact that Ms. Bhuiya may have spent one additional year in school after obtaining her Master’s degree does not turn her 16 year Master’s degree into a 17 year Master’s degree.” But the facts before me raise a somewhat different issue.

[43] The issue in the present case is whether, in computing how many years led up to the Applicant’s Master’s degree, his time at ICASL would have been counted by the Officer if he had turned his mind to that issue.

[44] The Respondent says these years could not be counted because they were not relevant to the Master’s degree and were, in fact, unrelated, extraneous and parallel because they led to another qualification. The Applicant says the requirement is simply that the Applicant is required to have at least 17 years of education, and that the Applicant does not need a related course of study, he just has to progress to the highest credential. At the very least, the Applicant says the Officer needs to address whether the ICASL requirement was part of the years of study that led to the Master’s degree. There is nothing in the Regulations that excludes the ICASL years from being part of the computation under Regulation 78(2)(f).

[45] In the *Bhuiya* case relied upon by the Applicant, the Officer had specifically found that Ms. Bhuiya’s post-graduate diploma in personnel management was “not in the line of progression towards the highest credential,” namely Ms. Bhuiya’s Master’s degree. So the year that Ms. Bhuiya spent on the post-graduate diploma was not included in the computation of the years leading to the

Master degree. Justice MacTavish endorsed this approach and concluded that such an interpretation of the Regulations was consistent with both the Immigration Manual and the policy objectives described in the Regulatory Impact Assessment Statement relating to the Regulations.

[46] While I agree with the Respondent that the decision in *Bhuiya* does not turn on the fact that one year spent on the diploma came after Ms. Bhuiya obtained her Master's degree, the Officer in the present case made no determination that the Applicant's years at ICASL were not in the line of progression to the highest credential and there is insufficient evidence before me to make such a determination. Consequently, it is not possible for me to determine whether the Officer's mistake was immaterial, or whether another officer who did not make the mistake of not considering the education received by the Applicant from ICASL would regard the Applicant's years at ICASL as being in the line of progression towards his highest credential.

[47] In the end, I have to conclude that, had the mistake not been made, a different conclusion favouring the Applicant might have ensued. Consequently, this matter should be returned for consideration by a different officer.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application is allowed and the matter is returned for reconsideration by a different officer in accordance with these reasons.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO.: IMM-4409-08

STYLE OF CAUSE: *H. JAYAWEERA MUHANDIRAMGE*

v.

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: June 2, 2009

REASONS FOR JUDGMENT: RUSSELL J.

DATED: July 23, 2009

WRITTEN REPRESENTATIONS BY:

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FOR THE APPLICANT

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