

Federal Court



Cour fédérale

Date: 20101108

Docket: IMM-6394-09

Citation: 2010 FC 1104

Ottawa, Ontario, November 8, 2010

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

JIGARKUMAR PATEL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

SUPPLEMENTARY REASONS FOR JUDGMENT AND JUDGMENT

[1] In my reasons issued on October 20, 2010 I gave the Respondent the opportunity to propose a certified question in this proceeding and the Respondent has proposed the following three questions for certification:

1. What is the appropriate standard of review that must be applied by the Court when reviewing a visa officer's interpretation of the scheme for selecting applicants in the skilled worker class set out in the Immigration and Refugee Protection Regulations?

2. If s. 33(2) of the Interpretation Act is applied to the interpretation of s. 83(3) of the Immigration and Refugee Protection Regulations, so that “a program” in s. 83(3) is interpreted as “programs”, do the words “of at least two years’ duration” in s. 83(3) describe each program of full-time study, so that the requirement remains in s. 83(3) that each program of study should be of at least two years’ duration?
3. In assessing adaptability under s. 83 of the *Immigration and Refugee Protection Regulations*, should a visa officer aggregate programs of study that do not each constitute two years of full-time study of at least two years’ duration at a post-secondary institution in Canada and award points if the total period of study amounts to or exceeds two years of full-time study at one or more post-secondary institutions?

[2] The Applicant opposes certification. The first two questions, he says, are well settled and invite no controversy. The third question is said to have been settled by the decision of Justice Elizabeth Heneghan in *Nie v Canada (Minister of Citizenship and Immigration)*, 2009 FC 220, 80 Imm. LR (3d) 127 and by the Respondent’s own past practices.

[3] I agree with the Respondent that the third question it proposes is worthy of certification. It raises a point of law that was not resolved in *Nie* and which is of undoubted importance to other similarly-situated visa applicants. There was no evidence in the record before me as to whether the decision under review conformed with the Respondent’s past practice. Even if it does not correspond with the Respondent’s past practice this may only be relevant to a person’s reasonable expectations and not to the correctness of the decision.

[4] I agree with the Applicant that the first question does not raise an issue of sufficient significance to support certification. It will, nevertheless, be a point of consideration on appeal along with the second question, which is inexplicably tied to the third.

[5] In the result I will certify the following question:

In assessing adaptability under s. 83 of the Immigration and Refugee Protection Regulations, should a visa officer aggregate programs of study that do not each constitute two years of full-time study of at least two years' duration at a post-secondary institution in Canada and award points if the total period of study amounts to or exceeds two years of full-time study at one or more post-secondary institutions?

JUDGMENT

THIS COURT’S JUDGMENT is that the following question be certified in this proceeding:

In assessing adaptability under s. 83 of the *Immigration and Refugee Protection Regulations*, should a visa officer aggregate programs of study that do not each constitute two years of full-time study of at least two years’ duration at a post-secondary institution in Canada and award points if the total period of study amounts to or exceeds two years of full-time study at one or more post-secondary institutions?

“ R. L. Barnes ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6394-09

STYLE OF CAUSE: JIGARKUMAR PATEL
v
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 27, 2010

**SUPPLEMENTARY REASONS
FOR JUDGMENT AND
JUDGMENT BY:** BARNES J.

DATED: November 8, 2010

APPEARANCES:

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