Federal Court  Cour fédérale

Date: 20110111

Docket: IMM-1426-10

Citation: 2011 FC 22

Ottawa, Ontario, January 11, 2011

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

MAJID HASSAN CHAUHDRY

Applicant

and

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 the decision of the Designated Immigration Officer (Visa Officer) of the Immigration Regional Program Center in Buffalo, New York, dated 31 December 2009 (Decision), which refused the Applicant's application for a permanent residence visa on the ground that the Applicant's health condition "might reasonably be expected to cause excessive demand on [the] health or social services" of Canada.

BACKGROUND

[2] The Applicant is a full-time PhD student in the Electrical and Computer Engineering program at the University of Connecticut. He is also employed by a private company, with whom he has private health insurance. Although currently resident in the United States, the Applicant applied for permanent residence in Canada under the Federal Skilled Worker Class in December 2007.

[3] The Applicant received a renal transplant in 2004. He requires daily immunosuppressive medication. Nonetheless, he says that he is in excellent health and expects to remain so for many years, a claim which is supported by letters from two medical doctors in the U.S. He also says that his health condition poses no impediment to his academic course work and research or to his work with the private company; these claims are supported with letters from his thesis supervisor as well as his employer. He describes himself as financially stable. He has savings and property in Pakistan in addition to the financial support of his father and brother, both of whom are veterinarians. He intends to purchase a comprehensive health insurance package, should he be granted a permanent residence visa to Canada.

[4] The Visa Officer sent the Applicant a “Fairness Letter” dated 20 February 2009, acknowledging his medical condition and advising him that he must establish a reasonable and workable plan to offset the excessive demand that he would otherwise impose on Canadian health and social services, due to his condition. The Applicant’s 20 March 2009 response stated the above-

noted facts: that his condition was stable and that he required neither social services nor assistance. He also forwarded to the Visa Officer the above-mentioned academic, employment and medical letters of support; details of his own financial resources and those of his family; and a signed Declaration of Ability and Intent, in which he promised not to hold the federal or provincial authorities responsible for costs associated with his health. The final two items were submitted as evidence of the Applicant's plan to offset the excessive demands on health or social services that could result from his medical condition.

[5] The Applicant's visa application was rejected by letter (Refusal Letter) dated 31 December 2009 on the ground that his medical condition might require services, the costs of which would likely exceed the average Canadian per capita costs over five years. This is the Decision under review.

DECISION UNDER REVIEW

[6] The Decision consists of a Fairness Letter, the Visa Officer's CAIPS notes and a copy of the regulatory definitions pertinent to the Applicant's case. The letter advises the Applicant that he does not meet the requirements for immigration to Canada because his medical condition, Chronic Renal Failure–Post Renal Transplant, could reasonably be expected to require health or social services, the costs of which would likely exceed the average Canadian per capita costs over five years. In other words, the costs would be excessive. An excessive demand is currently defined as an amount greater than $4806 per year.

[7] The letter acknowledges the Applicant's 20 March 2009 submission of additional information, all of which was carefully considered but which did not alter the original assessment presented in the "Fairness Letter" of 20 February 2009. The Visa Officer notes that the Decision is final and reasonable in her view.

[8] The CAIPS notes reiterate the Visa Officer's finding that the Applicant's 20 March 2009 submissions did not convince her that he would be able to mitigate his medical costs.

ISSUES

[9] The Applicant raises the following issues:

1. Did the Visa Officer fail to provide adequate reasons for her Decision and thereby breach the principles of procedural fairness?
2. Did the Visa Officer err in failing to conduct an individualized assessment of whether the Applicant's health condition might reasonably be expected to cause excessive demand on Canadian health or social services?

STATUTORY PROVISIONS

[10] The following provisions of the Act are applicable in these proceedings:

Application before entering Canada	**Visa et documents**
11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or	**11.** (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les

for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
…	…
Health grounds	**Motifs sanitaires**
38. (1) A foreign national is inadmissible on health grounds if their health condition (*a*) is likely to be a danger to public health; (*b*) is likely to be a danger to public safety; or (*c*) might reasonably be expected to cause excessive demand on health or social services.	**38.** (1) Emporte, sauf pour le résident permanent, interdiction de territoire pour motifs sanitaires l'état de santé de l'étranger constituant vraisemblablement un danger pour la santé ou la sécurité publiques ou risquant d'entraîner un fardeau excessif pour les services sociaux ou de santé.

[11] The following provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, are applicable in these proceedings:

Definitions	**Définitions**
1. (1) The definitions in this subsection apply in the Act and in these Regulations.	1. (1) Les définitions qui suivent s'appliquent à la Loi et au présent règlement.
[…]	[…]
"excessive demand" **« fardeau excessif »**	**« fardeau excessif »** **" excessive demand "**
"excessive demand" means	« fardeau excessif » Se dit :
(a) a demand on health services or social services for which the	a) de toute charge pour les services sociaux ou les services

anticipated costs would likely exceed average Canadian per capita health services and social services costs over a period of five consecutive years immediately following the most recent medical examination required by these Regulations, unless there is evidence that significant costs are likely to be incurred beyond that period, in which case the period is no more than 10 consecutive years; or

de santé dont le coût prévisible dépasse la moyenne, par habitant au Canada, des dépenses pour les services de santé et pour les services sociaux sur une période de cinq années consécutives suivant la plus récente visite médicale exigée par le présent règlement ou, s'il y a lieu de croire que des dépenses importantes devront probablement être faites après cette période, sur une période d'au plus dix années consécutives;

(b) a demand on health services or social services that would add to existing waiting lists and would increase the rate of mortality and morbidity in Canada as a result of an inability to provide timely services to Canadian citizens or permanent residents.

b) de toute charge pour les services sociaux ou les services de santé qui viendrait allonger les listes d'attente actuelles et qui augmenterait le taux de mortalité et de morbidité au Canada vu l'impossibilité d'offrir en temps voulu ces services aux citoyens canadiens ou aux résidents permanents.

[…]

[…]

"health services"
« services de santé »

"health services" means any health services for which the majority of the funds are contributed by governments, including the services of family physicians, medical specialists, nurses, chiropractors and physiotherapists, laboratory services and the supply of pharmaceutical or hospital care.

« services de santé »
" health services "

« services de santé » Les services de santé dont la majeure partie sont financés par l'État, notamment les services des généralistes, des spécialistes, des infirmiers, des chiropraticiens et des physiothérapeutes, les services de laboratoire, la fourniture de médicaments et la prestation de soins hospitaliers.

“social services” **« services sociaux »**	**« services sociaux »** **“ social services ”**
“social services” means any social services, such as home care, specialized residence and residential services, special education services, social and vocational rehabilitation services, personal support services and the provision of devices related to those services,	« services sociaux » Les services sociaux — tels que les services à domicile, les services d’hébergement et services en résidence spécialisés, les services d’éducation spécialisés, les services de réadaptation sociale et professionnelle, les services de soutien personnel, ainsi que la fourniture des appareils liés à ces services :
(a) that are intended to assist a person in functioning physically, emotionally, socially, psychologically or vocationally; and	a) qui, d’une part, sont destinés à aider la personne sur les plans physique, émotif, social, psychologique ou professionnel;
(b) for which the majority of the funding, including funding that provides direct or indirect financial support to an assisted person, is contributed by governments, either directly or through publicly-funded agencies.	b) dont, d’autre part, la majeure partie sont financés par l’État directement ou par l’intermédiaire d’organismes qu’il finance, notamment au moyen d’un soutien financier direct ou indirect fourni aux particuliers.

STANDARD OF REVIEW

[12] The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, held that a 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.

[13] The first issue raised by the Applicant concerns the adequacy of reasons. As held in *Canada (Minister of Citizenship and Immigration) v. Charles*, 2007 FC 1146 at paragraph 24, citing *C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29, the adequacy of reasons is an issue of procedural fairness and is reviewable on a standard of correctness.

[14] The second issue concerns whether the Visa Officer conducted an individualized assessment. Justice Rosalie Abella in *Hilewitz v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 57 (*Hilewitz*) at paragraph 57, observed that the "Act calls for individual assessments." In *Sapru v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 240 at paragraph 16, Justice Richard Mosley of this Court, relying on *Hilewitz*, stated: "the … Officer failed to comply with her obligations as set down in *Hilewitz*. That is an issue of law which should be reviewed on a standard of correctness." The Visa Officer's findings of fact with respect to the assessment are reviewable on a standard of reasonableness. See *Mazhari v. Canada (minister of Citizenship and Immigration)*, 2010 FC 467 at paragraph 9; *Barnash v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 842 at paragraph 20; *Canada (Minister of Employment and Immigration) v. Jiwanpuri* (1990), 109 N.R. 293 (F.C.A.).

[15] 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." See *Dunsmuir*, above, at paragraph 47. Put another way, the Court should intervene only 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

Decision Breached Principle of Procedural Fairness

[16] In her Fairness Letter, the Visa Officer stated that she had consulted with the Health Management Branch of Citizenship and Immigration and determined that, with respect to social services, the Applicant would need "immunosuppressive medications on a daily basis." The Refusal Letter states that the Applicant's medical condition might reasonably be expected to cause excessive demands on health or social services.

[17] The Applicant argues that both letters offer the conclusion that the application must be rejected but offer no meaningful explanation as to how that conclusion was reached. There is no analysis regarding how the Applicant's prescription medication might cause a demand on services, no explanation for the conclusion that the demand would be excessive, and no explanation as to why the U.S. doctors' letters and Applicant's plan to offset the costs of the medication failed to satisfy the Visa Officer's concerns. The mere statement that the Applicant requires medication in and of itself is not sufficient to explain how the cost of that medication would exceed the average per capita expenditures.

[18] The Federal Court of Appeal in *Via Rail Canada Inc. v. Canada (National Transportation Agency)*, [2001] 2 F.C. 25 (F.C.A.) at paragraph 22, states that "the decision maker must set out its findings of fact and the principal evidence upon which those finds were based." The reasons should provide a meaningful explanation that makes clear to the applicant why his or her claim has failed. See *Ladouceur v. Canada (Attorney General)*, 2006 FC 1438 at paragraphs 22-27; *Ogunfowora v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 471 at paragraph 58.

[19] Adequate reasons are an important component of full participation in the decision-making process. They advise the applicant of the case to be met. The Citizenship and Immigration Canada Operational Bulletin 063B (July 29, 2009, section B) states that officers must "ensure the procedural fairness letter explicitly informs the applicant of the required care and social services that are critical to the individual being assessed as medically admissible."

[20] In the instant case, the Fairness and Refusal Letters do not state which social services the Applicants will supposedly require, and they do not assess how the prescription medication might impose an excessive demand on the health care system. In failing to provide adequate reasons, the Visa Officer breached the duty of fairness.

Visa Officer Failed to Provide Individualized Assessment of Excessive Demand

[21] Section 38(1)(c) of the Act requires an officer to determine whether an applicant has a health condition that might reasonably be expected to cause excessive demand on health or social services. It is not enough for the officer simply to find that the applicant has a health condition. The

officer must conduct an individualized assessment to determine the "repercussions" that each particular applicant's condition will have on those services. See *Brahim v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1313 at paragraph 13.

[22] Not every demand is excessive, and a "medical officer is not entitled to presume that a particular medical condition or disability must necessarily result in excessive demand." See *Rabang v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1934 at paragraphs 17-18. The Supreme Court of Canada held in *Hilewitz*, above, at paragraph 56, that an assessment must be carried out for each individual:

> If the medical officer considers the need for potential services based only on the *classification* of the impairment rather than on its particular manifestation, the assessment becomes generic rather than individual. It is an approach which attaches a cost assessment to the disability rather than to the individual. This in turn results in an automatic exclusion for all individuals with a particular disability, even those whose admission would not cause, or would not reasonably be expected to cause, excessive demands on public funds.

[23] An individualized assessment determines the expected costs of the medication based on the applicant's "unique circumstances and dosage requirements." See *Fallahi v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 906 at paragraph 7. It takes into account the applicant's "likely *demands* on services, not mere eligibility for them." See *Hilewitz*, above, at paragraph 54. See also *Tong v. Canada (Minister of Citizenship and Immigration)*, Immigration and Refugee Appeal Board (Appeal Division), 29 September 2009, TA7-12458 at paragraphs 24 and 33; and *Ashraf v. Canada (Minister of Citizenship and Immigration)*, Immigration and Refugee Appeal Board (Appeal Division), 19 May 2009, TA7-05863 at paragraph 32.

[24] Equally importantly, an individualized assessment considers the "willingness and ability of the applicant or his or her family to pay for the services." See *Hilewitz*, above, at paragraphs 55 and 61. Visa officers must consider this factor. See *Hossain v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 475 at paragraph 23. An officer who fails to assess whether an applicant has a viable plan to cover the costs of medication commits an error. See *Companioni v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1315 (*Companioni*) at paragraph 10.

[25] In the instant case, the Visa Officer provided no assessment of whether the costs of the Applicant's medication would exceed the per capita cost over five years and no assessment of whether the costs would draw on government-funded services. There is no universal government-funded out-patient drug program in Canada, so the officer should not have assumed that the Applicant's medication would be covered through a publicly-funded drug plan for which the Applicant would be eligible. Further, the Visa Officer did not assess the Applicant's financial plan to enrol in a private health insurance plan to attenuate any excessive demand on Canadian health services.

[26] The Applicant submits that, in failing to carry out the appropriate assessment, the Visa Officer made an error of law, which is reviewable on the correctness standard.

The Respondent

Visa Officer's Reasons Were Adequate

[27] The Respondent argues that the Visa Officer's reasons were adequate in the circumstances. If the Applicant believed them to be inadequate, however, he was obligated to request additional information and clarification. In *Hayama v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1305 (*Hayama*) at paragraph 15, Justice Edmond Blanchard relied on the Federal Court of Appeal's decision in *Marine Atlantic Inc. v. Canadian Merchant Service Guild*, 2000 CanLII 15517 (*Marine Atlantic*), in concluding as follows:

> If the applicant was unsatisfied with the decision letter and felt it did not adequately explain the decision, a request should have been made for further elucidation. There is no evidence that such a request would have been refused. I therefore conclude that, in the circumstances of this case, there is no breach of duty of fairness due to an absence of reasons, or inadequacy of reasons.

[28] In the alternative, if the Applicant was not obligated to request clarification of reasons, the Respondent submits that the Visa Officer's reasons were sufficient in that they identified both the source of the concern (namely, "Renal failure—chronic—post renal transplant") and the nature of the concern (namely, "excessive demand on health services"). See *Hersi v. Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16671 (F.C.) at paragraph 21.

[29] Although the Applicant argues that he was deprived of "meaningful explanations" for how the Visa Officer arrived at her negative conclusions and evaluations regarding the letters of support and the plan for payment of medication costs, the Respondent argues that it would be "inappropriate" to demand such detailed reasons from this administrative officer as she is not an

adjudicative administrative tribunal. See *Cupid v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 176 at paragraph 12. Further, an applicant may successfully challenge the adequacy of reasons only where such inadequacy has prejudiced his or her right of judicial review. That has not been shown here. See *Za'rour v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1281.

[30] The Respondent contends that the Applicant was advised of which social services he would require in the Visa Officer's view; a copy of the statutory definitions of "excessive demand," "health services," and "social services" was attached to the Visa Officer's reasons. See *Yogeswaran v. Canada (Minister of Citizenship and Immigration)*, 1997 CanLII 5080 (F.C.T.D.) at paragraph 7.

[31] The Respondent submits that the Fairness Letter and the Refusal Letter respond to live issues in the case. An appeal based on inadequacy of reasons is available only where the reasons are so deficient as to foreclose meaningful appellate review. That is not the case here.

Visa Officer Conducted Individualized Assessment

[32] The Respondent argues that, contrary to the Applicant's assertions, the Visa Officer did conduct an individualized assessment of his medical status. In her affidavit, dated 26 May 2010, the Visa Officer refers to the Medical Notification produced by Dr. Jason Creaghan, the Medical Officer who determined the Applicant's inadmissibility. The notification identifies the Applicant's health condition, the medication he was taking and the dosage, as well as the cost per year and the complete coverage that would be available through the provincial drug plan of Prince Edward Island

(PEI), where the Applicant was planning to reside. The details of this assessment are confirmed and explained in Dr. Creaghan's own affidavit, dated 25 May 2010.

[33] The Visa Officer also considered the Applicant's plan to cover the costs of medication, which she found was based on the Applicant's promise to pay. This Court has recognized such promises as unenforceable. The Applicant, in his argument on this point, has mischaracterized Justice Sean Harrington's decision in *Companioni*, above. In that case, the facts of which are similar to those of the instant case, the Court observed that "[p]romises not to access [Ontario's provincial drug program] are simply not enforceable." See *Companioni*, above, at paragraph 10; and *Rashid v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 157 at paragraph 23.

Applicant's Reply

[34] The affidavits of the Visa Officer and the Medical Officer introduce, for the first time, the above-noted information on specific medications, dosages and drug costs, and explain, for the first time, how the officers came to the conclusion that the Applicant's medication costs might impose an excessive burden on the public purse.

[35] The Applicant requests that, in the circumstances of this case, these affidavits be given little or no weight. In *Sklyar v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1226 at paragraph 11, Justice Michael Phelan advised a cautionary approach to after-the-fact affidavit evidence, which may be offered to buttress inadequate reasons:

> While there may be instances where the reasons for the decision are properly contained in not only the decision letter and the CAIPS

> notes but also in an affidavit (see *Hayama v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1305), the Court is concerned when the evidence submitted post-filing of an application for judicial review attempts to fill in gaps in the record of decision on the very points in issue and does so by adding major elements to the Record. The attempt to supplement the Record must be approached with caution when attempted by either an applicant or a respondent. If admissible, the Court must assess its weight.

[36] The Respondent, relying on *Hayama*, above, and *Marine Atlantic*, above, argues that the Applicant should have requested clarification if he found the Visa Officer's reasons to be inadequate. However, the Applicant contends that these cases are distinguishable from the instant case: the requirement for an applicant to request further clarification is not absolute but dependent on the circumstances of the case. See *Kidd v. Greater Toronto Airports Authority*, 2004 FC 703 at paragraphs 29-32, aff'd 2005 FCA 81; *Marine Atlantic*, above, at paragraph 7. In cases of medical admissibility on grounds of excessive demand, such as the instant case, visa officers are expected to provide adequate reasons to allow applicants to respond effectively.

[37] The Medical Officer's affidavit is deficient. With respect to provincial drug coverage in PEI, it fails to identify when the information was obtained, the program for which the Applicant is supposedly eligible and the eligibility criteria. Eligibility for publicly-funded drug plans is not automatic. Moreover, both affidavits fail to deal with the Applicant's intention to enrol in a private health insurance plan in Canada as he done in the United States.

Respondent's Further Memorandum

[38] The Respondent disputes the Applicant's submissions regarding the admissibility of the affidavits of the Visa Officer and the Medical Officer. Unlike the impugned affidavits highlighted in the cases cited by the Applicant, these two affidavits are not being used to buttress the Visa Officer's Decision or to introduce an "entire line of reasoning not reflected anywhere in her notes."

[39] The Visa Officer simply attached to her affidavit the Medical Notification issued by the Medical Officer, which is contained in the Tribunal Record and which informed the Visa Officer's Decision.

[40] The Medical Officer's affidavit echoes the contents of the Medical Notification, which addresses the Applicant's condition, the requisite treatment and its projected costs and the coverage of these costs by the provincial health plan in Prince Edward Island. The affidavit confirms that the Medical Officer considered the opinions of the Applicant's physicians in the United States and was still not dissuaded from his initial determination of inadmissibility.

[41] The Applicant's Reply demonstrates no error in the Medical Officer's affidavit. The Applicant suggests that the Medical Officer may not have confirmed that the provincial drug plan would cover the costs of the medication prior to the issuance of the Refusal Letter. This suggestion is without merit. Further, if the Applicant doubted the Medical Officer's findings with regard to the coverage of the medication, he could have cross-examined him on his affidavit.

ANALYSIS

[42] I have reviewed all of the issues raised by the Applicant. I think it is clear that an individualized assessment did take place. The only issue of substance relates to procedural fairness.

[43] The Officer provided the Applicant with reasons for the Decision. However, the Applicant now says that more should have been provided. He says that although "the Officer's Refusal Letter concludes very generally that the Applicant might cause excessive demand on health or social services, there is no explanation of what actual services the Officer believes the Applicant would require." The Applicant also complains that the "Refusal Letter also does not assess how any services required by the Applicant can be expected to exceed average Canadian per capita costs over 5 years."

[44] The Applicant complains that the Fairness Letter is no better: "[l]ike the Refusal Letter, the Fairness Letter presents statements of conclusion, some of which appear to be template phrases copied and repeated more than once."

[45] As for the CAIPS notes, the Applicant says that "there is no meaningful explanation of how the Applicant's doctors' letters, proposed plan and financial ability were taken into account, nor any explanation as to why they were not sufficient to alter the finding of medical inadmissibility."

[46] It is clear then, that the Applicant thinks he should have received further details that lay behind the reasons and conclusions provided. He says that it is procedurally unfair that this did not occur.

[47] I have reviewed the Fairness Letter and the Applicant's response. These documents make it clear that the Applicant knew perfectly well what the decisive issue was: drug costs and excessive demands upon the public health system in Canada. He understood this because, in his response, he says that the problem can be overcome and he can make arrangements for a private or group plan that will mean he does not make excessive demands upon the public purse.

[48] As Applicant's counsel conceded at the oral hearing, the real issue in this case was whether procedural unfairness occurred because the Applicant was not provided with the information concerning PEI which had been part of Dr. Creaghan's assessment. He says that if he had been provided with this information he could have provided a viable plan involving medical insurance and/or he could have directed his application at Ontario, for example, rather than PEI.

[49] In my view, this is not a procedural fairness issue. The Fairness Letter and the Applicant's response make it clear that the reason for the refusal was explained to the Applicant in sufficient detail to allow him to understand why his application was refused. It was then up to the Applicant to take whatever advice he needed and suggest a solution that would avoid an excessive demand upon the public system. The Applicant's response indicates that he knew this would involve alternative insurance coverage, but he does not say how and where this will be provided. The resolution he

comes up with is a suggestion or declaration of intent. It is not a plan. It is inchoate. See *Companioni*, above, at paragraphs 25 and 30-31.

[50] The Officer was not obliged to advise the Applicant that he might wish to consider residing elsewhere than PEI. The Applicant should have sought advice and provided a clear plan that would address the problem of excessive demand. The Officer could not guess that the Applicant might be willing to go to Ontario or to some other location that would not give rise to the problems that will occur if he goes to PEI. It was the responsibility of the Applicant to review his options and provide a plan that was more than an intention to seek group and/or private insurance.

[51] The Applicant did indicate his willingness to enroll in a private health insurance plan in Canada, just as he has done in the United States, but his plans were inchoate.

[52] As the Court held in *Companioni*, above, personal undertakings not to access government programs are not enforceable.

[53] In *Rashid*, above, Justice Mosley quoted Justice John Evans in the Federal Court of Appeal decision in *Deol v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 271 at paragraph 46, that:

> [a]s has been held in several previous cases, it is not possible to enforce a personal undertaking to pay for health services that may be required after a person has been admitted to Canada as a permanent resident, if the services are available without payment.

[54] I see little difference between a personal promise to pay or to refrain from accessing a government scheme, and a promise to enrol in a private health insurance plan. The Applicant may have no alternative in the United States but to purchase or enroll in such a plan but in Canada, where an alternative government scheme is available, his promise not to use it and to seek private coverage is not enforceable. The Applicant's reply to the Fairness Letter makes it clear that the Applicant does not understand the public health system in Canada. His attitude with respect to paying for private or group insurance may well change after he arrives here and realizes that he is paying for health coverage that other Canadians receive through the public system.

[55] The Applicant is at liberty to re-apply for permanent residence. He now has a full knowledge of what is required. He could have acquired this knowledge earlier if he had sought and taken appropriate advice. I can find no reviewable error in the Decision.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed;

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-1426-10
STYLE OF CAUSE:	**MAJID HASSAN CHAUHDRY** Applicant - and - MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent
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APPEARANCES:

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