

Federal Court



Cour fédérale

Date: 20110920

Docket: IMM-1323-11

Citation: 2011 FC 1077

Ottawa, Ontario, September 20, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

PRABHAT PRATAP DEV

Applicant

and

**THE MINISTER OF CITIZENSHIP &
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Prabhat Pratap Dev applied for permanent residence in Canada as a member of the Federal Skilled Worker Class. An immigration officer at the High Commission of Canada in New Delhi found that Mr. Dev fell four points short of the required score of 67.

[2] Mr. Dev claims that the immigration officer treated him unfairly by failing to consider whether he was likely to become economically established in Canada notwithstanding that he did

not have the required number of points for success (a “substituted evaluation”). He also maintains that the officer failed to provide adequate reasons for dismissing his application. He asks me to set aside the officer’s decision and order another officer to reconsider his application.

[3] I can find no grounds for overturning the officer’s decision and must, therefore, dismiss this application for judicial review.

[4] There are two issues:

1. Did the officer fail to carry out a substituted evaluation?
2. Were the officer’s reasons inadequate?

II. The Officer’s Decision

[5] The officer evaluated Mr. Dev’s ability to become economically established in Canada under s 76(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations cited are set out in an Annex). The officer considered the prescribed criteria – age, education, official language proficiency, experience, arranged employment, and adaptability – and found that Mr. Dev fell four points short of the required score of 67.

[6] Mr. Dev had asked the officer to conduct a substituted evaluation under s 76(3) of the Regulations if he did not achieve the required score. However, his request was not accompanied by any significant additional information with respect to economic establishment. While Mr. Dev

mentioned that his spouse could communicate in French, and that he had unencumbered assets worth about \$100,000, he did not provide any corroborating documentary evidence.

[7] In her decision letter, the officer did not mention any substituted evaluation. However, it was referred to in her notes where she stated that she had reviewed all of the documents on file but had “not found any additional factor(s) that have not already been accounted for in the points awarded or warranting the consideration for substituted evaluation”.

III. Issue One - Did the officer fail to carry out a substituted evaluation?

[8] Mr. Dev argues that the officer treated him unfairly by failing to consider his request for substituted evaluation.

[9] It is clear from the record that the officer considered Mr. Dev’s request. I see no basis for Mr. Dev’s complaint of unfair treatment.

IV. Were the officer’s reasons inadequate?

[10] An officer’s notes form part of his or her reasons (see *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817). As Justice Russell Zinn has observed, this Court has recognized in a myriad of cases that information in an officer’s notes form part of the reasons (*Xu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 418, at para 14). I also agree with Justice Zinn that, while the better practice is to include important details in the correspondence

to the applicant, “it does not follow that there were no reasons simply because they were not repeated in the decision letter” (at para 15).

[11] Admittedly, the officer’s reasons regarding substituted evaluation are brief. However, it is important to note that an officer is not required to give reasons at all. The officer simply has a duty to inform the applicant that the request for substituted evaluation was considered (*Poblano v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1167, at para 7).

[12] Here, the officer stated that she had considered Mr. Dev’s request, and found no grounds on which to exercise her discretion in his favour. Since Mr. Dev had not put forward any evidence to support his request, it was sufficient for the officer to state that she was satisfied that his point score properly reflected his ability to become economically established in Canada (*Marr v Canada (Minister of Citizenship and Immigration)*, 2011 FC 367, at para 13).

[13] In my view, the officer’s reasons were adequate in the circumstances.

V. Conclusion and Disposition

[14] The officer considered Mr. Dev’s request for substituted evaluation and explained why she found no basis to depart from his point score. I must, therefore, dismiss this application for judicial review. No question of general importance arises.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex

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

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 minimum number of required points referred to in subsection (2) on the basis of the following factors, namely,

a) le travailleur qualifié accumule le nombre minimum 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).

...

[...]

Circumstances for officer's substituted evaluation

Substitution de l'appréciation de l'agent à la grille

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

(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) — n'est pas un indicateur suffisant de l'aptitude de ce travailleur qualifié à réussir son établissement économique au Canada, l'agent peut substituer son appréciation aux critères prévus à l'alinéa (1)a).

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1323-11

STYLE OF CAUSE: PRABHAT PRATAP DEV
v
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 13, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: September 20, 2011

APPEARANCES:

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