

Federal Court



Cour fédérale

Date: 20110714

Docket: IMM-7124-10

Citation: 2011 FC 888

Toronto, Ontario, July 14, 2011

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

SALEEM ISBAD HADWANI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of a Designated Immigration Officer dated October 5, 2010 in which the Officer refused the Applicant's application for permanent residence in Canada as a skilled worker. For the reasons that follow this application is allowed with costs.

[2] The Applicant is a physician residing in Karachi, Pakistan. He seeks to come to Canada as a permanent resident. He made an application to do so using an immigration consulting firm. The

application was processed by the Canadian High Commission of Islamabad, Pakistan which required and was provided with a number of documents and information in support of his application. An assessment was made based on a points scheme. The Applicant received 63 points. He required 67 points in order to be successful. The essential issue turns on the award by the Officer of zero (0) points in a category termed as “adaptability”. The reason for doing so was that the Officer was not satisfied that the Applicant had filed a government issued birth certificate in support of the otherwise satisfactory proof that the Applicant had a nephew residing in Canada. What the Applicant had filed was a document provided by the Medical Record Department of Karachi Adventist Hospital providing particulars of the birth of the nephew at that hospital. The Officer was not satisfied with this document. The Officer apparently required a government issued birth certificate but didn’t tell the Applicant or his representatives.

[3] The CAIPS notes entered by the Officer indicates the following:

“FN claim to have a niece in Canada. Copy of PR card is on file. Copy of marriage cert of niece mother shows same parentage as appear on FN’s edu docs. But birth cert for niece is not acceptable as it is issued by a hospital and not by relevant govt authorities. No pts for relatives in Canada are awarded. FN does not obtain any points for adaptability factors. FN does not meet minimum 67 pass marks criteria under IRPA. File to PR for review.”

[4] The reference to a niece instead of a nephew reflects a degree of carelessness or inattention to this file by the Officer.

[5] The Officer did not advise the Applicant or his legal representatives as to any concern respecting the provision of a document other than government issued birth certificate. When the

Officer's decision was communicated to the Applicant's representatives the representatives attempted to provide further information. They were advised that it was too late to do so.

[6] The Applicant raises three issues on this application:

a. Did the Officer deny the Applicant procedural fairness by failing to provide the Applicant with an opportunity to disabuse the Officer's concerns with respect to documentation providing the relationship to his nephew residing in Canada?

b. Was the Officer's fining unreasonable in awarding the Applicant no points for adaptability, despite evidence indicating the existence of a Canadian relative?

c. Did the Officer err in failing to exercise his discretion to approve the Applicant's skilled worker application, give the unique circumstances of this case?

[7] The Respondent's position is that an applicant bears the burden of filing a proper and complete application and that an Officer is under no duty to inform an applicant as to defects or enter into a dialogue as to the adequacy of materials submitted.

[8] The issues should be approached from the point of view as to what the Applicant was required to submit. In this regard the Applicant was furnished by the Canadian High Commission with a document entitled "*Document Check List*". It set out a number of documents required for an application of this kind, including:

Proof of your relationship to your relative in Canada, if applicable, (i.e.; education documents, parent's Bay Form, birth certificates or Nikah Nama), and his/her status in Canada with the notarized copy of record of landing, Canadian passport or citizenship card. Documents must conclusively prove how you are related. Affidavits are not acceptable. Also provide the complete address of your relative in Canada.

[9] It is to be noted that the mention, in brackets, of birth certificates is preceded by the notation ie. which is to say “ such as”, meaning a degree of flexibility is permissible. Where it is to be made clear that certain documents are not acceptable, that is set out, for instance in the above section. “*Affidavits are not acceptable*”. The Check List elsewhere also makes it clear what documents are and are not acceptable, for instance:

- *Updated proof of funds with supporting verifiable documents showing the history of your funds.
Information on required settlement funds can be found at:
<http://www.cic.gc.ca/english/immigrate/skilled/funds.asp>*
- *Photocopies of the first 4 pages of passports for yourself and all your dependants, whether accompanying or not.*
- *Original employment certificates and official detailed job description for your declared NOC codes that meet the Ministerial Instructions.
Please do not submit self-written job descriptions, we will only consider your submission if it has been issued and certified by your employer.*

[10] The Check List does not state that a government issued birth certificate must be submitted in the case of a relative in Canada. It says documents “such as” a birth certificate must be submitted. The Officer was clearly wrong in dismissing out of hand the hospital record as to the nephew’s birth.

[11] It is incredulous that the application of a physician should be dismissed on the basis of failure to file a government issued birth certificate of his nephew (not “niece”) when he did file an acceptable alternative. He was turned down for being only four points short of achieving the necessary sixty-seven points. The failure of the officer to exercise a degree of flexibility and the

failure of the Respondent to settle this matter well before the hearing constitute special reasons for an award of costs which I fix at \$500.00.

[12] This application is allowed with costs fixed at \$500.00. The Officer's decision is set aside.

The matter is returned for re-determination by a different Officer bearing in mind these reasons.

JUDGMENT

FOR THE REASONS PROVIDED:

THE COURT'S JUDGMENT IS:

1. The application is allowed;
2. The decision of the Designated Immigration Officer dated October 5, 2010 is set aside;
3. This matter is returned for re-determination by a different Officer bearing in mind the Reasons herein;
4. The Applicant is entitled to costs fixed in the sum of \$500.00.

"Roger T. Hughes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-7124-10

STYLE OF CAUSE: SALEEM ISBAD HADWANI APPLICANT
and
THE MINISTER OF CITIZENSHIP AND IMMIGRATION RESPONDENT

PLACE OF HEARING: TORONTO

DATE OF HEARING: JULY 14, 2011

REASONS FOR JUDGMENT AND JUDGMENT: HUGHES J.

DATED: JULY 14, 2011

APPEARANCES:

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