

Federal Court



Cour fédérale

**Date: 20121206**

**Docket: IMM-3551-12**

**Citation: 2012 FC 1432**

**Vancouver, British Columbia, December 6, 2012**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**SWINDER KAUR LOHAT**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] The Applicant seeks judicial review of the decision of an immigration officer [Officer] rejecting her application to be selected as a member of the economic class on the basis of her ability to become economically established in Canada under subsection 12(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Applicant argues that she should have received an additional five points under paragraph 83(1)(d) and subparagraph 83(5)(a)(v) of the *Immigration*

*and Refugee Protection Regulations*, SOR/2002-227, as am SC 2002, c 8, s 182(3)(a) [*Regulations*] for being related to a person living in Canada.

## II. Judicial Procedure

[2] This is an application under subsection 72(1) of the *IRPA* for judicial review of the decision of the Officer, dated February 7, 2012.

## III. Background

[3] The Applicant, Ms. Swinder Kaur Lohat, is a citizen of India. She was born in 1975 and has been married to Mr. Parminder Singh since March 8, 2004.

[4] The Applicant has completed 18 years of full-time educational training, including a three-year diploma in General Nursing and Midwifery from the Government School of Nursing SGTB Hospital and a Bachelor of Arts.

[5] The Applicant has several years of work experience in an occupation classified under National Occupation Classification Code 3152, "Registered Nurses" [NOC 3152].

[6] On February 25, 2010, the Applicant applied for permanent residence in Canada under the skilled worker category [PR Application] on the basis of her work experience.

[7] On Schedule 3 of the PR Application, the Applicant indicated that her accompanying spouse had a sister or brother who was living in Canada or was a permanent resident in Canada.

[8] On April 30, 2010, the Federal Skilled Worker Centralized Intake Office advised the Applicant that her PR Application would be recommended to the visa office on the basis of her NOC 3152 work experience and requested her to submit a completed application to the New Delhi visa office [CIO Approval Letter].

[9] On August 24, 2010, the Applicant made submissions in response to the CIO Approval Letter, stating that her accompanying spouse's biological half-sister was Jaspreet Kaur Duggal [Jaspreet Duggal], a Canadian citizen living in Canada [Response to CIO Letter].

[10] In the Response to the CIO Letter, the Applicant included the following documents to support her claim that Jaspreet Duggal is the half-sister of her spouse: (i) the Indian passports of the Applicant, Parminder Singh, and Jaspreet Kaur; (ii) the marriage certificate of the Applicant and Parminder Singh; (iii) the employment records of the Applicant; (iv) the education records of Parminder Singh; (v) an affidavit of Parminder Singh; (vi) the Canadian citizenship card of Jaspreet Duggal; and (vii) the British Columbia Driver's License of Jaspreet Duggal.

#### IV. Decision under Review

[11] The Officer rejected the Applicant's PR Application because the Applicant had insufficient points to qualify for a permanent resident visa under subsection 12(2) of the *IRPA*. The Officer applied the selection criteria in subsection 76(2) of the *Regulations* to determine if the Applicant met the minimum requirements set out in subsection 75(2) of the *Regulations*.

[12] The Applicant received ten points for age, twenty-two for education, six for language proficiency, twenty-one for experience, zero for arranged employment, and four for adaptability. This came to a total of sixty-three points; three points short of the required sixty-seven points fixed by the Minister under subsection 76(3) of the *Regulations* as the minimum number of points required for skilled workers.

[13] Under paragraph 83(1)(d) and subparagraph 83(5)(a)(v) of the *Regulations*, an applicant under the skilled worker category shall be awarded five points if that applicant or an accompanying spouse has a sibling living in Canada. The Officer did not award the Applicant these points because the Applicant had not presented sufficient evidence to establish that her accompanying spouse was the half-brother of Jaspreet Duggal, a Canadian citizen currently living in Canada. In particular, the documents and affidavit provided by the Applicant were insufficient to prove a family relationship.

#### V. Issues

[14] (1) Was the Officer reasonable in finding that the Applicant could not be awarded five points under paragraph 83(1)(d) of the *Regulations* because her accompanying spouse was the half-brother of Jaspreet Duggal?

(2) Did procedural fairness require the Officer to provide the Applicant with an opportunity to respond?

#### VI. Relevant Legislative Provisions

[15] Please see Annex “A” for the relevant legislative provisions of the *IRPA* and the *Regulations*.

## VII. Position of the Parties

[16] The Applicant submits that the Officer was unreasonable in refusing to award her five points for adaptability under paragraph 83(1)(d) and subparagraph 83(5)(a)(v) of the *Regulations* because her accompanying spouse is related by blood to a person who is a Canadian citizen living in Canada and who is also a child of the mother of her accompanying spouse.

[17] The Applicant argues that she submitted sufficient documentation to establish that her accompanying spouse, Parminder Singh, is the son of Ujjagar Singh and Jaswant Kaur, including copies of his Indian passport and a letter from a former principal.

[18] The Applicant also argues that she submitted sufficient documentation to establish that her accompanying spouse, Parminder Singh, is the half-brother of Jaspreet Duggal by Jaswant Kaur's second marriage to another man. The documentation includes the Indian passport of Jaspreet Duggal, the citizenship card of Jaspreet Duggal, and an affidavit by Parminder Singh.

[19] According to the Applicant, it is difficult to document the names of mothers in India because most Indian record-keeping focused on paternity to the exclusion of maternity. She also claims that maintaining records such as birth, marriage, and death certificates [vital records] was unusual, that the legislative requirement to maintain vital records did not come into effect until the 1970s, and that this legislation was not always complied with. Consequently, the Applicant's birth record and the marriage records of Jaswant Kaur were unavailable.

[20] Citing *Wang v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 58, 217 FTR 193, the Applicant argues that the applicable standard of proof in assessing her PR Application is the balance of probabilities standard. The Applicant, relying on *R v Layton*, 2009 SCC 36, [2009] 2 SCR 540, argues that this standard required her to establish that it was more probable than not that Jaspreet Duggal was the half-sister of her accompanying spouse, Parminder Singh.

[21] The Applicant submits that, given the documents described above, it was more probable than not that Parminder Singh and Jaspreet Duggal were both the children of Jaswant Kaur and that the requirements of paragraph 83(1)(d) and subparagraph 83(5)(a)(v) of the *Regulations* were met. She contends that she should not be limited to vital records to establish family relationships and that she provided the best available evidence in their absence.

[22] In the Applicant's view, the Officer breached procedural fairness by failing to provide adequate reasons and an opportunity to respond. She received no notice that the submitted documentation was insufficient to establish that her accompanying spouse, Parminder Singh, and Jaspreet Duggal were both children of Jaswant Kaur.

[23] The Applicant submits that her inability to obtain the birth certificate of Parminder Singh or the marriage certificates of Jaswant Kaur placed her in a distinct situation. The evidence that she submitted in substitution of these records required the Officer to raise concerns with the evidence with the Applicant. The Applicant argues that she had a legitimate expectation that the Officer would address any concerns with her with regard to her PR Application as she received a letter on

September 7, 2010 advising her that she would receive a month's notice of any interview that might be required.

[24] Moreover, the Applicant claims that the Officer's rejection of the statutory declaration of Parminder Singh is tantamount to an adverse credibility finding to which she should have had an opportunity of responding.

[25] The Respondent submits that the Officer was reasonable in finding that the Applicant had failed to establish that her accompanying spouse, Parminder Singh, and Jaspreet Duggal were half-siblings and that, consequently, the Applicant could not satisfy the requirements of paragraph 83(1)(d) and subparagraph 83(5)(a)(v) of the *Regulations*. Citing *Kniazeva v Canada (Minister of Citizenship and Immigration)*, 2006 FC 268, 288 FTR 282, the Respondent argues that assessing an application under subsection 12(2) of the *IRPA* is an exercise of discretion warranting deference and that this Court should not intervene if the decision was made in good faith, complied with procedural fairness, and was not made on irrelevant or extraneous considerations.

[26] In particular, the Respondent argues that the Officer's finding was reasonable because the Applicant had not produced sufficient documentation establishing that her accompanying spouse and Jaspreet Duggal were half-siblings. The Respondent argues that the Applicant had clear notice of the types of documents she was required to submit since she had been directed to a website that set out the documents required to establish a family relationship. Further, the Respondent argues that the affidavit of Parminder Singh did not attract weight as it was the affidavit of an interested party and, consequently, self-serving and unreliable.

[27] The Respondent argues that the Applicant's application for judicial review effectively asks this Court to reweigh the evidence.

[28] Citing *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, the Respondent submits that adequacy of reasons is not a stand-alone ground for judicial review.

[29] Finally, the Respondent argues that the Officer was not required to give the Applicant an opportunity to respond as the Applicant had the onus of providing sufficient documentation to establish that paragraph 83(1)(d) and subparagraph 83(5)(a)(v) of the *Regulations* applied. Citing *Hussain v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 468, the Respondent argues that procedural fairness did not oblige the Officer to inform the Applicant of any concerns on the sufficiency of the evidence. The Respondent further argues, relying on *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283, [2007] 3 FCR 501, that an applicant under subsection 12(2) of the *IRPA* has the onus of establishing that he or she meets legislative requirements and that "where a concern arises directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns" (at para 24).

## VIII. Analysis

### *Standard of Review*

[30] A decision to award points for adaptability for being related to a person living in Canada is a question of mixed fact and law reviewable on the standard of reasonableness (*Lee v Canada*



(*Minister of Citizenship and Immigration*), 2011 FC 617, 390 FTR 166). The standard of correctness applies to questions of procedural fairness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 129). The content of the duty of procedural fairness will, however, vary according to the circumstances and the legislative and administrative context of a decision (*Mavi v Canada (Attorney General)*, 2011 SCC 30, [2011] 2 SCR 504).

[31] Where the standard of reasonableness applies, the Court may only intervene if the Board's reasons are not "justified, transparent or intelligible". To satisfy this standard, the decision must also fall in the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para 47).

[32] Although the Applicant has challenged the adequacy of the Officer's reasons, the Supreme Court of Canada has held that if reasons are given, a challenge to the reasoning or result is addressed in the reasonableness analysis. According to *Newfoundland and Labrador Nurses Union*, above, "reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (at para 14). A reviewing court may not "substitute [its] own reasons" but may "look to the record for the purpose of assessing the reasonableness of the outcome" (at para 15).

- (1) Was the Officer reasonable in finding that the Applicant could not be awarded five points under paragraph 83(1)(d) of the *Regulations* because her accompanying spouse was the half-brother of Jaspreet Duggal?

[33] The Officer was reasonable in finding that, on a balance of probabilities, the Applicant could not be awarded five points under paragraph 83(1)(d) of the *Regulations* because her accompanying spouse was the half-brother of Jaspreet Duggal.

[34] A decision-maker assesses if a person is related to a person living in Canada on a balance of probabilities (*Dhillon v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1049). Pursuant to *Layton*, above, this required the Officer to ask if it was more probable than not that Jaspreet Duggal was the half-sister of the Applicant's accompanying spouse and that paragraph 83(1)(d) and subparagraph 83(5)(a)(v) of the *Regulations* should apply.

[35] According to the Certified Tribunal Record [CTR] released pursuant to Rules 15 and 17 of the *Federal Courts Immigration as Refugee Protection Rules*, SOR/93-22, as am SOR/98-235, ss 1-6,7 (Fr), the Applicant presented the following documents to support her claim that she was married to Parminder Singh, that Parminder Singh was the son of Jaswant Kaur, and that Jaspreet Duggal was the daughter of the same Jaswant Kaur:

- A copy of the Applicant's Indian passport, issued August 29, 2010, identifying her spouse as Parminder Singh Lohat (CTR at p 47);
- A copy of the Indian passport of Parminder Singh Lohat, issued October 10, 2002, identifying his father as Ujjager Singh and his mother as Jaswant Kaur (CTR at p 66);
- A translated copy of the marriage certificate of the Applicant and Parminder Singh, dated March 8, 2004, identifying the father of Parminder Singh as Ujjager Singh (CTR at p 86);

- A translated copy of the birth certificate of the Applicant's son identifying his mother as the Applicant and his father as Parminder Kaur and his paternal grandfather as Ujjagar Singh Lohat, dated April 18, 2006 (CTR at p 91);
- Copy of a letters of confirmation of employment for the Applicant identifying her spouse as Parminder Singh Lohat, dated August 17, 2010 and August 19, 2010 (CTR at pp 92, 94, and 98);
- A copy of Parminder Singh's sanitary inspector training records identifying his father as Ujjager Singh (CTR at pp 128-130);
- A copy of Parminder Singh's Bachelor of Arts degree identifying his father as Ujjagar Singh, dated October 18, 1988 (CTR at p 118);
- Copies of the Parminder Singh's academic record at Guru Nanak Dev University identifying his father as Ujjagar Singh, dated April 1986, April 1987, and October 18, 1988 (CTR at pp 119, 120, and 121);
- A copy of the Parminder Singh's secondary school records identifying his father as Ujjager Singh, dated March 1985 (CTR at p 122);
- A copy of a letter from the Principal of Khalsa College Senior Secondary School certifying that Parminder Singh attended that school and was the son of Ujjager Singh and Jaswant Kaur, dated August 25, 2010 (CTR at p 124);
- An affidavit of Parminder Singh identifying himself as the son of Ujjager Singh and Jaswant Kaur, alleging that Jaswant Kaur remarried Surjit Singh on the death of Ujjager Singh, and further alleging that Jaspreet Duggal was the daughter of Jaswant Kaur by this second marriage, dated August 26, 2010 (CTR at p 137);

- A copy of the Indian passport of Jaspreet Kaur, issued April 6, 1999 stating that Jaspreet Kaur was born on May 23, 1975 and identifying her as the daughter of Surjit Singh and Jaswant Kaur (CTR at p 140); and,
- A copy of a Canadian citizenship card for Jaspreet Duggal, stating that she was born May 23, 1975 (CTR at p 142);
- A copy of a British Columbia Driver's License for Jaspreet Duggal, stating that she was born May 23, 1975 (CTR at p 142).

[36] The CTR also contains a translated copy of a statement from the Registrar of Births and Deaths in Ludhiana that a birth record for Parminder Singh was requested by Jaswant Kaur but was not available (CTR at p 90).

[37] Before disposing of this question, this Court wishes to outline two principles.

[38] First, an applicant is not necessarily limited to a prescribed list of documents (vital records) in establishing a family relationship for the purposes of paragraph 83(1)(d) and subparagraph 83(5)(a)(v) of the *Regulations*. In *Singh v Canada (Minister of Citizenship and Immigration)*, 2012 FC 855, Justice John O'Keefe did not accept Canadian passports and permanent residence cards because these documents did not actually provide a means of explaining how the applicant was related to individuals alleged to be family members. *Singh* was concerned with documents that did not contain sufficient genealogical information. It does not stand for the proposition that only vital records (and not other documents containing genealogical information) can establish a family relationship for the purposes of the *IRPA* and the *Regulations*. Certain records that give genealogical

information may be probative of a family relationship in certain circumstances, even if they are not vital records.

[39] Second, an affidavit unsupported by corroborating evidence has limited probative value in assessing whether an applicant meets the requirements of paragraph 83(1)(d) and subparagraph 83(5)(a)(vi) of the *Regulations*. In *Singh*, Justice O'Keefe held that affidavits from self-interested parties may not be sufficient to show that an applicant is related to a person living in Canada if the affidavits lack corroborating evidence (at para 30).

[40] Applying these principles to this PR Application leads to the conclusion that it would be reasonable to find that Jaspreet Duggal was not, on a balance of probabilities, the daughter of the same Jaswant Kaur who was also the mother of Parminder Singh.

[41] The Applicant's Indian passport, marriage certificate, birth certificate of her son, and employment records identified her spouse as Parminder Singh.

[42] The birth certificate of the Applicant's son, the Applicant's marriage certificate, the Indian passport of Parminder Singh, and Parminder Singh's educational and sanitary inspector training records are sufficient to establish, on a balance of probabilities, that the Applicant's spouse, Parminder Singh, is the son of Ujjager Singh and Jaswant Kaur.

[43] It would be reasonable to conclude that the documentary evidence does not, however, establish, on a balance of probabilities, that Jaswant Kaur who was the spouse of Ujjager Singh and

the mother of Parminder Singh was also the spouse of Surjit Singh and the mother of Jaspreet Duggal. The Indian passport of Jaspreet Duggal identifies her parents as Surjit Singh and Jaswant Kaur and the documentary evidence does not establish that Jaswant Kaur was also married to Ujjager Singh. On the basis of the documentary evidence before the Officer, it would be reasonable to conclude that Jaswant Kaur who was the mother of Parminder Singh was not the same person as the mother of Jaspreet Duggal. By introducing the name of Surjit Singh into the equation, the documentary evidence made it reasonable to find that it was more probable than not that there were two Jaswant Kaur; one who married Ujjager Singh and had a son named Parminder Singh and another who married Surjit Singh and had a daughter named Jaspreet Duggal. It was possible that the two Jaswant Kaur were the same person, but not probable.

[44] In these circumstances, something more was needed to establish that it would not be reasonable to find, on a balance of probabilities, that the Jaswant Kaur who was the mother of Parminder Singh was the same person as the Jaswant Kaur who was the mother of Jaspreet Duggal. The need for further information to tip the balance in the Applicant's favour is perhaps inevitable in the case of half-siblings. Given the privileging of paternal ancestry that emerges from the Indian vital records before this Court and the unavailability of many Indian vital records in general, it would not be reasonable to insist on vital records to establish this. Documentary evidence showing, for example, that the Jaswant Kaur who was the mother of Jaspreet Duggal lived at the same address as Parminder Singh might have been sufficient to establish, on a balance of probabilities, that there was one Jaswant Kaur and that she was the mother of both Parminder Singh and Jaspreet Duggal.

[45] The affidavit of Parminder Singh, however, was not sufficient to establish that the Jaswant Kaur described in the documentary evidence was a single person. The affiant was an interested person and had not provided corroborating evidence on the question of whether the Jaswant Kaur who married Surjit Singh had been previously married to Ujjager Singh.

(2) Did procedural fairness require the Officer to provide the Applicant an opportunity to respond?

[46] The jurisprudence of this Court is consistent on the point that decision-makers are not required to notify an applicant for a skilled worker visa under subsection 12(2) of the *IRPA* that he or she has produced insufficient documentation (*Malik v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1283 at para 26).

[47] In *Chowdhury v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1315, Justice James Russell held that procedural fairness did not require an immigration officer give an applicant an opportunity to address concerns about an alleged family relationship if the concerns “arose directly from the documentation, or lack thereof, submitted by the [a]pplicant” (at para 45). Citing *Oladipo v Canada (Minister of Citizenship and Immigration)*, 2008 FC 366, Justice Russell reasoned that the applicant had the onus of preparing and filing an application with relevant, sufficient, and credible supporting documentation.

[48] The Applicant’s argument that the Officer’s rejection of Parminder Singh’s affidavit amounts to an adverse credibility assessment also fails. Under *Singh*, above, the Officer was entitled to give the affidavit little weight as it was not supported by corroborating evidence establishing that the Jaswant Kaur who was the wife of Ujjagar Singh and the mother of Parminder Singh was the

same individual as the Jaswant Kaur who was the wife of Surjit Singh and the mother of Jaspreet Duggal. Since such corroborating evidence was not before the Officer, there was no negative credibility finding. In short, the Officer was unconvinced by (but not in disbelief of) the evidence.

#### X. Conclusion

[49] For all of the above reasons, the Applicant's application for judicial review is dismissed.



**JUDGMENT**

**THIS COURT ORDERS that** the Applicant's application for judicial review be dismissed.

No question of general importance for certification.

“Michel M.J. Shore”

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Judge

## ANNEX “A”

Relevant legislative provision of the *Immigration and Refugee Protection Act*, SC 2001, c 27:

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|--|---|
| <p><b>12.</b> (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.</p> | <p><b>12.</b> (2) La sélection des étrangers de la catégorie « immigration économique » se fait en fonction de leur capacité à réussir leur établissement économique au Canada.</p> |
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Relevant legislative provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, as am SC 2002, c 8, s 182(3)(a):

- |   |   |
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| <p><b>75.</b> ...</p> <p>(2) A foreign national is a skilled worker if</p> <p>(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;</p> | <p><b>75.</b> [...]</p> <p>(2) Est un travailleur qualifié l'étranger qui satisfait aux exigences suivantes :</p> <p>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 aux 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;</p> |
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(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.

**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).

(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

(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) the number of applications by skilled

a) le nombre de demandes, au titre de la catégorie des

workers as members of the federal skilled worker class currently being processed;

travailleurs qualifiés (fédéral), déjà en cours de traitement;

(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

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

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

**83.** (1) A maximum of 10 points for adaptability shall be awarded to a skilled worker on the basis of any combination of the following elements:

**83.** (1) Un maximum de 10 points d'appréciation sont attribués au travailleur qualifié au titre de la capacité d'adaptation pour toute combinaison des éléments ci-après, selon le nombre indiqué :

(a) for the educational credentials of the skilled worker's accompanying spouse or accompanying common-law partner, 3, 4 or 5 points determined in accordance with subsection (2);

a) pour les diplômes de l'époux ou du conjoint de fait, 3, 4 ou 5 points conformément au paragraphe (2);

(b) for any previous period of study in Canada by the skilled worker or the skilled worker's spouse or common-law partner, 5 points;

b) pour des études antérieures faites par le travailleur qualifié ou son époux ou conjoint de fait au Canada, 5 points;

(c) for any previous period of work in Canada by the skilled worker or the skilled

c) pour du travail antérieur effectué par le travailleur qualifié ou son époux ou

worker's spouse or common-law partner, 5 points;

conjoint de fait au Canada, 5 points;

(d) for being related to a person living in Canada who is described in subsection (5), 5 points; and

d) pour la présence au Canada de l'une ou l'autre des personnes visées au paragraphe (5), 5 points;

(e) for being awarded points for arranged employment in Canada under subsection 82(2), 5 points.

e) pour avoir obtenu des points pour un emploi réservé au Canada en vertu du paragraphe 82(2), 5 points.

...

[...]

(5) For the purposes of paragraph (1)(d), a skilled worker shall be awarded 5 points if

(5) Pour l'application de l'alinéa (1)d), le travailleur qualifié obtient 5 points dans les cas suivants :

(a) the skilled worker or the skilled worker's accompanying spouse or accompanying common-law partner is related by blood, marriage, common-law partnership or adoption to a person who is a Canadian citizen or permanent resident living in Canada and who is

a) l'une des personnes ci-après qui est un citoyen canadien ou un résident permanent et qui vit au Canada lui est unie par les liens du sang ou de l'adoption ou par mariage ou union de fait ou, dans le cas où il l'accompagne, est ainsi unie à son époux ou conjoint de fait :

(i) their father or mother,

(i) l'un de leurs parents,

(ii) the father or mother of their father or mother,

(ii) l'un des parents de leurs parents,

(iii) their child,

(iii) leur enfant,

(iv) a child of their child,

(iv) un enfant de leur enfant,

(v) a child of their father or mother,

(v) un enfant de l'un de leurs parents,

(vi) a child of the father or mother of their father or mother, other than their father or mother, or

(vi) un enfant de l'un des parents de l'un de leurs parents, autre que l'un de leurs parents,

(vii) a child of the child of their father or mother; or

(vii) un enfant de l'enfant de l'un de leurs parents;

(b) the skilled worker has a spouse or common-law partner who is not accompanying the skilled worker and is a Canadian citizen or permanent resident living in Canada.

b) son époux ou conjoint de fait ne l'accompagne pas et est citoyen canadien ou un résident permanent qui vit au Canada.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3551-12

**STYLE OF CAUSE:** SWINDER KAUR LOHAT v  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** December 5, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** SHORE J.

**DATED:** December 6, 2012

**APPEARANCES:**

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