Federal Court  Cour fédérale

Date: 20111017

Docket: IMM-535-11

Citation: 2011 FC 1167

Ottawa, Ontario, October 17, 2011

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

JAVED IQBAL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, Javed Iqbal, sought a permanent resident visa as a Skilled Worker. His wife and two sons were later added to his application. This is an application for judicial review of a decision made by Stephanie MacKay, a Visa Officer at the High Commission of Canada in London, England, dated November 18, 2010. Officer MacKay decided that Mr. Iqbal was inadmissible to Canada pursuant to paragraph 38(1)(c) and section 42 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] because his son's hearing impairment would cause an excessive demand on Canadian social services.

I. Background and Impugned decision

[2] The applicant is a citizen of Pakistan. He resides in Fredericton, New Brunswick, where he is studying to obtain a Ph.D. in Forestry. He submitted an application for permanent residence in Canada as a member of the Federal Skilled Worker Class. He subsequently added his wife and two sons to his application. Danish, the applicant's eldest son, born in 2001, suffers from a hearing impairment. At the age of three, while the family was living in Australia, Danish was implanted with a cochlear implant.

[3] In January 2010, as part of the immigration process, the applicant and his family underwent a medical examination and Danish's medical condition was brought to the attention of immigration officials. It was also noted that Danish was being monitored by an audiologist at Bathurst Regional Hospital and that he received full and part-time help from two specialized educational support teachers in his Grade 3 classroom in Fredericton.

[4] The Medical Officer who reviewed the results of the medial examinations issued a Medical Notification indicating that Danish's condition might reasonably be expected to cause excessive demand on health or social services.

[5] On April 28, 2010, the Visa Officer who reviewed the Medical Notification sent a "Fairness Letter" to the applicant indicating that Danish has a "health condition that might reasonably be expected to cause excessive demand on social services in Canada". The officer

identified Danish's condition as being a "Hearing Impairment" and repeated *verbatim* the Medical Officer's explanation of Danish's condition, his need for social services and the estimated cost associated with the language facilitator. The Fairness Letter informed the applicant that he had the opportunity to submit further information before a final decision was made. The following excerpt of the Fairness Letter is relevant:

> . . .
>
> I have determined that your family member, Danish, is a person whose health condition might reasonably be expected to cause excessive demand on social services in Canada. An excessive demand is a demand for which the anticipated costs exceed the average Canadian per capita health and social services costs, which is currently set at $5 143.00 per year. Pursuant to subsection 38(1) [and pursuant to section 42 in the case of a family member] of the Immigration and Refugee Protection Act, it therefore appears that you may be inadmissible on health grounds.
>
> Your family member, Danish, has the following medical condition or diagnosis:
>
> Hearing Impairment
>
> In particular:
> This 9 year old applicant has hearing impairment. He received a cochlear implant in 2004. His educational focus is on sign language. As a student he receives support from an Atlantic Provinces Special Education Authority (APSEA) Language Facilitator (sign and oral) on a full time basis and an APSEA itinerant teacher five hours per week.
>
> This applicant has a medical condition for which he requires special education services. These services are expensive. Based upon my review of the results of this medical examination and all the reports I have received with respect to this applicant's health condition, I conclude that he has a health condition that might reasonably be expected to cause excessive demand on social services. Specifically, this health condition might reasonably be expected to require services, the costs of which would likely exceed the average Canadian per capita costs over five years. This applicant is therefore inadmissible under Section 38(1) (c) of the Immigration and Refugee Protection Act.

> In consultation with the Health Management Branch of Citizenship and Immigration Canada, I have determined that the following social services will be required:
> Language Facilitator (sign and oral) cost about $22,500 annually.
>
> Before I make a final decision, you have the opportunity to submit additional information that addresses any or all of the following:
> - The medical condition(s) identified
> - Social services required in Canada for the period indicated above
> - Your individualized plan to ensure that no excessive demand will be imposed on Canadian social services for the entire period indicated above and your signed Declaration of Ability and Intent.
>
> . . .
>
> In order to demonstrate that your family member will not place an excessive demand on social services, if permitted to immigrate to Canada, you must establish to the satisfaction of the assessing officer that you have a reasonable and workable plan, along with the financial means and intent to implement this plan, in order to offset the excessive demand that you would otherwise impose on social services, after immigration to Canada. . . .

[6] The applicant responded to the Fairness Letter on May 19, 2010. In his response, he indicated that Danish's hearing impairment had been addressed with a cochlear implant and that he could now hear within normal range. He explained that this would allow for the normal progression and development of Danish's oral speech and comprehension. The applicant further stated, "[a]s he continues there will be a complete reliance on oral/speech once those skills are built to appropriate levels."

[7] With respect to the social services required to manage Danish's condition, the applicant disputed the cost of the extra services and indicated that the need for those services would decrease over time. He expressed the following:

> . . .
>
> 2. We feel the estimated cost that was quoted of $22,500 per annum is misguided as the services currently in place for Danish are not special/additional. These staff and services are there whether he is at that particular school or not (refer to the letter from school principal*).
> 3. Danish shows ongoing improvement with his oral/speech skills making this quoted amount diminish as we project into the future.

[8] With respect to the individualized plan, the applicant stated that he was in a financial position to pay for any services required and emphasized that he was in the process of completing a Ph.D. which would improve his financial capacity. He further indicated that he and his wife were both fluent in sign language and that their "abilities as facilitators could easily be utilized in helping Danish transition throughout his schooling."

[9] The applicant's response to the Fairness Letter included a letter from the principal of Danish's school, a letter from Danish's audiologist and a signed Declaration of Intent and Ability. The letter from the principal reiterated that sign language is used to help Danish progress academically at the same rate as his peers while his speech capabilities are being developed. It also mentioned that the services required for Danish did not cost extra because these services are present at the school whether Danish requires them or not, except for the language facilitator. The letter from Danish's audiologist confirmed that Danish's hearing was within normal range, that no further medical intervention was required for his cochlear implant and that he needed to be followed only once a year by an audiologist.

[10] The applicant's file was reassessed by Dr. Hélène Quevillon. She concluded that the material and information provided by the applicant in response to the Fairness Letter did not modify her assessment of Danish's inadmissibility.

[11] On November 18, 2010, Officer Mackay rendered the final decision confirming the inadmissibility of Danish and, as a consequence, the inadmissibility of the applicant, his wife and their other son. She indicated in the letter that the applicant's material and response to the Fairness Letter were considered but that they did not change the assessment of their situation.

[12] The Computer Assisted Immigration Processing System (CAIPS) notes outline the Visa Officer's reasoning:

> This file has been transferred back to SLM for processing. I have reviewed the medial officer's comments and I have fully reviewed the entire paper file & notes. I do not have any concerns in addition to those outlined in the letter from Officer Feldman dated April 28, 2010. I have reviewed the applicant's response to the procedural fairness letters.
>
> The applicant was given 60 days to respond to concerns in a letter dated April 28, 2010 and the 60-day submission period has passed. The applicant states that his son received a cochlear implant and has been learning sign language. The applicant states he is in a financial position to make monies available and that he and his wife are willing to assist their son.
>
> The applicant has not submitted a supporting plan other than the fact that he has the necessary funds and is willing to pay and help himself. He does not explain how he would pay over time and does not provide a viable and credible plan to mitigate the costs involved. The applicant has not addressed the concerns that were put to him. Having fully reviewed the information at hand, I am satisfied that Javed's [*sic*] health condition might reasonably be expected to cause excessive demand on health or social services in Canada. Javed [*sic*] is a person described in A38(1)(C) and consequently the applicant is a person described in A42 and is inadmissible. Application refused.

II. Issues

[13] This case raises the following issues:

1. Did the Medical Officer and the Visa Officer err by disregarding arguments and evidence submitted in response to the Fairness Letter, leading them to erroneously find that the applicant's son would place an "excessive demand" on social services?
2. Did the Visa Officer provide adequate reasons?
3. Should costs be awarded to the applicant?

[14] The applicant raised a preliminary issue relating to the affidavit submitted by Ms. MacKay, the Visa Officer who refused the applicant's application for permanent residence, and the affidavit submitted by Dr. Hélène Quevillon, the Medical Officer. The applicant argues that those affidavits should not be admitted or alternatively should not be afforded any weight because they add to and bolster the reasons for the decisions rendered by the Medical Officer and the Visa Officer. Based on the principles reiterated in *Sapru v Canada (Minister of Citizenship and Immigration)*, 2011 FCA 35, 330 DLR (4th) 670 [*Sapru*] that "an affidavit cannot be used to bolster the reasons of a decision-maker on judicial review" (para 52), I am of the view that Dr. Quevillon's affidavit should not be given much weight. I find that her affidavit adds and bolsters her decision with respect to Danish's medical condition and the support that he needs. It is also worth noting that the supplementary information contained in the affidavit was not before Officer Mackay when she reviewed Dr. Quevillon's assessment. The same cannot be said however about Officer Mackay's

affidavit. I wish to add that my determination of the judicial review would have remained the same even if those affidavits had not been submitted.

III. Standard of review

[15] The applicant framed the issue as being whether the Visa Officer sufficiently individualized her assessment of Danish's expected medical costs and burden on Canada's social services. The applicant relied on *Hilewitz v Canada (Minister of Citizenship and Immigration)*; *De Jong v Canada (Minister of Citizenship and Immigration)* 2005 SCC 57 at para 71, [2005] 2 SCR 706 [*Hilewitz*] to suggest that the Visa Officer's decision should be reviewed under the correctness standard of review.

[16] In my view, this case raises an issue that involves the application of subsection 38(1) of the IRPA to the facts of a case which is essentially a question of fact or of mixed fact and law that should be reviewed under the reasonableness standard (*Barlagne v Canada (Minister of Citizenship and Immigration)*, 2010 FC 547 at para 29, 367 FTR 281 [*Barlagne*]; *Sharma v Canada (Minister of Citizenship and Immigration)*, 2010 FC 398 at para 13 (available on CanLII); *Pamar v Canada (Minister of Citizenship and Immigration)*, 2010 FC 723 at para 39, 370 FTR 306).

[17] The Court's role when reviewing a decision against the reasonableness standard is enunciated in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190:

> . . . A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of

> justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[18] The question as to the adequacy of the Visa Officer's reasons involves an issue of procedural fairness and will be assessed on the correctness standard (*Dunsmuir* at para 129; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43, [2009] 1 SCR 339; *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 53, [2006] 3 FCR 392; *Sapru* at para 27).

IV. Analysis

A. *Legislative framework*

[19] The Visa Officer based her decision to deny the applicant and his family's immigration visa on paragraph 38(1)(c) of the IRPA which reads as follows:

38. (1) A foreign national is inadmissible on health grounds if their health condition	**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.
. . .	
(*c*) might reasonably be expected to cause excessive demand on health or social services.	

[20] "Excessive demand" is defined in section 1 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations) as follows:

"excessive demand" means	« fardeau excessif » Se dit :
(*a*) a demand on health services or social services for which the 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	*a*) de toute charge pour les services sociaux ou les services 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.

[21] "Social services" is also defined in section 1 of the Regulations. The medical and decision-making process is set out in the Regulations. Paragraph 30(1)(a) of the Regulations requires that all foreign nationals and their family members applying for permanent residence undergo a medical examination. Section 34 of the Regulations specifies that the Medical Officer assessing the foreign national's health condition must consider "(a) any reports made by the health practitioner or medical laboratory with respect to the foreign national; and (b) any condition identified by the medical examination."

[22] Finally, section 20 of the Regulations dictates the following to the immigration officer:

20. An officer shall determine that a foreign national is inadmissible on health grounds if an assessment of their health condition has been made by an officer who is responsible for the application of sections 29 to 34 and the officer concluded that the foreign national's health condition is likely to be a danger to public health or public safety or might reasonably be expected to cause excessive demand.	**20.** L'agent chargé du contrôle conclut à l'interdiction de territoire de l'étranger pour motifs sanitaires si, à l'issue d'une évaluation, l'agent chargé de l'application des articles 29 à 34 a conclu que l'état de santé de l'étranger constitue vraisemblablement un danger pour la santé ou la sécurité publiques ou risque d'entraîner un fardeau excessif.

[23] By virtue of section 42 of the IRPA, which reads as follows, the inadmissibility of the applicant's son caused the whole family to be inadmissible:

42. A foreign national, other than a protected person, is inadmissible on grounds of an inadmissible family member if	**42.** Emportent, sauf pour le résident permanent ou une personne protégée, interdiction de territoire pour inadmissibilité familiale les faits suivants :
(*a*) their accompanying family member or, in prescribed circumstances, their non-accompanying family member is inadmissible; or	*a*) l'interdiction de territoire frappant tout membre de sa famille qui l'accompagne ou qui, dans les cas réglementaires, ne l'accompagne pas;
(*b*) they are an accompanying family member of an inadmissible person.	*b*) accompagner, pour un membre de sa famille, un interdit de territoire.

(1) *Did the Medical Officer and the Visa Officer err by disregarding arguments and evidence submitted in response to the Fairness Letter leading them to erroneously find that the applicant's son would place an "excessive demand" on social services?*

[24] The applicant contends that the Medical Officer and the Visa Officer failed to consider the particular circumstances of Danish's situation and the information and material provided in response to the Fairness Letter. More specifically, the applicant submitted that the Visa Officer and the Medical Officer failed to consider that, as Danish could now hear at a normal range and was learning to speak orally, he would not require a full-time language facilitator and that, as these skills increase, the need for the facilitator will diminish. Over the course of the relevant five-year period the need for these services would phase out. In addition, the applicant argues that the Visa Officer ignored the plan put forward in which he stated that he was willing and able to pay the extra costs and that he and his wife could act as language facilitators. On that matter, he relies on the principles set out by the Supreme Court in *Hilewitz* and contends that, in addition, the scenario in *Hilewitz* had exactly the same fact pattern as the one at issue. The applicant argues that the Visa Officer totally ignored these considerations and failed to have regard to the evidence relating to these three crucial elements. Based on this alone, the applicant argues, the decision should be overturned. He relies on *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 157 FTR 35, 83 ACWS (3d) 264, to support this argument.

[25] With respect, I disagree. Contrary to the situation that prevailed in *Hilewitz*, it is apparent from the Medical Notification and from the CAIPS notes that the Medical Officer did conduct an individualized assessment of all the personal circumstances surrounding Danish's condition,

including his need for social services and the costs of those services. It also appears from the notes taken by the Medical Officer when she reassessed Danish's situation that she considered the information and material provided by the applicant in response to the Fairness Letter. She clearly stated that she acknowledged the receipt of the applicant's material and response:

> We received the following additional information:
>
> - Letter dated 19 May 2010 from Javed Iqbal, Principal applicant stating that Danish has hearing impairment addressed with a cochlear implant. Sign language is utilized to allow Danish to continue on par academically. As Danish continues there will be a complete reliance on oral/speech once those skills are built to appropriate levels. Referring to a previously submitted letter from the school principal, he also indicates that the services required are not special/additional as these staff and services are there whether Danish is at that particular school or not. He also states that they have financial accessibility to provide for the services required.
>
> - Signed Declaration of Ability and Intent dated 19 May 2010.

[26] She further indicated that she did consider the information but that it did not lead her to change her original position that Danish' condition would put an excessive burden on Canada's social services:

> I reviewed the additional information as well as the entire medical file on this applicant and I am of the opinion that the new information does not modify the current assessment of medical inadmissibility. This applicant has hearing impairment, has received a cochlear implant in 2004, and receives special education services. As previously indicated by the school principal, the "only additional cost APSEA incurs is that of the Language Facilitator (about $22,500 annually).

[27] It is also clear from the CAIPS notes that the Visa Officer did review Dr. Quevillons' medical assessment and agreed that the information and material provided by the applicant was not sufficient to change the original assessment. The CAIPS notes contain her assessment of the

sufficiency of the information and material provided by the applicant in response to the Fairness Letter:

> This file has been transferred back to SLM for processing. I have reviewed the medial officer's comments and I have fully reviewed the entire paper file & notes. I do not have any concerns in addition to those outlined in the letter from Officer Feldman dated April 28, 2010. I have reviewed the applicant's response to the procedural fairness letters.
>
> The applicant was given 60 days to respond to concerns in a letter dated April 28, 2010 and the 60-day submission period has passed. The applicant states that his son received a cochlear implant and has been learning sign language. The applicant states he is in a financial position to make monies available and that he and his wife are willing to assist their son.
>
> The applicant has not submitted a supporting plan other than the fact that he has the necessary funds and is willing to pay and help himself. He does not explain how he would pay over time and does not provide a viable and credible plan to mitigate the costs involved. The applicant has not addressed the concerns that were put to him. Having fully reviewed the information at hand, I am satisfied that Javed's [*sic*] health condition might reasonably be expected to cause excessive demand on health or social services in Canada. Javed [*sic*] is a person described in A38(1)(C) and consequently the applicant is a person described in A42 and is inadmissible. Application refused

[28] In light of the above, I consider that neither the Medical Officer nor the Visa Officer who reviewed the Medical Officer's conclusions ignored the evidence submitted by the applicant. They considered the evidence but found that it was not sufficient to overcome their initial finding that Danish's condition would cause an excessive demand on social services.

[29] I further consider that their finding was reasonable. The Fairness Letter clearly identified the services that Danish requires and their cost. The onus rested on the applicant to properly address those concerns. Further, the Fairness Letter plainly stated that the applicant was required to provide

a reasonable, workable plan to cover the cost of the services required along with evidence of financial means to pay for the services. The information provided by the applicant was insufficient.

[30] First, the applicant's contention that the services Danish receives do not involve extra costs to the public system is contradicted by the school principal's letter which confirms that the services of the language facilitator do, indeed, involve extra costs. Second, the documents and information submitted by the applicant in response to the Fairness Letter do not constitute a detailed plan on how the applicant will offset the cost of the language facilitator: the applicant did not provide any details to substantiate the assertion about Danish's diminishing need for such services as his oral and speech skills improved, he did not demonstrate that private payment for a classroom-based language facilitator was possible and he failed to show how parental contribution could reduce or eliminate the need for a trained specialised language facilitator working daily in Danish's classroom. Furthermore, the offer to pay for the language facilitator and the promise of family support in place of a language facilitator was insufficient as the applicant did not demonstrate that he could realistically afford the costs associated with his son's social services even if private payment was permitted.

[31] For all of the reasons above, I am of the view that the Visa Officer did not ignore the plan provided by the applicant as was the case in *Hilewitz* but she found it insufficient. Her assessment is reasonable.

(2) *Did the Visa Officer provide adequate reasons?*

[32] The applicant contends that the Visa Officer's decision does not provide adequate reasons because it fails to indicate why the additional evidence provided by the applicant in response to the Fairness Letter did not lead her to change her decision. In order to support this position, the applicant highlights *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 (available on CanLII) [*Baker*]. He further argues that the CAIPS notes should not be considered as constituting reasons because they are only provided to the applicant upon request. What is more, the CAIPS notes do not specifically set out what information the Visa Officer relied on when making her decision. Rather, they are simply notes prepared during the decision-making process. The applicant contends that this constitutes inadequate reasons, that the decision was unfair and that the decision should be overturned by the Court.

[33] The principles of procedural fairness require that a Visa Officer provide a prospective immigrant with the opportunity to respond to any negative assessment. As long as the prospective immigrant is made aware of the reasons for the negative assessment and is given the opportunity to respond to it, the duty of procedural fairness has been discharged (*Barlagne* at para 46).

[34] The Fairness Letter sent to the applicant met the criteria of procedural fairness. It clearly explained that the Visa Officer was concerned about the effect of Danish's hearing impairment on the family's admissibility and lays out her issues. It explained the reasons why Danish's hearing impairment met the inadmissibility criteria prescribed by law and specifically mentioned the estimated cost to social services. It further requested that the applicant provide an individualized plan to ensure that no excessive demand would be imposed on social services for the entire

five-year period. This Court has, on numerous occasions, considered the fairness letters to meet the standard of procedural fairness (*Barlagne* at para 50).

[35] Further, *Baker* clearly establishes the principle that CAIPS notes constitute sufficient reasons for a decision even when they are provided to the applicant after a refusal. In *Baker*, at paragraph 44, the Supreme Court concluded that the requirements of procedural fairness were met when the appellant was provided with the officer's notes. The Supreme Court explained:

> In my view, however, the reasons requirement was fulfilled in this case since the appellant was provided with the notes of Officer Lorenz. The notes were given to Ms. Baker when her counsel asked for reasons. Because of this, and because there is no other record of the reasons for making the decision, the notes of the subordinate reviewing officer should be taken, by inference, to be the reasons for decision. Accepting documents such as these notes as sufficient reasons is part of the flexibility that is necessary, as emphasized by Macdonald and Lametti, *supra*, when courts evaluate the requirements of the duty of fairness with recognition of the day-to-day realities of administrative agencies and the many ways in which the values underlying the principles of procedural fairness can be assured. It upholds the principle that individuals are entitled to fair procedures and open decision-making, but recognizes that in the administrative context, this transparency may take place in various ways. I conclude that the notes of Officer Lorenz satisfy the requirement for reasons under the duty of procedural fairness in this case, and they will be taken to be the reasons for decision.

[36] This excerpt unambiguously establishes the principle that an officer's notes, provided to an applicant after a decision is made, are sufficient in some circumstances to constitute reasons for a decision. I find that this principle applies to the case at bar. The CAIPS notes clearly outline the reasons on which the Medical Officer and the Visa Officer based their decisions. Therefore, I conclude that the applicant was provided with adequate reasons and no breach of procedural fairness occurred.

(3) *Should costs be awarded to the applicant?*

[37] The applicant contends that errors made by the Visa Officer were egregious and, therefore, costs should be awarded to the applicant.

[38] The respondent did not make any submissions regarding costs.

[39] Rule 22 of the *Federal Court Immigration and Refugee Protection Rules*, SOR/93-22 governs this issue and reads:

22. No costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders.	**22.** Sauf ordonnance contraire rendue par un juge pour des raisons spéciales, la demande d'autorisation, la demande de contrôle judiciaire ou l'appel introduit en application des présentes règles ne donnent pas lieu à des dépens.

[40] In order for the Court to award costs, extenuating circumstances need to be in place. The threshold for ordering costs is high (*Ibrahim v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1342, 169 ACWS (3d) 398). Costs may be awarded when the Minister's conduct is unfair, oppressive, improper or accentuated by bad faith (*Ibid* at para 8). I see nothing in the evidence to establish a conduct that is "unfair, oppressive, improper or accentuated by bad faith". Further, I do not find that the Visa Officer made any egregious errors.

[41] For all of the above reasons, and despite the sympathy that I have for the applicant and his family, this judicial review cannot succeed. No questions were proposed for certification and none arises. No costs are awarded.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. No question is certified. No costs are awarded.

"Marie-Josée Bédard"

Judge

SOLICITORS OF RECORD

DOCKET:	IMM-535-11
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PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 4, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	BÉDARD J.
DATED:	October 17, 2011

APPEARANCES:

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