

B E T W E E N:

CHAUDHARY ABDUL QAYUM

Applicant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

The applicant, a citizen of Pakistan who has been residing in the United States since 1989, applied for permanent residence under the entrepreneur category in July 1995 through the Canadian consulate office in Buffalo, New York. His application was assessed pursuant to sections 2 and 8 of the *Immigration Regulations*, SOR/78-172, ("*Regulations*").

The applicant intended to establish a leather-clothing and accessories manufacturing facility in Canada. The visa officer concluded that the applicant did not demonstrate that he had the ability to establish a business in Canada which would make a significant contribution to the economy of Canada. In particular, her conclusion was based on her finding that the applicant had failed to produce financial statements concerning his ongoing businesses in the United States. As a result, she determined that she could not make an appropriate assessment concerning the amount of income generated by legitimate business activity and concerning the applicant's ability to

establish a business operation in Canada. It is this decision of the visa officer which is under judicial review.

The applicant has been a resident of the United States since approximately 1989 when he began an import and distribution business. Since 1993, he has been the sole owner of AAR Trading International Corporation, a company marketing leather products and customized T-shirts. He also has a 50% interest in Hussain & Rasheed Trading Company, a leather manufacturing facility which has been operating in Pakistan since July 1990.

The applicant submits that the visa officer breached her duty to act fairly in the assessment of his application through her failure: (a) to provide an opportunity to produce supplementary documentary evidence in support of his application; (b) to request from him business plans for the establishment of a business in Canada; and (c) to make an appropriate assessment of the information made available to her.

The visa officer was required to determine whether the applicant "... has the ability to establish, purchase or make a substantial investment in a business ..." venture in Canada within the meaning of "entrepreneur" as defined in subsection 2(1) of the *Regulations*. The Court of Appeal recently confirmed in *Chiu Chee To v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 696 (A-172-93, May 22, 1996), that the appropriate scope of review in this type of case is the one enunciated in *Maple Lodge Farms Limited v. Government of Canada et al.*, [1982] 2 S.C.R. 2 at 7-8:

It is, as well, a clearly-established rule that the courts should not interfere with the exercise of a discretion by a statutory authority merely because the court might have exercised the discretion in a different manner had it been charged with that responsibility. Where the statutory discretion has been exercised in good faith and, where required, in accordance with the principles of natural justice, and where reliance has not been placed upon considerations irrelevant or extraneous to the statutory purpose, the courts should not interfere.

In *Hajariwala v. Canada (Minister of Employment and Immigration)*, [1989] 2 F.C. 79, 6 Imm. L.R. (2d) 222 (F.C.T.D.), Associate Chief Justice Jerome stated the visa officer need not request supplementary information (at page 83, F.C.):

It is clearly, therefore, the responsibility of the applicant to produce all relevant information which may assist his application. The extent to which immigration officers may wish to offer assistance, counselling or advice may be a matter of individual preference or even a matter of departmental policy from time to time, but it is not an obligation that is imposed upon the officers by the Act or the Regulations.

In my opinion, the applicant's submissions must fail. The applicant has the burden of establishing his right to enter Canada. In this case, his burden was to demonstrate his ability to establish a business in Canada, one which will make a significant contribution to the economy. In the view of the visa officer, he failed to do so. He provided no financial statements concerning his business operations in the United States and in Pakistan. More significantly, he did not produce any business plans for the establishment of his business in Canada other than a bald assertion of his intention to do so.

The visa officer's affidavit and personal notes confirm that she specifically requested the applicant's financial statements and tax returns pertaining to his businesses. She apprised the applicant of her concerns pertaining to the lack of supporting documents. In my opinion, the visa officer satisfied her duty to act fairly.

At best, the information disclosed by the applicant to the visa officer was incomplete. His attempt to introduce supplementary evidence with his affidavit in support of this application for judicial review can be of no assistance. This Court cannot consider evidence not available to the decision-maker. (See, for example, *Lemeicha et al. v. Minister of Employment and Immigration* (1993), 72 F.T.R. 49 at 51.) On the basis of the documents she received from the applicant, the visa officer concluded that he had failed to establish the necessary ability to set up a business venture in Canada in accordance with the criteria of the *Regulations*. She had no duty to pursue the matter further.

For these reasons, I can find no reviewable error in the decision reached by the visa officer. The application for judicial review will be dismissed. Both counsel agreed that this was not a matter for the certification of a serious question of general importance pursuant to section 83 of the *Immigration Act*.

"Allan Lutfy"
Judge

Ottawa, Ontario
May 9, 1997