

**Date: 20080617**

**Docket: IMM-4857-07**

**Citation: 2008 FC 752**

**Toronto, Ontario, June 17, 2008**

**PRESENT: The Honourable Maurice E. Lagacé**

**BETWEEN:**

**SEYED-HOJJAT SHAKERI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant seeks review, under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision of a Visa officer (the Officer) of the Embassy of Canada in Damascus, Syria, which determines that the applicant does not qualify for a permanent resident visa as a member of the “entrepreneur class” and therefore refused his application.

## I. The Facts

[2] The applicant, a citizen of Iran, applied for a permanent resident visa on behalf of himself, his wife and their two children.

[3] Interviewed on June 18, 2007 and October 17, 2007, the applicant was requested twice to provide additional documents, due to the insufficiency of the documentary evidence previously submitted. He was also required to complete one form per business.

[4] The applicant provides additional documentary evidence and indicates being the proprietor of “Seyed Hojjat Shakeri”, a “construction and related business”. He also indicates that he is a partner in a car dealing business “Iran Khodro No. 1 Sari Dealership”. Finally the applicant states that he owns 100% of the construction business and 33.3% of the car dealership business.

## II. The Impugned Decision

[5] The Officer evaluates all the submitted documentary evidence but is still not satisfied that the applicant meets the requirements of the *Act* and as a result refuses the application. Specifically, the Officer states to the applicant that:

[g]iven the discrepancies between your statements and the figures provided in your documents, the lack of clarity in how your business performance figures are compiled and presented and the lack of documentary evidence to demonstrate that your business meets the minimum requirements of a qualifying business, you have not satisfied me that you have business experience as defined in the *Regulations*.

Consequently, you have not satisfied me that you are an entrepreneur and therefore eligible for a permanent resident visa as a member of the entrepreneur class.

[6] The applicant seeks judicial review of the Officer's decision.

### III. Standard of Review

[7] The question is whether the First Secretary errs in his/her factual assessment of the applicant's business ownership. Therefore the standard of review is reasonableness (*Dunsmuir v. New Brunswick*, [2008] SCC 9). And as mentioned in *Dunsmuir*, at paragraph 161 "decisions on questions of fact always attract deference" and "when the issue is limited to questions of fact, there is no need to enquire into any other factor in order to determine that deference is owed to an administrative decision maker". Reasonableness remains the appropriate standard of review in this case.

[8] As pointed out also in *Dunsmuir*, above, at paragraph 47, this Court is only concerned "mostly with the existence of justification, transparency and intelligibility within the decision-making process, whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law".

#### IV. Legislation

[9] Pursuant to subsection 97(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (*Regulations*), the applicant was required to show that he meets the definition of an “entrepreneur” in subsection 88(1) of the Regulations.

[10] Under subsection 88(1) an “entrepreneur” is a foreign national who, among other things, has “business experience”. “Business experience” in respect of an entrepreneur, also defined in subsection 88(1) as follows:

“business experience”, in respect of

« expérience dans l’exploitation d’une entreprise » :

(b) an entrepreneur, other than an entrepreneur selected by a province, means a minimum of two years of experience consisting of two one-year periods of experience in the management of a qualifying business and the control of a percentage of equity of the qualifying business during the period beginning five years before the date of application for a permanent resident visa and ending on the day a determination is made in respect of the application; and

b) s’agissant d’un entrepreneur, autre qu’un entrepreneur sélectionné par une province, s’entend de l’expérience d’une durée d’au moins deux ans composée de deux périodes d’un an d’expérience dans la gestion d’une entreprise admissible et le contrôle d’un pourcentage des capitaux propres de celle-ci au cours de la période commençant cinq ans avant la date où la demande de visa de résident permanent est faite et prenant fin à la date où il est statué sur celle-ci;

[11] “Qualifying business” is defined in subsection 88(1) as well:

“qualifying business” means a business — « entreprise admissible » Toute entreprise — other than a business operated primarily for autre qu’une entreprise exploitée

the purpose of deriving investment income such as interest, dividends or capital gains — for which, during the year under consideration, there is documentary evidence of any two of the following:

(a) the percentage of equity multiplied by the number of full time job equivalents is equal to or greater than two full-time job equivalents per year;

(b) the percentage of equity multiplied by the total annual sales is equal to or greater than \$500,000;

(c) the percentage of equity multiplied by the net income in the year is equal to or greater than \$50,000; and

(d) the percentage of equity multiplied by the net assets at the end of the year is equal to or greater than \$125,000. (*entreprise admissible*)

principalement dans le but de retirer un revenu de placement, tels des intérêts, des dividendes ou des gains en capitaux — à l'égard de laquelle il existe une preuve documentaire établissant que, au cours de l'année en cause, elle satisfaisait à deux des critères suivants :

a) le pourcentage des capitaux propres, multiplié par le nombre d'équivalents d'emploi à temps plein, est égal ou supérieur à deux équivalents d'emploi à temps plein par an;

b) le pourcentage des capitaux propres, multiplié par le chiffre d'affaires annuel, est égal ou supérieur à 500 000 \$;

c) le pourcentage des capitaux propres, multiplié par le revenu net annuel, est égal ou supérieur à 50 000 \$;

d) le pourcentage des capitaux propres, multiplié par l'actif net à la fin de l'année, est égal ou supérieur à 125 000 \$. (*qualifying business*)

[12] Subsection 88(1) also includes, but is not limited to, the definitions of such terms as “percentage of equity”, “full-time job equivalents”, “net income”, “net assets”, and “net worth”.

[13] Pursuant to subsection 97(2),

2) If a foreign national who makes an application as a member of the entrepreneur class is not an entrepreneur within the meaning of subsection 88(1), the application shall be refused and no further assessment is required.

(2) Si le demandeur au titre de la catégorie des entrepreneurs n'est pas un entrepreneur au sens du paragraphe 88(1), l'agent met fin à l'examen de la demande et la rejette.

## V. Analysis

[14] Having regard to the documentary evidence submitted by the applicant, the Officer concludes that the applicant does not meet the definition of an “entrepreneur” who has “qualifying business” experience. Having reviewed the evidence and the decision, the Court finds that the impugned decision satisfies the standard of reasonableness. The applicant had to satisfy the Officer that he fully qualified under the Law; unfortunately for him he failed to do so. In addition he has shown no error in the Officer’s refusal to justify an intervention of this Court. It is not for this Court to appreciate the applicant’s qualifications; this Court has only to verify the reasonableness of the officer’s decision.

[15] Seeing that the Officer committed no reviewable error, the application for judicial review will be dismissed.

[16] The parties have submitted no question of general interest to certify, and there are none indeed, to certify here. Therefore, no question will be certified.

**JUDGMENT**

**FOR THE FOREGOING REASONS, THE COURT** dismisses the application.

“Maurice E. Lagacé”

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Deputy Judge

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

**DOCKET:** IMM-4857-07

**STYLE OF CAUSE:** SEYED-HOJJAT SHAKERI  
v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 5, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** Legacé D.J.

**DATED:** June 17, 2008

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