

Date: 20090226

Docket: IMM-2622-08

Citation: 2009 FC 206

Ottawa, Ontario, February 26, 2009

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

MONA PERSAUD

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) for judicial review of the decision of the then-First Secretary, Immigration (the visa officer or officer) of the High Commission of Canada in Port of Spain, Trinidad and Tobago, dated March 20, 2008, wherein the applicant's application for permanent residence under the skilled worker category was denied.

[2] The applicant requests that the decision be set aside and the matter referred back to a different visa officer for redetermination.

Background

[3] Mona Persaud (the applicant) is a citizen of Guyana. She made her first application for permanent residence in Canada as a skilled worker in 2004, but was refused in January 2005 because her score fell below the minimum required. The refusal letter explained that she was not awarded points for post-secondary education because she had completed only three of the six courses required for the Institute of Canadian Bankers' ("ICB") Business Program for Bankers ("Program") in which she was enrolled.

[4] Thereafter, the applicant completed the Program and on July 26, 2005, the ICB conferred on her a Certificate designating her "Associate of the Institute of Canadian Bankers". She then reapplied for permanent residence, again under the skilled worker category. Her second application is dated May 25, 2007.

[5] At the time of both applications, the applicant was a teller supervisor for the Treasury Department of the National Bank of Industry and Commerce, Inc., (the bank) where she had worked for many years, beginning in November 1991 as a customer service representative. On January 2, 2006 she resigned from the bank in order to pursue studies in accounting.

Officer's Decision

[6] In a letter dated March 20, 2008, the applicant was informed by the visa officer that her application for permanent residence had been denied because she had obtained insufficient points, having accumulated only 53 of a possible 100 (*i.e.* 14 points below the minimum 67). Here is the breakdown of her point allotment:

	Points Received	Total Points Available
Age	10	10
Education	5	25
Official language Proficiency	16	24
Experience	17	21
Arranged employment	0	10
Adaptability	5	10
TOTAL	53	100

[7] The applicant was assessed based on the occupation of banking supervisor, which corresponds to the National Occupational Classification (NOC) 1211.

[8] According to his CAIPS notes, the officer was initially not satisfied that the applicant met the minimum required points but allowed her an opportunity to provide further information, including evidence of her husband's level of education, a description of the applicant's duties at the

bank, updated proof of funds and, if available, evidence of performance in French from a certified testing agency. These documents were received on September 26, 2007.

[9] On November 30, 2007, the officer wrote in the CAIPS notes:

Applicant does not meet selection criteria based on points – Age (10), Educ CXC 2ndary school equiv awarded, sone [sic] ICB courses (5), experience as a “1211”, for bank sub – subj states 4 yrs, I assess as 2.5 yrs, prev yrs were “1434” banking clerk – Not an A/B/O skill level. moot point as given full 21 marks would not change marks to a pass (5). Relationship established) (5). 53 point – Refused (even if given full points for experience (extra 4) totald [sic] would only be 57. Challenge for subj is her educ does not amount to greater H S, even husband in [sic] only H S equiv. (Cert – City and Guilds and Pitmans). Subj latest Imm 8 states she is student since 01 2006 studying full time at home for ACCA – not recognized post 2ndary educ institution for IRPA. I am satisfied that points accurately reflect this applicant’s ability to establish in Canada.

Issues

[10] The applicant identifies the following issue:

Did the officer err in law in his assessment of the points to be awarded to the applicant for education and for experience?

Applicant's Submissions

[11] Education

The applicant contests the officer's failure to award her any points for the course of study she completed with the ICB, which she believes entitles her 15 points. Instead, she received only 5 points for having finished high school.

[12] The applicant observes that in the CAIPS notes the officer wrote that she had completed only five courses of the ICB Program, whereas she had in fact completed six. She also points out that there is no indication from the notes why the officer concluded that the ICB program did not meet the criteria for "educational credential" set out in section 73 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "Regulations"). At paragraph 21 of her written submissions, the applicant writes:

Thus, the officer had before him the evidence of the credential, the evidence that the applicant had six courses rather than five, and the evidence of the previous officer that six courses was equivalent to a credential. Yet, the officer did not avert [*sic*] his mind to whether or not the applicant was entitled to fifteen points for this credential.

[13] Employment Experience

The applicant disagrees with the officer's assessment of her work experience. He awarded her 17 points for having accrued more than two years, but less than three, of management experience, having been a teller supervisor at the bank since June 2003. A teller supervisor is,

according to the NOC, a 1211 or 1212 position. The position of authorization clerk/officer, held by the applicant prior to June 2003, is classified under the NOC as a 1434 position and does not attain the requisite skill level (*i.e.* A or B).

[14] The applicant argues that her formal title prior to June 2003 did not reflect her functions. The evidence indicates, she claims, that as an authorization clerk/officer she was already performing supervisory functions, such that she should have been granted 21 points for having over four years of management experience, rather than the 17 points she received.

Respondent's Submissions

[15] Education

The respondent argues that the applicant has provided no evidence that the visa officer erred in his assessment of the points he assigned for education. He notes that in order for the applicant to obtain the 15 points for education that she claims to merit, she would need to demonstrate that the ICB certificate she received is equivalent to a full-time post secondary educational credit.

According to the respondent, this has not been proven:

The Applicant maintains, without any evidence to substantiate her assertion, that the ICB Certificate, is equivalent to one year of post secondary education and that she has a total of 13 years of completed full time or full-time equivalent studies, thereby entitling her to 15 points.

[16] The respondent also relies on the visa officer's statement in his affidavit, sworn September 5, 2008, that the ICB courses taken by the applicant are not equivalent to one year full-time post-secondary study.

[17] Employment experience

With respect to the number of points assigned by the officer to the applicant for her employment experience, the respondent argues that even if the applicant is correct that the evidence demonstrates she had three years of experience rather than two as a banking supervisor, she would only be entitled to an additional four points; this is not sufficient for her application to succeed. Consequently, it is claimed, any error regarding the assessment of experience is not material to the application.

[18] The respondent argues at paragraph 20 of his memorandum of fact and law that, "While the Applicant maintains that she was performing the duties of a banking supervisor since 2001, there is no evidence to support this assertion". He then continues:

In this leave application, she maintains that she submitted to the visa officer for consideration the letter from her employer dated October 11, 2007 which attached a resume of the positions she held since 1991. The resume indicates that prior to June 10, 2003 she was not carrying on the duties of a banking supervisor. She also allegedly placed before the visa officer two job descriptions from her employment with National Bank. One was dated January 9, 2003 and the other was dated July 18, 2002. The latter one indicates that in 2002 she was performing the duties of an authorization officer, which directly contradicts her assertion that she was performing the duties of a banking supervisor since 2001.

[19] I note that, in his affidavit, the visa officer indicates that he used February 2003 as the date on which the applicant began working as a banking supervisor based on the applicant's prior statements, even though the record indicates that she did not formally begin that position until June of that year. Of course, even these additional months did not assist the applicant in her claim to having accumulated more than three years of experience by the time she resigned from the bank in January 2006.

Applicant's Reply

[20] The applicant, in her reply to the Minister's assertions at paragraphs 10 through 15 of his memorandum, submits that the visa officer in his affidavit clearly admits that he was wrong when he indicated that the applicant had only completed five courses of the ICB Program, acknowledging that she had completed six. He also accepted that she had in fact been awarded a certificate of achievement from ICB.

[21] In addition, the applicant points out that in his affidavit the officer attempts, inappropriately, to justify his decision regarding the points awarded for 'education' by providing a whole new line of reasoning not found anywhere in the CAIPS notes.

Analysis and Decision

[22] **Issue**

What is the appropriate standard of review?

Both parties agree that the standard of review is that of the reasonable decision. This is consistent with the jurisprudence (see *Tong v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 216, 2007 FC 165, at paragraph 26; *Kniazeva v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 336, at paragraph 15 (QL)).

[23] Subsection 78(2) of the Regulations sets out the manner in which points shall be awarded for a skilled worker's education. Accordingly:

- (a) 5 points for a secondary school educational credential;
- (b) 12 points for a one-year post-secondary educational credential, other than a university educational credential, and a total of at least 12 years of completed full-time or full-time equivalent studies;
- (c) 15 points for
 - (i) a one-year post-secondary educational credential, other than a university educational credential, and a total of at least 13 years of completed full-time or full-time equivalent studies, or
 - (ii) a one-year university educational credential at the bachelor's level and a total of at least 13 years of completed full-time or full-time equivalent studies; ...

[24] The dispute in this case arises because the officer awarded the applicant 5 points, whereas she expected to receive 15 points by virtue of having completed the ICB program.

[25] In his affidavit, the officer writes at paragraph 2:

I will accept that the Applicant completed 6 ICB courses although I have indicated that she completed 5 in my CAIPS notes. I will also accept that she received a Certificate of Achievement from the Institute of Canadian Bankers (“ICB”). Nevertheless, the additional course and the Certificate do not change my assessment of the number of points awarded to the Applicant for education. Each course is stated as 45 credit hours on the ICB website. The completion of six part-time courses would not be equivalent to a one year post-secondary educational credential as per Regulations section 78(2)b or 78(2)c. [My emphasis]

[26] The CAIPS notes provide a more limited explanation:

... Educ CXC 2ndary school equiv awarded, sone [sic] ICB courses (5) ... Challenge for subj is her educ does not amount to greater H S, even husband is only H S equiv... Subj latest Imm 8 states she is student since 01 2006 studying full time at home for ACCA – not recognized post 2ndary educ institution for IRPA... [My emphasis]

[27] In Schedule 1 of her application form for permanent residence, the applicant indicates that she completed a total of eleven years of primary and secondary schooling, followed by four years of post-secondary studies at the ICB. Those were four years, however, of part-time study. To obtain 15 points under the Regulations, as the respondent points out, the applicant would need to prove that she completed a “*one-year post-secondary educational credential, other than a university, and a total of 13 years of completed full-time or full-time equivalent studies*” [my emphasis], as set out in paragraph 78(2)(c) of the Regulations.

[28] Paragraph 78(2)(c) presents two problems for the applicant. First, the total number of years she studied prior to completing the ICB program is, according to her application form, 11 and not 12. Thus, even if her certificate from the ICB were equivalent to a one-year post-secondary educational credential, her grand total would be 12 years – one shy of the provision’s requirement.

[29] Second, I have found nothing in the record specifying the number of hours of instruction completed by the applicant in her courses. It is therefore difficult to ascertain whether the ICB program constitutes a one-year post-secondary educational credential, contributing to the total of 13 years of full-time (or full-time equivalent) studies.

[30] “Full-time” is defined in subsection 78(1) as “at least 15 hours of instruction per week during the academic year, including any period of training in the workplace that forms part of the course of instruction”. “Full-time equivalent”, with respect to part-time studies, means “the period that would have been required to complete those studies on a full-time basis”.

[31] I note that the applicant received a certificate for having completed the ICB program, rather than a diploma, and was granted the status of “Associate, Institute of Canadian Bankers”. None of the evidence in the record explains the significance of this title. Moreover, it is asserted that the certificate is equivalent to one of the credentials set out in section 73 of the Regulations:

... any diploma, degree or trade or apprenticeship credential issued on the completion of a program of study or training at an educational or training institution recognized by the authorities responsible for registering, accrediting, supervising and regulating such institutions in the country of issue.

[32] At bottom, the applicant bears the burden of proving that her certificate from ICB meets the criteria established in paragraph 78(2)(c) (see *Tong* above, at paragraph 33). I am generally in agreement with the respondent that the applicant does not support her statements with any reference to the evidence; nor is it apparent what evidence the officer is to rely on in making the inference she desires him to make. The officer has no duty to go beyond the record in his attempt to assess whether the applicant has met the statutory requirements for a skilled worker.

[33] It is true that the officer made a mistake when he wrote in his CAIPS notes that the applicant had completed “sone [*sic*] ICB courses (5)”, when in fact she had completed 6 and obtained certification as an “Associate of the ICB”. However, I do not see this mistake as material. I understand the officer’s notes, and his affidavit, to express his view that the evidence before him did not show that the applicant’s course of study with the ICB met the statutory criteria warranting a score above 5. A fuller explanation of his reasons would have been helpful; however, it was not, in my view, essential, given the amount of evidence before him on which to base his assessment.

[34] In my view, the officer did not, therefore, err in law in his assessment of the points to be awarded to the applicant for her education.

[35] Employment Experience

The applicant’s case is stronger with respect to the officer’s analysis of her employment experience.

[36] The respondent is correct to point out that the applicant's title in June 2003 was authorization officer/clerk. However, the record presents evidence that the applicant's responsibilities prior to her promotion to teller supervisor included management duties. For instance, the applicant in Schedule 3 of what appears to be her first application for permanent residence status enumerates her main duties as follows:

08-1996 to 08-2005: Banking Supervisor (NOC 1211)
Supervise junior clerks, prepare program
Performance reports, verify and balance
ATM transactions, supervision of tellers
Solve work-related problems, etc.

In addition, the applicant's curriculum vita includes the following description of her functions:

Aug. 26, 1997-January 9, 2000 – Desk Supervisor, Cash Clearing
Cage:
Supervision of clerks (six)
Assign and review duties. Verify and record deposits / payrolls.
Coordinate duties with other units. Tackle work related problems.
Train workers on the job. Operate computer equipment. Prepare
performance appraisal reports.
...

October 1, 2000-June 9, 2003 – Authorization Officer, Accounts
Dept.
Supervision of the authorization clerk. Checking transactions
pertaining to all new current and non-personal accounts. Ensure all
files are up-to-date and certificates of registrations are presented
yearly. Diarise and follow for all outstanding authorisations
regarding operation of accounts. Prepare performance appraisal
report.

[37] A letter from the bank's personnel officer, dated October 24, 2007, confirms that the applicant was an authorization clerk as of September 22, 2000 and that the duties and responsibilities of the position are as follows:

Ensures that New Accounts Agreement forms are received and filed for all new accounts;

Maintains strict custody and control of signature cards for all Deposit Accounts;

Collects all signature cards for the Accounts that are opened and files same on a daily basis;

Ensures that all signature cards for closed accounts are removed from the current files and Frontline on a daily basis;
Scans signatures for new accounts and make amendments as required;

Ensues proper maintenance of signature cards in accordance with circular requirements;

Assists in the preparation and follow-up of correspondence pertaining to missing or obsolete signature cards;

Assists in ensuring that the courier Bag is cleared and dispatched in a timely manner.

Occasional Duties: As assigned by the Authorisation Supervisor, Officer-in-charge or Manager's Assistant – Accounts Department.

[38] The respondent relies on a similar letter dated July 18, 2002, detailing the duties of the position of an authorization officer, to demonstrate that the officer's decision was reasonable.

However, the letters both clearly itemize those duties that are formally associated with the position itself. They do not preclude the possibility that the applicant undertook tasks beyond those formally linked to her position, which is what she claims to have done.

[39] I believe that the applicant was correct in insisting that the officer had a duty to take into account evidence in the record that suggested her managerial experience extended beyond the period when her title at the bank officially changed.

[40] Nonetheless, even were the applicant granted the additional points for these years of experience, it would not carry her above the minimum threshold of 67 points. I would therefore conclude that despite the apparent unreasonableness of the officer's decision with respect to the category of 'work experience', no purpose is served by sending the matter back for redetermination as the applicant has no possibility of having her present application accepted (*Cela v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 1324, 2004 FC 1092, at paragraphs 8 and 9; see also *Yassine v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 949, 172 N.R. 308, at paragraph 9). Indeed, even were the applicant awarded 12 points for education (rather than 5) and 21 points for experience (rather than 17), her total would be 64 – still short of the minimum.

[41] The application for judicial review is therefore dismissed.

[42] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

[43] **IT IS ORDERED that** the application for judicial review is dismissed.

“John A. O’Keefe”

Judge

ANNEX

Relevant Statutory Provisions

The following provisions of the *Immigration and Refugee Protection Act*, S.C. 2001, c.

27 are pertinent:

<p>11.(1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.</p> <p>...</p> <p>12.(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>11.(1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.</p> <p>...</p> <p>12.(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>
--	---

The following provisions of the *Immigration and Refugee Protection Regulations*,

SOR/2002-227 are also relevant.

<p>73. The following definitions apply in this Division, other than section 87.1.</p> <p>"educational credential" diplôme</p> <p>"educational credential" means any diploma, degree or trade or apprenticeship credential issued</p>	<p>73. Les définitions qui suivent s'appliquent à la présente section, à l'exception de l'article 87.1.</p> <p>«diplôme» educational credential</p> <p>«diplôme» Tout diplôme, certificat de compétence ou certificat d'apprentissage</p>
--	---

on the completion of a program of study or training at an educational or training institution recognized by the authorities responsible for registering, accrediting, supervising and regulating such institutions in the country of issue. (diplôme)

obtenu conséquemment à la réussite d'un programme d'études ou d'un cours de formation offert par un établissement d'enseignement ou de formation reconnu par les autorités chargées d'enregistrer, d'accréditer, de superviser et de réglementer les établissements d'enseignement dans le pays de délivrance de ce diplôme ou certificat. (educational credential)

75.(1) For the purposes of subsection 12(2) of the Act, the federal skilled worker class is hereby prescribed as a class of persons who are skilled workers and who may become permanent residents on the basis of their ability to become economically established in Canada and who intend to reside in a province other than the Province of Quebec.

75.(1) Pour l'application du paragraphe 12(2) de la Loi, la catégorie des travailleurs qualifiés (fédéral) est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada, qui sont des travailleurs qualifiés et qui cherchent à s'établir dans une province autre que le Québec.

...

...

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

a) le travailleur qualifié accumule le nombre minimum de points visé au paragraphe (2), au titre des facteurs

(2) on the basis of the following factors, namely,	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;
78.(1) The definitions in this subsection apply in this section.	78.(1) Les définitions qui suivent s'appliquent au présent article.
"full-time" temps plein	«équivalent temps plein» full-time equivalent
"full-time" means, in relation to a program of study leading to an educational credential, at least 15 hours of instruction per week during the academic year, including any period of training in the workplace that forms part of the course of instruction. (temps plein)	«équivalent temps plein» Par rapport à tel nombre d'années d'études à temps plein, le nombre d'années d'études à temps partiel ou d'études accélérées qui auraient été nécessaires pour compléter des études équivalentes. (full-time equivalent)
"full-time equivalent" équivalent temps plein	«temps plein» full-time

<p>"full-time equivalent" means, in respect of part-time or accelerated studies, the period that would have been required to complete those studies on a full-time basis. (équivalent temps plein)</p>	<p>«temps plein» À l'égard d'un programme d'études qui conduit à l'obtention d'un diplôme, correspond à quinze heures de cours par semaine pendant l'année scolaire, et comprend toute période de formation donnée en milieu de travail et faisant partie du programme. (full-time)</p>
<p>(2) A maximum of 25 points shall be awarded for a skilled worker's education as follows:</p>	<p>(2) Un maximum de 25 points d'appréciation sont attribués pour les études du travailleur qualifié selon la grille suivante :</p>
<p>(a) 5 points for a secondary school educational credential;</p>	<p>a) 5 points, s'il a obtenu un diplôme d'études secondaires;</p>
<p>(b) 12 points for a one-year post-secondary educational credential, other than a university educational credential, and a total of at least 12 years of completed full-time or full-time equivalent studies;</p>	<p>b) 12 points, s'il a obtenu un diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant une année d'études et a accumulé un total d'au moins douze années d'études à temps plein complètes ou l'équivalent temps plein;</p>
<p>(c) 15 points for</p>	<p>c) 15 points, si, selon le cas :</p>
<p>(i) a one-year post-secondary educational credential, other than a university educational credential, and a total of at least 13 years of completed full-time or full-time equivalent studies, or</p>	<p>(i) il a obtenu un diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant une année d'études et a accumulé un total de treize années d'études à temps plein complètes ou l'équivalent temps plein,</p>
<p>...</p>	<p>...</p>
<p>80.(1) Up to a maximum of 21 points shall be awarded to a</p>	<p>80.(1) Un maximum de 21 points d'appréciation sont</p>

skilled worker for full-time work experience, or the full-time equivalent for part-time work experience, within the 10 years preceding the date of their application, as follows:

(a) for one year of work experience, 15 points;

(b) for two years of work experience, 17 points;

(c) for three years of work experience, 19 points; and

(d) for four or more years of work experience, 21 points.

(2) For the purposes of subsection (1), points are awarded for work experience in 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.

attribués au travailleur qualifié en fonction du nombre d'années d'expérience de travail à temps plein, ou l'équivalent temps plein du nombre d'années d'expérience de travail à temps partiel, au cours des dix années qui ont précédé la date de présentation de la demande, selon la grille suivante :

a) pour une année de travail, 15 points;

b) pour deux années de travail, 17 points;

c) pour trois années de travail, 19 points;

d) pour quatre années de travail, 21 points.

(2) Pour l'application du paragraphe (1), des points sont attribués au travailleur qualifié à l'égard de l'expérience de travail dans toute profession ou tout métier 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.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2622-08

STYLE OF CAUSE: MONA PERSAUD
- and -
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 22, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT OF:** O'KEEFE J.

DATED: February 26, 2009

APPEARANCES:

Krassina Kostadinov

FOR THE APPLICANT

Bridget O'Leary

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates
Toronto, Ontario

FOR THE APPLICANT

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE RESPONDENT