

Federal Court



Cour fédérale

Date: 20090729

Docket: IMM-4975-08

Citation: 2009 FC 776

Toronto, Ontario, July 29, 2009

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

RAMI EL HABET

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Rami El Habet seeks judicial review of the decision of a visa officer refusing his application for permanent residence as a skilled worker. Mr. El Habet says that the officer erred in failing to carry out a substituted evaluation with respect to his ability to become economically established in Canada, and in failing to consider humanitarian and compassionate factors in relation to his application. Mr. El Habet also asserts that the officer's failure to interview him meant that he was denied procedural fairness in relation to his application.

[2] For the reasons that follow, I am not persuaded that the officer erred as alleged.

Consequently, the application will be dismissed.

The Failure to Conduct a Substitute Evaluation

[3] Mr. El Habet's application was assessed in relation to the selection criteria set out in section 76 of the *Immigration and Refugee Protection Regulations*. To qualify as a skilled worker, a candidate needs to obtain 67 points. Mr. El Habet received a total of 66 points, including 10 points for his English language ability, based upon his results in an International English Language Test System (or "IELTS") test.

[4] Mr. El Habet does not take any issue with either the fairness or the accuracy of the points awarded to him by the visa officer in this case, including the points awarded for his linguistic capabilities. Rather, he argues that his English language abilities would have improved quickly once he came to Canada, and that the officer erred in failing to recognize this. In the circumstances, Mr. El Habet says that it was incumbent on the visa officer to carry out a substituted evaluation with respect to his ability to become economically established in Canada.

[5] The jurisprudence of this Court is clear that there is no obligation on a visa officer to carry out a substituted evaluation of an applicant's ability to become economically established in Canada, in the absence of a request for such an evaluation by the applicant: see, for example, *Lam v. Canada*

(Minister of Citizenship and Immigration), [1998] F.C.J. No. 1239 and *Lu v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 520.

[6] Given that Mr. El Habet did not request the exercise of the visa officer's discretion with respect to a substituted evaluation, the failure of the officer to exercise his discretion in this regard does not amount to a reviewable error.

The Failure of the Visa Officer to Interview Mr. El Habet

[7] Mr. El Habet also argues that he was denied procedural fairness in this matter, as a result of the failure of the officer to interview him in order to carry out a further evaluation of Mr. El Habet's English language skills.

[8] The assessment of an applicant's proficiency in either of Canada's official languages is governed by section 79 of the Regulations. Subsection 79(4) of the Regulations provides that the results of an assessment of the language proficiency of an applicant by a designated organization or institution, and the correlation of those results with the benchmarks in accordance with subsection 79(3) of the Regulations are conclusive evidence of the skilled worker's proficiency in the official languages of Canada for the purposes of the Regulations. The IELTS test carried out in this case was done by a designated organization or institution.

[9] Mr. El Habet does not take issue with the 10 points awarded to him with respect to his English language proficiency, nor do I understand there to be any question with respect to the

correlation of the results of his IELTS test with the benchmarks set out in the Regulations. These were, therefore, conclusive evidence of Mr. El Habet's English language proficiency. In these circumstances, it was unnecessary for, or even open to, the visa officer to carry out a further evaluation of Mr. El Habet's English language skills by means of a personal interview.

The Failure of the Visa Officer to Consider H&C Factors

[10] Finally, Mr. El Habet asserts that the visa officer erred in failing to have regard to the humanitarian and compassionate factors in his case, in particular, the fact that he is a stateless Palestinian.

[11] Section 25 of the *Immigration and Refugee Protection Act* provides for the granting of an exemption from criteria imposed by the Act, where justified, "*upon request of a foreign national*".

[my emphasis]

[12] I will assume for the purposes of this decision that it is open to a visa officer to take H&C factors into account in assessing an application for permanent residency as a skilled worker. However, Mr. El Habet never requested an exemption from the requirements of the Act on humanitarian and compassionate grounds, nor did he ever ask the visa officer to consider the fact that he was a stateless Palestinian in assessing his application. In the circumstances, the visa officer could hardly be faulted for failing to consider H&C factors in this case.

Conclusion

[13] In her argument, counsel repeatedly emphasized the fact that Mr. El Habet was young, single, well-educated, affluent, and had a family member in Canada, in submitting that the decision of the visa officer was unreasonable. While these were undoubtedly factors operating in Mr. El Habet's favour, each of these factors was taken into account in the assessment of application, and each is reflected in the points that were awarded to him.

[14] While Mr. El Habet was understandably disappointed by the rejection of his application for permanent residence, he has not persuaded me that the visa officer acted in a procedurally unfair manner in the assessment of the application, or that the decision itself was unreasonable. Consequently, the application for judicial review is dismissed.

Certification

[15] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4975-08

STYLE OF CAUSE: *RAMI EL HABET v. MCI*

PLACE OF HEARING: Toronto, Ontario

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

DATED: July 29, 2009

APPEARANCES:

SANDRA SACCUCCI-ZAHER

FOR THE APPLICANT

DAVID CRANTON

FOR THE RESPONDENT

SOLICITORS OF RECORD:

SANDRA SACCUCCI-ZAHER
BARRISTER AND SOLICITOR
WINDSOR, ONTARIO

FOR THE APPLICANT

JOHN H.SIMS, Q.C.
DEPUTY ATTORNEY GENERAL
OF CANADA
TORONTO,ONTARIO

FOR THE RESPONDENT