

Federal Court



Cour fédérale

**Date: 20100211**

**Docket: IMM-552-09**

**Citation: 2010 FC 130**

**Ottawa, Ontario, February 11, 2009**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**ZAFAR SHAHID**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] Mr. Zafar Shahid applied to the High Commission in Islamabad for permanent residence in Canada as a skilled worker. An immigration officer evaluated his application and scored him 63 points, four points short of the threshold for success. The officer gave Mr. Shahid no credit for his spouse's education. Mr. Shahid argues that the officer should have awarded him an additional four points, which would have resulted in a successful application.

[2] Mr. Shahid asks me to order another officer to reconsider his application. I agree with Mr. Shahid that the officer erred and will grant his application for judicial review.

[3] The only question is whether the officer's treatment of Mrs. Shahid's educational credits was reasonable.

## II. Analysis

### 1. The legislative framework

[4] An applicant for permanent residence is entitled to be given credit for his or her spouse's education, according to the *Immigration and Refugee Protection Regulations*, SOR/2002-227, s. 83(1)(a), (2)). The applicant should receive four points if the spouse has "a two-year university educational credential at the bachelor's level and a total of at least 14 years of completed full-time or full-time equivalent studies" (s. 78(2)(d)). "Full-time" means at least 15 hours of instruction per week. "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 (s. 78(1)).

### 2. The officer's decision

[5] The officer acknowledged that Mrs. Shahid had completed secondary school and had acquired a higher secondary certificate. He also accepted that she had obtained a two-year university education credential at the bachelor level from the University of Karachi. However, he noted that

she was external candidate at the university and, therefore, did not meet the requirement that she demonstrate completion of 14 years of full-time or full-time equivalent studies.

3. Was the officer's decision reasonable?

[6] The Minister argues that the burden fell on Mr. Shahid to satisfy the officer that his wife met the criteria set out in the Regulations. The evidence showed that Mrs. Shahid had completed a two-year university degree and wrote examinations in her first and second years. It is not clear from the record whether a further piece of evidence from the university, which had been submitted as part of a request for reconsideration of an earlier failed application, was before the officer. That letter stated that Mrs. Shahid had achieved 14 years of full-time studies. The Minister suggests that, without that evidence, the officer reasonably concluded that the regulatory criteria had not been met.

[7] In my view, the respondent's position overlooks the definition of "full-time equivalent". Even without the evidence of 14 years of full-time study, the officer had to consider, on the evidence before him, whether Mrs. Shahid met the definition of full-time equivalent. As I read that definition, in the context here, an applicant would meet the criteria where he or she actually takes either more or less than fourteen years to acquire a bachelor's degree but, nevertheless, shows that the degree would ordinarily take fourteen years of full-time study to obtain.

[8] The officer explains in his affidavit that candidates for bachelor's degrees in Pakistan can register as external students and then pursue their studies elsewhere or through private tutors. They can sit their exams at the university (*e.g.*, The University of Karachi) and, if successful, obtain their

bachelor's degree. The university does not require students to have attended classes at the university either on a full-time or part-time basis. In Mrs. Shahid's case, the officer found that she had not provided proof that she had attended classes anywhere given that she was an external candidate. Accordingly, she did not meet the definition of a "full-time" student. He went on to state that the lack of proof of attendance in classes meant that she did not meet the definition of "full-time equivalent" either.

[9] It is clear why Mrs. Shahid did not meet the definition of "full-time" – she did not provide evidence of attendance in class for 15 hours a week. However, it is not clear why she did not meet the definition of full-time equivalent. Even if she studied elsewhere, or on her own, whether part-time or on an accelerated basis, it seems to me she could meet the definition of "full-time equivalent" if she proved that the degree she obtained would ordinarily take 14 years of full-time study to obtain. Here, the evidence showed that she took exams over the course of two years and obtained a degree that ordinarily takes two years of full-time study to achieve. And she provided proof of twelve years of full-time study preceding her university credential. In the circumstances, I believe another officer should consider whether this evidence satisfies the applicable regulatory requirements.

### III. Conclusion and Disposition

[10] In my view, the officer unreasonably disallowed any credit for Mrs. Shahid's education. I will order Mr. Shahid's application to be reviewed by another officer. Mr. Shahid asked for costs, but I find no special circumstances that would justify them. The parties requested an opportunity to

make submissions on a question of general importance. I will consider any submissions made within 10 days of this judgment.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is allowed. The matter is referred back to another officer for reconsideration.
2. There is no order as to costs.
3. The parties may make submissions on a question of general importance for certification within 10 days of this judgment.

“James W. O’Reilly”

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Judge

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

**DOCKET:** IMM-552-09

**STYLE OF CAUSE:** ZAFAR SHAHID v. MCI

**PLACE OF HEARING:** Toronto, ON.

**DATE OF HEARING:** September 23, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** February 11, 2010

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