Federal Court  Cour fédérale

Date: 20111101

Docket: IMM-695-11

Citation: 2011 FC 1247

Ottawa, Ontario, November 1, 2011

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

ABDULAZIZ ALI; FARIDA ALI and INARA ALI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the decision of a designated immigration officer (Officer) at the Immigration Regional Program Center in Buffalo, New York dated 7 January 2011 (Decision). The Officer refused the Applicants' application for a permanent resident visa under subsection 75(1) of the *Immigration and Refugee Protection Regulations* SOR/2002-227 of the Act.

BACKGROUND

[2] The Principal Applicant, Abdulaziz Ali, is a citizen of the United States (US) and is originally from Pakistan. Farida Ali (Farida) is the Principal Applicant's wife, Inara Ali (Inara), is the Principal Applicant's adopted daughter. Farida and Inara are both citizens of Pakistan.

[3] In March 2008, the Applicants applied for permanent resident visas under the Federal Skilled Worker program. Their application was based on the qualifications of the Principal Applicant. In support of the application, the Principal Applicant submitted: T4 Income Statements (T4) from 2008 and 2009; pay stubs for October and November 2008; a letter listing his employment from August 1978 to 2008; and supporting letters from several employers, the most recent being from 2003. He also submitted a transcript and a letter from the Dean of Admissions and Registration at Kuwait University, a Student Academic Record from Loyola University in Chicago, Illinois, and an IELTS certificate. The Applicants also submitted their passports and adoption documentation for Inara.

[4] In May 2009, an official with the Consulate General of Canada (CGC), identified as SM in the CAIPS notes, determined that an interview would be required to confirm the genuineness of: the relationship between the Principal Applicant, Farida and Inara; the Principal Applicant's employment experience; the Principal Applicant's credential from Kuwait University; the Principal Applicant's arranged employment; Farida's education credential; and the Applicants' family

relationships in Canada. The CGC scheduled an interview for 2 September 2010, but the Applicants did not attend.

[5] The CGC determined, after the Applicants inquired about the status of their application in December 2010, that they had not received the letter requesting an interview. CGC scheduled a new interview for 6 January 2011. The Principal Applicant attended and the Officer interviewed him.

[6] The CAIPS notes indicate that the Officer advised the Principal Applicant of the purpose of the interview and that he could be examined on any other aspect of the application. The Officer asked the Principal Applicant about his family relationships in Canada, as well as his education, the adoption of his daughter, and his work history. At the end of the interview, the Officer told the Principal Applicant that he was refusing the application and that a refusal letter would follow.

[7] On 11 January 2011, the Applicants' immigration consultant e-mailed the Officer expressing concerns about the questions put to the Principal Applicant at the interview related to his education credentials. In this e-mail, the consultant reviewed the Principal Applicant's educational credentials and said original transcripts could be provided if they were required. The CGC responded in a letter dated 20 January 2011 which noted that the application had already been refused and the Applicants could re-apply if they had new information.

DECISION UNDER REVIEW

[8] The Decision in this case consists of both the Officer's letter to the Applicants dated 7 January 2011 and the CAIPS notes on file.

[9] The Officer awarded the Principal Applicant a total of 48 points as follows:

Category	Points assessed	Maximum
Age	0	10
Education	05	25
Experience	15	21
Arranged employment	10	10
Official language proficiency	08	24
Adaptability	10	10
TOTAL	48	100

[10] The portions of the Decision that are at issue in this case relate to the Officer's assessment of points in the experience, education, and official language proficiency categories.

Experience

[11] The Officer awarded the Principal Applicant 15 points for his work experience. The Officer found that the Principal Applicant had not provided sufficient documentation to substantiate his claimed work experience from 1998 to 2008. He did not provide any objective documentation proving income, such as W-2 – Wage and Tax Statements from his employment in the US (W-2), income tax returns, or pay stubs. The Principal Applicant did provide Canadian T4s from his employment at Illustrate Inc. in 2008 and 2009.

[12] The Officer also noted several contradictions between the Principal Applicant's employment experience as stated in his application and his responses in the interview. The Officer asked how the Principal Applicant was able to work with Elegant Accent in Reading, PA from April 2000 to May

2002, as stated in his application, when he had said in the interview that he was in Pakistan from 2000 to 2004. The Principal Applicant did not respond to this question.

[13] The Officer also questioned the Principal Applicant's stated work experience from 2005 to 2008. In his application, the Principal Applicant said that he was self-employed in the US. However, in the interview, he said that he had been living in Canada since 2004. When asked to explain this discrepancy, the Principal Applicant said that the business was actually run from his brother-in-law's address in Illinois. The Officer learned that this business was not formally registered in Illinois and it had never provided any goods or services. When the Officer asked why he referred to a business that had never done anything, the Principal Applicant said that he wanted to keep the business established for the future, in case he returned to the US.

[14] The Officer did not award any points for the work experience the Applicant claimed in the US and Pakistan because of the lack of documentary evidence from 1998 to 2008, the ten-year period before he filed his application, and the Principal Applicant's unsatisfactory answers. He awarded the Principal Applicant 15 points for experience because he had been granted a Temporary Work Permit in July 2008.

Education

[15] The Officer awarded 5 points for education because he had serious concerns about the Principal Applicant's stated undergraduate education at Kuwait University.

[16] First, the Officer noted that the Principal Applicant provided a statement purportedly issued by Kuwait University, Dean of Admission and Registration addressed “TO WHOM IT MAY CONCERN” and dated 12 December 1998. The Officer said the document contained five different type fonts and part of the text was misaligned. The transcript the Principal Applicant provided was a photocopy, also addressed “TO WHOM IT MAY CONCERN”.

[17] Second, the Officer observed that the Principal Applicant purportedly graduated in 1976 and the transcripts and letter were dated twelve years later. However, the Certified Tribunal Record shows that the transcripts and letter were actually dated 1998. When asked about this matter, the Principal Applicant said that his original degree was burned in a fire in Kuwait and that he contacted the university in 1998 and requested a copy of his transcript. When asked why he did not contact Kuwait University to obtain a replacement of his degree and a certified copy of his transcripts, the Principal Applicant said that Kuwait is not a very sophisticated country and that he had sent numerous e-mails and placed several phone calls to Kuwait regarding the replacement of his degree, but had received no cooperation. The Officer asked whether the Principal Applicant had copies of those e-mails and he said no.

[18] The Officer wrote in the CAIPS notes that he told the Principal Applicant that the website and instructions for applying for permanent resident status

> clearly [indicated] what documentation was required and if he chose to ignore such instructions that he assumed the risk that the lack of such [documentation] could present or become a potential issue in demonstrating his education.

When the Principal Applicant said that he was admitted to a Masters program at Loyola University in Chicago which proved he had an undergraduate degree, the Officer said he could not rely on second-hand or hearsay information.

[19] The Officer decided that the documentation provided by the Principal Applicant to substantiate his education was insufficient and awarded him 5 points for completing secondary school.

Official Language Proficiency

[20] The Officer awarded the Principal Applicant a total of 8 points for his English language proficiency because he is moderately proficient in all four abilities (listening, speaking, reading and writing). The Officer said this was based upon the supporting evidence provided.

Conclusion

[21] The Principal Applicant did not meet the minimum requirement of 67 points so the Officer refused the application.

ISSUES

[22] The Applicants raise the following issues in his written submissions but he modified his position at the judicial review hearing:

a. Whether the Officer erred in his assessment of points under the education, language proficiency and experience categories;

b. Whether the Principal Applicant was denied the opportunity to respond when the Officer did not inform him that the interview would include questions on his work experience, education and English proficiency;

c. Whether the Officer's reasons were adequate;

d. Whether the Officer was biased.

RELEVANT LEGISLATION

[23] The following provision of the Act is applicable in this proceeding:

Economic Immigration 12. …	**Immigration économique** 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.	(2) La sélection des étrangers de la catégorie « immigration économique » se fait en fonction de leur capacité à réussir leur établissement économique au Canada.

[24] The following provisions of the Regulations are also applicable in these proceedings:

Federal Skilled Worker Class	**Travailleurs qualifiés (fédéral)**
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	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

basis of their ability to become economically established in Canada and who intend to reside in a province other than the Province of Quebec.

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.

(2) A foreign national is a skilled worker if

(2) Est un travailleur qualifié l'étranger qui satisfait aux exigences suivantes :

(a) within the 10 years preceding the date of their application for a permanent resident visa, they have at least one year of continuous full-time employment experience, as described in subsection 80(7), or the equivalent in continuous part-time employment in one or more 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;

a) il a accumulé au moins une année continue d'expérience de travail à temps plein au sens du paragraphe 80(7), ou l'équivalent s'il travaille à temps partiel de façon continue, au cours des dix années qui ont précédé la date de présentation de la demande de visa de résident permanent, dans au moins une des professions 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;

(b) during that period of employment they performed the actions described in the lead statement for the occupation as set out in the occupational descriptions of the National Occupational Classification; and

b) pendant cette période d'emploi, il a accompli l'ensemble des tâches figurant dans l'énoncé principal établi pour la profession dans les descriptions des professions de cette classification;

(c) during that period of employment they performed a substantial number of the main duties of the occupation as set out in the occupational

c) pendant cette période d'emploi, il a exercé une partie appréciable des fonctions principales de la profession figurant dans les descriptions

descriptions of the National Occupational Classification, including all of the essential duties.

des professions de cette classification, notamment toutes les fonctions essentielles.

(3) If the foreign national fails to meet the requirements of subsection (2), the application for a permanent resident visa shall be refused and no further assessment is required.

(3) Si l'étranger ne satisfait pas aux exigences prévues au paragraphe (2), l'agent met fin à l'examen de la demande de visa de résident permanent et la refuse.

Selection criteria

Critères de selection

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 (2) on the basis of the following factors, namely,

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

STANDARD OF REVIEW

[25] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[26] In *Kniazeva v Canada (Minister of Citizenship and Immigration)* 2006 FC 268, Justice Yves de Montigny held that the assessment of an application for permanent residence under the Federal Skilled Worker Class is an exercise of discretion that should be given a high degree of deference. Further, in *Persaud v Canada (Minister of Citizenship and Immigration)* 2009 FC 206, Justice John O'Keefe held that the appropriate standard of review for a determination under the Federal Skilled worker class is reasonableness. (See also *Tong v Canada (Minister of Citizenship and Immigration)* 2007 FC 165). The standard of review on the first issue is reasonableness.

[27] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[28] The opportunity to respond and the adequacy of reasons are issues of procedural fairness. In *Canadian Union of Public Employees (CUPE) v Ontario (Minister of Labour)*, 2003 SCC 29, [2003] SCJ No. 28, the Supreme Court of Canada held that the standard of review with respect to questions of procedural fairness is correctness. Further, the Federal Court of Appeal in *Sketchley v Canada (Attorney General)* 2005 FCA 404 at paragraph 53 held that the "procedural fairness element is reviewed as a question of law. No deference is due. The decision-maker has either complied with the content of the duty of fairness appropriate for the particular circumstances, or has breached this duty." The standard of review with respect to the second issue and third issues is correctness.

[29] Also in *Dunsmuir* (above), the Supreme Court of Canada held at paragraph 50 that

> When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

[30] In *Community for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369, [1976] SCJ No 118, Justice De Grandpré wrote at page 394 that the test for bias is that

> [...] the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly?"

Though Justice De Grandpré was in dissent, this formulation of the test was later approved by the Supreme Court of Canada in *R v RDS*, [1997] 3 SCR 484, [1997] SCJ No. 84 [*RDS*]. In that case, Justice Cory held at paragraph 114 that

> The onus of demonstrating bias lies with the person who is alleging its existence. […] Further, whether a reasonable apprehension of bias arises will depend entirely on the facts of the case.

Whether the Officer was biased is a question of fact within the jurisdiction of the reviewing court (see also *Martinez v Canada (Minister of Citizenship and Immigration)* 2005 FC 1065).

ARGUMENTS

The Applicants

The Officer Erred in his Assessment of Points

Education

[31] The Applicants argue that the Officer erred when he did not recognize the Principal Applicant's Bachelor of Science degree from Kuwait University. They say that the original degree was burned in a fire and that they had been unsuccessful in obtaining a replacement from Kuwait University.

[32] In support of the genuineness of the Principal Applicant's education documentation, the Applicants say that the Principal Applicant would not have been able to go on to work towards a Master's degree if he did not first have his Bachelor degree. The Officer erred by not accepting this fact as proof that his education credentials were genuine. Had the Officer accepted this evidence, the Principal Applicant would have been awarded 20 points for his Education.

Experience

[33] The Applicants say that the Principal Applicant was employed as follows during the ten-year period before they filed the Application:

- Jul. 1997 – Jan. 2000 Conestoga Wood Specialyies [*sic*], Inc., in Reading PA, USA.
- Apr. 2000 – May 2002 Elegent [*sic*] Accent, in Reading PA, USA.
- Nov. 2002 – Jan. 2005 Paper Centre International in Karachi, Pakistan.
- Jan. 2005 – Aug. 2008 Data Management Solutions in Prairie View, IL, USA.

[34] The Principal Applicant should have been awarded the maximum 21 points under this category.

English Language Proficiency

[35] The Applicants argue that the Officer ought to have awarded 16 points under the English Language Proficiency category. They say that the Principal Applicant is highly proficient in the English language, noting that his primary, secondary and undergraduate education were conducted in English. They also note that the Principal Applicant pursued a Master's degree in the US and that he is a US citizen who has studied, worked and taught in the US.

[36] Finally, the Applicants highlight the IELTS test report dated 7 February 2005 that they submitted with their application. This document proves the Principal Applicant's English proficiency so he should have been awarded 16 points.

[37] The Principal Applicant would have exceeded the 67 points required under the Federal Skilled Worker Class had the Officer awarded the proper number of points, so their application should not have been refused.

The Officer Breached the Principal Applicant's Right to Procedural Fairness

[38] The Applicants argue that the Officer breached the Principal Applicant's duty of procedural fairness by not telling him that the interview held on 6 January 2011 would include questions on the Principal Applicant's work experience, education and English proficiency. Had the Officer done so, the Principal Applicant would have been able to produce documents and information that would have satisfied the Officer's concerns.

[39] The Applicants say that the Officer never indicated in any of the previous correspondence, including the request for an interview, that he had concerns regarding the Principal Applicant's education, work experience and English language proficiency. This is contrary to *Hernandez v Canada (Minister of Citizenship and Immigration)* 2005 FC 429, which the Applicants say requires officers to advise applicants of the purpose of an interview. They note that in the letter requesting an interview, the only documents that were specifically requested were their passports and drivers licenses. At the interview, the Officer asked the Principal Applicant for his W-2 statements, which he said he did not have because he did not know that he would be required to bring them. The Principal Applicant would have brought all his work documents if the interview request letter had requested them.

[40] The Applicants say that the Officer denied them the opportunity to respond when he made his Decision on the file without giving them an opportunity to provide additional supporting documentation which would address the concerns he raised in the interview. They note that the Decision was made at the end of the interview and they say this denied them the opportunity to respond.

[41] The Applicants also say the letters sent to them in advance of the interview gave them a legitimate expectation that the Principal Applicant's work history would not be an issue at the interview. They were taken by surprise when the Officer asked for supporting documents about the Principal Applicant's work history because the letters the CGC sent to them only said that they had to bring their identification.

The Officer's Reasons Were Inadequate

[42] The Applicants note that *Healey v Canada (Minister of Citizenship and Immigration)* 2009 FC 355 establishes that the adequacy of reasons as an issue of procedural fairness. They say that the Officer's reasons were inadequate.

The Officer was biased

[43] The Applicants argue that the Officer was biased. They say that he made his Decision on the file on grounds other than those applicable under subsection 76(1) of the Regulations. This allegation was withdrawn at the judicial review hearing.

The Respondent

Preliminary Matters

[44] The Respondent raises two preliminary matters. First, the Applicants have failed to provide a supporting affidavit verifying the facts upon which they are relying. This affidavit is required by Rule 10(2)(*d*) of the *Federal Courts Immigration and Refugee Protection Rules,* SOR/93-22 when perfecting an application for leave and judicial review. The Respondent says that, although the Applicants have provided the Court the documents they alleged were submitted to the Officer, they have not introduced them by way of affidavit evidence.

[45] Second, the Respondent points out that the Applicants provided a supplementary letter in a sealed envelope containing a certified copy of the Principal Applicant's transcripts from Kuwait University. The Respondent says that this letter should not be considered by the Court because it was not before the Officer at the time of his Decision. The lack of such a certified transcript was the reason why the Officer awarded the Principal Applicant only 5 points under the education category; the Applicants cannot now try to remedy the situation by providing that document on judicial review.

The Officer Did Not Breach the Principal Applicant's Right to Procedural Fairness

[46] The Respondent says that the onus was on the Applicants to satisfy the Officer fully of all the positive factors in their application. See *Oladipo v Canada (Minister of Citizenship and Immigration)* 2008 FC 366 at paragraph 24 for this proposition. The Officer was not required to offer the Applicants several opportunities to satisfy him on necessary points which they may have

overlooked. The Officer's role is to assess the application on the basis of the information and supporting documents provided.

[47] The Respondent says that when the material submitted is ambiguous or insufficient to satisfy the Officer, there is no general legal duty to ask for additional information before rejecting an application. See *Veryamani v Canada (Minister of Citizenship and Immigration)* 2010 FC 1268. Relying upon *Hassani v Canada (Minister of Citizenship and Immigration)* 2006 FC 1283, the Respondent also says that the Officer is not required to make his concerns known before rendering a decision when those concerns arise directly from the requirements of the Regulations.

[48] The Respondent relies on *Malik v Canada (Minister of Citizenship and Immigration)* 2009 FC 1283 [*Malik*] for the proposition that the duty of fairness owed to applicants applying for permanent residence under the Federal Skilled Worker Class is low. He notes that in *Malik,* Justice Robert Mainville held at paragraphs 26 and 29 that

> […] the Applicant holds no unqualified right to enter and to remain in Canada: *Chiarelli,* […], at pages 733-34. He applied for permanent residence under the federal skilled worker class and the process under the *Immigration and Refugee Protection Act* and the Regulations provides for an assessment of clear and specific criteria under a points system leaving little discretion to visa officers and which does not normally require an interview or other hearing with applicants. The nature of the regulatory scheme, the role of the decision of the visa officer in the overall scheme, and the choice of procedure made do not therefore suggest the need for strong procedural safeguards beyond what is already provided for in the legislation, save the procedural safeguard concerning proper information to applicants as to the criteria used and the documentation required to properly assess their applications. Though the decision to grant or not an application for permanent residence under the federal skilled worker class is obviously important to the individual affected, it is not such as to affect the fundamental freedoms or other fundamental rights of an applicant, such as a

> criminal proceeding or, in the immigration context, a deportation proceeding might have. In addition, no undertakings are made to applicants as to an interview or as to additional notification if documentation is missing or insufficient, thus considerably limiting expectations of applicants in such matters.
>
> […]
>
> In such circumstances, the duty of fairness owed the Applicant is low, and in any event has been met in this case through the prior notice provided to him specifying clearly the process that would be followed and the documentation required in order to support his application.

[49] In this case, the Applicants failed to provide adequate documentation to support the Principal Applicant's education and work experience claims. The Principal Applicant was only awarded 5 points for education because he only provided a photocopy of his transcript and letter of reference, rather than a certified copy. The Respondent notes that the application instructions and web-site are clear about the documents that must be produced.

[50] The Respondent says that the Officer was not required to apprise the Applicants of his concerns since they arose from the insufficiency of the evidence presented and the failure to meet the requirements of the Regulations. The Principal Applicant received 15 points for his work experience because none of his employment between 1998 and 2008 was supported by objective evidence of earned income, income-tax returns, W-2s or pay stubs.

The Officer Considered All of the Evidence and Provided Adequate Reasons

[51] The Respondent argues that the Officer's reasons do not need to be comprehensive. Relying upon *Lake v Canada (Minister of Justice)*, 2008 SCC 23, the Respondent says that the purpose of

providing reasons is to allow the individual concerned to understand why the decision was made and to allow the reviewing court to assess the validity of the decision. The Officer's reasons in this case satisfy these purposes.

[52] In any event, the adequacy of reasons does not establish a freestanding ground for judicial review. *R v Sheppard*, 2002 SCC 26 holds that an applicant must not only show that there is a deficiency in the reasons, but also that this deficiency has occasioned prejudice to the exercise of his legal right to seek leave and judicial review.

[53] The Respondent points out that the CAIPS notes are a constituent part of the Officer's Decision and provide additional detail to the formal decision letter. Together, these inform the Applicants of the reasons why the Officer refused their Application. In this case, the refusal letter and CAIPS notes together are 15 pages in length. The Officer's reasons demonstrate that he grasped the pertinent issues and the relevant evidence. Further, the Officer clearly explains why he awarded the Principal Applicant 48 points and refused the application.

The Officer Acted Fairly

[54] The Respondent argues that the Applicants have engaged in an improper allegation of bias against the Officer solely because they did not get what they wanted.

[55] The Respondent says *Martinez*, above, establishes that the test for reasonable apprehension of bias is whether or not an informed person, viewing the matter realistically and practically and

having thought the matter through, would think it more likely than not that the decision-maker would unconsciously or consciously decide an issue unfairly. The threshold for a finding of real or perceived bias is high and a real likelihood or probability of bias must be demonstrated. Mere suspicion is not enough. See *RDS*, above, at paragraphs 112 and 113.

[56] The Respondent says that there is no evidence in this case of either actual bias or a reasonable apprehension of bias. The Officer, after interviewing the Principal Applicant and considering all of the evidence, was entitled to draw the conclusions he did with respect to the Applicants' evidence. A negative decision does not, without more, signal a reasonable apprehension of bias.

ANALYSIS

[57] The Applicants applied for permanent residence under the Federal Skilled Worker Class, but did not provide adequate documentary evidence to support the claims made by the Principal Applicant and they failed to explain in a satisfactory manner certain obvious discrepancies in the information provided. The Applicants now seek to blame the Officer for problems that were of their own making.

[58] There are two preliminary issues raised by the Respondent that should be addressed. First, the Applicants have not included a sworn affidavit in this application. However, in this case, the documentation and evidence relied on by the Applicants (with the exception of the official transcripts from Kuwait University discussed in the next paragraph) can be found in the Certified

Tribunal Record. It is my view that I can rely on the Certified Tribunal Record to address the substantive issues raised by the Applicants.

[59] The second preliminary issue raised by the Respondent is that the Applicants have provided a supplementary letter with a sealed envelope containing a certified copy of transcripts from Kuwait University. The Respondent argues that this letter should not be considered by this Court as it was not before the Officer at the time of the Decision.

[60] This issue was addressed in *Chopra v Canada (Treasury Board)* (1999), [1999] FCJ No 835, 168 FTR 273, at paragraph 5, by Justice Jean-Eudes Dubé:

> There is considerable jurisprudence to the effect that only the evidence that was before the initial decision-maker should be considered by the Court on judicial review. These decisions are premised on the notion that the purpose of judicial review is not to determine whether or not the decision of the Tribunal in question was correct in absolute terms but rather to determine whether or not the Tribunal was correct based on the record before it.

[61] As the official transcripts were not before the Officer, and indeed were the primary reason the Officer assessed only 5 points for education, the certified transcripts submitted by the Applicants after the Officer's Decision will not to be considered in this case.

Assessment of Points

[62] The Applicants claim the Officer erred in the proper assessment of points under the education, language proficiency and experience categories. As held in *Kniazeva*, above, the assessment of an application for permanent residence under the Federal Skilled Worker Class is an

exercise of discretion that should be given a high degree of reference and is reviewable on a standard of reasonableness.

[63] In this case, it is my view that the Officer's assessment of points was reasonable.

Education

[64] The Applicants were required to provide sufficient documentation to prove to the Officer that the Principal Applicant had successfully completed his Bachelor degree from Kuwait University. They failed to do so.

[65] The Officer found that the documents provided were not acceptable. Both documents were dated 1998 even though the Principal Applicant claimed to have graduated in 1976. The Officer observed that the letter contained five type fonts and did not appear to be properly aligned. In addition, instead of supplying a sealed, certified copy of transcripts as required, the Principal Applicant only provided a photocopy of his transcripts. The Officer specifically questioned the Principal Applicant on these documents and was not satisfied by his responses.

[66] The Officer's finding that the documents were not credible is a finding of fact deserving of high deference. As the transcripts were not original copies submitted in university-sealed envelopes as required in the application, the Principal Applicant simply did not submit the proper documentation to substantiate his education claim. The Officer's finding and decision to award the

Principal Applicant 5 points was within the range of possible, acceptable outcomes described in *Dunsmuir*.

Work Experience

[67] Subsection 80(1) of the Regulations states that the work experience of an applicant under the Federal Skilled Worker Class must be assessed within the 10-year period preceding the date of their application. The Applicants submitted their application in March, 2008. Thus, the relevant time period is between March 1998 and March 2008.

[68] The Applicants provided many documents to establish the Principal Applicant's extensive work experience, dating back to his employment from 1976 to 1978 at Kuwait University. However, much of the documentation provided by the Applicants appears to me to be irrelevant for their application. While at first glance there appear to be many documents supporting the Principal Applicant's cumulative work experience, there are in fact very few documents evidencing his work experience during the relevant time period prescribed by the Regulations.

[69] The relevant work experience claimed by the Applicants on their application, as noted above, is as follows:

a. Jul. 1997 – Jan. 2000 Conestoga Wood Specialyies [*sic*], Inc., in Reading PA, USA.
b. Apr. 2000 – May 2002 Elegent [*sic*] Accent, in Reading PA, USA.
c. Nov. 2002 – Jan. 2005 Paper Centre International in Karachi, Pakistan.
d. Jan. 2005 – Aug. 2008 Data Management Solutions in Prairie View, IL, USA.

[70] The Applicants did not submit any objective documentation proving the Principal Applicant's income from any of these four employers. No documentation whatsoever was provided regarding the Principal Applicant's claimed employment with Conestoga Wood Specialyies [*sic*] Inc., Elegent [*sic*] Accent or Data Management Solutions. The only document supporting the Principal Applicant's claim of employment with Paper Centre International is a letter stating that he worked as a manager and was making RS. 25000 per month.

[71] With regards to the Principal Applicant's employment with Elegent [*sic*] Accent in the US, the Officer also found that this claim contradicted the Principal Applicant's interview response that he had been living in Pakistan from 2000 to 2004. The Officer also noted that no income tax returns, W-2s or pay stubs were supplied by the Principal Applicant to substantiate his employment in the US from 1997 to 2002. Based on this lack of evidence, the Officer concluded that she could not award the Principal Applicant credit for his work for the two companies in the US he claimed to have worked for.

[72] Finally, the Officer was also unable to award the Principal Applicant any points for his self-employment with Data Management Solutions. As with his other claimed employment, the Principal Applicant did not provide objective evidence of any income received from his employment from January 2005 to August 2008.

[73] In addition, the Officer noted that the Applicants claimed that Data Management Solutions, the business the Principal Applicant worked for from 2005 to 2008, was in the US while the Applicants also claimed to have lived in Canada from 2004 to the present. When questioned, the

Principal Applicant replied that the business was actually run from his brother-in-law's address in the US. Further, the Officer learned that the business had never been registered in Illinois and had never provided any goods or services. The Officer concluded that no points could be awarded to the Principal Applicant for this claimed employment. This was reasonable.

[74] The Officer's decision not to award the Applicants the requested number of points is reasonable when the evidence, or lack thereof, is taken into account.

English Language Proficiency

[75] The Officer awarded a total of 8 points of assessment for English language proficiency. The Officer held that the Principal Applicant had moderate proficiency in all four abilities, i.e. listening, speaking, reading and writing. The Officer stated that this finding was based upon the supporting evidence provided by the Applicants.

[76] According to the Appendix A Checklist, the Principal Applicant had the option of submitting original test results from an approved language-testing organization or providing other evidence in writing. Test results had to be originals and the results could not be older than one year upon submission. The Checklist clearly states that photocopies are unacceptable.

[77] The Checklist also states that the Principal Applicant could provide other evidence in writing, including written submissions detailing his training in, and use of, English, official

documentation of education in English, official documentation of work experience in English and other applicable documentation.

[78] The Officer appears to have made her assessment based on the Principal Applicant's written submissions. The Principal Applicant did submit a test report, but it was clearly older than one year as it was dated 7 February 2005. The final page of the Officer's notes also indicates that no English test was taken for the purposes of assessing his English language proficiency.

[79] As no objective evaluation of the Principal Applicant's English language proficiency was submitted, the Officer had to rely on the Principal Applicant's written submissions to assess his English language proficiency. This was an exercise of discretion on the part of the Officer deserving deference. Her decision to award 8 points based on the supporting evidence provided by the Applicants was not unreasonable. At the review hearing before this Court, counsel for the Applicant indicated that the Applicant no longer disputes the Officer's findings on this point.

Procedural Fairness

[80] Questions of procedural fairness must be reviewed on a standard of correctness. Essentially, the Applicants claim that the Officer did not afford them proper procedural fairness because the Officer did not alert them to her concerns going into the interview. The Applicants claim that had the Officer informed them of her concerns regarding the Principal Applicant's education and work experience, they would have been able to provide the necessary documents and evidence to satisfy her concerns.

[81] In my view, the Officer did not breach her duty of procedural fairness to the Applicants.

[82] First, as submitted by the Respondent, *Malik*, above, holds at paragraph 26 that the duty of procedural fairness owed to applicants, "other than the procedural safeguard concerning proper information to applicants as to the criteria used and the documentation required to properly assess their applications," is low. The Applicants have not argued that they were unaware of the criteria used and the documentation required when they submitted their application. The Applicants only claim that they were not informed of the Officer's concerns *after* the application had been submitted and *before* the interview.

[83] Secondly, "[t]he case law establishes that the onus is on the applicant to file an application with all relevant supporting documentation and to provide sufficient credible evidence in support of his application. The applicant must put his 'best case forward.'" See *Oladipo*, above, at paragraph 24. As a general rule, when concerns arise directly from the requirements of the Regulations, visa officers are not under a duty to provide an opportunity for the applicant to address those concerns. See *Ramos-Frances v Canada (Minister of Citizenship and Immigration)*, 2007 FC 142 at paragraph 8.

[84] This is such a case. The Officer's concerns regarding the Principal Applicant's claimed work experience arose directly from the requirements of the Regulations and the Principal Applicant's failure to provide documentation establishing his work experience.

[85] The Officer was under no duty to inform the Principal Applicant prior to the interview that she had concerns regarding his work experience. The onus was on the Applicants to provide the necessary documentation.

[86] However, while the Officer was not under a duty to inform the Principal Applicant of her concerns regarding his work experience, such a duty did arise, in my view, in relation to the Officer's concerns about the Principal Applicant's claimed education. Justice Richard Mosley in *Hassani*, above, provides the following guidance at paragraph 24:

> …it is clear that where a concern arises directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns. Where however the issue is not one that arises in this context, such a duty may arise. This is often the case where the credibility, accuracy or genuine nature of information submitted by the applicant in support of their application is the basis of the visa officer's concern, as was the case in *Rukmangathan*, and in *John*….

[87] The Officer's concerns about the Principal Applicant's claimed education were a result of a lack of required documentation but also raised credibility issues and the reliability of the letter and transcripts from Kuwait University submitted by the Applicants. Following *Hassani*, above, the Officer owed the Principal Applicant a duty to inform him of her concerns and provide him with an opportunity to address those concerns. The question is whether the Officer met this duty.

[88] In *Liao v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1926, Justice Pierre Blais held that an officer's duty to inform an applicant of his or her concerns will be fulfilled if the visa officer adopts an appropriate line of questioning or makes reasonable inquiries that give the applicant the opportunity to respond to the visa officer's concerns.

[89] From the CAIPS notes, it is clear that the Officer discussed the education documentation with the Principal Applicant. The Officer asked him why the documents were dated from 1998 and questioned why he had not contacted Kuwait University to obtain a replacement of his degree and a certified copy of his transcripts. When told by the Principal Applicant that he had attempted to do so but had received no cooperation from the university, the Officer asked whether he had brought copies of the e-mails requesting those documents. The Principal Applicant stated he had not.

[90] The Officer also advised the Principal Applicant that, when he initially applied for permanent resident status, the website and instructions clearly indicated what documentation was required and if he chose to ignore those instructions, he then assumed the risk that the lack of such documents could present or become a potential issue in demonstrating his education. The Officer noted that the Principal Applicant stated that since he was accepted at Loyola University in the US, the Officer should consider that Loyola University verified his degree in Kuwait. The Officer reiterated that she could not rely on second-hand or hearsay information regarding his education. There was nothing unreasonable about the Officer raising these concerns or in her deciding that official sealed transcripts were needed.

[91] In this case, the Officer clearly had concerns regarding the credibility and reliability of the education documentation supplied by the Applicants. The Officer raised these concerns at the interview and provided the Principal Applicant with an opportunity to address them. Unfortunately, the Principal Applicant’s responses did not satisfy the Officer as to the genuineness of the documents and the Officer ultimately did not accept them.

[92] In my view, the Applicants were provided with ample opportunity to present their case. The Applicants were able to submit all the required documentation to support the Principal Applicant's claimed education, work experience and English language proficiency with their initial application. They were also able to address concerns held by the Officer during the interview. The Officer was under no obligation to provide extra time for the Principal Applicant to "re-submit" documentation that would have satisfied any concerns that remained at the conclusion of the interview. As set out above, the onus is on the Applicants to put their best case forward at the time of the application.

[93] I conclude that the Officer did not breach her duty of procedural fairness owed to the Applicants. It is clear from the jurisprudence that any duty owed by the Officer was low and, based on the facts and the CAIPS notes, the Officer in this case clearly met any duty that did exist.

[94] My conclusion is that the Applicants have not established any grounds for reviewable error. The negative Decision is the result of their failure to submit the required documentation with their application and the Principal Applicant's failure to provide adequate answers to concerns raised at the interview.

[95] The parties agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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REASONS FOR JUDGMENT AND JUDGMENT:	HON. MR. JUSTICE RUSSELL
DATED:	November 1, 2011

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