

Federal Court



Cour fédérale

**Date: 20120117**

**Docket: IMM-1216-11**

**Citation: 2012 FC 55**

**Ottawa, Ontario, January 17, 2011**

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

**BETWEEN:**

**JAVED SIDDIQI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP &  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Overview**

[1] In 2007, Mr. Javed Siddiqi, a citizen of Pakistan, applied for permanent residence to the Canadian High Commission in London as a skilled worker. He relied on an immigration consulting company, Aries International, to act as his representative.

[2] His application was dismissed because he fell four points short of the required threshold of 67 points. He argues that he was entitled to be credited with a further four points in recognition of his spouse's educational credentials. However, his application did not include a transcript of his spouse's grades. He submits that this was the result of an administrative error, either on the part of Aries International or Immigration Canada. He maintains that it should have been clear to Immigration Canada that the transcript was missing from his file. Therefore, in fairness, he should have been given a chance to provide the missing transcript before his application was dismissed. He asks me to order a reconsideration of his file by a different officer.

## II. Factual Background

[3] After it confirmed receipt of Mr. Siddiqi's application, the High Commission advised him that it would provide him with a complete list of the required documents once his application was ready to be assessed. He would then have four months to prepare and submit his documents.

[4] That letter was sent in March 2010. It advised Aries International that Mr. Siddiqi was required to submit all of his supporting documentation (including copies of educational credentials and transcripts for him and his spouse) within 120 days, and that there was no obligation on immigration officials to request additional documents that had not been provided within that timeframe.

[5] On July 28, 2010 (after the 120-day deadline had passed) the High Commission received a letter from Aries International and a package of documents supporting Mr. Siddiqi's application.

The documents were forwarded to Ottawa for processing.

[6] The letter from Aries International stated that the supporting documents included, under the heading “Spouse”, a “Copy of certificate and marksheet for Bachelor of Commerce from University Karachi – Faculty of Business Administration & Commerce, Karachi, Pakistan”.

[7] From September 2010 to January 2011, Mr. Siddiqi sent three emails to Ottawa inquiring about the status of his file. The first email, on September 29, 2010, stated that all the required documents listed in the March 2010 letter had been submitted. Mr. Siddiqi also asked when he could expect to receive the medical request, and when his visa would be issued. He said he required this information because his son would be applying to McGill and other Canadian universities that winter. Ottawa responded on October 5, 2010, stating that it could not confirm receipt of documentation or respond to status check inquiries at that time.

[8] On January 9, 2010, Mr. Siddiqi sent a second email, which again stated that all documents listed in the March 2010 letter had been submitted and received, and again asked when he could expect the medical request. Ottawa replied on January 10, 2010, stating that the file had not yet been reviewed by an officer and that once it was, Mr. Siddiqi would be notified.

[9] Mr. Siddiqi emailed Ottawa a third time on January 13, 2011, again asking when the file would be reviewed. He got the same response.

[10] On January 28, 2011, Mr. Siddiqi's application was refused because he did not obtain the minimum number of points required.

[11] In his refusal letter, the officer stated: "I gave you no point [*sic*] for Spousal education – there were no transcript [*sic*] for your spouse's bachelor's degree, as was requested in the letter sent by our London office."

[12] Through counsel, Mr. Siddiqi asked for his application to be reassessed. The officer dismissed this request, stating: "Only a single copy of a post-secondary diploma for the spouse was submitted but no transcript. Hence no evidence as to the number of years taken to complete it was present, and no secondary [*sic*] education evidence [*sic*] had been submitted... The file wil [*sic*] remain closed".

### III. Was Mr. Siddiqi Treated Unfairly?

[13] Mr. Siddiqi argues that the officer wrongly applied the 120-day deadline and, by doing so, refused to give Mr. Siddiqi an opportunity to complete his application by submitting the missing transcript. Mr. Siddiqi also argues that the officer had a duty to inform him of the omission and give him a reasonable opportunity to supply the transcript.

[14] While Mr. Siddiqi was told that he had to submit his documents within 120 days, it is clear that the officer considered his application even though the documents were filed late. A new policy (pursuant to Citizenship and Immigration Canada Operational Bulletin 120, or OB 120, "Federal

Skilled Worker (FSW) Applications – Procedures for Visa Offices”) applies to applications filed on or after February 27, 2008 (after Mr. Siddiqi’s application was filed) and imposes strict enforcement of the 120-day deadline, but I see no evidence that Mr. Siddiqi’s application was treated as being subject to this rule.

[15] With respect to the duty to give Mr. Siddiqi notice that his application was incomplete, Mr. Siddiqi maintains that it would have been obvious to the officer that the crucial transcript had originally been submitted and somehow went missing.

[16] The list of documents submitted by Mr. Siddiqi’s agent, Aries International, referred to a “marksheet” from the University of Karachi. Mr. Siddiqi submits that this was obviously a reference to a transcript of his spouse’s grades. The officer should therefore have noticed, when he reviewed the file and found no transcript, that this important document was missing – whether Aries International had erred in filing it or it somehow went missing at Immigration Canada’s end. Either way, the officer should have realized that something was amiss and given Mr. Siddiqi a chance to correct it. This is especially so, he submits, because his emails manifested his concern about the completeness of his application.

[17] In my view, the burden was on Mr. Siddiqi to ensure his application was complete. He engaged an agent to assist him in this and, therefore, he had an obligation to ensure that the agent filed the necessary documents. His emails did not display a specific concern about the completeness of his application; they related more to the timing of events.

[18] In addition, there is no evidence before me that any transcript existed when Mr. Siddiqi made his application or even that any exists now. Among the documents submitted in support of Mr. Siddiqi's application was a "marksheet" from the University of Karachi. But this was not a transcript. The marksheet is simply a summary of the distribution of grades within the class. No transcript was presented in the original application, in the request for reconsideration, or on this application for judicial review.

[19] Accordingly, I cannot see how the officer could have been expected to conclude that a transcript was likely available, that it had somehow gone missing, and that Mr. Siddiqi could produce it if given a chance. This is unlike the situation where an applicant had explicitly complied with earlier instructions about what documents to provide, and the instructions were revised at the time the application was considered: *Noor v Canada (Minister of Citizenship and Immigration)*, 2011 FC 308; nor was this a situation where there was an issue about the credibility or genuineness of the evidence where fairness would require that the applicant be given a chance to address the officer's concerns: *Shah v Canada (Minister of Citizenship and Immigration)*, 2011 FC 697, at para 30.

[20] Accordingly, I cannot conclude that Mr. Siddiqi was treated unfairly. His application was simply incomplete.

#### IV. Conclusion and Disposition

[21] Having found no basis for concluding that Mr. Siddiqi was treated unfairly, I must dismiss this application for judicial review. Counsel for Mr. Siddiqi has submitted the following question for certification:

Whether or not in a missing document case there can ever be a question arising of procedural fairness, particularly as the immigration policy has moved into a no tolerance immigration processing system which does not allow an applicant to be able to determine in advance whether or not a document he sent has gone missing and whether or not it is the fault of the handling of the file inside the immigration office. The question therefore proposed is whether the concept of procedural fairness so boldly pronounced in the case of *Muliadi v Canada*, [1986] 2 FC 205 by the Federal Court of Appeal has been completely closed down by a system of no tolerance processing in which the visa officer can avoid attempts to determine whether or not his application was completely received, and the fact that the submission cover letter with the list of documents demonstrated that the missing document had been sent, or that the applicant had not ignored the checklist which he received requesting the general submission? In the alternative, did procedural fairness require the officer to re-open application?

[22] In my view, this proposed question is fact-specific and relates primarily to an issue not raised here – there was no evidence that a document was missing and, therefore, there is no question about whether the officer had a duty to give the applicant a chance to complete the file. In addition, the question of whether an officer may have a duty to re-open an application does not arise here because it is the refusal itself that is the subject of this application for judicial review, not the refusal to reconsider the application. No question will be stated.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that**

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

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Judge



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

**DOCKET:** IMM-1216-11

**STYLE OF CAUSE:** JAVED SIDDIQI  
v  
MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** September 27, 2011

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

**DATED:** January 17, 2012

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