Federal Court  Cour fédérale

Date: 20130620

Docket: IMM-7643-12

Citation: 2013 FC 661

Ottawa, Ontario, this 20th day of June 2013

Present: The Honourable Mr. Justice Pinard

BETWEEN:

SANDRA BROWN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, of a decision by a visa officer (the "officer") with the High Commission of Canada in London, England. In the decision, dated May 15, 2012, the officer refused the applicant's application for permanent residence under the Federal Skilled Worker class.

[2] The applicant is a 64-year-old citizen of the United Kingdom. In her application, the applicant requested that the officer conduct a substituted evaluation pursuant to subsection 76(3) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "Regulations") in the event that she received insufficient points to qualify for permanent residence.

[3] The officer assessed the applicant's points as follows:

	Points assessed	Maximum possible
Age	00	10
Experience	21	21
Arranged employment	00	10
Education	22	25
Official language proficiency	23	24
Adaptability	00	10
TOTAL	66	100

[4] The officer found the applicant obtained insufficient points to qualify for immigration to Canada, as the minimum requirement was 67 points.

[5] As requested, the officer conducted a substituted evaluation. He determined that the points awarded were an accurate reflection of the likelihood that the applicant would be able to become economically established in Canada.

* * * * * * * *

[6] Subsection 76(3) of the Regulations states:

76. (3) Whether or not the skilled worker has been awarded the minimum number of	**76.** (3) Si le nombre de points obtenu par un travailleur qualifié — que celui-ci

required points referred to in subsection (2), an officer may substitute for the criteria set out in paragraph (1)(*a*) their evaluation of the likelihood of the ability of the skilled worker to become economically established in Canada if the number of points awarded is not a sufficient indicator of whether the skilled worker may become economically established in Canada.

obtienne ou non le nombre minimum de points visé au paragraphe (2) — n'est pas un indicateur suffisant de l'aptitude de ce travailleur qualifié à réussir son établissement économique au Canada, l'agent peut substituer son appréciation aux critères prévus à l'alinéa (1)*a*).

[7] Section 83 of the Regulations provides the following:

83. (1) A maximum of 10 points for adaptability shall be awarded to a skilled worker on the basis of any combination of the following elements:
[…]
(*d*) for being related to a person living in Canada who is described in subsection (5), 5 points; and
[…]

(5) For the purposes of paragraph (1)(*d*), a skilled worker shall be awarded 5 points if
(*a*) the skilled worker or the skilled worker's accompanying spouse or accompanying common-law partner is related by blood, marriage, common-law partnership or adoption to a person who is a Canadian citizen or permanent resident living in Canada and who is
[…]
(vi) a child of the father or mother of their father or mother, other than their father or mother,

83. (1) Un maximum de 10 points d'appréciation sont attribués au travailleur qualifié au titre de la capacité d'adaptation pour toute combinaison des éléments ci-après, selon le nombre indiqué :
[…]
d) pour la présence au Canada de l'une ou l'autre des personnes visées au paragraphe (5), 5 points;
[…]

(5) Pour l'application de l'alinéa (1)*d*), le travailleur qualifié obtient 5 points dans les cas suivants :
a) l'une des personnes ci-après qui est un citoyen canadien ou un résident permanent et qui vit au Canada lui est unie par les liens du sang ou de l'adoption ou par mariage ou union de fait ou, dans le cas où il l'accompagne, est ainsi unie à son époux ou conjoint de fait :
[…]
(vi) un enfant de l'un des parents de l'un de leurs parents, autre que l'un de leurs parents,

* * * * * * * *

[8] The only issue raised by the applicant in this matter is whether the officer erred in his assessment of the substituted evaluation.

[9] The standard of review for a discretionary decision of an immigration officer relating to a permanent residence visa under the Federal Skilled Worker class is one of reasonableness (*Requidan v The Minister of Citizenship and Immigration*, 2009 FC 237 at para 12; *Kisson v The Minister of Citizenship and Immigration*, 2010 FC 99 at para 11).

[10] In order for a decision to be reasonable, the Court will consider "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at para 47 [*Dunsmuir*]).

* * * * * * * *

[11] The applicant submits that, when doing the assessment of substituted evaluation, the officer erred by not considering the fact that it was highly likely that the applicant would soon have two sons available in Canada to provide financial and social support to her. The applicant alleges that the officer had access to the fact that she had two sons in the final stages of immigrating to Canada.

[12] The applicant claims that had this fact been considered in conjunction with the fact that the point assessment left her only one point short of the required amount, there would have been

compelling information demonstrating that she would likely become economically established in Canada.

[13] For his part, the respondent submits there is no indication in the applicant's record that she ever informed the visa officer that the reason she requested a substituted evaluation was that the processing of her two sons' applications for permanent residence was almost complete.

[14] Moreover, there is no indication in the affidavit sworn by Jialan Pan, case manager with the law firm Goldman Associates, filed in support of this application for judicial review that the documents concerning the applicant's sons' applications were ever before the officer. As such, the respondent asserts that the documents relating to the sons' applications are not properly before the Court and should be given no weight.

[15] In reply, the applicant submits that the main purpose of Ms. Pan's affidavit is to show that the status of both of the applicant's sons' applications for permanent residence was available to the visa officer at the time of his decision and that this evidence is appropriately before the Court.

[16] In *Fernandes v The Minister of Citizenship and Immigration*, 2008 FC 243 at para 7, Deputy Judge Strayer stated the following regarding the purpose of a substituted evaluation assessment as prescribed in subsection 76(3) of the Regulations:

> [7] It is clear that the purpose of subsection 76(3) is to allow an exception to be made to the point system where the Applicant's chances of becoming successfully established in Canada is greater than is reflected in the points assessment: see e.g. *Yeung v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1174 at

> para. 15. To obtain such advantage the Applicant must request the exercise of the discretion and must give some good reasons for it: see *Lam v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1239 at para. 5. However, such reasons need not be elaborate and may consist of a more full description of the Applicant's background, education, and work experience and knowledge of an official language of Canada: see *Nayyar v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 342 at para. 12.

[17] I agree with the respondent that there is no evidence in the file that the applicant's sons' applications were part of the record before the officer. Contrary to the applicant's assertions, the Pan affidavit does not attest to this. Ms. Pan's affidavit simply establishes that Ms. Pan's law firm represented the applicant's sons in their applications for permanent residence and indicates important dates related to the applicant's sons' applications.

[18] Accordingly, I am not persuaded that the officer erred by not considering the status of the applicant's sons' applications. The onus was on the applicant to provide the necessary information for her application (*Tikhonova v The Minister of Citizenship and Immigration*, 2008 FC 847 at para 11). Given that the applicant's only challenge to the officer's decision is that the officer did not consider evidence which I have found was not before the officer, I am of the view that the officer's decision on the substituted evaluation fell within the range of possible, acceptable outcomes (*Dunsmuir, supra*).

[19] As such, the officer's decision is reasonable and the Court's intervention is not warranted.

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[20] For the above-mentioned reasons, the application for judicial review is dismissed.

[21] I agree with the parties that this is not a matter for certification.

JUDGMENT

The application for judicial review of a decision by a visa officer with the High Commission of Canada in London, England, dated May 15, 2012, is dismissed.

"Yvon Pinard"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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Me Kim Sutcliffe	FOR THE RESPONDENT

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