

Federal Court



Cour fédérale

Date: 20110606

Docket: IMM-5486-10

Citation: 2011 FC 645

Ottawa, Ontario, June 6, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

PUTHENPURACKAL GOPI PRASAD

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Puthenpurackal Prasad, a citizen of India, applied for permanent residence in Canada as a skilled worker. A visa officer at the Canadian High Commission in London concluded that Mr. Prasad did not meet the 67-point threshold required for a successful application. Mr. Prasad contends that he would have obtained the required number of points if the officer had given him

proper credit for his educational qualifications. He asks me to overturn the officer's decision and order a reassessment by a different officer.

[2] I agree with Mr. Prasad that the officer erred and will allow this application for judicial review.

[3] The main issue is whether the officer awarded Mr. Prasad the correct number of points in the education category.

II. The Officer's Decision

[4] Mr. Prasad obtained a three-year diploma in computer science at a polytechnical college after completing higher secondary school. In total, he had completed 15 years of full-time study.

[5] The visa officer found that Mr. Prasad could have entered the computer science program after Grade 10. He did not need to complete Grades 11 and 12 to enter that particular program. Accordingly, the officer found that Mr. Prasad should only be credited with a total of 13 years of full-time study.

[6] Mr. Prasad had initially planned to attend university, not a technical college, which is why he decided to complete his higher secondary education. A higher secondary diploma is required for entry into university in India. As it turned out, Mr. Prasad's grades were too low to get into university, so he went to college instead. (He subsequently obtained a M.Sc. in Information

Technology, but he finished that degree after he submitted his application).

[7] Under the *Immigration and Refugee Protection Regulations*, SOR/2002-227, an applicant should receive 15 points for a one-year post-secondary educational credential and a total of 13 years of full-time studies (s 78(2)(c)(i)) (see Annex attached). This is the provision on which the officer relied in Mr. Prasad's case. The officer reasoned that since Mr. Prasad could have entered his diploma program after 10 years of education, the other two years should not be counted as full-time studies; they were superfluous for the attainment of his diploma.

[8] Mr. Prasad argues that the officer should have invoked s 78(2)(e)(i) instead. That provision states that applicants should receive 22 points for a three-year post-secondary educational credential and a total of 15 years of full-time studies.

III. Case law on the Interpretation of the Regulations

[9] The Minister relies on cases where the Court has found that the Regulations do not recognize all years of study as counting towards an educational credential. For example, a diploma achieved after obtaining a Master's degree could not be counted towards an applicant's total years of study since it did not contribute to obtaining her highest educational credential: *Bhuiya v Canada (Minister of Citizenship and Immigration)*, 2008 FC 878. There, Justice Anne Mactavish concluded that the "fact that Ms. Bhuiya may have spent one additional year in school after obtaining her Master's degree does not turn her 16 year Master's degree into a 17 year Master's degree" (para 19). (See also *Roberts v Canada (Minister of Citizenship and Immigration)*, 2009 FC 518; *Lee v*

Canada (Minister of Citizenship and Immigration), 2011 FC 617).

[10] The Minister also points to decisions of Justice Elizabeth Heneghan in which she found that the years taken to obtain a second Master's degree could not be counted as part of the applicant's years of study because the Regulations (s 78(3)(a)) stipulate that points cannot be awarded cumulatively when the applicant has acquired multiple educational credentials: *Khan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 983; *Kabir v Canada (Minister of Citizenship and Immigration)*, 2010 FC 995.

[11] In essence, therefore, the Minister maintains that only those years of study that are strictly required for the achievement of the applicant's highest educational credential should be counted towards the person's total years of study.

[12] In two recent cases, however, the Court has departed from the *Khan* and *Kabir* decisions relied on by the Minister. In the first, Justice Douglas Campbell held that the applicant's total educational history should be considered, not just the years of study that contributed directly to his or her highest educational credential: *Hasan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1206. Justice Campbell found that the years of study the applicant had followed to obtain his second Master's degree should be counted as part of his total years of study. Similarly, in the second case, Justice Simon Noël found that the years of study required to obtain a second Master's degree should be counted: *Rabeya v Canada (Minister of Citizenship and Immigration)*, 2011 FC 370.

[13] Perhaps the case that is most similar to Mr. Prasad's is *McLachlan v Canada (Minister of Citizenship and Immigration)*, 2009 FC 975. There, Justice Leonard Mandamin concluded that an officer erred in failing to consider whether the applicant's twelfth year of full-time studies preceding a two-year educational credential could be counted, even though the applicant could have completed those studies in eleven years. The applicant had decided to do a twelfth year to improve his grades. Justice Mandamin concluded that the officer should have considered s 78(4) of the Regulations which applies in special circumstances where the applicant has a recognized educational credential but not the corresponding total number of years of study. Had he done so, the applicant would have been credited for his two-year credential and fourteen years of full-time study (para 35).

[14] Justice Russel Zinn followed a similar approach in *Marr v Canada (Minister of Citizenship and Immigration)*, 2011 FC 367. There, he found that the officer should have gone on to consider whether s 78(4) applied after concluding that the applicant was short one year of study (para 48).

IV. Did the Officer Interpret the Regulations Correctly?

[15] This case turns on the interpretation of the applicable Regulations. I can overturn the officer's decision if I find the officer's interpretation to be incorrect.

[16] None of the cases cited to me involves precisely the same facts as the case at hand. Still, the Minister suggests that the officer, by counting only the years of study needed to acquire Mr. Prasad's college diploma, was respecting the approach laid down in *Bhuiya, Khan and Kabir*, above. That approach, it is argued, requires that only those years of study leading directly to the

applicant's highest educational credential should be counted. By contrast, Mr. Prasad argues that there is nothing in the Regulations that specifically supports the officer's conclusion here. Further, Mr. Prasad relies on the decisions in *McLachlan*, *Hasan*, and *Rabeya*.

[17] The main issue here is whether two years of Mr. Prasad's education, not strictly required to obtain his college diploma, are nonetheless "studies". In my view, the grounds given in other cases for not crediting an applicant's years of study do not apply here. In particular, Mr. Prasad does not have two degrees at the same level, as in *Khan* and *Kabir*. Nor did he acquire a lesser diploma after obtaining his highest credential as in *Bhuiya*. The interpretative rules mentioned in those cases do not appear to apply here. In any case, however, even if the officer's approach was correct, he had a duty to go on to consider s 78(4). According to *McLachlan* and *Marr*, even if the applicant is lacking the requisite number of years of study, immigration officers must determine whether special circumstances require that the applicant receive the number of points corresponding with their educational credential. Here, the officer did not consider the application of s 78(4) and that error alone requires that I allow this application for judicial review.

V. Conclusion and Disposition

[18] I conclude that the officer erred in law and must, therefore, allow this application for judicial review and order another officer to reconsider Mr. Prasad's application in light of these reasons. The parties agree that the following question should be certified:

In assessing points for education under s 78 of the Immigration and Refugee Protection Regulations, does the visa officer award points for years of full-time equivalent studies that did not contribute to obtaining the educational credential being assessed?

[19] I find that this question qualifies as a serious question of general importance and, therefore, that it should be stated. The applicant asked for his costs, but I find no special circumstances that justify a cost award.

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. The following question is stated:

In assessing points for education under s 78 of the Immigration and Refugee Protection Regulations, does the visa officer award points for years of full-time equivalent studies that did not contribute to obtaining the educational credential being assessed?

“James W. O’Reilly”

Judge

Annex

*Immigration and Refugee Protection Regulations, SOR/2002-227**Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227*

78. (2) A maximum of 25 points shall be awarded for a skilled worker's education as follows:

78. (2) Un maximum de 25 points d'appréciation sont attribués pour les études du travailleur qualifié selon la grille suivante :

...

[...]

(c) 15 points for

c) 15 points, si, selon le cas :

(i) a one-year post-secondary educational credential, other than a university educational credential, and a total of at least 13 years of completed full-time or full-time equivalent studies, or

(i) il a obtenu un diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant une année d'études et a accumulé un total de treize années d'études à temps plein complètes ou l'équivalent temps plein,

...

[...]

(e) 22 points for

e) 22 points, si, selon le cas :

(i) a three-year post-secondary educational credential, other than a university educational credential, and a total of at least 15 years of completed full-time or full-time equivalent studies, or

(i) il a obtenu un diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant trois années d'études et a accumulé un total de quinze années d'études à temps plein complètes ou l'équivalent temps plein,

Multiple educational achievements

Résultats

(3) For the purposes of subsection (2), points

(3) Pour l'application du paragraphe (2), les points sont accumulés de la façon suivante :

(a) shall not be awarded cumulatively on the basis of more than one single educational credential; and

a) ils ne peuvent être additionnés les uns aux autres du fait que le travailleur qualifié possède plus d'un diplôme;

Special circumstances

Circonstances spéciales

(4) For the purposes of subsection (2), if a skilled worker has an educational credential referred to in paragraph (2)(b), subparagraph

(4) Pour l'application du paragraphe (2), si le travailleur qualifié est titulaire d'un diplôme visé à l'un des alinéas (2)b), des sous-alinéas (2)c)(i)

(2)(c)(i) or (ii), (d)(i) or (ii) or (e)(i) or (ii) or paragraph (2)(f), but not the total number of years of full-time or full-time equivalent studies required by that paragraph or subparagraph, the skilled worker shall be awarded the same number of points as the number of years of completed full-time or full-time equivalent studies set out in the paragraph or subparagraph.

et (ii), (2)d)(i) et (ii) et (2)e)(i) et (ii) ou à l'alinéa (2)f) mais n'a pas accumulé le nombre d'années d'études à temps plein ou l'équivalent temps plein prévu à l'un de ces alinéas ou sous-alinéas, il obtient le nombre de points correspondant au nombre d'années d'études à temps plein complètes — ou leur équivalent temps plein — mentionné dans ces dispositions.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5486-10

STYLE OF CAUSE: PUTHENPURACKAL GOPI PRASAD
v
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 28, 2011

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

DATED: June 6, 2011

APPEARANCES:

Matthew Jeffery FOR THE APPLICANT

Tamrat Gebeyehu FOR THE RESPONDENT

SOLICITORS OF RECORD:

Matthew Jeffery FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario