

Federal Court



Cour fédérale

Date: 20130620

Docket: IMM-8471-12

Citation: 2013 FC 660

Ottawa, Ontario, this 20th day of June 2013

Present: The Honourable Mr. Justice Pinard

BETWEEN:

Mamdouh Issa Mamdouh ALBAJJALI

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 (the “Act”) of a decision by a visa officer (the “officer”) with the visa office at the Embassy of Canada in Ankara, Turkey. In the decision, dated June 28, 2012, the officer refused the applicant’s application for permanent residence under the Federal Skilled Worker class.

[2] The applicant is a 39-year-old citizen of Jordan who applied for a permanent resident visa under the Federal Skilled Worker class. He indicated that he had work experience as an electrician.

[3] In support of his application and to be awarded five points under the adaptability factor, the applicant indicated that he had a maternal uncle living in Canada.

[4] The applicant submitted numerous documents related to the said relative's status in Canada, including the relative's Canadian citizenship card and Canadian passport. To establish the relative's residency in Canada, the applicant also submitted the relative's Ontario driver's license, some credit card and utility bills and a letter from the relative's lawyer regarding the purchase of a home in Mount Albert, Ontario.

[5] The applicant provided two documents relating to his blood relation with the said relative: the applicant's own birth certificate and a travel document belonging to the stated relative.

* * * * *

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

	Points assessed	Maximum Possible
Age	10	10
Education	20	25
Experience	21	21
Arranged employment	0	10
Official language proficiency	10	24
Adaptability	4	10
TOTAL	65	100

[7] The officer stated he was unable to award the applicant any points for having a relative in Canada, pursuant to subsection 83(5) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”), as he was not satisfied a blood relationship existed between the applicant and his stated relative. The officer noted that the applicant had not provided birth certificates for his mother and his stated relative in Canada.

[8] The officer provided more detail for the reasons for his decision in the Global Case Management System notes. The officer noted that the applicant had provided his birth certificate, which stated his mother’s name and his mother’s father’s name, and that he had also provided a copy of what appeared to be his stated relative’s travel document showing the relative’s mother’s name. However, the officer found there was insufficient documentation to allow him to conclude that there was indeed a blood relationship between the applicant and his stated relative.

* * * * *

[9] 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

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;

[...]

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,

(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,

* * * * *

[10] As a preliminary issue, the respondent submits, in his written memorandum of argument, that the evidence attached to the applicant's immigration consultant's affidavit submitted in support of this application, namely copies of a birth certificate and a marriage document, is fresh evidence that was not before the visa officer. As such, the respondent states the evidence should not be included as part of the record on judicial review.

[11] The applicant did not reply to this submission.

[12] Upon judicial review of an administrative decision, evidence that was not before the decision-maker is only admissible in very limited circumstances (*Alabadleh v The Minister of Citizenship and Immigration*, 2006 FC 716 at para 6). The applicant has not asserted how the fresh evidence adduced in the present case falls into the exceptional circumstances of being admissible. I therefore agree with the respondent that the evidence is inadmissible.

[13] The only issue raised on the merits of the application is whether the officer breached the duty of procedural fairness by not providing the applicant an opportunity to submit additional evidence. This is an issue that should be assessed on the correctness standard (*Canada (Citizenship and Immigration) v Khosa*, [2009] 1 SCR 339 at para 43; *Veryamani v The Minister of Citizenship and Immigration*, 2010 FC 1268 at para 27).

* * * * *

[14] It is well established that an officer is under no duty to inform an applicant about any concerns regarding his or her application that arise directly from the requirements of the legislation or regulations and do not pertain to the veracity of the documents (*Hassani v Canada (Minister of Citizenship and Immigration)*, [2007] 3 FCR 501 at paras 23 and 24; *Uddin v The Minister of Citizenship and Immigration*, 2012 FC 1005 at para 38 [*Uddin*]).

[15] As Justice Luc Martineau states in the recent case of *El Sherbiny v The Minister of Citizenship and Immigration*, 2013 FC 69, at paragraph 6:

[6] On one hand, an applicant bears the onus of providing adequate and sufficient evidence in support of his application, which means that the immigration officer is under no obligation to request further clarification from an applicant if he or she finds there is not enough evidence initially submitted. On the other hand, where there is a question related to the credibility, accuracy, or genuineness of the information an applicant has submitted, then the officer must give the applicant the opportunity to respond to the officer's concerns, but the credibility issue must be determinative.

[16] In the previous case of *Uddin, supra*, Justice John O'Keefe also states, at paragraph 38:

[38] ... The onus is always on the applicant to satisfy the officer of all parts of his application. The officer is under no obligation to ask for additional information where the applicant's material is insufficient (see *Sharma v Canada (Minister of Citizenship and Immigration)*, 2009 FC 786, [2009] FCJ No 910 at paragraph 8; and *Veryamani v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1268, [2010] FCJ No 1668 at paragraph 36).

[17] In the case at bar, the officer reasonably found that the applicant had not satisfied him that he had a blood relationship with his stated relative pursuant to subsection 83(5). As the respondent underlines, the applicant only provided two documents to establish his blood relationship with his stated relative: his birth certificate showing his parent's names and a travel document belonging to his stated relative in Canada which showed his relative's mother's name. Moreover, the applicant does not take issue with the officer's assessment that there was insufficient evidence to prove the applicant's blood relation with his uncle.

[18] In my view, as the officer's concerns arose directly from the Regulations, he was under no duty to inform the applicant that he had provided insufficient information to establish a blood relationship with the stated relative.

[19] The applicant relies on *Marr v The Minister of Citizenship and Immigration*, 2011 FC 367 and *Mansouri v The Minister of Citizenship and Immigration*, 2012 FC 1242, but in both cases, the applicant sought reconsideration of a Federal Skilled Worker application and submitted new evidence to confirm previously disclosed facts shortly after a negative decision was issued. It was these circumstances that the Court found gave rise to a duty to reconsider a negative decision. In the case at bar, there is no evidence the applicant made a reconsideration request accompanied by

evidence to support his blood relationship with his uncle. I therefore fail to see the analogy between the present case and *Marr* or *Mansouri*.

* * * * *

[20] For these 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 the decision by a visa officer at the Embassy of Canada in Ankara, Turkey, dated June 28, 2012, is dismissed.

“Yvon Pinard”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-8471-12

STYLE OF CAUSE: Mamdouh Issa Mamdouh ALBAJJALI v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: May 7, 2013

REASONS FOR JUDGMENT AND JUDGMENT: Pinard J.

DATED: June 20, 2013

APPEARANCES:

Me Richard Kurland FOR THE APPLICANT

Me Hilla Aharon FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kurland, Tobe FOR THE APPLICANT
Vancouver, British Columbia

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada