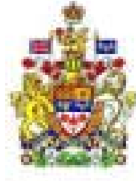
Federal Court of Appeal



Cour d'appel fédérale

Date: 20120215

Docket: A-213-11

Citation: 2012 FCA 54

CORAM: **LAYDEN-STEVENSON J.A.**
GAUTHIER J.A.
STRATAS J.A.

BETWEEN:

MARTIN TAN LEE

Appellant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

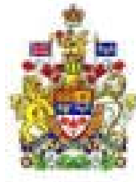
Respondent

Heard at Toronto, Ontario, on February 15, 2012.

Judgment delivered from the Bench at Toronto, Ontario, on February 15, 2012.

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on February 15, 2012)

STRATAS J.A.

[1] Mr. Lee appeals from a judgment of the Federal Court (*per* Justice Snider): 2011 FC 617.

[2] Mr. Lee had applied for a permanent resident visa under the "federal skilled worker class" described in the *Immigration and Refugee Protection Regulations*, SOR/2002-227. A designated

immigration officer rejected Mr. Lee's application on the basis that he failed to earn the minimum number of points needed to qualify for the visa.

[3] The Federal Court dismissed Mr. Lee's application for judicial review, finding that the immigration officer committed no reviewable error. In doing so, it certified the following as a question of general importance:

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

[4] Recently, in another appeal, this Court considered this very question and answered it in the negative: *Khan v. Canada (Citizenship and Immigration)*, 2011 FCA 339. The appellant has not convinced us that *Khan* is manifestly wrong. Accordingly, we must answer the certified question in this case in the negative.

[5] In addition to the issue raised by the certified question, Mr. Lee raises other issues in this Court. These broadly relate to the substantive merits of the designated immigration officer's decision and his failure to provide reasons.

[6] Mr. Lee raised these same issues in the Federal Court, submitting that the designated immigration officer's decision should be set aside. As mentioned above, the Federal Court found no reviewable error.

[7] For substantially the same reasons as the Federal Court, we agree that there is no reviewable error.

[8] Finally, in this Court, the appellant submits that the decision was “lawfully invalid” because outdated forms were used. The CAIPS notes show that there was updating of the appellant’s file. In our view, the appellant’s submission in this respect elevates form over substance.

[9] Therefore, notwithstanding counsel’s spirited submissions, we shall answer the certified question in the negative and dismiss the appeal.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-213-11

APPEAL FROM AN ORDER OF THE HONOURABLE MADAM JUSTICE SNIDER DATED MAY 26, 2011, DOCKET NO. IMM-6513-10

STYLE OF CAUSE:	MARTIN TAN LEE V. MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	February 15, 2012
REASONS FOR JUDGMENT OF THE COURT BY:	(LAYDEN-STEVENSON, GAUTHIER AND STRATAS JJ.A.)
DELIVERED FROM THE BENCH BY:	STRATAS J.A.

APPEARANCES:

Timothy E. Leahy	FOR THE APPELLANT
Jamie Todd Teresa Ramnarine	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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