



IAD File No. / N° de dossier de la SAI : VB3-01687

Client ID no. / N° ID client : 4469-5107

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Aziz Fatima KHANUM	Appelant(e)(s)
and		et
Respondent	The Minister of Citizenship and Immigration	Intimé(e)
Date(s) of Hearing	August 26, 2014	Date(s) de l'audience
Place of Hearing	Vancouver, BC	Lieu de l'audience
Date of Decision	January 8, 2015	Date de la décision
Panel	Larry Campbell	Tribunal
Counsel for the Appellant(s)	Massood Joomratty Barrister and Solicitor	Conseil(s) de l'appelant(e) / des appelant(e)(s)
Designated Representative(s)	N/A	Représentant(e)(s) Désigné(e)(s)
Counsel for the Minister	Laura Merriam	Conseil du ministre

REASONS FOR DECISION

[1] These are the reasons for the decision in the appeal of Aziz Fatima KHANUM (the “appellant”), who appeals the refusal to approve the permanent resident application made by her son, Muhammed Ibrahim KHAN (the “applicant”). The sponsored application for a visa was refused because the visa officer found the applicant to be inadmissible to Canada in that he did not meet the requirements of the *Immigration and Refugee Protection Act* (the “Act”).¹

ISSUE

[2] At issue in this appeal is whether the applicant is a member of the family class as set out in subsection 117(1)(b) of the *Immigration and Refugee Protection Regulations* (the “Regulations”).² Section 2 of the *Regulations*, along with other sections, was amended effective August 1, 2014. The parties agreed that on the basis of the Transitional Provisions accompanying the change in the *Regulations*, the appeal was governed by the *Regulations* as they read at the time of the visa officer’s decision.

DECISION

[3] I have come to the conclusion that the appellant has established that the applicant is a dependent child as defined in section 2 and subsection (b) of the *Regulations*. The appeal is allowed for the following reasons.

BACKGROUND

[4] The applicant is 30 years of age and is a citizen of Pakistan. He is currently attending school in the United Kingdom. The applicant was originally listed as a non-accompanying dependent on the appellant’s application for permanent residence. The appellant subsequently

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² *Immigration and Refugee Protection Regulations*, SOR/2010–208, s. 1.

filed an application to sponsor the applicant as an overage dependent. At the time of the sponsorship, the applicant was 27 years of age.

ANALYSIS

[5] The appellant presented documentary evidence to show the applicant's attendance at several educational institutions between May 2006 and the date of the hearing. The visa officer had refused the application, in part, because there was an apparent gap in the applicant's attendance between April 2006 and March 2007. The applicant provided testimony at the hearing which indicated that due to unrest in Pakistan at that time there had been a lengthy delay in processing examination results without which the applicant could not proceed to further ongoing study. Counsel for the appellant submitted that this did not represent a break in the applicant's attendance but rather delays in the system itself. The appellant provided documentary evidence which supported a periods of educational disruption in Pakistan from 2005 to 2009. I find that the appellant was pursuing a course of study continuously in the period from April 2006 to March 2007 and that his inability to attend classes was structural in nature and did not reflect a cessation of studies on his part.

[6] The documentary evidence shows that the applicant had a significant period where the school records show he failed every course, even when repeating the same courses. The testimony at the hearing provided a reasonable explanation for this related to instability in the post-secondary educational situation in Pakistan at that time and its effects on the applicant's studies.

[7] The testimony and documentary evidence support that the applicant has been attending school in the United Kingdom up to the time of the hearing. While there was an initial period of course failure, the latter years of study have been successful.

[8] I find that, on a balance of probabilities, that the appellant has been continuously enrolled and attending accredited post-secondary institutions since before the age of 22.

[9] The evidence at the hearing was that the applicant is financially supported from funds left to him by his late father, and currently controlled by the appellant. I find that the weight of the evidence establishes that the applicant has been dependent substantially on the support of the parent since before the age of 22.

CONCLUSION

[10] I find that the appellant has established that the applicant was a dependent child within the meaning of the section 2 of the *Regulations* and as required by subsection 117(1)(b) of the *Regulations*. The appeal is allowed.

NOTICE OF DECISION

The appeal is allowed. The officer's decision to refuse a permanent resident visa is set aside, and an officer must continue to process the application in accordance with the reasons of the Immigration Appeal Division.

(signed)

"Larry Campbell"

Larry Campbell

January 8, 2015

Date