



Untangling The Law

by R. Reis Pagtakhan, LL.B., B.A. (Hons.)
and Leanne Verreault
rrp@aikins.com

Does Immigration give Second Chances?

Under the law, there is no formal appeal process for most refused immigration applications. Citizenship and Immigration Canada often takes the position that if your immigration application is refused, their decision will not be revisited. Recently, however, this has been challenged in several different court cases.

In the case of Muhammad Usman Ali which was decided in August, the court ruled that Mr. Ali's application, which was refused, should be looked at again by CIC without Mr. Ali having to start the process from the beginning.

In this case, Mr. Ali applied for permanent residency as a Federal Skilled Worker. Mr. Ali's

application was refused on the basis of his "education" and "adaptability" scores. To prove his education, Mr. Ali initially submitted proof of 18 years' worth of full-time schooling. To prove his "adaptability" he provided the passport of his sister-in-law – a permanent resident in Canada. The court found that the documents regarding his sister-in-law were not the kind of evidence requested in the immigration application guide.

Like all Federal Skilled Workers, Mr. Ali's application was assessed under the point system. At the time, a score of 67 was required to be approved. Mr. Ali scored a 63.

In response to the refusal, Mr. Ali wrote to the Program Manager of the visa office requesting that his score be recalculated. Mr. Ali

continuation on page 23

Does immigration...

from page 19

felt that he deserved a higher score for his education and provided a letter from the Higher Education Commission of Pakistan in support of this. He also felt he deserved more points for adaptability and provided additional proof of his sister-in-law's permanent residency in Canada.

Though Mr. Ali had provided what he felt was a strong case, his application for reconsideration was refused. The court stated that this was because the officer found that the new documents Mr. Ali submitted were not submitted with his original application.

When this case was brought before the Federal Court, the judge said that while officers can choose not to reconsider an immigration application, officers must exercise this discretion "with a practical and reasonably fair approach". The judge went on to say that, "[w]hile efficiency of the immigration process is a reasonable justification for refusing a reconsideration request, efficiency is not served by refusing this request". As a result, Mr. Ali won the ability to have his application reconsidered with the new evidence he submitted.

It is important to note that not all cases will be treated the same way. Citizenship and Immigration Canada can refuse any application

that does not meet the requirements for entry into Canada, and, in most cases, takes the position that immigration applicants must put in all of the documents requested when they file their applications. Requesting that the application be reviewed by a second officer, or submitting additional evidence after an application has already been refused will not always work. It is always best that applications be submitted on time with all supporting documents, because you will not necessarily be given another opportunity to plead your case.

This Article is prepared for general information purposes only and is intended to provide comments for readers and friends

of the Filipino Journal. The contents should not be viewed as legal advice or opinion. If you have specific questions regarding immigration law, you should discuss them with a legal advisor of your choice.

Reis is a partner with Aikins Law and practices in the areas of immigration law. His direct line is 204-957-4640. If you would like to know more about Reis or Aikins you can visit the firm's web page at www.aikins.com or email him at rrp@aikins.com

Leanne is an immigration legal assistant at Aikins Law. She holds a Bachelor of Arts degree in sociology and criminal justice from the University of Winnipeg.