Federal Court  Cour fédérale

Date: 20150116

Docket: IMM-4516-13

Citation: 2015 FC 67

Ottawa, Ontario, January 16, 2015

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

MINAA IJAZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Minaa Ijaz, is a citizen of Pakistan who applied for permanent residence status in Canada as a federal skilled worker (FSW) pursuant to s. 12(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, (IRPA) and s. 75(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRP Regulations). A Citizenship and Immigration Canada (CIC) officer (Officer) denied her application. This is the judicial review of that decision.

Background Facts

[2] In her May 4, 2013 application for permanent residence, the Applicant identified her occupation as a financial analyst which corresponded with National Occupational Classification Code 1112 of the FSW program. As required, she included with her application a Credential Evaluation and Authentication Report from World Education Services Canada (WES), an organization which is designated pursuant to s. 75(4) of the IRP Regulations to conduct equivalency assessments.

[3] Along with complying with other admission criteria, FSW applicants are assessed and awarded points based on the selection criteria set out in s. 76(1)(a) of the IRP Regulations: age, education, proficiency in Canada's official languages, arranged employment, experience and adaptability. Applicants must obtain a minimum number of 67 points in order for their application to be approved, as set out in s. 361(4)(b) of the IRP Regulations. By letter dated June 19, 2013, the Officer advised the Applicant that she had obtained only 57 points, including 5, of a potential 25, for education. Accordingly, she had not demonstrated that she would be capable of becoming economically established in Canada.

[4] The Applicant submits that the Officer erroneously awarded her only 5 educational qualification points, as opposed to the 19 points, at minimum, that she was entitled to and contends that had the Officer awarded her the correct number of points, she would have met the requirements of the FSW program and her permanent residency would have been granted.

Legislative Framework

[5] It is necessary to set out, in some detail, the legislative framework of this matter. Pursuant to the *Regulations Amending the Immigration and Refugee Protection Act Regulations*, SOR/2012 274, December 7, 2012, ss. 75(2)(e) and 78 (which came into force May 4, 2013), and ss. 75(4) and 75(8) (which came into force January 2, 2013), amongst other sections of the IRP Regulations, were amended. At the hearing of this matter, counsel advised that this was the first time that the amended provisions had been the subject of judicial review.

[6] Section 73(1) of the IRP Regulations defines "Canadian educational credential" and "equivalency assessment" as follows:

"Canadian educational credential"	**« diplôme canadien »**
"Canadian educational credential" means any diploma, certificate or credential, issued on the completion of a Canadian program of study or training at an educational or training institution that is recognized by the provincial authorities responsible for registering, accrediting, supervising and regulating such institutions.	« diplôme canadien » Tout diplôme, certificat ou attestation obtenu pour avoir réussi un programme canadien d'études ou un cours de formation offert par un établissement d'enseignement ou de formation reconnu par les autorités provinciales chargées d'enregistrer, d'accréditer, de superviser et de réglementer de tels établissements.
"equivalency assessment"	**« attestation d'équivalence »**
"equivalency assessment" means a determination, issued by an organization or institution designated under subsection 75(4), that a foreign	« attestation d'équivalence » S'entend d'une évaluation faite par une institution ou organisation désignée en vertu du paragraphe 75(4), à l'égard

diploma, certificate or credential is equivalent to a Canadian educational credential and an assessment, by the organization or institution, of the authenticity of the foreign diploma, certificate or credential.	d'un diplôme, certificat ou attestation étranger, attestant son équivalence avec un diplôme canadien et se prononçant sur son authenticité.

[7] Section 75(2)(e) of the IRP Regulations requires foreign nationals to submit their Canadian educational credentials, or, to submit their foreign diploma, certificate or credential and an equivalency assessment as part of the information necessary to make the determination of whether they qualify as a FSW:

Federal Skilled Worker Class	**Travailleurs qualifiés (fédéral)**
Skilled workers	**Qualité**
(2) A foreign national is a skilled worker if	(2) Est un travailleur qualifié l'étranger qui satisfait aux exigences suivantes :
[…]	[…]
(e) they have submitted one of the following:	e) il a soumis l'un des documents suivants
(i) their Canadian educational credential, or	(i) son diplôme canadien,
(ii) their foreign diploma, certificate or credential and the equivalency assessment, which assessment must be less than five years old on the date on which their application is made.	(ii) son diplôme, certificat ou attestation étranger ainsi que l'attestation d'équivalence, datant de moins de cinq ans au moment où la demande est faite.

[8] These educational credentials are evaluated by organizations or institutions designated for that purpose pursuant to s. 75(4) of the IRP Regulations, and who are responsible for issuing equivalency assessments:

Designation for equivalency assessment	**Désignation pour les attestations d'équivalence**
(4) For the purposes of paragraph (2)(e) and subsection (2.1), the Minister may designate, for a period specified by the Minister, any organization or institution to be responsible for issuing equivalency assessments	(4) Pour l'application de l'alinéa (2)e) et du paragraphe (2.1), le ministre peut, en se fondant sur les critères ci-après, désigner, pour la durée qu'il précise, des institutions ou organisations chargées de faire des attestations d'équivalences :
(a) if the organization or institution has the recognized expertise to assess the authenticity of foreign diplomas, certificates and credentials and their equivalency to Canadian educational credentials; and	a) l'institution ou l'organisation est dotée d'une expertise reconnue en matière d'authentification et d'évaluation des diplômes, certificats ou attestations étrangers visant à établir leur équivalence avec les diplômes canadiens;
(b) if, in the case of a professional body, their equivalency assessments are recognized by at least two provincial professional bodies that regulate an occupation listed in the National Occupational Classification matrix at Skill Level A or B for which licensing by a provincial regulatory body is required.	b) s'agissant d'un ordre professionnel, ses attestations d'équivalence sont reconnues par au moins deux organismes provinciaux de réglementation professionnelle régissant une profession exigeant un permis délivré par un organisme provincial de réglementation et appartenant au niveau de compétence A ou B de la matrice de la Classification nationale des professions.

[9] Section 75(8) of the IRP Regulations pertains to the evidentiary effect of the equivalency assessment:

Conclusive evidence	**Preuve concluante**
(8) For the purposes of paragraph (2)(e), subsection (2.1) and section 78, an equivalency assessment is conclusive evidence that the foreign diplomas, certificates or credentials are equivalent to Canadian educational credentials.	(8) Pour l'application de l'alinéa (2)e), du paragraphe (2.1) et de l'article 78, l'attestation d'équivalence constitue une preuve concluante, de l'équivalence avec un diplôme canadien, du diplôme, du certificat ou de l'attestation obtenu à l'étranger.

[10] Section 76(1)(a) of the IRP Regulations concerns the minimum number points to be awarded pursuant to selection criteria, including education:

Selection criteria	**Critères de sélection**
76. (1) For the purpose of determining whether a skilled worker, as a member of the federal skilled worker class, will be able to become economically established in Canada, they must be assessed on the basis of the following criteria:	76. (1) Les critères ci-après indiquent que le travailleur qualifié peut réussir son établissement économique au Canada à titre de membre de la catégorie des travailleurs qualifiés (fédéral) :
(a) the skilled worker must be awarded not less than the minimum number of required points referred to in subsection (2) on the basis of the following factors, namely,	a) le travailleur qualifié accumule le nombre minimum de points visé au paragraphe (2), au titre des facteurs suivants :

[11] Section 78 of the IRP Regulations specifies how points are to be allotted for a skilled worker's Canadian educational credential or equivalency assessment submitted in support of an application:

Selection Grid	**Grille de sélection**
Education (25 points)	**Études (25 points)**
78. (1) Points shall be awarded, to a maximum of 25, for a skilled worker's Canadian educational credential or equivalency assessment submitted in support of an application, as follows:	78. (1) Un maximum de 25 points d'appréciation sont attribués au travailleur qualifié pour tout diplôme canadien ou pour toute attestation d'équivalence fournis à l'appui de la demande, selon la grille suivante :
(a) 5 points for a secondary school credential;	a) 5 points, pour le diplôme de niveau secondaire;
[…]	[…]
(c) 19 points for a two-year post-secondary program credential;	c) 19 points, pour le diplôme de niveau postsecondaire visant un programme nécessitant deux années d'études;
(f) 23 points for a university-level credential at the master's level or at the level of an entry-to-practice professional degree for an occupation listed in the *National Occupational Classification* matrix at Skill Level A for which licensing by a provincial regulatory body is required; and	f) 23 points, pour le diplôme de niveau universitaire de deuxième cycle ou pour le diplôme visant un programme d'études nécessaire à l'exercice d'une profession exigeant un permis délivré par un organisme de réglementation provincial et appartenant au niveau de compétence A de la matrice de la *Classification nationale des professions*;
[…]	[…]

[12] Lastly, s. 78(2)(b) of the IRP Regulations mandates that applicants are entitled to be awarded the highest number of points justified in their application for their educational credentials:

More than one educational credential	**Plus d'un diplôme**
(2) For the purposes of subsection (1), points	(2) Pour l'application du paragraphe (1), les points sont accumulés de la façon suivante:
[…]	[…]
(b) shall be awarded on the basis of the Canadian educational credentials or equivalency assessments submitted in support of an application for a permanent resident visa that result in the highest number of points.	b) ils sont attribués en fonction du diplôme canadien ou de l'attestation d'équivalence fournis à l'appui de la demande de visa de résident permanent qui procure le plus de points.

Decision Under Review

[13] In his decision the Officer set out the maximum permissible points that may be allocated and the Applicant's actual allocation of points for age, education, official language proficiency, arranged employment, experience and adaptability. With respect to education, the Officer stated that:

> You were assigned 5 points for your education Credential at the secondary school credential level this is based on the Canadian educational credential or equivalency assessment submitted in support of your application in accordance with R75(8) and R78(1).
>
> You submitted a foreign education credential and the equivalency assessment issued by World Education Services (WES) who evaluated your educational credential as Secondary School Diploma, two years of undergraduate study and two years of

> professional study. The latter two are not equivalent to a Canadian Educational Credential therefore you have been awarded points at the Secondary school level only.

[14] As the Applicant achieved a total of only 57 points, the minimum requirement being 67, the Officer advised that she had not obtained sufficient points to qualify for immigration to Canada.

Issues

[15] The issues in this application can be framed as follows:

1. What is the standard of review?
2. Did the Officer err in his treatment of the equivalency assessment?

[16] In her written submissions, the Applicant also submitted that the Officer erred in failing to reconsider his decision and also that she was entitled to costs. However, at the hearing before me, her counsel advised that these issues were no longer being pursued. Accordingly, they are not addressed in this decision.

Issue 1: What is the standard of review?

Applicant's Position

[17] The Applicant is of the view that the Officer's interpretation of the IRPA and the IRP Regulations is to be reviewed by this Court on a standard of correctness as the Federal Court of Appeal in *Khan v Canada (Citizenship and Immigration)*, 2011 FCA 339 at para 26 [*Khan*] and

Canada (Citizenship and Immigration) v Patel, 2011 FCA 187 at para 27 [*Patel*], held that this is the standard to be applied to a visa officer's decision. Further, that those decisions are consistent with *Agraira v Canada (Safety and Emergency Preparedness)*, 2013 SCC 36 [*Agraira*] which states that the standard of review need not be redetermined if past jurisprudence has identified the standard, which is the circumstance in this case. The Applicant also refers to the recent Federal Court of Appeal decisions in *Canada (Citizenship and Immigration) v Kandola*, 2014 FCA 85 [*Kandola*] and *Kinsel v Canada (Citizenship and Immigration)*, 2014 FCA 126 [*Kinsel*] in support of her position.

[18] The Applicant further submits that, even on the reasonableness standard, the decision cannot stand as it lacks justification, transparency and intelligibility (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*]; *Lozano Vasquez v Canada (Citizenship and Immigration)*, 2012 FC 1255; *Shirazi v Canada (Citizenship and Immigration)*, 2012 FC 306).

Respondent's Position

[19] The Respondent submits that the Officer's interpretation of a provision of the IRP Regulations is an interpretation of his home statute with which he has particular familiarity (*Dunsmuir*, at para 54; *Agraira* at para 50; *Alberta (Information and Privacy Commission) v Alberta Teachers' Association*, 2011 SCC 61 at paras 30 and 46 [*Alberta Teachers'*]). The Officer was required to determine whether the Applicant had the educational credentials to meet the regulatory requirements of s. 78 of the IRP Regulations, which is a question of mixed fact and law reviewable on a standard of reasonableness (*Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 at para 12 [*Zhang*]; *Wangden v Canada (Citizenship and*

Immigration), 2009 FCA 344 confirming 2008 FC 1230). Even if a question of law were at issue, the standard of review would still be that of reasonableness (*B010 et al v Canada (Citizenship and Immigration)*, 2013 FCA 87 at paras 68-70 [*B010*], leave to the SCC granted, 35388 (July 17, 2014); *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2011 SCC 53 at para 18 [*Canadian Human Rights Commission*]; *Alberta Teachers'* at paras 45-46). And, in any event, there is no reviewable error in the Officer's determination under either standard.

Analysis

[20] As held in *Dunsmuir*, in determining the applicable standard of review, the Court must first ascertain whether the jurisprudence has already determined, in a satisfactory manner, the degree of deference to be accorded with regard to a particular category of question. If that inquiry proves to be unfruitful, then the Court must proceed to an analysis of the factors making it possible to identify the proper standard of review (*Dunsmuir* at para 62; *Kandola* at para 32). Further, where the question is one of fact, discretion or policy, deference will usually apply automatically (*Dunsmuir* at paras 53 and 54) when a decision-maker is interpreting its own statute or statutes closely connected to its function with which it will have particular familiarity (*Dunsmuir* at para 54; also see *Alberta Teachers'* at para 30), the presumption of a deferential standard of reasonableness will apply (*Agraira* at para 50; *Kandola* at para 40).

[21] In *B010*, the Federal Court of Appeal restated this and also addressed the reasonableness standard as applicable to questions of law:

> [64] More recently, in *Alberta Teachers'*, cited above at paragraph 45, the Supreme Court restated the general principle that reasonableness will usually be the applicable standard of review when a tribunal is interpreting its own statute or statutes closely connected to its function. At paragraph 30 of the reasons of the majority, this general principle was said to apply:
>
> > […] unless the interpretation of the home statute falls into one of the categories of questions to which the correctness standard continues to apply, i.e., "constitutional questions, questions of law that are of central importance to the legal system as a whole and that are outside the adjudicator's expertise, ... '[q]uestions regarding the jurisdictional lines between two or more competing specialized tribunals' [and] true questions of jurisdiction or vires" (*Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471, at para. 18, per LeBel and Cromwell JJ., citing *Dunsmuir*, at paras. 58, 60-61).
>
> [65] The application of these principles to the present case leads to my second reason for concluding that the Federal Court selected the appropriate standard of review.
>
> [66] Members of the Board function in a discrete and special administrative regime. They have expertise with respect to the interpretation and application of the Act. The nature of the question of law is the interpretation of the phrase "people smuggling". This question of statutory interpretation of the Board's home statute raises neither a constitutional question, nor a question of law of general importance to the legal system as a whole. Neither does it involve a question regarding jurisdictional lines between competing specialized tribunals nor a true question of jurisdiction (to the extent such questions continue to exist; see, *Alberta Teachers'* at paragraphs 33 to 43).

[22] The Court concluded that there was no basis in law for ousting the presumption that deference should be afforded to the Board's interpretation of the IRPA in that case (also see *Canadian Human Rights Commission* at paras 16-18).

[23] The Supreme Court of Canada addressed the presumption that the reasonableness standard will apply in *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 [*McLean*]:

> [21] Since *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, this Court has repeatedly underscored that "[d]eference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity" (para. 54). Recently, in an attempt to further simplify matters, this Court held that an administrative decision maker's interpretation of its home or closely-connected statutes "should be presumed to be a question of statutory interpretation subject to deference on judicial review" (*Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at para. 34).
>
> [22] The presumption endorsed in *Alberta Teachers*, however, is not carved in stone. First, this Court has long recognized that certain categories of questions — even when they involve the interpretation of a home statute — warrant review on a correctness standard (*Dunsmuir*, at paras. 58-61). Second, we have also said that a contextual analysis may "rebut the presumption of reasonableness review for questions involving the interpretation of the home statute" (*Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 35, [2012] 2 S.C.R. 283, at para. 16)….

[24] The Supreme Court found in *McLean* that the presumption of the reasonableness standard was not rebutted in that case. Further:

> [31] …The modern approach to judicial review recognizes that courts "may not be as well qualified as a given agency to provide interpretations of that agency's constitutive statute that make sense given the broad policy context within which that agency must work" (*National Corn Growers Assn. v. Canada (Import Tribunal)*, [1990] 2 S.C.R. 1324, at p. 1336, per Wilson J.; see also *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650, at para. 92; *Mowat*, at para. 25).
>
> [32] In plain terms, because legislatures do not always speak clearly and because the tools of statutory interpretation do not

> always guarantee a single clear answer, legislative provisions will on occasion be susceptible to multiple *reasonable* interpretations (*Dunsmuir*, at para. 47; see also *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65, [2012] 3 S.C.R. 405). Indeed, that is the case here, as I will explain in a moment. The question that arises, then, is *who gets to decide among these competing reasonable interpretations?*
>
> [33] The answer, as this Court has repeatedly indicated since *Dunsmuir*, is that the resolution of unclear language in an administrative decision maker's home statute is usually best left to the decision maker. That is so because the choice between multiple reasonable interpretations will often involve policy considerations that we presume the legislature desired *the administrative decision maker* — not the courts — to make. Indeed, the exercise of that interpretative discretion is part of an administrative decision maker's "expertise".

[25] In this case, the Applicant relies on *Khan* and *Patel* to argue that because visa officers' decisions have previously been reviewed on the correctness standard, the same standard should be applied to this matter. However, both of those cases were decided prior to the jurisprudential development regarding the deference to be afforded to decisions of Ministers arising from the Supreme Court of Canada's decision in *Agraira* (at para 63). An issue may be revisited when the standard is incompatible with subsequent jurisprudential developments (*Kandola* at para 35; *Agraira* at para 48). And, while it can be rebutted, the Federal Court of Appeal has held that the presumption of deference also applies to Ministerial delegates, in this case the FSW officer (*Kandola* at para 42).

[26] Further, as noted above, this is the first time that this issue has come before the Court, as it concerns recent amendments to the IRP Regulations. Although not concerned with the precise question now before this Court, it is of note that this Court has previously held that the assessment of an application for permanent residence under the skilled worker class is a

discretionary exercise involving questions of mixed law and facts and should be given a high degree of deference (*Kaur v Canada (Citizenship and Immigration)*, 2014 FC 678 at para 9; (*Khanoyan v Canada (Citizenship and Immigration)*, 2013 FC 446 at para 3; *Tabanag v Canada (Citizenship and Immigration)*, 2011 FC 1293 at paras 11-12 [*Tabanag*]; *Ekladious Mansour v Canada (Citizenship and Immigration)*, 2013 FC 343 at para 11).

[27] The foregoing all suggests that the jurisprudence has not previously and satisfactorily dealt with the standard of review with respect to this issue. Accordingly, it may be revisited.

[28] The Applicant also submits that this is a circumstance similar to the recent Federal Court of Appeal decision in *Kandola*, where the correctness standard was found to apply to a question of statutory interpretation. In that case, the applicant had sought judicial review of the rejection of an application for Canadian citizenship. The issue was whether the Canadian father of a child conceived through assisted human reproduction technology, without any genetic link to him or to the foreign birth mother, obtains derivative citizenship pursuant to s. 3(1)(b) of the *Citizenship Act*.

[29] The Federal Court of Appeal revisited the standard of review jurisprudence and acknowledged that the analysis must start from the premise that reasonableness applies to the review of the citizenship officer's interpretation of s. 3(1)(b) of the *Citizenship Act*. However, the Court of Appeal found that the presumption was rebutted in that case:

> [42] …However, as in *Takeda* (paras. 28 and 29), this presumption can be quickly rebutted (*McLean*, para. 22; *Rogers Communications Inc. v. Society of Composers, Authors and Music Publishers of Canada*, 2012 SCC 35, para. 16).

> [43] Specifically, there is no privative clause and the citizenship officer was saddled with a pure question of statutory construction embodying no discretionary element. The question which he was called upon to decide is challenging and the citizenship officer cannot claim to have any expertise over and above that of a Court of Appeal whose sole reason for being is resolving such questions.
>
> [44] In this respect, I note that construing paragraph 3(1)(*b*) requires a consideration of the shared meaning rule in the application of bilingual enactments as well as the use that may be made of the French text given that it was enacted in the context of a revision. There is no suggestion that an citizenship officer was ever asked to consider either of those questions and nothing in the structure or scheme of the Act suggests that deference should be accorded to the citizenship officer on the question which he had to decide.
>
> [45] I am therefore satisfied that the presumption is rebutted.

[30] A similar rebuttal of the presumption of the application of the reasonableness standard was subsequently reached by the Federal Court of Appeal in *Kinsel*. There, the Court of Appeal also found, on the basis of *McLean*, that where the ordinary tools of statutory interpretation lead to a single reasonable interpretation, and the administrative decision-maker adopts a different interpretation, that interpretation will necessarily be unreasonable (*Kinsel* at para 32). Having conducted the required textual, contextual and purposive analysis of the relevant legislation, the Court of Appeal was satisfied that there was only one reasonable interpretation. Therefore, whether as a result of the rebuttal of the presumption of reasonableness, or as a result of the fact that there was only a single reasonable interpretation, it was required to interpret the relevant legislation and verify that the delegate's interpretation was consistent with that interpretation (*Kinsel* at para 34).

[31] In this case, the underlying question is one of statutory interpretation. Specifically, whether an equivalency assessment conducted for the purpose of awarding points based on education under s. 78 of the IRP Regulations requires a foreign diploma, certificate or credential to be the equivalent of a completed Canadian educational credential. Applying the *Dunsmuir* analysis, the Officer was interpreting his home statute and related regulations - the IRPA and IRP Regulations. Therefore, the starting point must be that the reasonableness standard must apply to the Officer's interpretation. Deference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity (*Dunsmuir* at para 54; *Smith v Alliance Pipeline Ltd*, 2011 SCC 7, at para 28).

[32] In my view, in this matter the presumption has not been rebutted and its circumstances more closely align with *B010* and *McLean* than with *Kandola* and *Kinsel*. While there is no privative clause this, in and of itself, does not prescribe the correctness standard (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 21 and 25). Further, immigration officers form a part of a discrete and special administrative regime in which the decision-maker has special expertise (*Philbean v Canada (Citizenship and Immigration)*, 2011 FC 487 at para 7; *Debnath v Canada (Citizenship and Immigration)*, 2010 FC 904 at para 8; *Roohi v Canada (Citizenship and Immigration)*, 2008 FC 1408 at para 33). In this instance, that expertise comes to bear in making a determination of whether the technical requirements of the IRPA and IRP Regulations have been met. Specifically, whether in the circumstances of the case, the required number of points have been achieved to permit qualification in the FSW class. In assessing the education component, this requires the interpretation of ss. 78 and 73 of the IRP Regulations, as well as the results of the equivalency assessment. In my view, this is a question of mixed fact

and law and is entitled to deference. Further, the statutory ambiguity at the heart of this judicial review does not fall within one of the categories of questions to which the standard of correctness continues to apply – constitutional questions, questions of law that have central importance to the legal system as a whole and that are outside the adjudicator's expertise, questions regarding the jurisdictional lines between two or more competing specialized tribunals and true questions of jurisdiction or *vires* (*Canadian Human Rights Commission* at para 18, *Dunsmuir* at paras 58, 60-61; *Alberta Teachers'* at para 30).

[33] Reasonableness is concerned with the existence of justification, transparency and intelligibility, and with whether the decision falls within a range of possible, acceptable outcomes (*Dunsmuir* at para 47).

Issue 2: Did the Officer err in his treatment of the equivalency assessment?

Applicant's Position

[34] The Applicant submits that in assessing the number of points that should be awarded, the Officer was required to refer to the educational equivalency assessment provided by the Applicant which was conclusive evidence that her foreign diplomas, certificates or credentials are equivalent to Canadian educational credentials. Accordingly, the Officer cannot call the educational assessment into question and must award points according to the Canadian educational equivalent set out in the assessment. The educational assessment that the Applicant was provided stated that she had the equivalent of two years of studies at the university undergraduate level and two years of studies at the professional degree level. Accordingly,

pursuant to IRP Regulation s. 78(c), her two years of undergraduate study should have been evaluated as worth 19 points, and, pursuant to IRP Regulation s. 78(f), she should have received 23 points for her professional degree. There is no requirement that the assessment show that the foreign degree is the equivalent of some specific Canadian degree or diploma.

[35] The Officer failed to properly apply ss. 78(c) and (f) and, given the WES educational assessment, was in error in finding that the Applicant's two years of undergraduate study and two years of professional study are not equivalent to a Canadian Educational Credential.

Respondent's Position

[36] The Respondent submits that the Officer did not err in awarding the Applicant 5 points for education.

[37] The Respondent submits that s. 73(1) of the IRP Regulations specifies that a "Canadian educational credential" is issued upon completion of a program of study and that an equivalency assessment must indicate whether the foreign education credential is equivalent to a Canadian educational credential. Given the reference to "Canadian educational credential" in the definition of "equivalency assessment", the criteria of the "Canadian educational credential" definition must be fulfilled for a foreign credential to be found equivalent to a Canadian educational credential. Thus, a foreign credential must be assessed as equivalent to a completed Canadian program of study in order to award points for the foreign credential. The Respondent points out that the provisions of the IRP Regulations in issue are new and submits that its interpretation of them is supported by the *Regulatory Impact Analysis Statement* which

accompanied the original publication of the amended provisions, as well as the OP 6-C – Federal Skilled Worker Class – Applications received on or after May 4, 2013 manual [OP 6-C Manual].

[38] While the WES assessment indicates that the Applicant's post-secondary credentials in Pakistan are equivalent to two years of post-secondary study and two years of professional study in Canada, it does not indicate that they are equivalent to a completed Canadian two-year post-secondary school credential. The only educational credential equivalent to a completed Canadian credential in the Applicant's application is her Higher Secondary Certificate in Pakistan, which the WES assessment indicates is equivalent to a Canadian secondary school diploma. Accordingly, the Officer did not err and his interpretation of how the Applicant's education meets the regulatory criteria is a determination of mixed fact and law that should be afforded deference.

Analysis

[39] The starting point for this analysis is the actual content of the WES Credential Evaluation and Authentication Report. This states:

> **CANADIAN EQUIVALNCY SUMMARY**
>
> Two years of undergraduate study and two years of professional study
>
> **CREDENTIAL ANALYSIS**
>
> | | |
> |---|---|
> | 1. Credential Authentication: | Official transcripts were sent directly from the institution |
> | Country: | Pakistan |
> | Credential: | Higher Secondary Certificate |

Year:	1996
Awarded By:	Federal Board of Intermediate and Secondary Education, Islamabad
Admission Requirements:	Secondary School Certificate
Length of Program:	Two years
Major/Specialization:	Science Stream
Canadian Equivalency:	Secondary school diploma

2. Credential Authentication:	Transcripts were verified by the institution
Country:	Pakistan
Credential:	Bachelor of Science
Year:	1999
Awarded By:	University of Punjab
Institution Status:	Recognized
Admission Requirements:	Intermediate Examination Certificate
Length of Program:	Two years
Major/Specialization:	Science
Canadian Equivalency:	Two years of undergraduate study

3. Credential Authentication:	Transcripts were verified by the institution
Country:	Pakistan
Credential:	Intermediate and Professional Examination Results
Year:	2006

Awarded By:	Institute of Cost and Management Accountants of Pakistan
Institution Status:	Recognized
Admission Requirements:	Bachelor's degree
Length of Program:	Not applicable
Major/Specialization:	Accounting
Canadian Equivalency:	Two years of professional study
Remarks:	Upon completion of the program, Ms. Ijaz was awarded a Certificate of Membership

[40] As pointed out by the Respondent, "Canadian educational credential" is defined by s. 73(1) of the IRP Regulations as meaning a diploma, certificate or credential, issued on the completion of a Canadian course of study that is recognized by the provincial authorities responsible for accrediting and regulating such institutions. "Equivalency assessment" is defined as meaning a determination, issued by a designated organization, that a foreign diploma, certificate or credential is equivalent to a Canadian educational credential. In my view, this clearly suggests that what the foreign issued diplomas, certificates or credentials of an applicant are being compared to are those issued by a Canadian institution for the purpose of determining if the former is equivalent to the latter.

[41] While it is clear from the WES report that the Applicant completed the Canadian equivalent of two years of undergraduate study, there is no indication in the report that this was equivalent to a Canadian Bachelor of Science degree or a two-year post-secondary program Canadian credential.

[42] The Regulatory Impact Analysis Statement (RIAS) accompanied the issuance of the revised IRP Regulation provisions. It states as follows:

> The *Immigration and Refugee Protection Regulations* (IRPR) establish the selection criteria for the FSWC and prescribe the weight given to each selection factor…Applicants will be required to submit either their Canadian educational credentials or an assessment of the Canadian equivalency of foreign educational credentials, issued by a designated organization. *Points will be awarded based on the equivalent completed Canadian educational credential*…..
>
> […]
>
> - Requiring a foreign educational credential assessment and changing education points […]. Designated organizations will work on a case-by-case basis to authenticate diplomas, certificates or credentials obtained in foreign jurisdictions *and determine their equivalent value in Canada*. This measure allows CIC to benefit from a better assessment of the value of a foreign educational credential in Canada. Applicants whose credentials are not equivalent to any Canadian programs of study as well *as those who do not have a credential equivalent to a completed Canadian credential* are not eligible for FSWC. *Points will be awarded according to how an applicant's foreign educational credential equates to completed educational credential in Canada.*
>
> [emphasis in italic added]
>
> [RIAS to the *Regulations Amending the Immigration and Refugee Protection Regulations,* PC 2012-1643 December 6, 2012, *Canada Gazette* vol 146, no 26, December 19, 2012].

[43] While a RIAS may be used as an interpretive tool, it cannot be used to override the clear language of regulations (*Teva Canada Limited v Sanofi-Aventis Canada Inc*, 2014 FCA 67 at para 77). However, in this case I see no inconsistency or ambiguity between the language of the

IRP Regulations and the RIAS. Further, the RIAS again clearly suggests that what is being assessed is whether the diploma, certificate or credential obtained from a foreign institution is the equivalent of a completed Canadian diploma, certificate of credential.

[44] The Respondent also refers to the OP 6-C Manual. Operational manuals are departmental policy documents which do not have the force of law, but can be valuable to the Court as an interpretative aid in determining whether a particular outcome is reasonable *(Singh Sran v Canada (Citizenship and Immigration)*, 2012 FC 791 at para 17; *Agraira* at para 60; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 72). The OP 6-C Manual states:

> **11.1 Education**
>
> To be awarded points for education, the applicant must provide evidence that they have earned a Canadian secondary or post-secondary educational credential AND/OR submit their completed foreign educational credential and the equivalency assessment (ECA report) issued by a designated organization or institution. The ECA report must indicate an *equivalency to a completed Canadian secondary or post-secondary educational credential.*
>
> In order to maximise points for education, applicants may submit evidence of more than one completed educational credential. However, any completed foreign educational credential submitted must be accompanied by an ECA report. For example, an applicant may have completed a Canadian post-secondary program and the equivalent of a Canadian post-secondary program of three years or longer at an educational institution outside of Canada. In this case, the applicant would submit proof of the completed Canadian educational credential, the completed foreign educational credential, and the ECA report *demonstrating its equivalency to a completed Canadian post-secondary program credential.*
>
> R78(2)(b) provides that points shall be awarded on the basis of the completed Canadian educational credentials or equivalency assessments (ECA reports) submitted in support of the application for permanent residence that result in the highest number of points.

> […]
>
> Pursuant to R78(1), officers should assess the application and award the applicant up to a maximum of 25 points for educations as follows...
>
> [emphasis in italic added]

[45] In this case, the WES assessed the Applicant's higher secondary certificate credential as equivalent to a Canadian secondary school diploma. It assessed her foreign two-year Bachelor of Science credential as equivalent to two years of Canadian undergraduate study and her Intermediate and Professional Examination Results credential as equivalent to two years of Canadian professional study. It summarized this as being the Canadian equivalent of "Two years of undergraduate study and two years of professional study".

[46] In my view, based on the foregoing, it was open to the Officer to interpret the WES educational assessment and the IRP Regulations as he did, being that the WES equivalency finding of two years of undergraduate study and two years of professional study were not the equivalent of a Canadian Educational Credential. The WES educational assessment did not state that that the Applicant's credentials were equivalent to Canadian educational credentials, and the Officer relied on this as conclusive evidence as required by s. 75(8) of the IRP Regulations. Thus, while the Officer had discretion in interpreting ambiguous language in the WES, he had no discretion on the points to be awarded once the meaning of the report had been ascertained.

[47] The Officer explained in his letter what educational points had been allocated, referenced the WES assessment which determination was on the record before him and stated that the WES finding of two years of undergraduate and two years of professional study was not equivalent to

a Canadian Educational Credential, which was in keeping with both the WES assessment and s. 73(1) of the IRP Regulations. For that reason, he awarded the Applicant points only at the secondary level. Accordingly, I find the Officer's assessment to be reasonable.

[48] It is also of note that each of the statutory point allocations set out in s. 78(1) of the IRP Regulations refers to the subject program "credential". Under s. 78(1), points are allocated for a skilled worker's equivalency assessment based on the identified "credential". In the absence of a determination by WES that two years of undergraduate study is equivalent to a two-year post-secondary "credential", in my view it was open to the Officer to conclude that the allocation of 19 points pursuant to s. 78(1)(c) was not permissible.

[49] The Applicant also submits the Officer's interpretation of the IRP Regulations was in error as it leads to an absurd result (*Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27; *Wise v Canada (Minister of Public Safety and Emergency Preparedness)*, 2014 FC 1027) in that the Applicant is awarded no points when she has clearly demonstrated that she holds a two-year Bachelor of Science degree and a professional certificate and the WES equivalency assessment credits her with two years of undergraduate study and two years of professional study.

[50] However, if the purpose of an equivalency assessment is to determine if a foreign diploma, certificate or credential "is equivalent to" a Canadian educational credential - which is a diploma, certificate or credential issued on the completion of a Canadian program of study or training - then the result is not absurd, but is as intended. In other words, if the Applicant's two-year Bachelor of Science degree is not the equivalent of a Canadian diploma, degree or

credential granted upon *completion* of a course of study, but is only the equivalent of two years of undergraduate *study* in Canada, then not allocating points would not be absurd, as the Applicant may not have the educational skills required to qualify as a FSW.

[51] Having reached the conclusion that the Officer's decision was reasonable, I would also note that the alternate interpretation suggested by the Applicant was also a possible outcome. However, when there is more than one reasonable possible outcome the Officer is to be afforded deference (*McLean* at paras 39-41; *Canadian Human Rights Commission* at para 30).

Certified question

[52] The Applicant submits, and I agree, that the wording of the WES educational assessment in this matter was less than a model of clarity. In the future it may be that designated organizations such as WES will be instructed to issue clear and unambiguous determinations. It is also true that the wording of s. 78 could be clearer and, as noted above, that the relevant provisions of the IRP Regulations can potentially be interpreted in more than one way. In recognition of this, the parties have each proposed a question for certification.

[53] The Applicant submits the following question:

> In order to award points for education in a Federal Skilled Worker Class application pursuant to s. 78 of the *Immigration and Refugee Protection Regulations*, do the Regulations require that an equivalency credential report describe the foreign education as being the equivalent of some specific type of completed Canadian educational credential, or is an equation of the relative value in education years sufficient?

[54] The Respondent proposes as follows:

> In order to award points for education in a FSWC class application pursuant to s.78 of the *Immigration and Refugee Protection Regulations*, do the Regulations require that an equivalency assessment of a foreign diploma, certificate or credential provided in an educational credential report be equivalent to a completed Canadian educational credential?

[55] The test for certification of a question pursuant to s. 74(d) of the IRPA was recently reiterated by the Federal Court of Appeal in *Zhang* at para 9:

> [9] It is trite law that to be certified, a question must (i) be dispositive of the appeal and (ii) transcend the interests of the immediate parties to the litigation, as well as contemplate issues of broad significance or general importance. As a corollary, the question must also have been raised and dealt with by the court below and it must arise from the case, not from the Judge's reasons (*Canada (Minister of Citizenship and Immigration) v. Liyanagamage*, 176 N.R. 4, 51 A.C.W.S. (3d) 910 (F.C.A.) at paragraph 4; *Zazai v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 89, [2004] F.C.J. No. 368 (C.A.) at paragraphs 11-12; *Varela v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 145, [2010] 1 F.C.R. 129 at paragraphs 28, 29 and 32).

[56] In my view, the test is met in this case and I accordingly certify the following question:

> When assessing a federal skilled worker class application for permanent residency and the points to be awarded for education under s. 78 of the *Immigration and Refugee Protection Regulations* (IRP Regulations), do the IRP Regulations require an equivalency assessment, as required by s. 75(2) and defined by s. 73(1), of a foreign diploma, certificate or credential to be evaluated and explicitly stated as being equivalent to a diploma, certificate or credential issued on the completion of a Canadian program of study or training, as defined in s. 73(1) as a "Canadian educational credential"?
>
> Or, is a determination and statement of the equivalent value of the foreign diploma, certificate or credential, expressed as a number of

years of study in Canada, sufficient to award points pursuant to s. 78(1)?

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed; and

2. The following question is certified pursuant to s. 74(d) of the IRPA:

   When assessing a federal skilled worker class application for permanent residency and the points to be awarded for education under s. 78 of the *Immigration and Refugee Protection Regulations* (IRP Regulations), do the IRP Regulations require an equivalency assessment, as required by s. 75(2) and defined by s. 73(1), of a foreign diploma, certificate or credential to be evaluated and explicitly stated as being equivalent to a diploma, certificate or credential issued on the completion of a Canadian program of study or training, as defined in s. 73(1) as a "Canadian educational credential"?

   Or, is a determination and statement of the equivalent value of the foreign diploma, certificate or credential, expressed as a number of years of study in Canada, sufficient to award points pursuant to s. 78(1)?

"Cecily Y. Strickland"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4516-13
STYLE OF CAUSE:	MINAA IJAZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 27, 2014
JUDGMENT AND REASONS:	STRICKLAND J.
DATED:	JANUARY 16, 2015

APPEARANCES:

Matthew Jeffery	FOR THE APPLICANT
Margherita Braccio	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Matthew Jeffery Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT