Federal Court  Cour fédérale

**Date: 20150206**

**Docket: IMM-5324-13**

**Citation: 2015 FC 160**

**Ottawa, Ontario, February 6, 2015**

**PRESENT: The Honourable Mr. Justice Boswell**

**BETWEEN:**

**HAMID DASHTBAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

### I. Nature of the Matter and Background

[1] Pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*Act*], the Applicant seeks judicial review of the decision of an immigration officer [Officer] which denied his application for permanent residence as a member of the federal skilled workers class. The Applicant asks the Court to set aside the Officer's decision and return the matter to a different immigration officer for re-determination.

[2] The Applicant is a citizen of Iran who, on March 19, 2010, applied for permanent residence in Canada as a member of the federal skilled worker class, claiming to be a dentist (National Occupational Classification [NOC] Code 3113) and a manager in healthcare (NOC Code 0311).

[3] That application was refused for the first time on May 2, 2012. The Applicant needed 67 points to meet the threshold prescribed by the Minister of Citizenship and Immigration [Minister] pursuant to subsection 76(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*] (as it appeared on May 3, 2013), but he received only 66 points. This was partially because the Applicant was awarded only 20 points for his education pursuant to paragraph 78(2)(d) of the *Regulations*, on the basis that his medical degree was equivalent to a Bachelor's degree. The Applicant also received 5 points for adaptability because he had a relative residing in Canada, but did not receive any additional points for his wife's educational background.

[4] Having had six years of full-time study in dentistry, the Applicant believed that he should have received 22 points for his education pursuant to paragraph 78(2)(e) of the *Regulations*. He also thought that, pursuant to paragraph 83(1)(a), he should have received more points for adaptability because of his wife's education. The Applicant therefore asked for reconsideration of the first decision several times, but he was refused. Following these refusals, he sought judicial review from this Court on June 29, 2012, and he succeeded with the consent of the Minister on October 10, 2012 (*Dashtban v Minister of Citizenship and Immigration*, IMM-6503-12 (FC)).

[5] The Applicant's application for permanent residence was thus returned to another officer for re-determination, and it is this second Officer's decision which is the subject matter of the present judicial review application.

## II. Decision under Review

[6] After reviewing the file, the Officer was inclined to award the same number of points as in the first assessment, since there was no evidence that the Applicant's degree was equivalent to a Master's degree or two Bachelor's degrees or that his wife's education met the criteria in subsection 83(2) of the *Regulations*. The Officer sent the Applicant an e-mail to that effect on June 6, 2013, and afforded the Applicant 30 days to submit any additional information that might change such assessment. On July 4, 2013, the Applicant provided more documentation about courses he had taken, as well as some courses that his wife had taken at two institutions, i.e., Fanavaran Doran, and Tehran University Researchers and Innovators University Institute.

[7] By letter dated July 25, 2013, the Applicant's application was refused for a second time.

[8] Again, the Applicant was awarded only 20 points for his education. In the Computer Assisted Immigration Processing System [CAIPS] notes, the Officer wrote that "none of the documentation on [the Applicant's] file mentions that the degree was issued by a faculty of graduate studies or otherwise satisfied me that it is a diploma at the master's degree level." Although the Applicant presented some certificates saying that he attended some courses, none of these were degrees and there was "no evidence that [the Applicant] completed a subsequent university degree."

[9] The Officer also did not depart from the earlier assessment that the Applicant should receive no points under adaptability for his wife's education. Although she had attended many courses at Fanavaran Doran, the Officer noted that the longest course lasted only 460 hours, which was significantly less than the one year required for it to count as "full-time" or "full-time equivalent" under subsection 78(1) of the *Regulations*. Furthermore, the Officer determined that these courses were not combined under a single credential, as a separate certificate was issued for each course. The Officer also considered the Applicant's wife's certificate from the Tehran University Researchers and Innovators University Institute. Although it stated that she had completed courses equivalent to "Associate Degree Specialty Courses," the Officer discounted this certificate because it "did not mention the duration of this course, did not mention that an educational credential was issued upon its completion and it did not mention the basis for the equivalency made. Moreover, the equivalency did not relate to the associate degree itself but, rather to associate degree specialty courses." In the result, the Applicant was again awarded no points for his wife's education and received only 5 points for adaptability because he had a relative in Canada.

[10] The Applicant also received 10 points for age, 21 for experience, 10 for official language proficiency, and 0 for arranged employment. Combined with the 20 points for education and the 5 for adaptability, the Applicant was awarded a total of 66 points, 1 point shy of the threshold. Since the Officer decided that this score accurately reflected the Applicant's ability to become economically established in Canada, there was no cause to use a substituted evaluation pursuant to subsection 76(3) of the *Regulations*. Thus, the Applicant's application was again refused.

[11] The Applicant requested reconsideration of the Officer's decision on July 30, 2013, but this request was refused by an e-mail dated August 1, 2013, which said that the Applicant's application had been processed fairly and that there were insufficient grounds to reopen his file.

## III. The Parties' Submissions

### A. *The Applicant's Arguments*

[12] The Applicant argues that the Officer made two errors in denying the Applicant's application to enter Canada as a skilled worker. First, the Applicant submits that the Officer unreasonably concluded that the Applicant's degree in dentistry was just a bachelor's degree and, therefore, did not award him enough points for his education. Second, the Applicant argues that the Officer incorrectly interpreted and applied the *Regulations* and wrongly denied him 3 points for adaptability because of his wife's education.

[13] The Applicant notes that the dentistry degree he obtained required 202 credits at the University of Mashhad's Faculty of Dentistry. In view of the letter from the Mashhad Medical Sciences University dated July 1, 2012, the Applicant says he should have received at least 22 points for his education. Citing the decision of Mr. Justice Michael Phelan in *Nikoueian v Canada (Citizenship and Immigration)*, 2013 FC 514 at paras 8-11 [*Nikoueian*], the Applicant submits that the Officer's decision in this regard is unintelligible since, in that case, Justice Phelan decided that denying a similar application was unreasonable.

[14] With respect to the Officer's assessment of any points to be awarded in respect of the Applicant's wife's education, the Applicant argues that a standard of correctness should be applied (*Kastrati v Canada (Citizenship and Immigration)*, 2008 FC 1141 at paras 9-10 (available on CanLII) [*Kastrati*]). The Applicant contends that the Officer misinterpreted the *Regulations* and wrongly assumed that his wife's training and courses had to be conducted on a full-time basis for a period of at least one year. The Applicant says that it was enough that the additional courses taken by the Applicant's wife were over a period of two years and involved a total of 1,953 hours of course work.

[15] The Applicant also argues that the Officer unreasonably refused to reconsider the decision following receipt of a letter from the Mashhad Medical Sciences University, dated July 1, 2012, which he claims proved that his credentials were considered a Master's degree in Iran. If that letter was not before the Officer, then the Applicant argues that was not his fault since he sent it in time for at least the reconsideration decision.

B. *The Respondent's Arguments*

[16] The Respondent submits that the standard of review for every issue in this case is one of reasonableness (citing *Anabtawi v Canada (Citizenship and Immigration)*, 2012 FC 856 at para 29, 415 FTR 66 [*Anabtawi*]).

[17] The Respondent argues that the onus was upon the Applicant to show that his credentials were equivalent to a Master's degree. This, the Respondent says, the Applicant did not do.

[18] The Respondent argues that this matter is not similar to the decision in *Nikoueian*, since in that case there was clear documentation that the applicant there had a PhD in dentistry, and in the present matter there is no document that refers to the Applicant as having a PhD. According to the Respondent, the Applicant's circumstances are more akin to those of the applicants in *Sedighi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 445 at para 16, 431 FTR 302 [*Sedighi*], and *Mahouri v Canada (Minister of Citizenship and Immigration)*, 2013 FC 244 at para 20, 428 FTR 263 [*Mahouri*].

[19] The Respondent further argues that it cannot be said the Officer's decision is unreasonable just because the Applicant had more years of study than was necessary. According to the Respondent, the Officer did not need to assess the Applicant's credentials as they would be viewed in Iran.

[20] The Respondent also says that the Officer reasonably assessed the credentials of the Applicant's wife. At best, the Respondent submits that she had only an "associate degree," which was not equivalent to a bachelor's degree (citing *Ghajarieh v Canada (Citizenship and Immigration)*, 2013 FC 722 at para 27, 435 FTR 211).

[21] The Respondent claims that the letter from the Mashhad Medical Sciences University dated July 1, 2012, was before the Officer when reconsideration was requested. The Respondent notes that the subsequent correspondence to the Applicant dated August 1, 2013, clearly refers to the additional information supplied by the Applicant and says that it did not change the Officer's points assessment. The Respondent defends this result by arguing that the letter is not altogether

clear as to whether the Applicant does in fact hold a credential equivalent to a Master's degree. In the end, the Respondent says that one cannot speculate as to what the Officer may or may not have thought about this letter.

## IV. Analysis

### A. *Standard of Review*

[22] The Applicant says that the standard of review for questions of law is correctness and relies primarily on *Kastrati*. That case is not helpful, as it was reviewing a decision of the Refugee Protection Division, which is a significantly different decision-maker from the Officer whose decision is under review in this case. Furthermore, in *Najafi v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 876 at para 58, 438 FTR 135, aff'd 2014 FCA 262 at para 56, Madam Justice Mary Gleason expressly stated that the bland assertion in *Kastrati* that questions of law are reviewed on the correctness standard was never universally accurate and has been definitively overruled by cases like *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Asssociation*, 2011 SCC 61 at paras 30, 34, [2011] 3 SCR 654. I agree with her conclusion.

[23] Still, I also disagree with the Respondent's submission that the standard of review for every issue in this case is one of reasonableness. Although Mr. Justice John O'Keefe stated that he applied the reasonableness standard to the question of law in *Anabtawi*, he ultimately concluded that the officer in that case "applied the correct legal test for assessing the applicant's

work experience" (*Anabtawi* at para 36, emphasis added). It is therefore unclear which standard of review was actually applied.

[24] Ultimately, I agree with the Applicant that the correctness standard should be applied to the Officer's interpretation of sections 76(2) and 83(2) of the *Regulations*, but I do so in view of the decisions of the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Shahid*, 2011 FCA 40 at para 25, [2012] 4 FCR 99 [*Shahid*], and in *Canada (Citizenship and Immigration) v Patel*, 2011 FCA 187 at paras 27-28, [2013] 1 FCR 340 [*Patel*]. In *Shahid*, the correctness standard was applied in assessing an immigration officer's interpretation of "full-time equivalent" in subsection 78(1) of the *Regulations*, and in *Patel* the same standard was applied with respect to an officer's interpretation of adaptability under section 83 of the *Regulations*.

[25] I am aware that my colleague Madam Justice Cecily Strickland has recently opined that, in light of *Agraira v Canada (Citizenship and Immigration)*, 2013 SCC 36 at para 50, [2013] 2 SCR 559 [*Agraira*], the Federal Court of Appeal decision in *Patel* is now open to some question and revisited the applicable standard of review for decisions by visa officers in respect of an application for permanent residence under the skilled worker class (*Ijaz v Canada (Citizenship and Immigration)*, 2015 FC 67 at paras 25-27 [*Ijaz*]). For very cogent reasons, Justice Strickland applied a reasonableness standard when reviewing a question of statutory interpretation decided by an officer in assessing an application for permanent residence under the skilled worker class (*Ijaz* at paras 28-33).

[26] However, to some extent, *Ijaz* is distinguishable from this case, since the question of law was harder to separate from the factual assessment and new versions of the *Regulations* were in issue, so *Patel* was less directly on point (*Ijaz* at para 26). To the extent that *Ijaz* could be interpreted more broadly, however, I decline to follow the reasonableness standard of review as adopted by that case.

[27] I do so because, "although *Dunsmuir* allows courts to revisit the standard of review when previous analysis was unsatisfactory, it does not override the hierarchy of courts" (*Vuktilaj v Canada (Citizenship and Immigration)*, 2014 FC 188 at para 30, 24 Imm LR (4th) 234; see also *Qin v Canada (Citizenship and Immigration)*, 2013 FC 147 at para 13, [2014] 3 FCR 373 [*Qin* (FC)]). Both *Patel* and *Shahid* were decisions of the Federal Court of Appeal that are directly on point, and this Court should only depart from them "if new legal issues are raised as a consequence of significant developments in the law" (*Canada (AG) v Bedford*, 2013 SCC 72 at para 42, [2013] 3 SCR 1101 (emphasis added)). Yet, even that threshold may be too low since it was set in a *Charter* case where fundamental rights and freedoms were at stake. For issues like standard of review, it should be remembered that it "is usually more important that a rule of law be settled, than that it be settled right" (*David Polowin Real Estate Ltd v The Dominion of Canada General Insurance Co* (2005), 76 OR (3d) 161 at para 118, 255 DLR (4th) 633 (CA) [*David Polowin*], citing *Di Santo v Pennsylvania*, 273 US 34, 47 S Ct 267 (1927), at p 270). The virtues of consistency, predictability, certainty, and sound judicial administration are depreciated whenever a lower court declines to obey the guidance of a higher court (*David Polowin* at paras 119-120).

[28] In view of the foregoing, I do not think it would be appropriate to depart from *Patel* and *Shahid* unless I can confidently say that they have been implicitly overruled by significant developments in the law, and I cannot. Both cases were decided after *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*], and the presumption that the reasonableness standard applies when reviewing a decision-maker's interpretation of its home statute was expressly considered in *Patel* at para 24. *Agraira* confirmed that the presumption applies to all decision-makers (*Canada (Citizenship and Immigration) v Kandola*, 2014 FCA 85 at paras 35-42, 372 DLR (4th) 342 [*Kandola*]), but nothing in *Shahid* or *Patel* indicates that the Federal Court of Appeal was under a different impression at that time.

[29] Also, the Federal Court of Appeal was aware of *Agraira* and had a chance to reconsider *Patel* in *Qin v Canada (Citizenship and Immigration)*, 2013 FCA 263 at paras 24-38, 21 Imm LR (4th) 98 [*Qin* (FCA)], but it declined to do so. While this was largely because the issue was not dispositive, Mr. Justice John Evans observed that "deference is only due to administrative decision-makers on questions within their statutory power to decide" (*Qin* at para 34; see also *Kandola* at paras 43-45), and he implied that officers may not have the power to decide questions of law (*Qin* (FCA) at paras 34-37; *Nova Scotia (Workers' Compensation Board) v Martin; Nova Scotia (Workers' Compensation Board) v Laseur*, 2003 SCC 54 at paras 40-41, [2003] 2 SCR 504). The foregoing supplies a rationale upon which the results in *Shahid* and *Patel* can still be justified and need not be revisited, and I therefore decline to depart from them.

[30] Thus, at least for the time being, correctness is the standard of review for the questions of statutory interpretation in this case.

[31] As for the other issues raised with respect to the Officer's decision, the standard of review is reasonableness. The Officer here is a specialized decision-maker whose factual findings with respect to the Applicant's eligibility for permanent residence in Canada attract deference: *Dunsmuir* at para 53; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61, [2009] 1 SCR 339; *Hameed v Canada (Minister of Citizenship and Immigration)*, 2008 FC 271 at para 22, 324 FTR 109. As stated by Mr. Justice André Scott in *Shirazi v Canada (Citizenship and Immigration)*, 2012 FC 306, 406 FTR 290:

> [15] "The assessment of an application for permanent residence under the [FSW] class is an exercise of discretion that should be given a high degree of deference" (see *Ali v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1247, [2011] FCJ No 1536 at para 26; *Kniazeva v Canada (Minister of Citizenship and Immigration)*, 2006 FC 268). The present issue raises a question of fact or of mixed fact and law. It is therefore reviewable on a standard of reasonableness (see *Gulati v Canada (Minister of Citizenship and Immigration)*, 2010 FC 451, [2010] FCJ No 771 at para 19 [*Gulati*]).
>
> [16] When reviewing a decision on a standard of reasonableness, the Court must be concerned "with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47 [*Dunsmuir*]).

B. *Did the Officer correctly interpret Sections 78(2) and 83(2) of the* Regulations*?*

[32] In the CAIPS notes dated July 25, 2013, the Officer stated the following in assessing the Applicant's wife's educational credentials:

> The additional information provided failed to disabuse me of my concerns regarding pa's spouse's education in the context of points under the Adaptability factor….the spouse attended several courses, however, none of the courses lasted for a period of at least

> one year of full time or full time equivalent studies, as stated in subsection 78(2)(b) of the Regulations. The definition of "full-time" and "full-time equivalent" studies is provided in subsection 78(1) of the Regulations and I have used it in order to assess the duration of the spouse's studies. The longest course completed by the spouse lasted 460 hours, i.e. significantly less than one year. The certificate from Fanavaran Doran states that the spouse completed 15 different courses, each lasting for a period much shorter than one year. These courses were not completed under one credential for all of them, but rather, separate credentials (certificates) were issued upon completion of each course. The evidence submitted by pa supports this statement, as it features several certificates issued upon completion of separate courses by the spouse, which were listed by Fanavaran Doran on their certificate. The same applies to all the other educational certificates which were submitted on behalf of the spouse. I considered the certificate issued by Tehran University Researchers and Innovators University Institute Level Determination, according to which the spouse completed a course in computer sciences and IT in computer software, which, according to its issuing institution, was equivalent to associate degree specialty courses. Upon review of this document, I was not satisfied that it met the requirements of subsection 78(2)(b) for the following reasons; the certificate did not mention the duration of this course, it did not mention that an educational credential was issued upon its completion and it did not mention the basis for the equivalency made. Moreover, the equivalency did not relate to the associate degree itself, but rather to associate degree specialty courses. Upon review of all of the evidence on file, I concluded that the spouse did not complete any education which would meet the requirements of subsection 78(2) of the Regulations….

[33] At the relevant time for assessing the Applicant's application, sections 78 and 83 of the *Regulations* provided, in part, as follows:

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| **78.** (1) The definitions in this subsection apply in this section. | **78.** (1) Les définitions qui suivent s'appliquent au présent article. |
| "full-time" means, in relation to a program of study leading to an educational credential, at least 15 hours of instruction | « équivalent temps plein » Par rapport à tel nombre d'années d'études à temps plein, le nombre d'années d'études à temps partiel ou |

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| per week during the academic year, including any period of training in the workplace that forms part of the course of instruction. | d'études accélérées qui auraient été nécessaires pour compléter des études équivalentes. |
| "full-time equivalent" means, in respect of part-time or accelerated studies, the period that would have been required to complete those studies on a full-time basis. | « temps plein » À l'égard d'un programme d'études qui conduit à l'obtention d'un diplôme, correspond à quinze heures de cours par semaine pendant l'année scolaire, et comprend toute période de formation donnée en milieu de travail et faisant partie du programme. |
| (2) A maximum of 25 points shall be awarded for a skilled worker's education as follows: | (2) Un maximum de 25 points d'appréciation sont attribués pour les études du travailleur qualifié selon la grille suivante : |
| … | […] |
| (*b*) 12 points for a one-year post-secondary educational credential, other than a university educational credential, and a total of at least 12 years of completed full-time or full-time equivalent studies; | *b*) 12 points, s'il a obtenu un diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant une année d'études et a accumulé un total d'au moins douze années d'études à temps plein complètes ou l'équivalent temps plein; |
| … | […] |
| … | … |
| **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: | **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 : |
| (*a*) for the educational credentials of the skilled worker's accompanying spouse or accompanying common-law partner, 3, 4 or 5 points determined in accordance with subsection (2); | *a*) pour les diplômes de l'époux ou du conjoint de fait, 3, 4 ou 5 points conformément au paragraphe (2); |
| … | […] |
| (2) For the purposes of paragraph (1)(a), an officer shall evaluate the educational credentials of a skilled worker's accompanying spouse or accompanying common-law partner as if the spouse or common-law partner were a skilled worker, and shall award points to the skilled worker as follows: | (2) Pour l'application de l'alinéa (1)a), l'agent évalue les diplômes de l'époux ou du conjoint de fait qui accompagne le travailleur qualifié comme s'il s'agissait du travailleur qualifié et lui attribue des points selon la grille suivante : |
| … | […] |
| (*c*) for a spouse or common-law partner who would be awarded 12 or 15 points, 3 points. | *c*) dans le cas où l'époux ou le conjoint de fait obtiendrait 12 ou 15 points, 3 points. |

[34] Upon an initial reading of paragraphs 78(2)(b) and 83(2)(c), it is clear that the Applicant could only be awarded 3 points for his wife's credentials if he could show that she had completed at least "a one-year post-secondary educational credential, other than a university educational credential, and a total of at least 12 years of completed full-time or full-time equivalent studies." The Officer interpreted this to mean that the Applicant's wife had to have completed at least one course that "lasted for a period of at least one year of full time or full time equivalent studies." The Applicant disputes that interpretation, while the Respondent defends it.

[35] In my view, the Officer here incorrectly stated what subsection 78(2)(b) requires. It requires two things: (1) that there be "a one-year post-secondary educational credential" (emphasis added); and (2) "a total of at least 12 years of completed full-time or full-time equivalent studies." The first requirement is not tied to whether such credential was obtained on a full-time or full-time equivalent basis. The simple fact that the credential was obtained would be sufficient to satisfy the dictates of the first aspect of the subsection 78(2)(b), so long as it took at least "one year".

[36] What is tied to full-time or full-time equivalent studies, however, is the program of study leading to an educational credential during an academic year or during the period that would have been required to complete the credential. Full-time or full-time equivalent studies are assessed for purposes of the total number of years which an applicant has completed and are tied to an "academic year" or some other "period" of studies.

[37] So, although the Officer here may have misstated what subsection 78(2)(b) requires, that does not necessarily mean it was incorrect or unreasonable for the Applicant not to be awarded three points for his wife's educational credentials. The fact of the matter was that, although the Applicant's wife had completed many courses totalling some 1,953 hours over a period of two years and had other educational credentials, the Officer determined that none of them led to "a one-year post-secondary educational credential." This was a reasonable conclusion by the Officer and falls within a range of possible, acceptable outcomes defensible in respect of the facts and law.

C. *Was the Officer's Decision Reasonable?*

[38] The Applicant also argues that he should have received more points for his education. Paragraphs 78(2)(e) and (f) provide as follows:

| | |
|---|---|
| **78.** ... (2) A maximum of 25 points shall be awarded for a skilled worker's education as follows: | **78.** […] (2) Un maximum de 25 points d'appréciation sont attribués pour les études du travailleur qualifié selon la grille suivante : |
| *(e)* 22 points for | *e)* 22 points, si, selon le cas : |
| (i) a three-year post-secondary educational credential, other than a university educational credential, and a total of at least 15 years of completed full-time or full-time equivalent studies, or | (i) il a obtenu un diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant trois années d'études et a accumulé un total de quinze années d'études à temps plein complètes ou l'équivalent temps plein, |
| (ii) two or more university educational credentials at the bachelor's level and a total of at least 15 years of completed full-time or full-time equivalent studies; and | (ii) il a obtenu au moins deux diplômes universitaires de premier cycle et a accumulé un total d'au moins quinze années d'études à temps plein complètes ou l'équivalent temps plein; |
| *(f)* 25 points for a university educational credential at the master's or doctoral level and a total of at least 17 years of completed full-time or full-time equivalent studies. | *f)* 25 points, s'il a obtenu un diplôme universitaire de deuxième ou de troisième cycle et a accumulé un total d'au moins dix-sept années d'études à temps plein complètes ou l'équivalent temps plein. |

[39] Upon the re-determination of his application, the Applicant supplied an affidavit dated August 21, 2012, wherein he deposed the following:

> 7. I obtained my PhD of dentistry over seven years which required 202 credits to fulfill the requirements. …
>
> 8. My PhD of dentistry is a direct doctorate degree. In other words, [a] PhD of dentistry in Iran is a continuous study of at least six years.
>
> 9. Moreover, [a] Bachelor's degree has 120 credits, while I have passed 202 credits in the Mashhad Medical Sciences University in Iran.

The Applicant had also provided a letter from the Mashhad Medical Sciences University dated July 1, 2012, wherein it was certified that the Applicant had completed a "professional Doctorate degree in the Field of Dentistry (DDS)" in 1995. This letter (which was translated) also stated that "in…Iran graduated [*sic*] of DDS (Doctor of Dental Surgery) are allowed to practice medicine having obtained the permanent Practice License and if interested to continue their studying in clinical specialized fields in PhD level are evaluated in the same level as Master program."

[40] Subsequent to the Officer's letter dated July 25, 2013, the Applicant requested that the Officer reconsider his decision and explained in an email to the Officer dated July 30, 2012, that "dentistry students, after passing a number of courses equivalent to a BSc, are formally examined and those failing to get through the axamination [*sic*] are prevented to continue their studies and dismissed with a BSc degree. Therefore, successful examinees who manage to finish the remaining courses must be awarded a higher degree, that is at least an MSc." This request was refused, however, by an e-mail from the Warsaw embassy dated August 1, 2013, which stated

that the Applicant's file had been processed fairly and that there were insufficient grounds to reopen his application.

[41] A number of cases have been decided in this Court with similar fact situations, and it is useful to canvass them at some length.

[42] In *Nikoueian*, Mr. Justice Michael Phelan allowed an application for judicial review where the applicant's Ph.D in dentistry was not given the maximum points. The visa officer had awarded the applicant in *Nikoueian*, like the Applicant in this case, only 20 points for education and assessed a total score of 66 points out of the 67 necessary for a visa. The applicant had provided evidence that her program of studies required 202 credits, whereas an undergraduate degree required only 120 credits, and she also had 19 years of completed full-time studies. Justice Phelan remarked that the officer had never inquired or even considered how the PhD was viewed locally (see *Lak v Canada (Minister of Citizenship and Immigration)*, 2007 FC 350, 62 Imm LR (3d) 101). In allowing the application for judicial review, Justice Phelan concluded:

> [10] In my view, the Officer made an unreasonable finding by following the OP 6 Manual in respect of first degrees (as outlined in paragraph 6). The OP 6 Manual is not law and the Officer applied it blindly.
>
> [11] The Officer failed to consider that the Applicant's full-time (or full-time equivalent) studies was 19 years, two years more than the requirement for credit at the doctoral level and four years more than at the Masters level or bachelor's level.

[43] In *Mahouri*, Mr. Justice Michael Manson upheld a refusal of a visa officer to issue a visa where the applicant held a Doctorate Degree of Medicine from Shiraz University of Medical Sciences, which had been obtained after eight years of study, and a "specialty degree" following

three further years of study at the same university. The officer in that case found that both degrees were at the bachelors level and awarded 22 points for the applicant's education. There was no evidence that the "local authorities" responsible for medical institutions would recognize these credentials as being at the graduate level.

[44] In *Sedighi*, the applicant was a physician, trained in Iran, and the officer who denied the application assessed the applicant as being entitled to 66 points out of the required 67 points. The applicant challenged the officer's assessment, claiming that the officer was wrong in allowing only 22 points out of a maximum of 25 points on account of education. The applicant relied upon his statement that he had received a PhD in medicine and took issue with the officer's finding that the degree is a first-level university credential. In dismissing the application for judicial review, Justice Roy stated that it was for the applicant to show that the university educational credential he obtained was at the master's or doctoral level, and quoted the officer's reasons for awarding the applicant only 22 points:

> I note that this applicant has indicated that the highest level of completed education is a PhD degree. The OP 6 indicates that: "Medical doctor degrees are generally first-level university credentials, in the same way that a Bachelor of Law or a Bachelor of Science in Pharmacology is a first level, albeit "professional" degree and should be awarded 20 points. If it is a second-level degree and if, for example, it belongs to a Faculty of Graduate Studies, 25 points may be awarded. If a bachelor's credential is a prerequisite to the credential, but the credential itself is still considered a first-level degree, then 22 points would be appropriate."
>
> In this instance, the applicant received a single degree which allowed to practice medicine. There is no indication that there was a Bachelor's awarded prior to this degree or that the degree was awarded by a faculty of graduate studies. After completing a single degree, the applicant undertook a specialization and appears to have been performing the duties related to it.

> In light of above, I am awarding 22 points for two or more university educational credentials at the bachelor's level and at least 15 years of full-time or full-time equivalent studies.

[45] In *Rabiee v Canada (Citizenship and Immigration)*, 2011 FC 824 [*Rabiee*], the applicant had completed medical school in Iran, followed by a two-year internship. She then took a four year residency program, at the completion of which she was recognized as a certified specialist. The officer in *Rabiee* had awarded the applicant 22 points for her education, assuming that all of her credentials were at the bachelor's level. The applicant maintained, however, that she should have received 25 points because of the specialty she completed in dermatology. Mr. Justice Michel Beaudry dismissed the application for judicial review, and concluded that a medical degree may reasonably be considered a first-level degree in the absence of clear evidence showing that it qualifies as graduate studies.

[46] This Court's decision in *Mohagheghzadeh v Canada (Citizenship & Immigration)*, 2013 FC 533 [*Mohagheghzadeh*], should also be noted. Unlike the circumstances of the present case, the applicant in *Mohagheghzadeh* had been awarded full points for his education, but he was awarded only 4 points within the adaptability category for his wife, who had a six year degree in dental medicine and was licensed to practice in Iran. The applicant challenged this decision on the basis that the Damascus visa office had previously been awarding 5 points for medical and dental degrees such as that of his spouse. A somewhat similar letter to the one in this case from Mashhad Medical Sciences University had been provided by the university in that case which had granted the applicant's wife's degree. Although that letter was found to be inadmissible because it was not before the visa officer, Mr. Justice Donald Rennie was also of the view that the letter did not indicate that the applicant's degree was a graduate degree:

> [19] While the letter from the Shiraz University of Medical Sciences is inadmissible, it does not in any event, advance the applicant's position. The letter states that the "Dental Medicine Doctor Degree is accredited as an M.S. Degree for admission to a PhD program." It does not address whether it is a graduate degree or was issued by a graduate studies faculty….

[47] Another case that deserves note is Mr. Justice Russel Zinn's decision in *Ahrairoodi v Canada (Citizenship and Immigration)*, 2013 FC 682 [*Ahrairoodi*], where a medical doctor from Iran challenged the visa officer's decision to award him 22 points for having earned a medical degree and a specialty diploma. In dismissing the application for judicial review, Justice Zinn distinguished *Nikoueian* from the case before him, stating as follows (at para 15):

> [15] Importantly, there is no evidence whatsoever in the applicant's application for permanent residence or in the certified tribunal record that establishes that he holds a Ph.D., that the applicant's medical degree is the equivalent of a master's degree, or that the specialization certificate is the equivalent of a Ph.D. degree.
>
> This case is distinguishable from *Nikoueian v Canada (Minister of Citizenship and Immigration)*, 2013 FC 514, a case advanced by the applicant for the proposition that an officer must have regard to how the local authorities recognize an applicant's educational credentials (a point conceded by the respondent and set out in OP-6). That is because in *Nikoueian*, the applicant's university certificate expressly stated that she had received a "Ph.D;" here the applicant's certificate only indicated that he received a "diploma." In other words, the difference here is that Mr. Ahrairoodi's materials did not purport that his medical degree is considered a master's degree, or that his specialisation program is considered a Ph.D., in Iran.

[48] In *Dehghan v Canada (Citizenship and Immigration)*, 2013 FC 680, 435 FTR 18 [*Dehghan*], a doctor from Iran was awarded 22 points for two or more university educational credentials at the bachelor's level and at least 15 years of full-time studies. The applicant in

*Dehghan* provided evidence to the visa officer that he had an eight-year Doctorate Degree in the field of Medicine from Shahid Beheshti University of Medical Sciences and had submitted a letter verifying that this degree was considered a Master's degree in Iran. In dismissing the application for judicial review, Mr. Justice James Russell found (at para 47) that with respect to "the educational assessment and procedural fairness issues…this case is indistinguishable from *Mahouri*, above, and *Sedighi*…".

[49] In *Sharifian v Canada (Citizenship and Immigration)*, 2013 FC 665 [*Sharifian*], an officer awarded 20 points to a pharmacist from Iran with a degree from Tehran University of Medical Sciences which had been completed over a period of six years. In dismissing the application for judicial review, Madam Justice Catherine Kane stated as follows:

> [18] The determinative issue is whether the Officer's finding that the applicant's educational credential was not a Master's degree was reasonable given the supporting material provided by the applicant, including the letter written by the registrar of the Ministry of Health and Medical Education of Iran.
>
> [19] The letter, dated August 25, 2010, states the following:
>
> > "This is to certify that: Qualification of the Graduates of **General Doctorate** in the field of **Pharmacy** is evaluated as the same as **Master's Degree** in the Islamic Republic of Iran in respect of Academic Promotion to Ph.D" (emphasis in original)
>
> [20] The applicant's educational credential issued by the Faculty of Pharmacy at Tehran University of Medical Sciences is entitled "Diploma of Completion of Studies" and reads: "Mr. Abdollah Sharifian, …successfully completed his studies in the curriculum of Doctorate Degree in the field of Pharmacy on Dec. 31, 1990…".
>
> …
>
> [22] After citing para 10.2 [of the OP6A Manual], the Officer made specific findings which relate to the requirements set out in the *Regulations*:

> In this instance, the applicant received a single degree which allowed him to practice pharmacy. There is no indication that there was a Bachelor's / Master's degree awarded prior to this degree or that the degree was awarded by a faculty of graduate studies. There is also no indication the applicant undertook any specialization or has been performing any duties related to a pharmaceutical specialization after completing his single degree. The same refers to the spouse's education.
>
> …
>
> [33] The Officer's failure to specifically mention the letter is not a reviewable error as the letter does not contradict the findings of the Officer. Moreover, there is no indication that the Officer ignored any evidence that was before him.
>
> ….
>
> [35] As noted, OP 6A, which provides guidance to Officers in the application of the Regulations, indicates that medical doctor degrees are generally first-level university credentials unless it is a second-level degree, such as those degrees belonging to a Faculty of Graduate Studies. The Officer's conclusion that the applicant's degree was completed at the bachelor's level is reasonable, despite that the applicant's degree followed a six year program of study. There was nothing in the letter or other evidence submitted to suggest that the Doctorate degree completed by the applicant was at the graduate level, or that the applicant had completed a previous degree as a pre-condition. The letter indicated only that the degree was considered as a "Master's degree" in order to satisfy prerequisites to a PhD degree program in Iran.

[50] The Applicant's circumstances are similar to the applicant's wife in *Mohagheghzadeh* and also to those of the pharmacist in *Sharifian* who was assessed only 20 points in respect of his General Doctorate in the field of Pharmacy. The Applicant's situation is unlike that of the applicant in *Nikoueian* whose university certificate, as noted by Justice Zinn in *Ahrairoodi*, expressly stated that she had received a "Ph.D". It is also unlike the applicants in *Mahouri*,

*Sedighi*, *Rabiee*, *Ahrairoodi*, and *Dehghan*, where the applicants in those cases were awarded 22 points for their education on the basis of having two degrees at the bachelor's level.

[51] In view of the foregoing decisions of this Court, it is apparent that a visa officer's assessment of an application for permanent residence in Canada as a member of the federal skilled worker class is not only a fact-driven process, but a discretionary one as well. Each application will fail or succeed on the basis of the information and materials that an applicant places before the immigration officer. This being so, an applicant must put their best case forward at the time of the application and submit sufficient credible evidence to establish that the requirements of the legislation have been met (see: *Pacheco Silva v Canada (Minister of Citizenship and Immigration)*, 2007 FC 733 at para 20, 63 Imm LR (3d) 176).

[52] In this case, I accept that the Officer received the July 1, 2012, letter from Mashhad Medical Sciences University. However, it was incumbent upon the Applicant to show that his "professional Doctorate degree in the Field of Dentistry (DDS)", which he had obtained in 1995 was something more than just "a two-year university educational credential at the bachelor's level." The Applicant failed to convince the Officer in this regard, and it was reasonable for the Officer to conclude that none of the documentation submitted by the Applicant mentioned that his DDS degree was issued by a faculty of graduate studies or otherwise constituted a diploma at the Master's degree level (*Sharifian* at para 35; *Mohagheghzadeh* at para 19). Although the Applicant presented some certificates, stating that he had attended some courses subsequent to completing his DDS, none of these were degrees and there was no evidence before the Officer that the Applicant had completed a subsequent university degree.

[53] The Officer justified the decision that the Applicant's professional dentistry degree was not a credential at the master's or graduate level. Since there was no clear or convincing evidence adduced by the Applicant that his specialization qualified as graduate studies, the decision was left to the Officer's discretion and the Court is satisfied that this conclusion was reasonable.

## V. Conclusion

[54] In the end, I find the Officer's reasons for his decision transparent and justifiable and his decision one which falls within the range of possible, acceptable outcomes justified by the facts and the law.

[55] Accordingly, the application for judicial review is dismissed. Neither party raised a question of general importance, and so none is certified.

## JUDGMENT

**THIS COURT'S JUDGMENT is that:**

1. the application for judicial review is dismissed; and

2. no question of general importance is certified.

"Keith M. Boswell"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-5324-13 |
| **STYLE OF CAUSE:** | HAMID DASHTBAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | NOVEMBER 12, 2014 |
| **JUDGMENT AND REASONS:** | BOSWELL J. |
| **DATED:** | FEBRUARY 6, 2015 |

**APPEARANCES:**

| | |
|---|---|
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| David Knapp | FOR THE RESPONDENT |

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