

Federal Court



Cour fédérale

**Date: 20210630**

**Docket: IMM-7276-19**

**Citation: 2021 FC 694**

**Ottawa, Ontario, June 30, 2021**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**KHUSHWINDER KAUR LAKHANPAL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION ALSO KNOWN AS THE  
MINISTER OF IMMIGRATION,  
REFUGEES AND CITIZENSHIP CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] The Applicant, Ms. Lakhanpal, applied for permanent residence through the Interim Pathway for Caregivers Program. Ms. Lakhanpal's application was refused on the basis that she had not met the education eligibility requirements set out in the program guidelines. The only

issue on this application for judicial review is whether the Officer reasonably evaluated the evidence with respect to Ms. Lakhanpal's education.

[1] I find the Officer's refusal decision unreasonable as it is not transparent, intelligible or justified in light of the evidence before them. For the reasons set out below, I am granting this application for judicial review.

## II. Background

[2] Ms. Lakhanpal is a citizen of India. She has a high school diploma from the Punjab School Education Board and obtained a Diploma in General Nursing and Midwifery after approximately four years of study at the College of Nursing, Sigma Nursing Training Institute in India. Since August 2016, Ms. Lakhanpal has been working in Canada in various caregiving positions.

[3] After approximately three years of working as a caregiver in Canada, Ms. Lakhanpal applied for permanent residence. She applied under a special program, the Interim Pathway for Caregivers ("Interim Pathway Program"), that had been created by the Minister through their public policy power under s. 25.2 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[4] The Interim Pathway Program was a provisional pathway to permanent residence available to "some of the in-home temporary foreign worker caregivers who came to Canada expecting to obtain permanent residence, but who do not qualify under existing caregiver

pathways” (Canada, Immigration, Refugees and Citizenship Canada, *Public policy to reinstate an interim pathway for caregivers* (Ottawa: Immigration, Refugees and Citizenship Canada, 2019) (“*Background Document*”). It was a short-term, one-time public policy, coming into effect on March 4, 2019 and expiring three months later, on June 4, 2019.

[5] The impetus for the program was the recognition by the government that after the overhaul of the live-in caregiver program in 2014, there had been a misapprehension by some foreign workers now coming to Canada through the caregiver pilot programs that they would be on a direct path to permanent residence after two years of work in Canada, as had been the case under the former caregiver program. This one-time, short-term pathway was created to address the “unique vulnerabilities that in-Canada temporary foreign worker caregivers face because they are not eligible under a current pathway to permanent residence” and also as “a recognition of the significant contributions that these caregivers have made to Canadian families” (*Background Document*).

[6] On November 21, 2019, Ms. Lakhanpal’s application for permanent residence was refused by an Officer at the Immigration, Refugee and Citizenship Canada (“IRCC”) Case Processing Centre in Edmonton (“Officer”). The Officer determined that the Applicant did not meet the eligibility requirements set out in the guidelines for the program because she failed to provide proof that she had completed at least an equivalent to a Canadian secondary school diploma.

[7] This is a judicial review of that refusal.

III. Issues and Standard of Review

[8] The sole issue is whether the Officer reasonably evaluated the evidence with respect to the Applicant's education.

[9] In reviewing the decision of the Officer, I will be applying a reasonableness standard of review. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. The parties agree that reasonableness is the applicable standard, and this case raises no issue that would justify a departure from that presumption.

IV. Analysis

[10] The Officer refused Ms. Lakhanpal's application because she did not meet the education requirement for the program; specifically, she had failed to provide proof that her education level was equivalent to at least a Canadian high school diploma.

[11] I find that in coming to this conclusion the Officer failed to meaningfully evaluate the findings of the education credential equivalency report. The Officer did not explain their rationale as to why the determination that Ms. Lakhanpal's post-secondary education in India was equivalent to three and a half years of hospital training and study in Canada was not sufficient to meet the minimal education requirement of equivalency to a Canadian high school education.

[12] There are no eligibility requirements specific to the Interim Pathway Program set out in statute or regulation. IRCC issued guidelines explaining the eligibility requirements for the program, including the level of language proficiency, the type and length of work experience in Canada, and the minimal level of education.

[13] The only relevant requirement for this judicial review is the education requirement. This requirement is described as follows:

Has obtained:

- a. a completed Canadian educational credential of at least a secondary school diploma, or,
- b. a foreign diploma, certificate or credential, along with an equivalency assessment - issued within five years before the date of application- that indicates that the foreign diploma, certificate or credential is equivalent to a completed Canadian secondary school diploma.

[14] Since Ms. Lakhanpal graduated high school in India, the second option applied to her, requiring that she submit an education equivalency assessment that demonstrated an equivalency to a Canadian secondary school diploma.

[15] Applicants were advised that they could meet the education requirement of the program by demonstrating that they had a secondary school diploma equivalency *or higher* (as stated in the program instructions and the document checklist issued to accompany the application forms). Similarly, the IRCC-designated agency that conducts education credential assessments, World Education Services (“WES”) in Ms. Lakhanpal’s case, instructs applicants to send in their *highest* level of education to be assessed.

[16] Ms. Lakhanpal followed these instructions and provided the material related to her highest level of education, her nursing education in India, to the education credential agency, WES. She also provided her secondary school diploma and transcript.

[17] WES determined that the Applicant's diploma in general nursing and midwifery, which was listed in the report as the credential it was evaluating, was the equivalent to "three and one half years of Canadian hospital study and training". There is also a statement listed as a "remark" on the report that noted that this credential is "not comparable to a completed Canadian education credential." There was no evaluation done of Ms. Lakhanpal's secondary school diploma that had also been provided.

[18] In addition to the WES credential report, the evidence before the Officer also included: Ms. Lakhanpal's secondary school diploma and two previous approvals for Labour Market Impact Assessments ("LMIA's") in Canada, where a secondary school diploma was the minimal level of education required.

[19] In the decision letter sent to Ms. Lakhanpal, the Officer stated the application is refused due to not meeting the eligibility requirements and checked off the box related to education requirements. The education requirements for the program are incorrectly set out in the decision letter. This error is not significant and was not argued by the Applicant given that in the Officer's notes ("GCMS"), which the parties agree form part of the Officer's reasons for the decision, the

program education requirements are correctly described. After setting out the educational requirements, the Officer's reasons are limited to the following:

PA ["Principal Applicant"] provided World Education Service (WES) ECA ["Educational Credential Assessment"] dated August 31, 2019. PA has a Canadian equivalency of: three and one half years of hospital study and training. As PA does not have a Canadian equivalency to a completed secondary school diploma, application is refused as eligibility requirements are not met.

[20] Though the Officer makes reference to the determination in the WES report that Ms. Lakhanpal had three and a half years of hospital study and training, there is no explanation as to why this is insufficient to meet the requirement of an equivalence to a Canadian secondary school diploma. The Officer did not explain to the Applicant why her post-secondary training, that was found to be equivalent to three and a half years of hospital training and study in Canada, did not demonstrate that she had sufficient education to meet the minimal requirement of equivalency to a Canadian high school diploma.

[21] The Supreme Court of Canada in *Vavilov*, at paragraph 13, described the reasonableness standard as a deferential but nonetheless "robust form of review," where the starting point of the analysis begins with the decision maker's reasons. The Court explained that administrative decision makers, in exercising public power, must ensure that their decisions are "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov*, at para 95). Reasons must be responsive by demonstrating that they are "justified in relation to the constellation of law and facts that are relevant to the decision" (*Vavilov*, at para 105).

[22] The Officer fails to do an evaluation of the three and a half years of hospital study and training in relation to the secondary school eligibility requirement. This is a fundamental gap in the reasoning that leaves the Applicant having to guess as to why her foreign education credential was not found to be sufficient. As Justice Favel noted in *Samra v Canada (Citizenship and Immigration)*, 2020 FC 157, at paragraph 23: “Extensive reasons are not required; but there must be more than in the instant case—there must be some statement about *why* the officer reached the conclusions that he did.”

[23] The Officer’s failure to provide responsive reasons is particularly concerning in the context of this sort of application, where the purpose of the program was to provide a time-limited pathway for permanent residence for workers who may not otherwise qualify under other programs. The impact of a decision on the individual is a contextual factor that can be relevant in evaluating the reasonableness of a decision (*Vavilov*, at para 135):

Many administrative decision makers are entrusted with an extraordinary degree of power over the lives of ordinary people, including the most vulnerable among us. The corollary to that power is a heightened responsibility on the part of administrative decision makers to ensure that their reasons demonstrate that they considered the consequences of a decision and that those consequences are justified in light of the facts and law.

[24] The Interim Pathway Program was a one-time, three-month program that was created to provide relief to a vulnerable group of workers who made the decision to come and work in Canada on the understanding that they would be on a direct path to permanent residence. The consequence of a rejection was serious for Ms. Lakhanpal; she cannot re-apply as this public policy program no longer exists. The Officer’s reasons and approach to the application do not demonstrate any consideration of the time-limited nature of the program.



[25] The Respondent argued that the notation classified as a “remark” on the WES report that stated that the Applicant’s education was not “comparable to a completed Canadian credential” was evidence that demonstrated in “no uncertain terms” that the Applicant had not satisfied the secondary school requirement. I do not agree for two reasons. First, it is not clear on its face what the remark is referring to given that the credential being evaluated in the report was a nursing degree obtained in India, not the high school diploma. Second, and more importantly, the Officer makes no reference to this remark on the WES report in their decision. This is not a question for the parties or me to speculate upon on judicial review. The Officer should have addressed this remark in their reasons if it was a basis for their refusal of the application.

[26] The Respondent also argues that the onus was on the Applicant to provide complete, clear and convincing evidence to fulfill the eligibility requirements. While it is no doubt true that it is the Applicant’s onus to provide the sufficient evidence to meet the eligibility requirements (see for example *Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264, at para 22), it remains the Officer’s task to evaluate the evidence before them and explain how it does not fulfill the eligibility requirement for which they are refusing the application. The Officer failed to do this.

[27] The minimal reasons provided to Ms. Lakhanpal for the refusal of her application do not address the key issue in light of the evidence. Instead, the Officer’s approach favoured an exacting interpretation of the requirements without providing any reasoning as to why Ms. Lakhanpal’s proof of education equivalency was insufficient.

[28] Accordingly, the application for judicial review is allowed and the matter will be referred back to an officer for reconsideration in accordance with these reasons.

[29] The parties have not asked to certify a question and I agree that none arises.

**JUDGMENT IN IMM 7276-19**

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

1. The application for judicial review is allowed. The decision of the Officer is set aside and the matter is remitter for reconsideration by a different officer;
2. No question is certified.

**"Lobat Sadrehashemi"**

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-7276-19

**STYLE OF CAUSE:** KHUSHWINDER KAUR LAKHANPAL v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION  
ALSO KNOWN AS THE MINISTER OF  
IMMIGRATION, REFUGEES AND CITIZENSHIP  
CANADA

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 7, 2021

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** JUNE 30, 2021

**APPEARANCES:**

Harry Virk FOR THE APPLICANT

Kimberley Sutcliffe FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Harry Virk FOR THE APPLICANT  
Liberty Law Corporation  
Abbotsford, British Columbia

Attorney General of Canada FOR THE RESPONDENT  
Vancouver, British Columbia