

Federal Court



Cour fédérale

**Date: 20210901**

**Docket: IMM-5098-20**

**Citation: 2021 FC 914**

**Toronto, Ontario, September 1, 2021**

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

**BETWEEN:**

**DOMINIC KEALAN THOMPSON**

**Applicant**

**and**

**THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] By letter dated August 11, 2020, Immigration, Refugee, and Citizenship Canada [IRCC] advised the Applicant that his application for permanent residence [PR application] was rejected for being incomplete [the Decision]. The specific ground for rejection was that proof of the Applicant's completed Canadian Educational Credential [CEC] was not provided with his application.

[2] On August 13, 2020, the Applicant submitted an enquiry to IRCC pointing out that he had in fact submitted a document as proof of his completed degree in the form of certified information from the Office of the Registrar at the University of Alberta. He requested that his PR application be reconsidered and that if it was still found wanting, further guidance be provided to ensure his application was complete.

[3] By letter dated September 14, 2020, IRCC advised the Applicant that his request for reconsideration had been reviewed and that the PR application would not be reopened.

[4] The Applicant seeks judicial review of the decisions by the IRCC to cancel his PR application and deny his request for reconsideration.

[5] By Order dated May 28, 2021, Mr. Justice Richard Southcott granted an extension of time to file his application for leave and judicial review and leave to bring the application.

## II. Factual Background

[6] The facts in this case are not in dispute.

[7] The Applicant is a citizen from the United Kingdom who came to Canada in September 2014 as an international student to complete a Master of Science degree in chemical engineering at the University of Alberta. He graduated from the program with a Master of Science degree in June 2017.

[8] Upon graduating, the Applicant obtained a post-graduate work permit to work in Canada.

[9] After applying for permanent residence in Canada under the Canadian Experience Class through Express Entry, the Applicant received a letter from IRCC dated March 23, 2020 inviting him to apply for permanent residence.

[10] The letter stated that if the Applicant chose to apply for permanent residence, he would need to login into his account, go to the section called “applications”, click on the application called “permanent residence”, and review and validate the information on the pre-filled form transferred from his Express Entry profile. It also cautioned the Applicant that he would need to obtain the documents in a checklist found on the website, which had to be submitted along with the application form.

[11] The Express Entry online profile listed a category of documents that the Applicant was required to upload to support his application. This included an “Education (diplomas/degrees)” category. An electronic pop-up screen explained the type of documents accepted by the IRCC as proof of post-secondary education, which is prefaced with the following instructions:

You must provide proof that you completed your post-secondary education. Examples of proof of education include a diploma and/or degree.

[12] The Applicant requested a formal confirmation from the University of Alberta under the “Verification Documents” form on the University’s website to comply with the proof of education requirement. The Office of the Registrar responded to his request by issuing a “Certified Information” document, which reads as follows:

Dominic Kealan Thompson  
(*student number expurgated for the purpose of these reasons*)

This is to certify that the above student  
Has completed all the requirements of the

Faculty of Graduate Studies and Research

For the Master of Science  
In Chemical Engineering  
Department of Chemical and Materials Engineering

Awarded June 08, 2017.

[13] The said document was uploaded to the Applicant's Express Entry online profile under the Education (diplomas/degrees) category, along with the overall application on June 19, 2020.

[14] As noted above, on August 11, 2020 the IRCC notified the Applicant that his PR application was rejected for being incomplete. The relevant portion of the Decision is reproduced below:

Immigration, Refugees and Citizenship Canada (IRCC) has reviewed your application for permanent residence. We have determined that your application does not meet the requirements of a complete application as described in sections 10 and 12.01 of the *Immigration and Refugee Protection Regulations*. Your application is rejected for being incomplete.

Specifically, your application does not include the following elements:

Canadian Education Credential:

- Proof of your completed Canadian credential (certificate, diploma or degree) was not provided with your application. This document is required based on the education details you provided in your Express Entry profile. The letter of explanation and/or the transcripts you have provided with your application has been reviewed, however, the document(s) provided does not overcome the requirement of providing a completed

Canadian credential (certificate, diploma or degree). Applications submitted without proof of information provided in your Express Entry profile cannot be considered complete.

Note: A full review of your application was not performed. There may be other elements, not identified above, which may also be missing or incomplete.

[15] On August 13, 2020, the Applicant contacted the IRCC Call Center. He was advised by an agent that he could request reconsideration of the Decision through the case specific webform on the IRCC's website. That same day, the Applicant submitted a reconsideration request, providing the following explanation:

I am unsure why [the Certified Information document for the Office of the Registrar at the University of Alberta] does not suffice. I asked the University to provide proof of my degree for immigration purposes and this is what they gave me. This document appears to prove not only that I have a degree from the University of Alberta, but also the type of degree, the subject, and the date it was awarded.

[16] As the IRCC did not confirm receipt of the Applicant's August 13, 2020 reconsideration request, the Applicant followed up by sending a new reconsideration request through the webform on September 10, 2020. The Applicant included a copy of the degree certificate received upon his graduation in June 8, 2017. The Applicant added that he did not have access to the degree certificate when he was preparing his application for his permanent residence during the spring of 2020.

[17] By letter dated September 14, 2020, the IRCC advised the Applicant that the Decision remained the same and that his application would not be reopened.

III. Issue to be Determined

[18] There is no dispute that reasonableness is the presumptive standard of review on the merits of the Decision and that none of the circumstances warranting a departure from this presumption arises in this case.

[19] Accordingly, the only issue to be determined is whether the Decision rejecting the Applicant's PR application and IRCC's subsequent refusal to reopen the application is justified in relation to the facts and law that constrain the decision maker: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 85.

IV. Preliminary Objection

[20] The Respondent raises a preliminary objection regarding the Applicant's reliance on correspondence and documents that are said to post-date the reconsideration refusal. The evidence includes the missing degree certificate that formed the basis for the rejected application and refusal to reopen, as well as further information communicated to IRCC on September 10, 2020.

[21] It is trite law that only material that was before the decision maker may be considered on judicial review. However, in this case, there are two interrelated decisions being challenged, the original Decision dated August 11, 2020 and the reconsideration refusal dated September 14, 2020. As the documents and information objected to by the Respondent were transmitted to IRCC before the reconsideration decision was made, I conclude that they should be admitted and

considered even though they may not have been reviewed before the decision was made not to reopen the Applicant's application.

V. Analysis

[22] The Respondent submits that the rejection of the PR application and the refusal to subsequently reopen it is not only reasonable, but it is the only possible outcome.

[23] According to the Respondent, the Applicant is requesting this Court to ignore clear documentary requirements and legislative provisions to interpret the University of Alberta's certified information document as being sufficient to meet the requirement of the CEC.

[24] The Respondent contends that neither the Court nor the Respondent has the jurisdiction to override clear legislative intent, as set out in the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations], which regulates the economic classes including Canadian experience class and, more particularly, subsection 73(1) that defines a CEC as:

any secondary school diploma or any post-secondary diploma, certificate or credential that is 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.

[25] The Respondent maintains that the Applicant did not submit the required documentation, which would have been a copy of his degree, and insists that there is no authority to accept anything else. I disagree.

[26] On judicial review, the Court is required to ensure that a decision as a whole is transparent, intelligible and justified: *Vavilov* at para 15. In my view, while the decision may be transparent and intelligible, it is not justified on the particular facts of this case.

[27] I agree with the Applicant that most reasonable people would be led to believe that certified information obtained from the office of the registrar of a reputable Canadian university would be considered sufficient proof of a CEC based on the wording of the “Instructions for Proof of Education” webpage.

[28] The webpage, which provides plain language instructions to applicants when they upload their documents, states at the top as follows:

You must provide proof that you completed your post-secondary education. Examples of post-secondary education include a diploma and/or degree.

[Emphasis added.]

[29] The Merriam-Webster Dictionary (online: <https://merriam-webster.com>) defines the word “example” as “one that is representative of all of a group or type”, while one of the definitions of the verb “include” is “to take in or comprise as a part of a whole or group.”

[30] The use of the word “examples” raises the spectre of other types of documents existing that are not restricted to the specific documents identified in the instructions. This is bolstered by the use of the word “include”, which suggests that the type of documents that can serve as proof is not exhaustive.



[31] If IRCC had intended proof of CEC to be limited to a “diploma, certificate or credential” within the meaning of subsection 73(1) of the Regulations, it should have clearly stated so in the instructions.

[32] It was the responsibility of the IRCC to provide clear instructions that are consistent with the *Immigration and Refugee Protection Act* SC 2001, c. 27 [IRPA] and its regulations and avoid creating confusion. Applicants should not need a law degree to understand the requirements to apply for immigration or have to crosscheck government guidelines by delving into the complexities of the IRPA and its regulations to ensure consistency.

[33] There is uncontradicted evidence before me that the Applicant was misled by the instructions provided by IRCC, which failed to specify that only a copy of a certificate, diploma or degree would be accepted as proof of CEC. The Applicant was entitled to rely on the instructions provided online and assume that they were accurate and communicated precisely. He should not be faulted or penalized for relying on imprecise instructions drafted by IRCC itself.

[34] I should add that the facts in this case are fairly unique. The document the Applicant uploaded as proof of CEC included all of the information necessary to assess his application. As was well articulated by the Applicant in his reconsideration request, the document he submitted with his application certifies on its face that he graduated from the University of Alberta, identifying the type of degree, the subject, and the date on which it was awarded.

[35] The Decision dated August 11, 2020 refusing his application as incomplete did not explain the reasons why the Certified Information document did not fit the criteria. It simply stated that the Applicant did not provide proof of his completed Canadian Credential, and that the document submitted did not overcome the requirement of providing a completed Canadian Credential.

[36] In his August 13, 2020, reconsideration request, the Applicant expressed confusion and questioned the finding that the Certified Information document did not suffice. The Applicant went further and asked for guidance as to how he could ensure that his application would be complete.

[37] While I accept that it is not the role of the IRCC to chase applicants and ensure that they provide a complete application or upload the correct documents, in this particular case, IRCC had received some proof of CEC, albeit not the specific document required by subsection 73(1) of the Regulations. In the circumstances, it would have been a simple matter to contact the Applicant and ask that he provide a copy of his diploma for authentication purposes if the application otherwise met all other requirements.

## VI. Conclusion

[38] For the above reasons, I conclude that the application for judicial review should be allowed and the matter referred back to IRCC for reconsideration of the Applicant's application for permanent residence, taking into account the copy of the diploma submitted on September 10, 2020, as reproduced in the certified tribunal record.

**JUDGMENT IN IMM-5098-20**

**THIS COURT’S JUDGMENT is that:**

1. The application for judicial review is granted.
2. The matter is referred back to Immigration, Refugee, and Citizenship Canada for reconsideration of the Applicant’s application for permanent residence, taking into account the copy of the diploma issued to the Applicant by the University of Alberta on June 8, 2017, which was submitted to IRCC on September 10, 2020 and reproduced in the certified tribunal record.
3. The style of cause is amended to remove the Minister of Immigration, Citizenship and Refugees and substitute with the Minister of Citizenship and Immigration as the Respondent, with immediate effect: *Federal Courts Rules*, SOR/98-106 rule 303(1)(a) and *Hicks v Canada (Attorney General)*, 2019 FCA 311 at paragraph 8.
4. No question is certified.

“Roger R. Lafrenière”

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Judge

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

**DOCKET:** IMM-5098-20

**STYLE OF CAUSE:** DOMINIC KEALAN THOMPSON v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 26, 2021

**JUDGMENT AND REASONS:** LAFRENIÈRE J.

**DATED:** SEPTEMBER 1, 2021

**APPEARANCES:**

Dominic Thompson

FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Galina Bining

FOR THE RESPONDENT

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Calgary, Alberta

FOR THE RESPONDENT