

Federal Court



Cour fédérale

Date: 20211222

Docket: IMM-6292-20

Citation: 2021 FC 1461

Ottawa, Ontario, December 22, 2021

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

SHAIKH PROBORTONA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision of a visa officer (the “Officer”) of Immigration, Refugees and Citizenship Canada (“IRCC”) dated October 9, 2020, refusing the Applicant’s application for permanent residence under the Federal Skilled Worker program.

[2] The Applicant submits that her application was assessed improperly due to deficiencies in the online Express Entry immigration system. The Applicant submits that the Officer's decision is unreasonable and that her rights to procedural fairness were breached.

[3] For the reasons that follow, I find that the Officer's decision is unreasonable. I therefore grant this application for judicial review.

II. **Facts**

A. *The Applicant*

[4] The Applicant is a citizen of Bangladesh and a qualified Barrister in England and Wales. The Applicant holds a Bachelor of Laws degree from De Montfort University in England, as well a Postgraduate Diploma in Professional Legal Skills from the City School of Law (the "Post-Graduate Diploma"). The Applicant received the Post-Graduate Diploma for completing a year-long Bar Professional Training Course, which is a prerequisite for being called to the Bar in England and Wales.

[5] On May 25, 2020, the Applicant submitted an Express Entry Profile to become a permanent resident of Canada through the Express Entry system. As part of this process, International Credential Assessment Service of Canada ("ICAS") assessed the Applicant's educational credentials. ICAS indicated that the Applicant's credentials were equivalent to a "Bachelor's Degree" and a "Post-Bachelor's Diploma."

[6] To submit her Express Entry Profile, the Applicant was first required to assess her eligibility by answering a series of questions on an IRCC webpage (the “IRCC Webpage”). With respect to her level of education, the Applicant selected from a dropdown list of options that she had “Two or more certificates, diplomas, or degrees [...]”. The IRCC Webpage indicated that the Applicant was eligible, and directed her to prepare an Express Entry Profile.

[7] However, when the Applicant began filling out her Express Entry Profile, the options related to educational credentials were different from those on the IRCC Webpage. Specifically, there was no longer the option to select “Two or more certificates, diplomas, or degrees [...]”. Instead, the Applicant was required to select one option for each of her qualifications. The Applicant selected “Master’s degree, or professional degree needed to practice in a licensed profession” for her Bachelor of Laws, as well as for her Post-Graduate Diploma, given that she required the Post-Graduate Diploma to practice law and that the IRCC Webpage indicated that this degree is equivalent to “Two or more certificates, diplomas, or degrees [...]”.

[8] Based on these selections, the Applicant was awarded 126 points. Had there been an option to select “Two or more certificates, diplomas, or degrees [...]”, the Applicant would have only been awarded 119 points.

[9] Based on her Express Entry Profile, on July 8, 2020 the Applicant received an Invitation to Apply under the Government of Canada’s Federal Skilled Worker program. The Invitation to Apply indicated that she had a total score of 481 points. The lowest ranked candidate for the

July round of invitation had a score of 478. The Applicant submitted her application on September 2, 2020.

B. *Decision Under Review*

[10] On October 9, 2020, the Officer refused the application, finding that the Applicant did not meet the requirements for immigration to Canada. The Officer's decision states:

[...] In your Express Entry profile you indicated: that you had a master's degree. However, as per the assessment report that you submitted from ICAS, the credentials you provided represent a level of education in Canada comparable to Bachelor's Degree and Post-Bachelor's Diploma.

This change in your qualifications resulted in a loss of points that brought your rank below the lowest ranking person who was invited to apply in your round of invitation, under the Express Entry Comprehensive Ranking System.

[11] The Global Case Management System ("GCMS") notes, which form part of the reasons for the Officer's decision, state that the Applicant did not have enough points under the Government of Canada's Comprehensive Ranking System ("CRS") Criteria for Express Entry:

MI3 A11.2: Not Met – CRS points fall below the minimum score.
****Note: Points adjusted to reflect ECA verification from a Master's degree at ITA to a Bachelor's Degree and a Post-Bachelor's Diploma at APR. As per ICAS verification, The Bachelor of Laws is equivalent to a Bachelor's degree.

III. **Issue and Standard of Review**

[12] Whether the Officer's decision is reasonable.

[13] It is common ground between the parties that this issue is reviewed upon the reasonableness standard. I agree (*Zhang v Canada (Citizenship and Immigration)*, 2019 FC 764 at para 12). I find that this conclusion accords with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("Vavilov") at paragraphs 16-17.

[14] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[15] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

IV. Legislative Framework

[16] Excerpts of the applicable provisions from the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”) and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (“*IRPR*”) are found at **Appendix A**.

V. Analysis

[17] The Applicant submits the Officer’s decision lacks transparency and is unjustified in light of the evidence. First, the Officer refers to the Applicant’s educational credentials as being equivalent to “a Bachelor’s Degree and a Post-Bachelor’s Diploma,” when those are not one of the eight levels for which points are assigned according to the CRS criteria. A table comparing the options available to the Applicant when creating her Express Entry Profile to the options under the CRS Criteria is found at **Appendix B**. As such, the Applicant contends that the Officer failed to make a finding about what Canadian education level her diploma is comparable to, and failed to make a finding about what her score was, thus leaving the Applicant to guess.

[18] Second, the Applicant submits that since the ICAS assessment was inconclusive, the Officer should have referenced other documents, citing *Lakhanpal v Canada (Citizenship and Immigration)*, 2021 FC 694 (“*Lakhanpal*”) in support. The Applicant argues that the Officer ignored her employment letters identifying her as legal counsel and Barrister, and the fact that she was called to the Bar. Instead, the Officer appears to have fixated on the first part of the educational category she selected – “Master’s degree” – and failed to evaluate the evidence with respect to “professional degree needed to practice in a licensed profession.”

[19] In *Lakhanpal*, the applicant had her educational credentials assessed by World Education Services (“WES”). WES determined that her diploma in general nursing and midwifery was equivalent to three and a half years of Canadian hospital study and training, but also indicated that it was “not comparable to a completed Canadian education credential” (*Lakhanpal* at para 18). As a result, the officer refused the application for permanent residence because the applicant was found to “not have a Canadian equivalency to a completed secondary school diploma.” (*Lakhanpal* at para 20). This Court found the officer’s decision to be unreasonable, stating at paragraphs 21 and 23:

[21] [...] 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.

[23] 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.

[20] In response to this argument, the Respondent points to subsection 75(8) of the *IRPR*, which states that an equivalency assessment is conclusive evidence that foreign credentials are equivalent to Canadian educational credentials. The Respondent relies on *Ijaz v Canada (Citizenship and Immigration)*, 2015 FC 67 (“*Ijaz*”). In *Ijaz*, the WES report indicated the applicant completed the equivalent of two years of undergraduate study and two years of professional study. This Court found it was reasonable for the officer to interpret this to mean that the applicant did not have the equivalent of a Canadian educational credential (at para 47).

[21] I find *Ijaz* to be factually distinct from the case at hand. The Officer here did not determine that the Applicant did not have the equivalent of a Canadian educational credential, but rather that her credentials were comparable to a Bachelor's Degree and Post-Bachelor's Diploma.

[22] The Respondent also relies on *Khan v Canada (Citizenship and Immigration)*, 2011 FCA 339 ("*Khan*") at paragraph 32, to submit that the Applicants' Postgraduate Diploma was not a "second Bachelor's Degree" and therefore, was not a "professional degree needed to practice in a licensed profession." In *Khan*, the applicants had earned two master's degrees and completed 17 years of study (which would have earned them 25 points under the *IRPR*). The officer refused their applications, finding they had only completed 16 years of study, which resulted in them obtaining only 22 points. Since the situation in *Khan* did not concern professional degrees, I do not find these obiter comments to be persuasive. I disagree with the Respondent that this case stands for the principle that an applicant will only ever be accredited the Canadian equivalent of a professional degree in law if they have two Bachelor's degrees.

[23] I agree with the Applicant that the decision is unreasonable, as it lacks transparency and justification. The decision is not transparent with respect to which educational category the Officer placed the Applicant, or whether the Officer even assessed whether the Applicant possessed a "professional degree needed to practice in a licensed profession."

[24] I also agree with the Applicant that *Lakhanpal* is analogous to this case. The evidence before the Officer was that the Applicant was a practicing Barrister in England and Wales.

While the Officer found the Applicant had indicated she had a “Master’s degree,” the Officer ignored the second part of that selection: a “professional degree needed to practice in a licensed profession.” As a result, it is unclear why the Officer reasoned that the Applicant did not fall into this category by virtue of her qualifications. The information on the IRCC Webpage also supports the Applicant’s position that she falls into this category, as it states: “A “first professional degree” prepares a person for a certain profession” and includes “Bachelor of Law.”

[25] I find that the Officer’s failure to engage with the evidence before them, and their failure to consider whether the Applicant possessed a “professional degree needed to practice in a licensed profession” renders their decision unreasonable.

[26] I sympathize with the Applicant. She reasonably relied on the Express Entry system, which indicated she had enough points to meet the criteria for permanent residence in the July 8, 2020 round of invitations. Had the system been populated with the appropriate options, the Applicant could have selected the option that matched her ICAS assessment and the guidance provided by IRCC, which would have resulted in her receiving a lower score. This would have been reflected in her invitation to apply, and she could then have declined the invitation and waited to apply in a later round of invitations for which she had enough points. I note that it would be much easier for future applicants if the IRCC Webpage were amended such that the Express Entry Profile options reflect the categories by which applicants are assigned points.

[27] Having determined that the decision is unreasonable, I do not find it necessary to address the Applicant’s arguments with respect to procedural fairness.

VI. **Costs**

[28] The Applicant seeks costs of this application, but makes no argument as to why costs are appropriate. The Respondent argues there are no special reasons to justify an award of costs in this case, pursuant to Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22. I agree. This Court has previously held that special reasons include “where, for example, a party has unnecessarily or unreasonable prolonged legal proceedings, acted in an unfair oppressive or improper manner, or acted in bad faith” (*Singh v Canada (Citizenship and Immigration)*, 2021 FC 638 at para 13). In this case, the Officer assessed the evidence, and came to a conclusion in an efficient manner. While the decision may be unreasonable, and the layout of the IRCC Webpage is confusing, this alone does not rise to the level of special circumstances that would justify an award of costs.

VII. **Conclusion**

[29] For the above reasons, I find that the Officer’s decision is unreasonable. I therefore grant this application for judicial review.

[30] No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-6292-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted. The decision under review is set aside and the matter is referred back for redetermination by another visa officer.
2. No costs are awarded.
3. There is no question to certify.

"Shirzad A."

Judge

APPENDIX A: RELEVANT LEGISLATION

**Relevant provisions from the *Immigration and Refugee Protection Act*,
SC 2001, c 27 (“IRPA”)**

<p>DIVISION 0.1</p> <p>Invitation to Make an Application</p> <p>Application for permanent residence — invitation to apply</p> <p>10.1 (1) A foreign national who seeks to enter or remain in Canada as a member of a class that is referred to in an instruction given under paragraph 10.3(1)(a) may make an application for permanent residence only if the Minister has issued them an invitation to do so, the invitation has not been cancelled under subsection 10.2(5) and the applicable period specified in an instruction given under paragraph 10.3(1)(k) has not expired.</p> <p>[...] Expression of interest</p> <p>(3) A foreign national who wishes to be invited to make an application must submit an expression of interest to the Minister by means of an electronic system in accordance with instructions given under section 10.3 unless the instructions provide that they may do so by other means.</p>	<p>SECTION 0.1</p> <p>Invitation à présenter une demande</p> <p>Demande de résidence permanente — invitation à présenter une demande</p> <p>10.1 (1) L'étranger qui cherche à entrer au Canada ou à y séjourner comme membre d'une catégorie visée par une instruction donnée en vertu de l'alinéa 10.3(1)a ne peut présenter une demande de résidence permanente que si le ministre lui a formulé une invitation à le faire, celle-ci n'a pas été annulée en vertu du paragraphe 10.2(5) et la période applicable prévue aux termes d'une instruction donnée en vertu de l'alinéa 10.3(1)k n'est pas expirée.</p> <p>[...]</p> <p>Déclaration d'intérêt</p> <p>(3) L'étranger qui désire être invité à présenter une demande soumet une déclaration d'intérêt au ministre au moyen d'un système électronique conformément aux instructions données en vertu de l'article 10.3, sauf si ces instructions prévoient qu'il peut la lui soumettre par un autre moyen.</p>
<p>Expression of interest — processing</p> <p>10.2 (1) In processing an expression of interest, the Minister</p> <p>(a) is to determine whether the foreign national is eligible to be invited to make an application by applying the</p>	<p>Traitement de la déclaration d'intérêt</p> <p>10.2 (1) Lorsqu'il traite une déclaration d'intérêt, le ministre:</p> <p>a) décide, en appliquant les critères prévus par les instructions données en vertu de l'alinéa 10.3(1)e, si l'étranger</p>

<p>criteria set out in instructions given under paragraph 10.3(1)(e) and is to advise the foreign national of the determination in accordance with instructions given under paragraph 10.3(1)(l); and</p> <p>(b) subject to subsection (2), is to determine whether, in accordance with instructions given under paragraph 10.3(1)(i), the foreign national occupies the rank required to be invited to make an application and, if so, is to issue the invitation in accordance with instructions given under paragraph 10.3(1)(l).</p>	<p>peut être invité à présenter une demande et l’informe de cette décision conformément aux instructions données en vertu de l’alinéa 10.3(1)l);</p> <p>b) sous réserve du paragraphe (2), décide si, conformément aux instructions données en vertu de l’alinéa 10.3(1)i), l’étranger occupe le rang nécessaire pour être invité à présenter une demande et, le cas échéant, lui formule l’invitation conformément aux instructions données en vertu de l’alinéa 10.3(1)l).</p>
<p>Instructions</p> <p>10.3 (1) The Minister may give instructions governing any matter relating to the application of this Division, including instructions respecting</p> <p>(a) the classes in respect of which subsection 10.1(1) applies;</p> <p>[...]</p> <p>(e) the criteria that a foreign national must meet to be eligible to be invited to make an application;</p> <p>[...]</p> <p>(h) the basis on which an eligible foreign national may be ranked relative to other eligible foreign nationals;</p> <p>(i) the rank an eligible foreign national must occupy to be invited to make an application in respect of a class referred to in an instruction given under paragraph (a);</p>	<p>Instructions</p> <p>10.3 (1) Le ministre peut donner des instructions régissant l’application de la présente section, notamment des instructions portant sur :</p> <p>a) les catégories auxquelles ce paragraphe s’applique;</p> <p>[...]</p> <p>e) les critères que l’étranger est tenu de remplir pour pouvoir être invité à présenter une demande;</p> <p>[...]</p> <p>h) la base sur laquelle peuvent être classés les uns par rapport aux autres les étrangers qui peuvent être invités à présenter une demande;</p> <p>i) le rang qu’un étranger doit occuper pour être invité à présenter une demande au titre d’une catégorie visée par une instruction donnée en vertu de l’alinéa a);</p>

<p>Visa or other document not to be issued</p> <p>11.2 (1) An officer may not issue a visa or other document in respect of an application for permanent residence to a foreign national who was issued an invitation under Division 0.1 to make that application if — at the time the invitation was issued or at the time the officer received their application — the foreign national did not meet the criteria set out in an instruction given under paragraph 10.3(1)(e) or did not have the qualifications on the basis of which they were ranked under an instruction given under paragraph 10.3(1)(h) and were issued the invitation.</p>	<p>Visa ou autre document ne pouvant être délivré</p> <p>11.2 (1) Ne peut être délivré à l'étranger à qui une invitation à présenter une demande de résidence permanente a été formulée en vertu de la section 0.1 un visa ou autre document à l'égard de la demande si, lorsque l'invitation a été formulée ou que la demande a été reçue par l'agent, il ne répondait pas aux critères prévus dans une instruction donnée en vertu de l'alinéa 10.3(1)e) ou il n'avait pas les attributs sur la base desquels il a été classé au titre d'une instruction donnée en vertu de l'alinéa 10.3(1)h) et sur la base desquels cette invitation a été formulée.</p>
<p align="center">Relevant provisions from the <i>Immigration and Refugee Protection Regulations</i>, SOR/2002-227 (“IRPR”)</p>	
<p>Federal Skilled Worker Class</p> <p>Class</p> <p>75 (1) For the purposes of subsection 12(2) of the Act, the federal skilled worker class is hereby prescribed as a class of persons who are skilled workers and who may become permanent residents on the basis of their ability to become economically established in Canada and who intend to reside in a province other than the Province of Quebec.</p> <p>Skilled workers</p> <p>(2) A foreign national is a skilled worker if</p> <p>[...]</p> <p>(e) they have submitted one of the following:</p>	<p>Travailleurs qualifiés (fédéral)</p> <p>Catégorie</p> <p>75 (1) Pour l'application du paragraphe 12(2) de la Loi, la catégorie des travailleurs qualifiés (fédéral) est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada, qui sont des travailleurs qualifiés et qui cherchent à s'établir dans une province autre que le Québec.</p> <p>Qualité</p> <p>(2) Est un travailleur qualifié l'étranger qui satisfait aux exigences suivantes:</p> <p>[...]</p> <p>e) il a soumis l'un des documents suivants:</p>

<p>(i) their Canadian educational credential, or</p> <p>(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.</p> <p>[...]</p> <p>Conclusive evidence</p> <p>(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.</p>	<p>(i) son diplôme canadien,</p> <p>(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.</p> <p>[...]</p> <p>Preuve concluante</p> <p>(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.</p>
<p>Selection Grid</p> <p>Education (25 points)</p> <p>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:</p> <p>(a) 5 points for a secondary school credential;</p> <p>(b) 15 points for a one-year post-secondary program credential;</p> <p>(c) 19 points for a two-year post-secondary program credential;</p> <p>(d) 21 points for a post-secondary program credential of three years or longer;</p> <p>(e) 22 points for two or more post-secondary program credentials, one of which must be a credential issued on</p>	<p>Grille de selection</p> <p>Études (25 points)</p> <p>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:</p> <p>a) 5 points, pour le diplôme de niveau secondaire;</p> <p>b) 15 points, pour le diplôme de niveau postsecondaire visant un programme nécessitant une année d'étude;</p> <p>c) 19 points, pour le diplôme de niveau postsecondaire visant un programme nécessitant deux années d'études;</p> <p>d) 21 points, pour le diplôme de niveau postsecondaire visant un programme nécessitant au moins trois années d'études;</p>

<p>completion of a post-secondary program of three years or longer;</p> <p>(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</p> <p>(g) 25 points for a university-level credential at the doctoral level.</p>	<p>e) 22 points, pour l'obtention d'au moins deux diplômes de niveau postsecondaire dont l'un des deux visant un programme nécessitant au moins trois années d'études;</p> <p>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;</p> <p>g) 25 points, pour le diplôme de niveau universitaire de troisième cycle.</p>
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APPENDIX B: EDUCATION CREDENTIAL OPTIONS TABLE

Options Available in the Express Entry Profile	Options According to the CRS Criteria, and Corresponding Points Awarded
None, or less than secondary (high school)	Less than secondary (high school) 0
Secondary diploma (high school graduation)	Secondary diploma (high school graduation) 28
One-year program at a university, college, trade or technical school, or other institute	One-year degree, diploma or certificate from a university, college, trade or technical school, or other institute 84
Two-year program at a university, college, trade or technical school, or other institute	Two-year program at a university, college, trade or technical school or other institute 91
Bachelor's degree OR a three or more year program at a university,	Bachelor's degree OR a three or more year program at a university,

college, trade or technical school, or other institute	college, trade or technical school, or other institute 112
Master's degree, or professional degree needed to practice in a licensed profession	Two or more certificates, diplomas, or degrees. One must be for a program of three or more years 119
Doctoral level university degree (PhD)	Master's degree, OR professional degree needed to practice in a licensed profession (For "professional degree," the degree program must have been in: medicine, veterinary medicine, dentistry, optometry, law, chiropractic medicine, or pharmacy.) 126
	Doctoral level university degree (Ph.D.) 140

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6292-20

STYLE OF CAUSE: SHAIKH PROBORTONA v THE MINISTER OF
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DATED: DECEMBER 22, 2021

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