

Federal Court



Cour fédérale

Date: 20120403

Docket: IMM-235-11

Citation: 2012 FC 390

Ottawa, Ontario, April 3, 2012

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

MOHAMMAD GOLAM SABUR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is a citizen of Bangladesh who applied for permanent residence in Canada as a member of the Federal Skilled Worker class. His intended occupation in Canada was that of a Financial Manager as described in the National Occupation Classification (NOC) 0111. His application, filed pursuant to section 11 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] was rejected by an immigration officer (the immigration officer) on November 8, 2010. The applicant was awarded 64 points whereas he required 67 points to be a successful applicant.

This application for judicial review challenges that decision. The issue at bar relates to the points that the immigration officer awarded to the applicant in regard to his educational credentials.

[2] For the reasons that follow, the application is dismissed.

I. Decision under review

[3] The assessment of applications for permanent residence is governed by the grid and parameters provided in the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations]. Section 78 of the Regulations sets out the points to be awarded with respect to education:

78. (1) The definitions in this subsection apply in this section.	78. (1) Les définitions qui suivent s'appliquent au présent article.
“full-time”	« équivalent temps plein »
« temps plein »	“full-time equivalent”
“full-time” means, in relation to a program of study leading to an educational credential, at least 15 hours of instruction per week during the academic year, including any period of training in the workplace that forms part of the course 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 d'études accélérées qui auraient été nécessaires pour compléter des études équivalentes.
“full-time equivalent”	« temps plein »
« équivalent temps plein »	“full-time”
“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	« 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

full-time basis.	pendant l'année scolaire, et comprend toute période de formation donnée en milieu de travail et faisant partie du programme.
Education (25 points)	Études (25 points)
(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 :
(a) 5 points for a secondary school educational credential;	a) 5 points, s'il a obtenu un diplôme d'études secondaires;
(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;
(c) 15 points for	c) 15 points, si, selon le cas :
(i) a one-year post-secondary educational credential, other than a university educational credential, and a total of at least 13 years of completed full-time or full-time equivalent studies, or	(i) il a obtenu un diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant une année d'études et a accumulé un total de treize années d'études à temps plein complètes ou l'équivalent temps plein,
(ii) a one-year university educational credential at the bachelor's level and a total of at least 13 years of completed full-time or full-time equivalent studies;	(ii) il a obtenu un diplôme universitaire de premier cycle nécessitant une année d'études et a accumulé un total d'au moins treize années d'études à temps plein complètes ou l'équivalent temps plein;
(d) 20 points for	d) 20 points, si, selon le cas :

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|---|--|
| (i) a two-year post-secondary educational credential, other than a university educational credential, and a total of at least 14 years of completed full-time or full-time equivalent studies, or | (i) il a obtenu un diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant deux années d'études et a accumulé un total de quatorze années d'études à temps plein complètes ou l'équivalent temps plein, |
| (ii) a two-year university educational credential at the bachelor's level and a total of at least 14 years of completed full-time or full-time equivalent studies; | (ii) il a obtenu un diplôme universitaire de premier cycle nécessitant deux années d'études et a accumulé un total d'au moins quatorze années d'études à temps plein complètes ou l'équivalent temps plein; |
| (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. |

Multiple educational achievements

(3) For the purposes of subsection (2), points

(a) shall not be awarded cumulatively on the basis of more than one single educational credential; and

(b) shall be awarded

(i) for the purposes of paragraphs (2)(a) to (d), subparagraph (2)(e)(i) and paragraph (2)(f), on the basis of the single educational credential that results in the highest number of points, and

(ii) for the purposes of subparagraph (2)(e)(ii), on the basis of the combined educational credentials referred to in that paragraph.

Special circumstances

(4) For the purposes of subsection (2), if a skilled worker has an educational credential referred to in paragraph (2)(b), subparagraph (2)(c)(i) or (ii), (d)(i) or (ii) or (e)(i) or (ii) or paragraph (2)(f), but not the total number of years of full-time or full-time equivalent studies required by that paragraph or subparagraph, the skilled worker shall be awarded the same number of points as the number of years of completed full-time or full-time

Résultats

(3) Pour l'application du paragraphe (2), les points sont accumulés de la façon suivante :

a) ils ne peuvent être additionnés les uns aux autres du fait que le travailleur qualifié possède plus d'un diplôme;

b) ils sont attribués :

(i) pour l'application des alinéas (2)a) à d), du sous-alinéa (2)e)(i) et de l'alinéa (2)f), en fonction du diplôme qui procure le plus de points selon la grille,

(ii) pour l'application du sous-alinéa (2)e)(ii), en fonction de l'ensemble des diplômes visés à ce sous-alinéa.

Circonstances spéciales

(4) Pour l'application du paragraphe (2), si le travailleur qualifié est titulaire d'un diplôme visé à l'un des alinéas (2)b), des sous-alinéas (2)c)(i) et (ii), (2)d)(i) et (ii) et (2)e)(i) et (ii) ou à l'alinéa (2)f) mais n'a pas accumulé le nombre d'années d'études à temps plein ou l'équivalent temps plein prévu à l'un de ces alinéas ou sous-alinéas, il obtient le nombre de points correspondant au nombre d'années d'études à temps plein complètes — ou

equivalent studies set out in the paragraph or subparagraph. leur équivalent temps plein — mentionné dans ces dispositions.

[4] The applicant holds a Bachelor of Commerce degree in accounting from the University of Dhaka, a Master's degree in accounting, also from the University of Dhaka, and a Cost Management Accountant (CMA) degree from the Institute of Chartered Accountants of Bangladesh.

[5] The immigration officer awarded the applicant 22 points for these credentials pursuant to subparagraph 78(2)(e)(ii) of the Regulations. The relevant excerpt of the decision reads as follows:

. . . You were awarded 22 points for Education, on the strength of your full-time equivalents of a 1-year bachelor's of commerce degree (concentration: accounting) and a 2-year master's degree (concentration: accounting), respectfully; this is equivalent to 15 years of full-time study and having two or more university credentials. . . .

[6] In his Computer Assisted Immigrant Processing System (CAIPS) notes, the officer explains that:

EDUCATION CREDENTIALS ARE NOT TO BE STACKED (RE ACCOUNTING CREDENTIAL). MAX LEVEL OF PA'S STUDY IS A RESULT OF THE COMBINATION OF HIS BACH AND MASTERS, RESULTING IN 15 YEARS OF STUDY, AND TWO OR MORE UNIVERSITY CREDENTIALS AT THE BACH LEVEL – STACKING OF PA'S ACCOUNTING CREDENTIAL IS NOT AUTHORIZED IN IRPAA AND WOULD NOT QUALIFY FOR CONSIDERATION TOWARD 17 YEARS OF FT STUDY AND A UNIVERSITY CRED AT MASTERS OR PHD LEVEL.

[*Sic* throughout]

II. Issue and standard of review

[7] The only issue to be determined in this case is whether the immigration officer erred in awarding the applicant a mere 22 points for his educational credentials pursuant to subparagraph

78(2)(e)(ii) of the Regulations, rather than the full 25 points to which the applicant believes he is entitled pursuant to paragraph 78(2)(f) of the Regulations. The Federal Court of Appeal in *Khan v Canada (Minister of Citizenship and Immigration)*, 2011 FCA 339 at para 26 (available on CanLII) [*Khan*] stated that the standard of review in cases such as the one at bar is correctness.

III. Analysis

[8] The applicant argues that all three of his university degrees must be counted towards his years of education for the purposes of section 78 of the Regulations. The applicant alleges that the CMA degree is not simply a second Bachelor's degree, as characterized by the immigration officer. Rather, the CMA degree must be counted as years of education in the "line of progression" of education, because having a Bachelor's degree was a prerequisite to enrolling in the CMA program. Further, as the CMA degree is a professional degree akin to a law degree, the CMA degree falls under one of the exceptions mentioned by the Federal Court of Appeal in *Khan*, above, at paragraph 32. Finally, the applicant argues that his educational background clearly meets the criteria for earning 25 points pursuant to paragraph 78(2)(f) of the Regulations: he holds a Master's degree and has 17.5 years of study, including his CMA, which accounts for 2.5 years.

[9] The respondent, for his part, argues that the officer did not err in his interpretation and application of the grid set out in section 78 of the Regulations. The respondent maintains that the applicant's arguments are identical to the ones that failed before the Federal Court of Appeal in *Khan*, above, and accordingly should fail, once again. Furthermore, the exception mentioned at paragraph 32 of *Khan* only applies to individuals whose credentials would otherwise earn them 20 points rather than 22 points, but does not apply to individuals whose credentials otherwise earn

them 22 points rather than 25 points, as in the applicant's case. In other words, the exception only applies to paragraph 78(2)(d) of the Regulations, and not to paragraph 78(2)(f).

[10] The applicant's arguments cannot succeed. *Khan*, above, provided extremely clear guidance as to how an immigration officer must assess educational credentials pursuant to section 78 of the Regulations, and *Khan* applies directly to the case at bar. This decision unequivocally explained that the applicant's interpretation of the Regulations is erroneous.

[11] In *Khan*, above, the following principles were clearly enunciated:

- Points may only be awarded on the basis of a single educational credential, namely the highest credential or, in other words, the one which awards the highest number of points (paragraphs 78(3)(a) and (b)). Additional credentials may not be considered;
- Points allowed for a credential include points for any prerequisite credentials (paragraph 78(3)(a));
- Points are not awarded for multiple credentials of the same level, subject to the exception set out in subparagraph 78(2)(e)(ii) which allows points for two or more credentials at the Bachelor's level, when obtained through at least 15 years of study;
- Points are awarded for a combination of educational credentials and years of study; and
- The number of years of study to be considered corresponds to the number of years of study normally required to obtain the credential in the country where the studies were completed. Therefore, years completed in excess of the years normally required to obtain the credential in question are not counted.

[12] The Federal Court of Appeal in *Khan*, above, at paragraph 53, summarized its interpretation of subsections 78(3) and (4) of the Regulations as follows:

To summarize, subsections 78(3) and (4) of the Regulations provide that applicants are to be assessed on the basis of their single highest educational credential, without cumulating points for other equal or lesser credentials. Where another credential is a pre-requisite for the higher credential, the years of study associated with that other credential are included in the program of studies for the higher credential established by the national authorities. Where the other credential is not a pre-requisite for the candidate's highest credential, the years of study leading to that credential are not to be cumulated with the years of completed study attributable to the highest credential, since the candidate's application is to be assessed on the basis of a single educational credential.

[13] The immigration officer's approach in the case at bar was the same as the one articulated in *Khan*, above. He determined that the applicant's highest credential was a Master's degree. He then determined that a Master's degree in Bangladesh was equivalent to 15 years of education. Accordingly, the applicant did not meet the criteria enumerated at paragraph 78(2)(f) of the Regulations to earn 25 points, because a Master's degree in Bangladesh was not equivalent to 17 years of study. The immigration officer proceeded to determine that the applicant more closely met the criteria enumerated in subparagraph 78(2)(e)(ii) of the Regulations, because he had at least two university credentials and a minimum of 15 years of study. Based on *Khan*, it was not open to the immigration officer to award any points for the years of study that the applicant completed in excess of the 15 years required to complete a Master's degree in Bangladesh. As explained by the Federal Court of Appeal in *Khan* at paragraph 56:

In assessing points for education under section 78 of the Immigration and Refugee Protection Regulations, the visa officer does not award points for years of full-time or full-time equivalent studies that did not contribute to the educational credential being assessed. That is, visa officers must give credit only for those years of study which the

national authorities identify as the norm for the achievement of the educational credential in issue.

Furthermore, the “line of progression” analysis raised by the applicant was determined to be fallacious in *Khan*, above, at paragraph 54 and, therefore, cannot succeed in this case.

[14] For these reasons, I find the immigration officer’s interpretation of the applicant’s educational credentials correct.

[15] The applicant proposed the following question for certification:

In assessing education under s. 78 of the Regulations, should a visa officer award 25 points under s. 78(2)(f), where there is a Master’s degree, 17 years of completed full-time or full-time equivalent studies and there are two educational credentials at the bachelor’s level where one bachelor’s degree is a pre-requisite to the second bachelor’s degree.

[16] The respondent opposed the certification of this question on the grounds that it did not meet the criteria from *Canada (Minister of Citizenship and Immigration) v Liyanagamage* (1994), 51 ACWS (3d) 910, 176 NR 4 (FCA), being that (1) the question transcends the interests of the immediate parties to the litigation; (2) the question contemplates issues of broad significance or general application; and (3) the question is determinative of the appeal. I agree.

[17] In my view, *Khan*, above, directly answered the question raised by the applicant. Therefore, it would not be determinative of an appeal and I find it unnecessary to certify the question.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. No question is certified.

"Marie-Josée Bédard"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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