

Federal Court



Cour fédérale

Date: 20130429

Docket: IMM-8085-12

Citation: 2013 FC 445

Ottawa, Ontario, this 29th day of April 2013

Present: The Honourable Mr. Justice Roy

BETWEEN:

SEDIGHI, Seyed Mahdi

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review, made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”), of the decision of an immigration officer (the “officer”) at the Canadian Embassy in Warsaw, Poland, refusing the application for permanent residence in Canada as a Federal Skilled Worker of Mr. Seyed Mahdi Sedighi (the “applicant”).

Facts and relevant provisions

[2] The facts of this case are simple and it involves a single issue. The applicant wishes to become a permanent resident of Canada in accordance with subsection 12(2) of the Act, which reads:

12. (2) A foreign national may be selected as a member of the economic class on the basis of their ability to become economically established in Canada.

12. (2) La sélection des étrangers de la catégorie « immigration économique » se fait en fonction de leur capacité à réussir leur établissement économique au Canada.

[3] The applicant is a physician, trained in Iran, and he must satisfy the requirements of sections 73 to 85 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the ‘Regulations’) in order to qualify as a member of an economic class.

[4] The decision made by the officer was to deny the application. He did so in application of sections 76 and 78 of the Regulations and, in particular, he assessed the applicant as being entitled to 66 points out of the required 67 points in order to qualify. The applicant challenges the assessment made by the officer by claiming that the officer was wrong in allowing 22 points out of a maximum of 25 points on account of education.

[5] Subparagraph 76(1)(a)(i) of the Regulations reads, in part, as follows:

76. (1) For the purpose of determining whether a skilled worker, as a member of the federal skill worker class, will be able to become economically established in Canada, they must be assessed on the basis of the following criteria:

(a) the skilled worker must be awarded not less than the minimum number of required points

76. (1) Les critères ci-après indiquent que le travailleur qualifié peut réussir son établissement économique au Canada à titre de membre de la catégorie des travailleurs qualifiés (fédéral) :

a) le travailleur qualifié accumule le nombre minimum de points visé au paragraphe (2), au titre des facteurs suivants :

referred to in subsection (2) on the basis of the following factors, namely,

(i) education, in accordance with section 78,

(i) les études, aux termes de l'article 78,

As subparagraph 76(1)(a)(i) announces, one of the criteria to be considered is the education of the applicant, to be assessed in accordance with section 78. Subsection 78(2) reads 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 :

(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 :

(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

(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;

(e) 22 points for

(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

(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

(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.

accumulé un total de quatorze années d'études à temps plein complètes ou l'équivalent temps plein,

(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, si, selon le cas :

(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) 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, 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.

Standard of review

[6] In the memorandum of fact and law submitted by the applicant, he does not address the standard of review applicable in these matters. He rather states, quite elliptically, that “issues of reasonability are to be controlled on a standard of reasonability whereas issues of equity are to be controlled upon a standard of correctness”.

[7] We are here considering the application of facts to legal standards found in regulations. Questions of mixed fact and law have been consistently found to be reviewable on a standard of reasonableness. This case is no different. As is well known, such a standard is deferential in principle. To quote from *Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at paragraph 47:

. . . In judicial review, reasonableness is concerned mostly 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.

[8] Accordingly, the Court will not substitute its view of the matter to that of the officer but will rather consider if the conclusion falls within the range of acceptable outcomes. The reasons given are to be “read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes” (*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708 at para 14).

Analysis

[9] It must be taken that, in view of the standard of review applicable to these types of cases, the applicant is arguing that it was not reasonable for the officer to conclude that, as a physician in Iran, he was entitled to less than 25 points on account of his education.

[10] The applicant argues, forcefully, that he qualifies under paragraph (f) of subsection 78(2). The officer slated the education of the applicant as fitting within paragraph (e). The reasons given by the officer are as follows:

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.

[11] The question for the Court is whether or not that decision of the officer was reasonable in the circumstances. The burden was on the applicant to satisfy the Court, on a balance of probabilities, that it is unreasonable. With great respect, such a demonstration has not been made.

[12] The applicant relies on his statement that he has received a PhD in medicine and then takes issue with the officer’s finding that the degree is a first-level university credential. The applicant’s position boils down to arguing that 7 ½ years of university studies must qualify as a PhD or at least a Master’s degree.

[13] The evidence showed that following primary school and secondary school studies, the applicant was awarded a “medical diploma” and a certificate of completion of “doctoral” studies.

The applicant sought to supplement the record before this Court by introducing an affidavit in support of some internet research about medical diplomas issued in Iran. The respondent objected to such evidence being introduced at this stage.

[14] It is trite law that a judicial review application must be with respect to the decision made and the record before the reviewing court must be that which was before the decision-maker (*Isomi v Minister of Citizenship and Immigration*, 2006 FC 1394 and case law referred to therein; *Montesuma v Minister of Citizenship and Immigration*, 2011 FC 918; *Tabanag v Minister of Citizenship and Immigration*, 2011 FC 1293; *Mahouri v Minister of Citizenship and Immigration*, 2013 FC 244). The Court does not substitute its view to that of the decision-maker: allowing new evidence at this stage could only be for the purpose of weighing again the evidence once supplemented. This cannot be allowed. The new evidence will not be considered as it is ruled inadmissible.

[15] It was for the applicant to show that the university educational credential he obtained was at the master's or doctoral level, in order to benefit from paragraph 78(2)(f) of the Regulations. His contention that, somehow, the officer had an obligation to inform himself of the requirements for a medical degree in Iran is without merit. The burden is not transferred on the shoulders of the decision-maker; it remains that of the applicant throughout. The applicant raised one ingenuous argument, based on one word in paragraph 78(2)(f): "level". He contends that the use of the word "level" in conjunction with "master's or doctoral" suggests that it is not a particular degree that is required, but a diploma at the equivalent "level". Unfortunately for the ingenuous argument of the applicant, it is not conversant with the French version of the same paragraph, which makes it quite

clear that the degree required is one of a second or third cycle of studies. As is well known, courts will seek to find the common meaning between bilingual versions and that shared meaning will be accepted (*Merck Frosst Canada Ltd v Canada (Health)*, [2012] 1 SCR 23). In view of the evidence before the officer, it was not unreasonable to conclude as he did that the degree is not of the master's or doctoral level.

[16] This Court, very recently, was confronted to the same situation and the same argument with respect to a "Doctorate of Medical Science" obtained following eight years of study in Iran (indeed, the record also showed that the applicant's spouse had a medical degree obtained after seven years of study). Justice Michael Manson, in *Mahouri, supra*, also concluded that the applicant did not discharge his burden. The decision-maker reviewed the evidence and concluded reasonably that a simple degree allowing for the practice of medicine constitutes a first-level degree. The applicant in this case did not discharge either his burden before this Court to show that the finding was not reasonable.

[17] As a result, the application for judicial review is dismissed. The parties did not submit that a question ought to be certified pursuant to section 74 of the Act, and none arises.

JUDGMENT

The application for judicial review of the decision of an immigration officer at the Embassy of Canada in Warsaw, Poland, rendered on June 19, 2012, is dismissed.

“Yvan Roy”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-8085-12

STYLE OF CAUSE: SEDIGHI, Seyed Mahdi v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 10, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** Roy J.

DATED: April 29, 2013

APPEARANCES:

Me Jean-François Bertrand FOR THE APPLICANT

Me Michèle Joubert FOR THE RESPONDENT

SOLICITORS OF RECORD:

BERTRAND, DESLAURIERS FOR THE APPLICANT
Montréal, Quebec

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada