

Federal Court



Cour fédérale

Date: 20130617

Docket: IMM-7631-12

Citation: 2013 FC 665

Ottawa, Ontario, June 17, 2013

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

ABDOLLAH SHARIFIAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *Act*], of the August 13, 2012 decision of an Immigration Officer (the Officer) at the Canadian Embassy in Ankara, Turkey. The Officer determined that the applicant did not meet the requirements for permanent resident status in Canada as a Federal Skilled Worker [FSW] pursuant to subsection 76(1) of the *Act*.

Background

[2] Mr Sharifian, a citizen of Iran, applied for permanent residence as a member of the Federal Skilled Worker [FSW] class, under National Occupational Classification [NOC] 3131 as a Pharmacist. His wife, who is also a pharmacist, was included in the same application. The Officer assessed the application and attributed a total of 64 points, falling three points below the minimum 67 point requirement for the FSW class.

The Decision

[3] The Officer assessed the application on the basis of the occupation NOC Code 3131 – Pharmacists. With respect to the applicant's educational credentials, the Officer found that his degree from Tehran University of Medical Sciences was at the bachelor's level, and awarded 20 points pursuant to subsection 78(2)(d)(ii) of the *Immigration and Refugee Protection Regulations*, SOR 2002-227 [the *Regulations*].

[4] The Officer assessed the degree of the applicant's wife, also a pharmacist, at the bachelor's level and awarded 4 adaptability points to the applicant.

[5] Because the applicant did not meet the minimum 67 point requirement, the Officer was not satisfied that the applicant would become economically established in Canada. As a result, he determined that the applicant was not eligible for permanent residence in Canada as a Federal Skilled Worker.

The Issues

[6] The applicant submits that the decision as a whole is unreasonable because the Officer ignored relevant evidence and did not assess the educational qualifications according to country or local standards. Since the applicant had 18 years of full-time study and his educational credentials were stated to be at the Master's level by the Ministry of Health and Medical Education in Iran, the applicant submits that the Officer should have attributed 25 points pursuant to subsection 78(2)(f) of the *Regulations*. In addition, the educational credentials of the applicant's wife should have been awarded additional points since she held the same degree. The applicant submits that this would have resulted in total points surpassing the minimum 67 point requirement.

[7] The applicant submits that neither the Global Case Management System [GCMS] notes nor the Officer's refusal letter refer to the letter from the Ministry of Health and Medical Education and, therefore, it can be inferred that the Officer ignored this relevant evidence of the country or local standards to assess educational credentials .

[8] The applicant also submits that the Officer breached procedural fairness by failing to request further information and to permit the applicant an opportunity to respond to the Officer's concerns regarding the educational credentials.

[9] The respondent's position is that the Officer assessed the application in accordance with the *Regulations* as guided by the Operational Manual [OP 6A] and, based on all the evidence, the decision is reasonable.

[10] The respondent notes that medical degrees are generally considered as “first-level” according to OP 6A. The evidence submitted by the applicant did not indicate a degree by a Faculty of Graduate Studies and the Officer reasonably concluded that the applicant had one university credential at the Bachelor’s level, which was not equivalent to a Master’s level degree.

[11] The respondent submits that consideration of local standards is not determinative; it is one consideration.

[12] The respondent also submits that there was no obligation on the Officer to inform the applicant of the requirements of the immigration legislation. The onus is at all times on the applicant to put his best foot forward. The Officer’s concerns did not relate to the credibility or veracity of the documents. As a result, there was no breach of procedural fairness.

Relevant provisions

Definition

[13] Section 3 of the Regulations:

“educational credential”
means any diploma, degree or trade or apprenticeship credential issued on the completion of a program of study or training at an educational or training institution recognized by the authorities responsible for registering, accrediting, supervising and regulating such institutions in the country of issue.

« *diplôme* » Tout diplôme, certificat de compétence ou certificat d’apprentissage obtenu conséquemment à la réussite d’un programme d’études ou d’un cours de formation offert par un établissement d’enseignement ou de formation reconnu par les autorités chargées d’enregistrer, d’accréditer, de superviser et de réglementer de tels établissements dans le pays de délivrance de ce diplôme ou

certificat.

[14] Subsection 78(2) of the *Regulations* provides:

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| <p>78. (2) A maximum of 25 points shall be awarded for a skilled worker's education as follows:</p> <p>(a) 5 points for a secondary school educational credential;</p> <p>(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;</p> <p>(c) 15 points for</p> <p style="padding-left: 20px;">(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</p> <p style="padding-left: 20px;">(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;</p> <p>(d) 20 points for</p> <p style="padding-left: 20px;">(i) a two-year post-</p> | <p>78. (2) Un maximum de 25 points d'appréciation sont attribués pour les études du travailleur qualifié selon la grille suivante :</p> <p>a) 5 points, s'il a obtenu un diplôme d'études secondaires;</p> <p>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;</p> <p>c) 15 points, si, selon le cas :</p> <p style="padding-left: 20px;">(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,</p> <p style="padding-left: 20px;">(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;</p> <p>d) 20 points, si, selon le cas :</p> <p style="padding-left: 20px;">(i) il a obtenu un diplôme</p> |
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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

(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.

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) 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

[15] There is no dispute regarding the applicable standards of review. Breaches of procedural fairness raise questions of law and are reviewable on a standard of correctness: *Abou-Zahra v Canada (Minister of Citizenship & Immigration)*, 2010 FC 1073, [2010] FCJ no 1326 at para 16; *Chowdhury v Canada (Minister of Citizenship & Immigration)*, 2009 FC 709, [2009] FCJ no 875 at para 29; *Canada (Minister of Citizenship & Immigration) v Khosa*, 2009 SCC 12, 2009 CarswellNat 434 [*Khosa*] at para 43; *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 79, [*Dunsmuir*].

[16] The issue in this case is not about the interpretation of the *Regulations* or the *Act* but rather whether the Officer reasonably determined that the applicant had not met the requirements for eligibility in the FSW class as set out in the *Regulations*. The Officer is a specialized decision-maker whose factual findings relating to an applicant's eligibility for permanent residence in Canada attract significant deference and are reviewable on a reasonableness standard: *Dunsmuir* at para 53; *Khosa* at para 59; *Hameed v Canada (Minister of Citizenship and Immigration)*, 2008 FC 271 at para 22.

[17] As stated in *Khosa*, the role of the Court is to “determine if the outcome falls within “a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, at para 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome” (para 59).

Was the Officer's assessment of the applicant's educational credentials reasonable?

[18] The determinative issue is whether the Officer's finding that the applicant's educational credential was not a Master's degree was reasonable given the supporting material provided by the applicant, including the letter written by the registrar of the Ministry of Health and Medical Education of Iran.

[19] The letter, dated August 25, 2010, states the following:

“This is to certify that: Qualification of the Graduates of **General Doctorate** in the field of **Pharmacy** is evaluated as the same as **Master's Degree** in the Islamic Republic of Iran in respect of Academic Promotion to Ph.D” (emphasis in original)

[20] The applicant's educational credential issued by the Faculty of Pharmacy at Tehran University of Medical Sciences is entitled “Diploma of Completion of Studies” and reads: “Mr. Abdollah Sharifian, ... successfully completed his studies in the curriculum of Doctorate Degree in the field of Pharmacy on Dec. 31, 1990...” .

[21] When assessing the applicant's educational credential, the GCMS notes, which are part of the reasons, confirm that the Officer considered paragraph 10.2 of the OP 6A Manual, which provides:

Note: 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. It is important to refer

to how the local authority responsible for educational institutions recognizes the credential: i.e., as a first-level or second-level or higher university credential. Did officer include this last part?

[22] After citing para 10.2, the Officer made specific findings which relate to the requirements set out in the *Regulations*:

In this instance, the applicant received a single degree which allowed him to practice pharmacy. There is no indication that there was a Bachelor's / Master's degree awarded prior to this degree or that the degree was awarded by a faculty of graduate studies. There is also no indication the applicant undertook any specialization or has been performing any duties related to a pharmaceutical specialization after completing his single degree. The same refers to the spouse's education.

[23] The applicant submits that the Officer failed to consider the local standards when assessing the educational credentials. I have considered the decision of the Federal Court of Appeal in *Hasan v Canada (Minister of Citizenship and Immigration)*, 2011 FCA 339, [2011] FCJ No 1729 which the applicant relies on to emphasize the importance of local standards. That case dealt with how the *Regulations*, which require both the educational credential and particular years of study, are to be applied, and focused on the years of study. The Court of Appeal noted that deference to the national authorities is mandated by the definition of "educational credential" in the *Regulations*. In the present case, the definition of educational credential is not an issue. The Officer accepted that the appropriate authorities in Iran recognised the applicant's degree, which was referred to as a General Doctorate. The issue for the Officer was how that degree, as described, should be assessed in accordance with the *Regulations*.

[24] The applicant contends that the Officer blindly followed the OP Manual and ignored the requirement in the *Act* to consider the local standards. However, the OP Manual also guides an

officer to consider how the local authority responsible for educational institutions recognizes the credential: i.e., as a first-level or second-level or higher university credential.

[25] I do not agree that the Officer blindly followed the guidelines, or only part of the guidelines. He considered them and found examples that were analogous to the facts of the case. There is no evidence that he failed to consider how the local authority recognized the level of the credential. The Officer, however, concluded that the applicant's degree was a first level degree.

[26] The applicant and respondent both referred to several decisions of this Court that have addressed the reasonableness of an Officer's decision in assessing the educational credentials and the points to be attributed in accordance with the *Regulations*.

[27] For example, in *Nikoueian v Canada (Minister of Citizenship and Immigration)*, 2013 FC 514, Justice Phelan allowed the application for judicial review where the applicant's PhD in dentistry was not given the maximum points. Justice Phelan found that there was no evidence that the degree is considered an undergraduate degree in Iran.

[28] In the present case, the Officer found that there was no evidence that the applicant's degree was anything other than an undergraduate degree in Iran. The letter, which is presumed to have been considered, did not indicate that it was a graduate degree.

[29] I also note the recent decision of Justice Roy in *Sedighi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 445, which addressed the reasonableness of the Officer's decision with

respect to the points attributed to the applicant who asserted he was a medical doctor. Justice Roy noted:

[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 ingenious 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 ingenious 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.

[30] The comparison between the French and English versions of the provisions also assists in the present case as the bachelor's level is the "premier cycle" or first-level. The degrees of this applicant and his wife were described as first-level degrees given that the officer had no evidence that the degree was preceded by another degree or that the degree was issued by a Faculty of Graduate Studies.

[31] In *Mohagheghzadeh v Canada (Minister of Citizenship & Immigration)*, 2013 FC 533, Justice Rennie considered the refusal of a visa officer to award higher points for a dentist from Iran. He noted the role of visa officers to conduct independent assessments. A very similarly worded letter to the letter submitted by the applicant in the present case had been provided by the university

which granted Mr Mohagheghzadeh's degree. The letter was found to be inadmissible because it was not before the visa officer. However, it is of interest to note that Justice Rennie was of the view that the letter did not indicate that the applicant's degree was a graduate degree:

[17] Reasonableness, it is well known, contemplates a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. That certain visa officers may have, for a period of time, considered Iranian dental degrees to be at the graduate level does not narrow the range of reasonably acceptable outcomes or fetter their discretion for subsequent decisions. Each visa officer is empowered to make an independent assessment of an application. There is no requirement for uniformity. In each case the decision is assessed against the legal framework and the principles of administrative law.

[18] Here, there was no evidence before the Visa Officer to support a conclusion that the dentistry degree was a second-level university degree or was issued by a faculty of graduate studies. Therefore, the Visa Officer's decision survives scrutiny on either the reasonableness or correctness standard.

[19] While the letter from the Shiraz University of Medical Sciences is inadmissible, it does not in any event, advance the applicant's position. The letter states that the "Dental Medicine Doctor Degree is accredited as an M.S. Degree for admission to a PhD program." It does not address whether it is a graduate degree or was issued by a graduate studies faculty. As Justice Judith Snider observed in *Sirous Nekooei v Canada (Citizenship and Immigration)*, May 4, 2011 (IMM-5704-10), the definition of "educational credential" in section 73 of the *Regulations* requires that the degree or diploma be recognized by the authorities responsible for supervision and regulation of such institutions in the country of issue. The author of that letter, as Head of Admissions, is unlikely to be an accrediting body as contemplated by the *Regulations*.

[20] Other judges of this Court have found decisions reasonable where there was no evidence that the professional degree was a second-level or graduate degree. In *Mahouri v Canada (Citizenship and Immigration)*, 2013 FC 244 Justice Michael Manson upheld a refusal of a visa officer to issue a visa where the applicant held a Doctorate Degree of Medicine from Shiraz University of Medical Sciences after eight years of study and 'specialty' degree following three further years of study at the same university. The applicant's spouse had seven years of study and a "Doctorate of Medical

Science” followed by a “specialty” degree involving four additional years of study. The officer in that case found that both degrees were at the bachelors level. Similarly, in *Rabiee v Canada (Minister of Citizenship and Immigration)*, 2011 FC 824, Justice Michel Beaudry concluded that a medical degree may reasonably be considered a first-level degree in the absence of clear evidence showing that it qualifies as graduate studies.

[32] I do not agree that the Officer ignored relevant evidence that supported the applicant’s eligibility in the present case. Although the letter from the Ministry of Health and Medical Education is not specifically mentioned, there is a presumption that a decision-maker has considered all the evidence before him or her (*Florea v Canada (Minister of Employment and Immigration)*, 1993 FCJ 598 (FCA)). The applicant took the position that in accordance with *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 FCJ No 1425, the Officer’s failure to mention relevant evidence which was central to the applicant’s application and which contradicts the Officer’s conclusion is a reviewable error.

[33] The Officer’s failure to specifically mention the letter is not a reviewable error as the letter does not contradict the findings of the Officer. Moreover, there is no indication that the Officer ignored any evidence that was before him.

[34] The Officer stated that there was no indication in the evidence that the degree came from a Faculty of Graduate Studies, as OP 6A guides the Officer to consider. The letter relied on by the applicant does not specify that the degree came from a Faculty of Graduate Studies but rather states only that those who graduate with a General Doctorate are evaluated in the same way as Master’s degree students “in respect of Academic Promotion to Ph.D” in Iran.

[35] As noted, OP 6A, which provides guidance to Officers in the application of the *Regulations*, indicates that medical doctor degrees are generally first-level university credentials unless it is a second-level degree, such as those degrees belonging to a Faculty of Graduate Studies. The Officer's conclusion that the applicant's degree was completed at the bachelor's level is reasonable, despite that the applicant's degree followed a six year program of study. There was nothing in the letter or other evidence submitted to suggest that the Doctorate degree completed by the applicant was at the graduate level, or that the applicant had completed a previous degree as a pre-condition. The letter indicated only that the degree was considered as a "Master's degree" in order to satisfy prerequisites to a PhD degree program in Iran.

[36] Visa officers are tasked with applying the *Regulations* which have been developed to ensure some consistency in how educational credentials, which may vary from country to country, are assessed. While applicants may submit that their educational credentials are not sufficiently addressed by the *Regulations*, visa officers must apply the law and the *Regulations* guided by the applicable OP Manuals to the facts before them.

[37] It was open to the Officer to assess the degree of the applicant based on the evidence that he had before him and his determination was reasonable.

Did the Officer breach the procedural fairness of the applicant?

[38] The issue of whether visa officers have a duty to inform an applicant of their concerns before refusing an application was recently reviewed by Justice de Montigny in *Talpur v Canada (Minister of Citizenship and Immigration)*, 2012 FC 25, 210 A.C.W.S. (3d) 765:

21 It is by now well established that the duty of fairness, even if it is at the low end of the spectrum in the context of visa applications (*Chiau v Canada (Minister of Citizenship and Immigration)* (2000), [2001] 2 F.C. 297 (Fed. C.A.) at para 41; *Trivedi v. Canada (Minister of Citizenship & Immigration)*, 2010 FC 422 (F.C.) at para 39), require visa officers to inform applicants of their concerns so that an applicant may have an opportunity to disabuse an officer of such concerns. This will be the case, in particular, where such concern arises not so much from the legal requirements but from the authenticity or credibility of the evidence provided by the applicant. After having extensively reviewed the case law on this issue, Justice Mosley was able to reconcile the apparently contradictory findings of this Court in the following way:

Having reviewed the factual context of the cases cited above, it is clear that where a concern arises directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns. Where however the issue is not one that arises in this context, such a duty may arise. This is often the case where the credibility, accuracy or genuine nature of information submitted by the applicant in support of their application is the basis of the visa officer's concern, as was the case in *Rukmangathan*, and in *John and Cornea* cited by the Court in *Rukmangathan*, above.

Hassani v. Canada (Minister of Citizenship & Immigration), 2006 FC 1283 (F.C.) at para 24, (2006), [2007] 3 F.C.R. 501 (F.C.).

[39] The jurisprudence has confirmed that a duty to inform will depend on whether the concerns of the visa officer arise directly from the requirements of the legislation or from “the credibility, accuracy or genuine nature of information submitted by the applicant in support of their application” (*Hassani*, above, cited in *Talpur* at para 21).

[40] In the recent case of *Hamza v Canada (Minister of Citizenship and Immigration)*, 2013 FC 264, Justice Bédard considered the issue of procedural fairness in a FSW case and provided a summary of the relevant principles from the jurisprudence: the onus falls on the applicant to establish that they meet the requirements of the *Regulations* by providing sufficient evidence in support of their application; the duty of procedural fairness owed by visa officers is at the low-end of the spectrum; there is no obligation on a visa officer to notify the applicant of the deficiencies in the application or the supporting documents; and, there is no obligation on the visa officer to provide the applicant with an opportunity to address any concerns of the Officer when the supporting documents are incomplete, unclear or insufficient to satisfy the Officer that the applicant meets the requirements.

[41] Justice Bédard also noted that, as determined in *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283, [2007] 3 FCR 501 (FC) at para 24, an Officer may have a duty to provide the applicant with an opportunity to respond to the Officer's concerns when such concerns arise from the credibility, veracity, or authenticity of the documents rather than from the sufficiency of the evidence.

[42] In this case, the Officer did not have any concerns related to the genuineness or veracity of the evidence submitted. The Officer did not question the credibility of the applicant or draw any negative inferences relating to the quality of the evidence submitted.

[43] Therefore, the Officer did not have a duty to inform the applicant of his assessment of his application before it was refused, to seek further information or to provide an opportunity for the applicant to respond.

[44] In conclusion, there was no breach of procedural fairness and the Officer's decision which assessed the application and supporting material and attributed points in accordance with the *Regulations* was reasonable. The decision is clear and falls within the range of acceptable outcomes justified by the facts and the law.

[45] The application for judicial review is dismissed. No question was proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No question is certified.

"Catherine M. Kane"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-7631-12

STYLE OF CAUSE: ABDOLLAH SHARIFIAN v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 30, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** KANEJ.

DATED: June 17, 2013

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