Federal Court  Cour fédérale

Date: 20130307

Docket: IMM-5441-12

Citation: 2013 FC 244

Ottawa, Ontario, March 7, 2013

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

KHATEREH MAHOURI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision by an Immigration Officer [the officer] refusing the applicant's application for permanent residence under the federal skilled worker class. The decision, dated March 16, 2012, was based on the officer's finding that Ms. Khatereh Mahouri [the applicant] did not meet the minimum point requirement to qualify for immigration to Canada.

I. Background

[2] The applicant is a citizen of Iran. She applied for permanent residence under the skilled worker class with the intended occupation of a university professor on March 13, 2010.

[3] The applicant stated in Schedule 1 of her application that the Shiraz University of Medical Sciences issued her a "Doctorate Degree of Medicine" after eight years of study and that she was also issued a "specialty degree" following three further years of study at the same university. She submitted her diplomas and transcripts for both degrees as part of her application [pages 143 and 146 of the Tribunal Record for the first degree and pages 136 and 138 of the Tribunal Record for her specialization degree].

[4] The applicant's spouse stated in Schedule 1 of his application that the Shiraz University of Medical Sciences issued him a "Doctorate of Medical Science" after seven years of study and that he was also issued a "specialty degree" following four further years of study. The applicant's spouse's diplomas and his transcript for his medical degree were also included in the application [pages 176 and 186 of the Tribunal Record for the medical degree and transcript and page 183 of the Tribunal Record for the specialization degree].

[5] By letter dated March 16, 2012, the officer informed the applicant that her application was refused.

[6] The officer assessed the applicant's points as follows:

	Points assessed	Maximum
Age	10	10
Education	22	25
Experience	21	21
Arranged employment	0	10
Official language proficiency	9	24
Adaptability	4	10
TOTAL	66	100

[7] The officer awarded 22 points for the applicant's education because she found that the applicant's medical degree and specialization degree were both at the bachelor's level.

[8] The officer also found that the applicant's spouse's medical degree and specialization degree were both at the bachelor's level. Accordingly, the officer stated she would award 4 points for the applicant's spouse's education under the adaptability factor.

[9] The officer found that the applicant had obtained insufficient points to qualify for permanent residence in Canada, as the minimum requirement is 67 points. The officer therefore refused the application.

II. Issues

[10] The applicant raised the following issues:

A. Did the officer err in finding that the applicant's and her spouse's medical degrees were at the bachelor's level?

B. Did the officer breach the duty of procedural fairness by denying the applicant the opportunity to address her concerns?

III. Standard of review

[11] A visa officer's exercise of discretion in assessing a permanent residence application under the skilled worker class is a question of mixed fact and law and is reviewable on the reasonableness standard (*Malik v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1283 at para 22; *Patel v Canada (Minister of Citizenship and Immigration*)), 2011 FC 571 at para 18 [*Patel*]). Accordingly, the Court will consider "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[12] The applicant claims the issue of whether the officer erred by failing to refer to how the local authority responsible for educational institutions recognizes the credential is a procedural fairness question. In *Lak v Canada (Minister of Citizenship and Immigration)*, 2007 FC 350 at para 6 [*Lak*], Justice Simon Noël held that whether an officer's reasons were adequate was a question of procedural fairness, to be reviewed on the correctness standard. However, in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14,

the Supreme Court of Canada held that "reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" and that the adequacy of reasons is not a stand-alone basis for quashing a decision. Accordingly, in this case, I find that the adequacy of the officer's reasons is to be analyzed along with the reasonableness of the decision as a whole.

[13] The question of whether the officer breached the duty of procedural fairness is subject to the correctness standard (*Khosa v Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12 at para 43; *Patel*, above, at para 19).

IV. Analysis

[14] I agree with the respondent, as a starting point, that an applicant cannot adduce new evidence on an application for judicial review and attempt to impugn a decision of an officer on the basis of such new evidence (*Tabanag v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1293 at para 14).

[15] The applicant had a duty to put her best foot forward by submitting sufficient evidence at the time she applied for a visa to establish that she met the requirements of the legislation (*Silva v Canada (Minister of Citizenship and Immigration)*, 2007 FC 733 at para 20 and *Kaur v Canada (Minister of Citizenship and Immigration)*, 2010 FC 442 at para 9).

[16] Moreover, a visa officer has no obligation to seek to clarify a deficient application (*Sharma v Canada (Minister of Citizenship and Immigration)*, 2009 FC 786 at para 8; *Pan v Canada*

(Minister of Citizenship and Immigration), 2010 FC 838 at para 28). I therefore agree with the respondent that the letters from the Medical Council from Iran and the letter from Shiraz University of Medical Sciences are inadmissible.

A. *Did the Officer Err in Finding that the Applicant's and her Spouse's Medical Degrees were at the Bachelor's Level?*

[17] With respect to the evidence that was before the officer, the officer stated the following regarding her assessment of the applicant's education:

> In this instance, you received a single degree from Shiraz University of Medical Sciences which allowed you to practice medicine. There is no indication that there was a Bachelor's or Master's degree awarded prior to this degree or that the degree was awarded by a faculty of graduate studies. After completing your single degree, you undertook a specialization in Social Medicine, as demonstrated by the Medical Specialty certificate on file. Therefore, you were awarded 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.
>
> [Emphasis added]

[18] Similarly, the officer stated the following in her analysis of the applicant's spouse's education:

> In this instance your spouse received a single degree from Shiraz University of Medical Sciences which allowed him to practice medicine. There is no indication that there was a Bachelor's or Master's degree awarded prior to this degree or that the degree was awarded by a faculty of graduate studies…
>
> [Emphasis added]

[19] In *Nekooei v Canada (Minister of Citizenship and Immigration)*, IMM-5704-10, May 4, 2011 [*Nekooei*], an Iranian-educated radiologist argued that he should have been awarded 25 points for education in his federal skilled worker application because his post-secondary education

consisted of a medical degree from an Iranian university and some post-graduate training, including a three-year diploma program in radiology. The applicant submitted a letter from the President of his university stating that the applicant's medical degree was equivalent to a master's degree of higher university credential. The officer found that this letter did not prove the medical degree would be considered a master's degree by local authorities, and Justice Judith Snider concluded that this finding was "not unreasonable".

[20] Similarly, in the present case, notwithstanding the applicant and her spouse's degrees stated that they were both in a "Professional Doctorate Program" and that the applicant had passed the examinations of her "residency curriculum" in social medicine, there was no evidence in the file that the "local authorities" responsible for medical institutions would recognize these credentials as being at the graduate level.

B. *Did the Officer Breach the Duty of Procedural Fairness by Denying the Applicant the Opportunity to Address her Concerns?*

[21] No duty exists for visa officers to apprise an applicant of his or her concerns if these concerns arise directly from the Act or the *Immigration and Refugee Protection Regulations*, SOR/2002-227. As Justice Donald Rennie held in *Chen v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1279 at para 22:

> The question whether an applicant has the relevant experience, training or education and requisite certificates, as required by the *Regulations* and thus qualified for the trade or profession in which he or she claims to be a skilled worker is "...based directly on the requirements of the legislation and regulations." and falls squarely within the reasoning of Mosley J. in *Hassani*. Therefore it was up to the applicant to submit sufficient evidence on this question and the Visa Officer was not under a duty to apprise him of his concerns or

> to conduct more detailed inquiries to resolve the latent ambiguity: *Kaur*, paras 9-12. Visa officers are not expected to engage in a dialogue with the applicant on whether the *Regulations* are satisfied.

[22] Similarly, in my view the applicant in the present case had the burden to submit sufficient evidence to show her and her husband's medical degrees were at the graduate level, and the officer had no duty to apprise the applicant of her concerns.

[23] As Justice Michel Beaudry stated in *Rabiee v Canada (Minister of Citizenship and Immigration)*, 2011 FC 824 at para 29:

> The Officer's decision falls within the range of reasonable outcomes *Dunsmuir* para 47. The Officer justified her decision for believing that the applicant's specialist degree was not a credential at the master's or doctoral level. Given that there was no clear evidence showing that the specialization qualified as graduate studies, the decision was left to the Officer's discretion and the Court is not satisfied that this conclusion is unreasonable. It is not up to the Court to re-weigh the evidence (*Yu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1263).

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The applicant's application for judicial review is dismissed.

"Michael D. Manson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5441-12
STYLE OF CAUSE:	Mahouri v. MCI
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	March 6, 2013
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