Federal Court  Cour fédérale

Date: 20211013

Docket: IMM-780-20

Citation: 2021 FC 1067

Ottawa, Ontario, October 13, 2021

PRESENT: The Honourable Mr. Justice Henry S. Brown

BETWEEN:

AHMED MOHAMED SAAD ABDELKADER

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by an Immigration Officer [Officer], dated December 5, 2019. The Officer refused the Applicant's application for permanent residence under the Express Entry program for Federal Skilled Workers, holding he did not meet the requirements of section 11.2 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [*IRPA*] [Decision]. The main issue is whether the Officer acted unreasonably in

assessing the Applicant's education credentials because of a failure to consider and grapple with the true nature of the Applicant's request for consideration.

II. Facts

[2] The Applicant is a 34-year-old citizen of Egypt. The Applicant obtained a Bachelor of Laws degree (LL.B.) from Alexandria University on September 19, 2007, and has 11 years experience practicing law.

[3] In December 2018, the Applicant created an Express Entry profile and on February 20, 2019, he received an invitation to apply for permanent residence as a skilled worker.

[4] He submitted an application offering his credentials under the category "Master's degree, or professional degree needed to practice in a licensed profession". I will refer to this as "Master's Degree or 1st Professional Degree". I note the disjunctive "or" because while he was assessed in terms of having a Master's degree, he in fact did not have a Master's degree and could not have claimed otherwise. Instead, his claim was based on his having a Bachelor of Laws (LL.B.) degree (it is not disputed he has this degree). The question is whether that amounted to a 1st Professional Degree. There is nothing in the record to satisfy me that this issue was either considered or assessed. Therefore, this application will be granted.

[5] As part of his application, the Applicant provided a World Education Services [WES] Educational Credential Assessment [ECA] dated October 24, 2017. Under the heading "CREDENTIAL ANALYSIS", the report identified the "Credential" analyzed as "Bachelor

Degree", noting further down under "Major/Specialization" was "Law". The report concludes the Canadian Equivalency was "Bachelor's degree (four years)". Nothing is said as to whether it was a 1st Professional Degree.

[6] He subsequently filed a more recent WES ECA dated December 13, 2019. Under the heading "CREDENTIAL ANALYSIS", this report identified the "Credential" analyzed as "Bachelor of Laws (LL.B.)", and under "Major/Specialization" was "Law". The report concluded the Canadian Equivalency was "Bachelor's degree (four years)". Again, no finding was made as to whether it could be considered a 1st Professional Degree.

III. Decision under review

[7] On December 5, 2019, the Officer refused the application. The Officer determined the Applicant had not met the requirements for immigration to Canada. This finding was based on the WES assessment of the Credential analyzed, namely "Bachelor of Laws (LL.B.)" in terms of Canadian educational equivalency.

[8] Upon review of the Record, I am satisfied the Applicant applied on the second of two bases under the selection: "Master's degree, or professional degree needed to practice in a licensed profession" [emphasis added]. The first basis was that of having a Master's degree. He did not have a Master's degree and did not claim otherwise. The second basis was having a 1st Professional Degree, namely his Bachelor of Laws (LL.B.). I note that the Applicant sought reconsideration a number of times including submissions on December 4, 2019, December 8,

2019, and December 11, 2019. The Applicant's request to have his claim considered with respect to his Bachelor of Law (LL.B.) being a Professional Degree was clearly made.

[9] Immigration, Refugees and Citizenship Canada [IRCC] neither in its Decision nor in its responses of December 12, 2019 and December 17, 2019 refer to his application based on his having a 1st Professional Degree.

[10] The Respondent in each response stated: "you indicated: a Master's Degree"; none acknowledge his claim with respect to a 1st Professional Degree.

[11] I note the Respondent in their Memorandum to this Court persists on the position the Applicant only applied for consideration in respect of a Master's Degree. In my view, this is not sustainable on the record; he applied for consideration with respect to a Master's degree (which he did not have) "or" (note the disjunctive) that his Bachelor of Laws (LL.B.) was a 1st Professional Degree. The latter was his claim.

[12] It is apparent WES did not assess the claim to a Professional Degree: in my respectful view its reports only assessed the Bachelor of Laws (LL.B.) in terms of equivalency to a Bachelor's degree (four years), not as the 1st Professional Degree he claimed.

[13] The Court's review of the CTR confirms the actual application claimed a Master's degree "or" a Professional Degree – see pages 13, 18, 37, 38 and 39 wherein IRCC acknowledges the

Applicant selected “Master’s or 1st prof degree.” There may be more such acknowledgements but I am satisfied this is how he framed his application.

[14] At some point however, IRCC determined not to assess his application in terms of his claim to a 1st Professional Degree which was the same approach WES took.

[15] Subsection 11.2(1) of the *IRPA* requires that information provided in an applicant’s Express Entry Profile concerning their eligibility to be invited to apply [paragraph 10.3(1)(e)], as well as the basis on which an eligible applicant may be ranked [paragraph 10.3(1)(h)], be valid both at the time the invitation was issued and at the time the application for permanent residence is received:

Visa or other document not to be issued	**Visa ou autre document ne pouvant être délivré**
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.	**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.

[16] Paragraphs 10.3(1)(e) and (h) of the *IRPA* state:

Instructions	**Instructions**
10.3 (1) The Minister may give instructions governing any matter relating to the application of this Division, including instructions respecting	**10.3 (1)** Le ministre peut donner des instructions régissant l'application de la présente section, notamment des instructions portant sur :
…	…
(e) the criteria that a foreign national must meet to be eligible to be invited to make an application;	**e)** les critères que l'étranger est tenu de remplir pour pouvoir être invité à présenter une demande;
…	…
(h) the basis on which an eligible foreign national may be ranked relative to other eligible foreign nationals;	**h)** la base sur laquelle peuvent être classés les uns par rapport aux autres les étrangers qui peuvent être invités à présenter une demande;

[17] The Officer found the Applicant was invited to apply for permanent resident status based on his indication of having a Master's Degree. With respect, that characterization was not complete; as noted, he applied based on having a Master's Degree "or" a 1st Professional Degree. It appears his claim was initially assessed internally as if he had a 1st Professional Degree, but upon receipt of the WES assessments, which ignored this aspect of his application, lower points were awarded resulting in the Applicant no longer meeting the requirements of section 11.2 of the *IRPA.*

IV. Issues

[18] The only issue in this application is whether the Decision is reasonable.

V. Standard of Review

[19] An officer's determination of an applicant's application for permanent resident status as a member of the federal skilled worker class is reviewable on the standard of reasonableness: *Patel v. Canada (Minister of Citizenship & Immigration)*, 2011 FC 571 [O'Keefe J] at para 18; *Kaur v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 678 [de Montigny] at para 9 [*Kaur*]. Such decisions should be given a "high degree of deference":*Kaur*, above at para 9.

[20] In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, majority reasons by Justice Rowe [*Canada Post*], which was issued at the same time as the Supreme Court of Canada's decision in *Vavilov*, the majority explains what is required for a reasonable decision, and importantly for present purposes, what is required of a court reviewing on the reasonableness standard:

> [31] 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). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).

> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
>
> [Emphasis added]

[21] Most importantly for the case at bar, *Vavilov* indicates the tribunal should come to grips with and "meaningfully grapple with key issues or central arguments raised by the parties". The lack of doing so "may call into question whether the decision maker was actually alert and sensitive to the matter before it" at paragraph 128:

> [128] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.

VI. Analysis

[22] The Applicant submits the Officer acted unreasonably by failing to provide the Applicant with the correct number of points for his education and the Officer's decision to refuse the application was unreasonable.

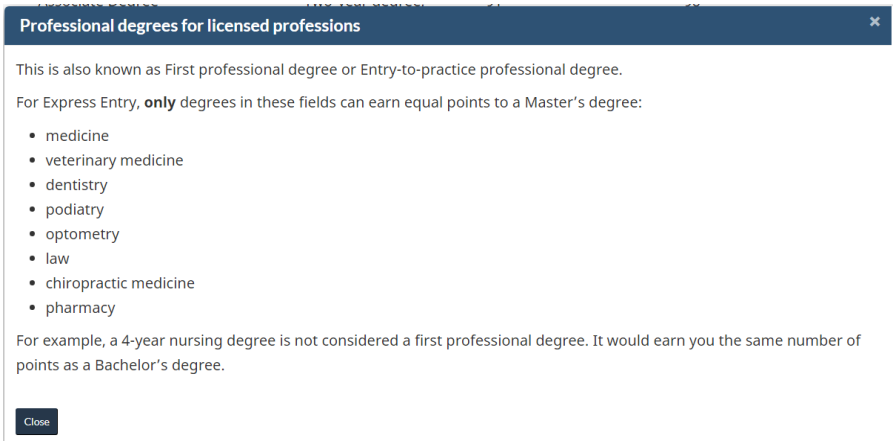
[23] In my view, the issue is whether the Officer's decision is transparent, intelligible and justified. More specifically, I have concluded the Decision failed to come to meaningfully grapple with the Applicant's claim to having a 1st Professional Degree, namely his Bachelor of Laws (LL.B.); this aspect of his application was not considered at all.

[24] As noted above, the Applicant applied for consideration based on his having a Master's degree "or" a Professional Degree. This is established not only by the Applicant's Record, but by the CTR.

[25] I agree the Officer acted unreasonably in finding he indicated a "Master's Degree" as his educational credential. The Applicant had in fact selected the "Master's degree, or professional degree needed to practice in a licensed profession" option as listed on the IRCC website; I am not persuaded this option was exclusively for master's degree holders.

[26] The Applicant also submits he correctly selected the appropriate option when selecting his education credential, because a Bachelor of Laws (LL.B.) degree is a "professional degree", which should have earned him the same points as a Master's degree. IRCC's website states that a

degree in law is a professional degree for licensed professions and can earn equal points to a Master's degree. As such, the Applicant submits he met the requirements pursuant to section 11.2 of the *IRPA* and the points allocated to his education credential should not have been adjusted. I agree.



Professional degrees for licensed professions

This is also known as First professional degree or Entry-to-practice professional degree.

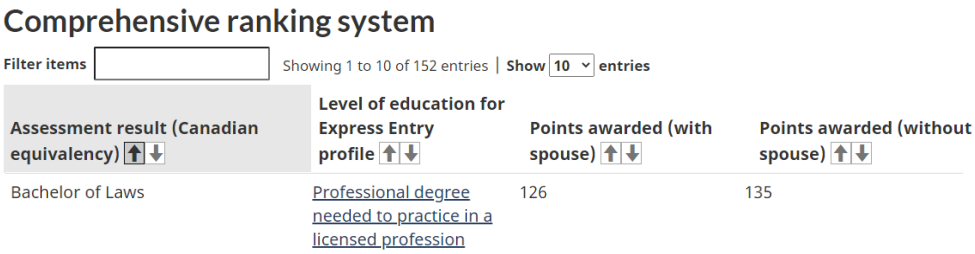
For Express Entry, **only** degrees in these fields can earn equal points to a Master's degree:

- medicine
- veterinary medicine
- dentistry
- podiatry
- optometry
- law
- chiropractic medicine
- pharmacy

For example, a 4-year nursing degree is not considered a first professional degree. It would earn you the same number of points as a Bachelor's degree.

Close

[27] In this connection, the Respondent's web page entitled "Comprehensive ranking system" at https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/documents/education-assessed/read-report.html#wb-auto-10 confirms that a Bachelor of Laws is a Professional Degree needed to practice in a licensed profession and should be awarded 135 points without a spouse (as in his case):



Comprehensive ranking system

Filter items | Showing 1 to 10 of 152 entries | Show 10 entries

Assessment result (Canadian equivalency)	Level of education for Express Entry profile	Points awarded (with spouse)	Points awarded (without spouse)
Bachelor of Laws	Professional degree needed to practice in a licensed profession	126	135

[28] I agree, a WES equivalency assessment is conclusive for its purposes, as per subsection 75(8) of the *Immigration and Refugee Protection Regulations*, SOR/2002-27 [*Regulations*]:

Conclusive evidence	**Preuve concluante**
75(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 credential	**75(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

[29] However, I am unable to find WES analyzed the Applicant's claim to having a 1st Professional Degree needed to practice in a licensed profession. Specifically para 78(1)(f) of the *Regulations* refers to: "(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;". It is not disputed Law is one such occupation.

[30] Likewise, IRCC failed to analyze the Applicant's claim to having a 1st Professional Degree needed to practice in a licensed profession, as contemplated as an alternative under paragraph 78(1)(f) just quoted.

[31] The Applicant's application was only considered and assessed with respect to his having a Master's Degree, as repeatedly asserted by IRCC in its correspondence with the Applicant, and as repeated in the Respondent's pleadings in this Court. The unreasonableness of this approach is underscored by the fact he did not have a Master's degree, which and with respect should have alerted IRCC to review the alternative claim to a 1st Professional Degree.

[32] The foregoing leads me to conclude the decision maker did not come to grips with or meaningfully grapple with the Applicant's claim to having a 1st Professional Degree. Contrary to paragraph 128 of *Vavilov*, this was overlooked or ignored. For the same reason, the Decision is neither transparent, intelligible or justified based on the facts before it and its result, and also likewise offends *Vavilov*.

[33] I was pointed to *Ijaz v Canada (Citizenship and Immigration),* 2015 FC 67. However, this case is distinguishable. I agree with Justice Strickland's determination that a WES assessment is conclusive as required by 75(8) of the *Regulations* cited earlier. However, this does not apply where no equivalency assessment or analysis is provided, such as here, where the Applicant claimed a 1st Professional Degree that WES neither analyzed nor assessed in terms of it being a 1st Professional Degree.

[34] The WES assessment concluded the Applicant has a Bachelor of Laws (LL.B.) in Major: Law. IRCC's website under Express Entry explicitly states that a "Bachelor of Laws" is a "Professional degree needed to practice in a licensed profession" and that a 1st Professional Degree in the field of law "can earn equal points to a Master's degree". This in my respectful view further evidences a failure to comply with *Vavilov*, such that judicial review will be granted and reconsideration ordered.

VII. Conclusion

[35] In my respectful view, the Applicant has shown the decision of the Officer was unreasonable. Therefore, judicial review will be granted.

VIII. Certified Question

[36] The Applicant proposed the following questions for certification:

> 1. Is it review error, error in law and violation of duty of fairness if the immigration officer failed to assess the application for the permanent residency visa under the express entry program in the light of imperative and clear legislation and guidelines "the *Immigration and Refugee Protection Act* and the *Immigration, Refugee and Citizenship Canada guidelines*" by the way of disregarding, lacking both considering and addressing the information provided within the application, provided that addressing and considering such information would have led to different conclusion and success of the application?
>
> 2. Is in an error in law, if the case officer ignored the applicable classification listed under subsection 78 of the *IRPA Regulations* and provided within the guidelines under Federal skilled workers selection criteria: Education to apply his or her opinion with regards to the awarded points to the application, and does an immigration officer breach the rules of fairness, when considering the application, in failing to consider the applicability of legislative provisions which are brought to the officer's attention prior to rendering a decision on the application?

[37] The Respondent states:

> The tripartite test for certification was set out by the Federal Court of Appeal in *Liyanagamage v Canada (Minister of Citizenship and Immigration*), [1994] FCJ No 1637 (FCA) [*Liyanagamage*]:
>
> > "a (certified) question must be one which…transcends the interests of the immediate parties to the litigation, contemplates issues of broad significance or general application…and must be one that is determinative of the appeal…"
>
> The Respondent submits that neither question posed by the Applicant meets any of the requirements set out by the Court of Appel in *Liyanagamage*. In this regard, neither question posed by the Applicant transcends the interests of the immediate parties to the litigation, contemplates issues of broad significance or general application, or is one that is determinative of the appeal.

> Hence, this Court should decline to certify the questions proposed by the Applicant.

[38] The Applicant replied by stating the Respondent missed the deadline and their right to respond is no longer valid, a point I reject because I granted the brief extension required.

[39] With respect, I decline to certify these question as ones of general importance. As to the first, it is well known that a failure to assess an application for permanent residency in light of "imperative and clear legislation" may lead to judicial review. Therefore this proposed question has been asked and answered. The same may be said for the second, which seeks to learn the consequences of ignoring applicable classifications listed under subsection 78 of the *IRPA Regulations.* The answer is well known and need not be asked again: judicial review may be granted.

JUDGMENT in IMM-780-20

THIS COURT'S JUDGMENT is that judicial review is granted, the Decision is set aside, this matter is remanded to a different decision maker for redetermination, no question of general importance is certified and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-780-20
STYLE OF CAUSE:	AHMED MOHAMED SAAD ABDELKADER v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 22, 2021
JUDGMENT AND REASONS:	BROWN J.
DATED:	OCTOBER 13 , 2021

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