

Federal Court



Cour fédérale

Date: 20230601

Docket: IMM-4140-22

Citation: 2023 FC 758

Toronto, Ontario, June 1, 2023

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

AGNES GUMTANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of the Philippines, seeks judicial review of the decision of an officer with Immigration, Refugees and Citizenship Canada [Officer] dated April 19, 2022, in which the Officer denied her application for permanent residence made under the Home Child Care Provider Class [HCCPC]. The application was denied on the basis that the Applicant did not meet the educational requirements of the HCCPC program.

[2] For the reasons that follow, I find that the Applicant has not established that the Officer's decision was unreasonable nor has she established any denial of procedural fairness. Accordingly, the application for judicial review shall be dismissed.

I. Background

[3] On June 18, 2019, Immigration, Refugees and Citizenship Canada [IRCC] issued a Ministerial Instruction to create two new classes of permanent residents – the Home Child Care Provider [HCCP] and Home Support Worker classes – pursuant to section 14.1 of the *Immigration and Refugee Protection Act* [IRPA]. Section 14.1 allows the Minister to establish a class of permanent residents as part of the economic class based on their ability to become economically established in Canada. The HCCPC is considered to be part of the economic class referred to in paragraph 70(2)(b) of the *Immigration and Refugee Protection Regulations* [IRPR]. These two programs were designed to provide a pathway from temporary to permanent residence for foreign nationals in eligible in-home care giving occupations.

[4] Among other requirements, applicants to the HCCPC must satisfy the education requirement that they either hold:

- A. A Canadian 1-year post-secondary (or higher) educational credential; or
- B. A foreign diploma, certificate or credential and an equivalency assessment – issued within five years before the date on which the application is made - that indicates that the foreign

diploma, certificate or credential is equivalent to a Canadian educational credential of at least one-year of post-secondary studies.

[5] The “Home Child Care Provider Pilot and Home Support Worker Pilot: Assessing the application against selection criteria” document published by the Government of Canada sets out the policy, procedures and guidance used by officers to assess applications. In relation to the educational requirement, it provides as follows, with the words in bold emphasized on the website itself:

Canadian credentials

A post-secondary Canadian educational credential is any post-secondary diploma, certificate or credential that is **issued on the completion** of a Canadian program of study or training at an educational or training institution that is recognized by the provincial authorities responsible for registering, accrediting, supervising and regulating such institutions. As such, an applicant who has started a college or university program and has successfully completed the credits for 1 year of that program, but who has not yet completed the program of study, would not meet this requirement.

Foreign credentials

For applicants with a foreign educational credential, the ECA report must

indicate that the credential is equivalent to a **completed** Canadian 1-year post-secondary (or higher) educational credential

be less than 5 years old on the date of application receipt

have been issued on or after the date the ECA organization was designated by IRCC

Equivalency assessments will include an assessment by the designated organization of the authenticity of the applicant's completed foreign educational credentials.

[6] This is consistent with subsection 73(1) of the *IRPR*, which defines “Canadian educational credential” and “equivalency assessment” as follows:

Canadian educational credential means any secondary school diploma or any post-secondary diploma, certificate or credential that is issued on the completion of a Canadian program of study or training at an educational or training institution that is recognized by the provincial authorities responsible for registering, accrediting, supervising and regulating such institutions.

equivalency assessment means a determination, issued by an organization or institution designated under subsection 75(4), that a foreign diploma, certificate or credential is equivalent to a Canadian educational credential and an assessment, by the organization or institution, of the authenticity of the foreign diploma, certificate or credential.

diplôme canadien Tout diplôme d'études secondaires ou tout diplôme, certificat ou attestation postsecondaires obtenu pour avoir réussi un programme canadien d'études ou un cours de formation offert par un établissement d'enseignement ou de formation reconnu par les autorités provinciales chargées d'enregistrer, d'accréditer, de superviser et de réglementer de tels établissements.

attestation d'équivalence S'entend d'une évaluation faite par une institution ou organisation désignée en vertu du paragraphe 75(4), à l'égard d'un diplôme, certificat ou attestation étranger, attestant son équivalence avec un diplôme canadien et se prononçant sur son authenticité.

[7] In order to facilitate this equivalency assessment process for applicants with foreign credentials, an Educational Credential Assessment report [ECA Report] is issued for immigration purposes by an organization designated by IRCC.

[8] In this case, as the Applicant does not have any Canadian educational credentials, the Applicant obtained an ECA Report from World Education Services [WES], which is a designated institution. The Applicant arranged for her foreign education documents to be sent directly from the institutions in the Philippines to WES in order for WES to evaluate their authenticity and provide a summary of their Canadian equivalency. The Applicant's ECA Report indicates two

credentials were evaluated. First, her high school or secondary school diploma was evaluated and determined to be the Canadian equivalent of completion of grade 10. Second, the Applicant's academic transcript from her studies at the University of the East, Caloocan was evaluated and the Canadian equivalency is listed as "secondary school diploma and two years of post-secondary study".

[9] On April 19, 2022, the Applicant received a letter advising that her application was rejected as the Officer was not satisfied that the Applicant met the educational criteria. The GCMS notes, which form part of the reasons for decision, provide as follows:

PA submitted an application for permanent residence under the Home Child Care Provider Class NOC 4411.

One of the eligibility requirement for applicants with a foreign educational credentials is that the ECA report must

- indicate that the credential is equivalent to a completed Canadian 1-year post-secondary (or higher) educational credential
- be less than 5 years old on the date of application receipt
- have been issued on or after the date the ECA organization was designated by IRCC

The assessment outcome state in the ECA report is conclusive evidence that an applicant's completed foreign educational credentials are equivalent to at least a completed Canadian 1-year post-secondary educational credential.

As per ECA report from WES submitted by PA, they have a Canadian equivalency of "Secondary School Diploma" PA does not meet the requirement for Education. Therefore PA does not meet the eligibility requirements to apply for permanent residence under the Home Child Care Provider Class.

Application refused and letter sent to PA.

[Emphasis added.]

II. Issue and Standard of Review

[10] The following issues arise on this application: (i) whether the Officer's decision was reasonable; and (ii) whether the Applicant's procedural fairness rights were breached.

[11] The first issue is reviewable on a reasonableness standard. When reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. 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 [see *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adenijj-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

[12] In relation to the second issue, breaches of procedural fairness in administrative contexts have been considered reviewable on a correctness standard or subject to a "reviewing exercise ... 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied" [see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54]. The duty of procedural fairness is "eminently variable", inherently flexible and context-specific. It must be determined with reference to all the circumstances, including the *Baker* factors [see *Vavilov, supra* at para 77]. A court assessing a procedural fairness question is required

to ask whether the procedure was fair, having regard to all of the circumstances [see *Canadian Pacific Railway Company, supra* at para 54].

III. Analysis

A. *The Officer's decision was reasonable*

[13] The Applicant submits that the Officer erred in finding that she did not meet the educational requirements for the HCCPC. The Applicant asserts that her studies at the University of the East were assessed by WES as being the Canadian equivalent to a secondary school diploma and two years of post-secondary study, which is sufficient to meet the requirement of “a foreign diploma, certificate or credential and an equivalency assessment ... that indicates that the foreign diploma, certificate or credential is equivalent to a Canadian educational credential of at least one-year of post-secondary studies”. The Applicant asserts that her two years of completed post-secondary study (which is a partly completed degree) is sufficient to meet the requirements of the HCCPC. As such, the Applicant asserts that the Officer ignored or misconstrued the evidence before them.

[14] I reject this assertion and agree with the Respondent that the Applicant's assertion is premised on a misunderstanding of the educational requirements. Though the ECA Report states the Applicant had completed the equivalent of two-years of post-secondary study, it was not evidence that the study resulted in conferment of a credential that would be equivalent to a Canadian credential (specifically a diploma, certificate or credential that is equivalent to a one-year Canadian educational credential with at least one year of post-secondary studies). Completing years of study without the conferment of a credential is not enough to meet the educational

requirement of the HCCPC, as is made clear in the “Home Child Care Provider Pilot and Home Support Worker Pilot: Assessing the application against selection criteria” document cited above. An applicant must have received an actual credential, such as a diploma or certificate. As there was no evidence of a conferred credential, the Officer reasonably determined that the Applicant had failed to meet the educational eligibility requirement.

[15] The Applicant further asserts that the Officer may not have properly considered the ECA Report as the GCMS notes make no reference to her two years of post-secondary studies, which calls into question the reasonableness of the decision. I also reject this assertion. The Officer is assumed to have considered all of the evidence when making their decision and in this case, the Officer expressly referenced the ECA Report. Moreover, the Officer’s notes made reference to the credentials that the Applicant had (as opposed to all of her education). Given that the educational eligibility requirement is focused on credentials, this reference in the Officer’s GCMS notes was sufficient for the purpose of establishing the reasonableness of their decision.

B. *The Applicant’s procedural fairness rights were not breached*

[16] The Applicant further asserts that the Officer breached the Applicant’s procedural fairness rights by not giving her an opportunity to respond to the Officer’s concerns, either by way of an interview or a procedural fairness letter.

[17] This Court has recently confirmed the requirements of procedural fairness in the context of applications for permanent residence under the Canadian Experience Class [CEC], which I find applies equally to an application for permanent residence under the HCCPC. Specifically:

- A. An applicant has the onus of providing sufficient evidence to support a positive decision on the application.
- B. The degree of procedural fairness owed to an applicant under the CEC program is at the low end of the spectrum.
- C. There is no obligation on a decision maker to notify an applicant of deficiencies in the application or supporting documentation.
- D. There is no obligation on a decision maker to provide an applicant with an opportunity to address any concerns that supporting documents are incomplete, unclear or insufficient to satisfy the decision maker that the applicant meets the legal requirements governing the application.
- E. If a decision maker has concerns relating to the credibility of information submitted in support of an application or to the accuracy or genuineness of that information, procedural fairness will often require that the applicant be given an opportunity to address those concerns.

[see *Potla v Canada (Citizenship and Immigration)*, 2020 FC 646 at paras 28-29; *Lazar v Canada (Citizenship and Immigration)*, 2017 FC 16 at paras 20-21]

[18] As the Officer expressed no concerns and made no findings regarding the credibility of the information submitted by the Applicant but rather found that the evidence submitted did not satisfy

the educational requirements, there was no obligation upon the Officer to provide the Applicant with an opportunity to address the deficiency in her evidence. Accordingly, I find that there was no breach of procedural fairness.

IV. Conclusion and Disposition

[19] As the Officer's decision was supported by the evidence before them, I cannot conclude that the Officer's decision was unreasonable. Moreover, the Applicant has not demonstrated any denial of procedural fairness. Accordingly, the application for judicial review shall be dismissed.

[20] Neither party proposed a question for certification and I agree that none arises.

JUDGMENT in IMM-4140-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Mandy Ayles"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4140-22

STYLE OF CAUSE: AGNES GUMTANG v THE MINISTER OF
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