

Federal Court



Cour fédérale

Date: 20240216

Docket: IMM-11640-22

Citation: 2024 FC 251

Toronto, Ontario, February 16, 2024

PRESENT: Madam Justice Go

BETWEEN:

Lakhwinder KAUR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Lakhwinder Kaur, a citizen of India, applied for permanent residence under the Home Support Worker Pilot [HSWP] program in November 2019, a pathway program developed by Immigration, Refugees and Citizenship Canada [IRCC]. Among the eligibility requirements for HSWP is an education requirement, which is at issue before this Court.

[2] To be eligible for permanent residence under the HSWP program, an applicant must have completed at least one-year of post-secondary Canadian education, or have evidence of an equivalency assessment to demonstrate that their foreign education credential meets the education requirement.

[3] By way of letter dated September 7, 2022, an immigration officer at the Case Processing Centre in Edmonton [Officer] refused to grant the Applicant's permanent residence application [Decision]. The Officer determined the Applicant's foreign education credential, a Bachelor of Dental Surgery from a recognized institution in India, was not equal to a completed one-year of a post-secondary Canadian credential. The Applicant seeks a judicial review of this Decision.

[4] For the reasons set out below, I find the Decision unreasonable and I grant the application.

II. Issues and Standard of Review

[5] The Applicant raises two issues before this Court: a) the Officer's failure to consider the Applicant's educational credentials, and b) the Officer conflated the Applicant's identity and application with that of another individual. At the hearing, the Applicant did not pursue the second issue.

[6] The parties agree that the standard of review for the merits of the Decision is reasonableness, as instructed by *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[7] 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. The onus is on the Applicant to demonstrate that the Decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency:” *Vavilov* at para 100.

III. Analysis

[8] To qualify for the HSWP program, the Applicant must provide that she has either of the following completed items:

- Canadian 1-year post-secondary (or higher) educational credential or
- foreign educational credential equivalent to the above **and** an Educational Credential Assessment (ECA) report issued for immigration purposes by an organization designated by IRCC.

[9] The Applicant completed all of her education in India. She must therefore show that she has the foreign educational credential equivalency and an ECA report to meet the educational requirement.

[10] Subsection 73(1) of the *Immigration Refugee Protection Regulations*, SOR/2002-227 [IRPR] defines the terms “Canadian educational credential” and “equivalency assessment.” The IRPR also designates an institution to determine if a foreign diploma, certificate or credential is equivalent to a Canadian educational credential. The relevant provisions under the IRPR are set out in Appendix A.

[11] In this case, the Applicant provided an ECA report dated October 3, 2019 from World Education Services [WES], a designated institution. The relevant portion of the ECA report reads as follows:

CANADIAN EQUIVALENCY SUMMARY

Five years of professional study in dentistry
Duplicate Evaluation Report (original completed on May 07, 2018)

CREDENTIAL ANALYSIS

1. Name on Credential:	Lakhwinder Kaur
Credential Authentication:	Documents were sent directly by the institution
Country:	India
Credential:	Bachelor of Dental Surgery
Year:	2016
Awarded By:	Baba Farid University of Health Sciences
Status:	Recognized Institution
Major:	Dentistry
Canadian Equivalency	Five years of professional study in dentistry
Remarks:	The Bachelor of Dental Surgery is the first professional degree in dentistry in India.

[12] The reasons for the Decision are contained in the Global Case Management Systems [GCMS] notes. In the GCMS notes, the Officer stated:

The [Applicant] has not provided proof of a credential that's equal to a Canadian one-year post-secondary. The Education Credential Assessment (ECA) issued by World Education Services (WES) that the [Applicant] has submitted indicates the Comparable Level of Education in Canada is Five years of professional study in dentistry which is not equivalent to a Canadian one-year post-secondary.

[13] The Applicant submits the Officer failed to consider her "qualifying countervailing educational credential evidence" and that her education not only meets the minimum education requirement, but exceeds it.

[14] The Applicant further submits the Officer cursorily noted that the Applicant's ECA report states that her degree is equivalent to "five years of professional study in dentistry," yet unreasonably failed to consider the credential in the context of Canadian dental studies. The Applicant submits basing findings on the mere repetition of words in a supporting document does not constitute a sufficient reason for refusal. She goes on to argue an Officer's assertion that they reviewed the application does not mean that the Officer in fact reviewed the application, citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 at para 27.

[15] I do not find all of the Applicant's arguments persuasive. However, I agree with the Applicant that the Officer failed to provide sufficient reasons for the refusal.

[16] As noted above, the WES report described the Applicant's Bachelor of Dental Surgery as a "professional degree in dentistry" under "Canadian Equivalency." While WES did not specify the equivalency in terms of the years of post-secondary education, the WES report also did not state that this professional degree is not equivalent to at least a one-year post-secondary study in Canada. Yet, in the GCMS notes, the Officer cited the WES report to find that five years of professional study in dentistry is not equivalent to a Canadian one-year post-secondary.

[17] The Respondent submits the Decision was reasonable, as the WES report did not indicate that the five years of professional study is a diploma, certificate, or degree equivalent to a Canadian one-year post-secondary educational credential. The Respondent also points to the WES report by the category "Remarks" which notes the Applicant's education is the first

professional degree in dentistry in “India.” The Respondent emphasizes that the WES report does not read that her degree is a professional degree in “Canada.”

[18] In addition, the Respondent relies on two decisions from the Court, *Preeti v Canada (Citizenship and Immigration)*, 2023 FC 551 [*Preeti*] and *Ajaz v Canada (Citizenship and Immigration)*, 2023 FC 876 [*Ajaz*]. In both *Preeti* and *Ajaz*, the WES report described the applicants’ education as “hospital study and training.” The Respondent submits that the Court in *Preeti* and *Ajaz* found that the WES report did not indicate the applicants’ training was equivalent to a completed one-year of Canadian post-secondary credential as required by the HSWP program. The Respondent argues that these decisions are analogous to the facts of the case at bar, since, similar to the officers in *Preeti* and *Ajaz*, the Officer here had “no choice” but to find the Applicant ineligible, as she did not meet the education requirement.

[19] I reject the Respondent’s arguments for two reasons.

[20] First, I note that the Respondent’s submissions were not the reasons the Officer provided to support their Decision. The Officer did not find the Applicant ineligible because she obtained her professional degree in India and not in Canada. Nor did the Officer cite, as the basis of the Decision, the lack of indication in the WES report that the five years of professional study is a diploma, certificate, or degree equivalent to a Canadian one-year post-secondary educational credential.

[21] Second, *Preeti* and *Ajaz* are distinguishable on the facts.

[22] In *Preeti*, the WES report clearly set out that “[t]he credential is not comparable to a completed Canadian education credential.” *Preeti* at para 6. In *Ajaz*, the WES credential assessment states the applicant’s nursing diploma is equivalent to “[t]hree years of hospital study and training” in Canada and her midwifery diploma is equivalent to “[o]ne year of hospital study and training” in Canada: *Ajaz* at para 4. It was in those factual contexts that the Court found it reasonable for the Officer to find the applicant ineligible. This is not the case before me.

[23] At the hearing, the Respondent made further arguments that the problem in this case lies with WES, and not the Officer. Because the equivalency was missing from the ECA report, argued the Respondent, the Officer was not required to interpret the ECA report to find that it provided the equivalency of a one-year post-secondary Canadian credential. The Respondent further argued the ground for the refusal was in the WES report itself. Finally, the Respondent submitted that applying the ordinary meaning of the words “professional study in dentistry” does not support a finding that the Applicant has the requisite credential equivalency.

[24] I reject these arguments.

[25] As I have already noted, the Officer did not mention anywhere in their Decision that the necessary equivalency was missing from the ECA report. Rather, the Officer did what the Respondent stated they should not do; the Officer interpreted the WES report to indicate that a five-year professional study for a Bachelor degree in India is not equivalent to a Canadian one-year post-secondary credential, even though the WES report is silent on this issue.

[26] Further, while I do not agree with the Applicant that the Respondent's argument would lead the Court down to a path of absurdity, I am far from convinced that applying the ordinary meaning to the term "professional study in dentistry," from a recognized institution no less, would logically lead to the conclusion that the Applicant does not possess a credential that is at least equivalent to a one-year of post-secondary education in Canada.

[27] At the end of the day, the Officer cited the WES report as the basis for finding the Applicant lacks the equivalency credential, when the WES report did not make such a determination. The Officer did not provide any other reason for their conclusion, making it impossible for the Applicant, and now the Court, to understand how the Officer reached their conclusion. As such, I find the Decision falls short of the hallmarks of justification, intelligibility and transparency: *Vavilov* at para 100.

IV. Conclusion

[28] The application for judicial review is allowed and the matter is returned for redetermination by a different officer.

[29] There is no question to certify.

JUDGMENT in IMM-11640-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matter is returned for redetermination by a different officer.
3. There are no questions to certify.

"Avvy Yao-Yao Go"

Judge

APPENDIX A***Immigration and Refugee Protection Regulations (SOR/2002-227)***
Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227)

<p>Definitions</p> <p>73 (1) The following definitions apply in this Division</p> <p>[...]</p> <p><i>Canadian educational credential</i> 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. (<i>diplôme canadien</i>)</p> <p><i>equivalency assessment</i> 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. (<i>attestation d'équivalence</i>)</p> <p>[...]</p>	<p>Définitions</p> <p>73 (1) Les définitions qui suivent s'appliquent à la présente section.</p> <p>[...]</p> <p><i>diplôme canadien</i> 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. (<i>Canadian educational credential</i>)</p> <p><i>attestation d'équivalence</i> 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. (<i>equivalency assessment</i>)</p> <p>[...]</p>
<p>Designation for equivalency assessment</p> <p>75 (4) For the purposes of paragraph (2)(e) and subsection (2.1), the Minister may designate, for a period specified by the Minister, any organization or institution to be responsible for issuing equivalency assessments</p> <p>(a) if the organization or institution has the recognized expertise to assess the</p>	<p>Désignation pour les attestations d'équivalence</p> <p>75 (4) Pour l'application de l'alinéa (2)e) et du paragraphe (2.1), le ministre peut, en se fondant sur les critères ci-après, désigner, pour la durée qu'il précise, des institutions ou organisations chargées de faire des attestations d'équivalences :</p> <p>a) l'institution ou l'organisation est dotée d'une expertise reconnue en matière</p>

authenticity of foreign diplomas, certificates and credentials and their equivalency to Canadian educational credentials; and

(b) if, in the case of a professional body, its equivalency assessments are recognized by at least two provincial professional bodies that regulate an occupation listed in TEER Category 1, 2 or 3 of the *National Occupational Classification* for which licensing by a provincial regulatory body is required.

d'authentification et d'évaluation des diplômes, certificats ou attestations étrangers visant à établir leur équivalence avec les diplômes canadiens;

b) s'agissant d'un ordre professionnel, ses attestations d'équivalence sont reconnues par au moins deux organismes provinciaux de réglementation professionnelle régissant une profession exigeant un permis délivré par un organisme provincial de réglementation et appartenant aux catégories FÉER 1, 2 ou 3 de la *Classification nationale des professions*.

FEDERAL COURT
SOLICITORS OF RECORD

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