

Federal Court



Cour fédérale

Date: 20130430

Docket: IMM-7115-12

Citation: 2013 FC 446

Ottawa, Ontario, April 30, 2013

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

DONARA KHANOYAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks to set aside the decision of a visa officer that the applicant does not meet the requirement for permanent residence in Canada as a Federal Skilled Worker under sections 76 to 83 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (*Regulations*).

[2] The visa officer awarded the applicant 65 points in total, two less than the minimum of 67 points. The applicant asserts that she should have been awarded 22 points for her education, a diploma in nursing and bachelor's degree in psychology, and not the 20 she received.

[3] In *Khan v Canada (Citizenship and Immigration)*, 2011 FCA 339, the Federal Court of Appeal ruled that the standard of review of a visa officer's interpretation of the *Regulations* is correctness. More recently however the Supreme Court of Canada provided that a tribunal's interpretation of its home statute will generally attract the standard of reasonableness: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654, para 30. For a more recent application of this principle, see *B010 v Canada (Citizenship & Immigration)*, 2013 FCA 87.

[4] Nothing turns on this issue, as I see no error in the decision applying either standard. Accordingly, the application must be dismissed.

[5] In *Khan*, the Federal Court of Appeal provided comprehensive instructions for the interpretation of section 78 of the *Regulations*. Points are to be awarded on the basis of a single educational credential only, the credential which awards the highest number of points. Points are not awarded for multiple credentials, subject to the exception set out in subparagraph 78(2)(e)(ii) which provides 22 points when an applicant has two or more credentials at the bachelor's level.

[6] The applicant's highest credential is a bachelor's degree in psychology, entitling her to 20 points under subparagraph 78(2)(d)(ii). Her two year diploma in nursing does not entitle her to 22 points because it is neither a three-year credential with a total of fifteen years of full-time studies under subparagraph 78(2)(e)(i), nor a second bachelor's degree under subparagraph 78(2)(e)(ii). The evidence in the record describes the diploma as being awarded for a two year program at a vocational school.

[7] Here, the applicant does not have either of the educational credentials provided for in paragraph 78(2)(e), as described above, and subsection 78(4) is not engaged.

[8] The applicant also submits that the visa officer should have provided her with notice of the concerns regarding her education. This is a question of procedural fairness and is therefore reviewed on a standard of correctness.

[9] The applicant bears the onus of establishing that she meets the statutory criteria and there is no requirement for notice when the visa officer's concern arises from that criteria: *Veryamani v Canada (Citizenship and Immigration)*, 2010 FC 1268, paras 34-36. Therefore, this argument fails without merit.

[10] Additionally, the applicant's submission that the visa officer failed to consider her request for substituted assessment under subsection 76(3) is incorrect. The visa officer determined that the evidence did not establish that the applicant would become economically established in Canada despite obtaining less than 67 points. An officer need not provide written reasons for declining to exercise jurisdiction; it is sufficient that the officer has turned his or her mind to the issue: per Justice Snider in *Lee v Canada (Citizenship and Immigration)*, 2011 FC 617, 2012 FCA 54. Had the applicant identified particular factors which could be relevant to this assessment the visa officer may have been required to provide more detailed reasons: *Marr v Canada (Citizenship and Immigration)*, 2011 FC 367, paras 12-15.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

There is no question for certification.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7115-12

STYLE OF CAUSE: **DONARA KHANOYAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

PLACE OF HEARING: Toronto, ON

DATE OF HEARING: April 22, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** RENNIE J.

DATED: April 30, 2013

APPEARANCES:

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