

Federal Court



Cour fédérale

Date: 20130517

Docket: IMM-6505-12

Citation: 2013 FC 514

Ottawa, Ontario, May 17, 2013

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

PARASTOU NIKOUEIAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This judicial review concerns a decision of a Visa Officer [Officer] where the Officer refused a permanent residence application under the Federal Skilled Worker regulation.

II. BACKGROUND

[2] The Applicant is a citizen and resident of Iran. She had applied as a Manager in Health Care under the National Occupation Classification [NOC] category.

[3] The Applicant holds a PhD in dentistry. She received her doctorate in 2001 from Zehedan University of Medical Sciences and Health/Medical Services. According to her, her PhD program required 202 credits whereas an undergraduate degree requires 120 credits. She also had 19 years of completed full-time studies.

[4] The visa application was processed in Warsaw. The Officer gave the Applicant 20 points for education and a total score of 66 points out of the 67 necessary for a visa.

[5] The relevant regulations are:

78. (2) A maximum of 25 points shall be awarded for a skilled worker's education as follows:

(a) 5 points for a secondary school educational credential;

(b) 12 points for a one-year post-secondary educational credential, other than a university educational credential, and a total of at least 12 years of completed full-time or full-time equivalent studies;

(c) 15 points for

(i) a one-year post-secondary educational credential, other than a university educational credential, and a total of at least 13 years of completed

78. (2) Un maximum de 25 points d'appréciation sont attribués pour les études du travailleur qualifié selon la grille suivante :

a) 5 points, s'il a obtenu un diplôme d'études secondaires;

b) 12 points, s'il a obtenu un diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant une année d'études et a accumulé un total d'au moins douze années d'études à temps plein complètes ou l'équivalent temps plein;

c) 15 points, si, selon le cas :

(i) il a obtenu un diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant une année d'études et a accumulé un

full-time or full-time
equivalent studies, or

total de treize années
d'études à temps plein
complètes ou l'équivalent
temps plein,

(ii) a one-year university
educational credential at the
bachelor's level and a total of
at least 13 years of
completed full-time or full-
time equivalent studies;

(ii) il a obtenu un diplôme
universitaire de premier
cycle nécessitant une année
d'études et a accumulé un
total d'au moins treize
années d'études à temps
plein complètes ou
l'équivalent temps plein;

(d) 20 points for

d) 20 points, si, selon le cas :

(i) a two-year post-secondary
educational credential, other
than a university educational
credential, and a total of at
least 14 years of completed
full-time or full-time
equivalent studies, or

(i) il a obtenu un diplôme
postsecondaire — autre
qu'un diplôme universitaire
— nécessitant deux années
d'études et a accumulé un
total de quatorze années
d'études à temps plein
complètes ou l'équivalent
temps plein,

(ii) a two-year university
educational credential at the
bachelor's level and a total of
at least 14 years of
completed full-time or full-
time equivalent studies;

(ii) il a obtenu un diplôme
universitaire de premier
cycle nécessitant deux
années d'études et a
accumulé un total d'au moins
quatorze années d'études à
temps plein complètes ou
l'équivalent temps plein;

(e) 22 points for

e) 22 points, si, selon le cas :

(i) a three-year post-
secondary educational
credential, other than a
university educational
credential, and a total of at
least 15 years of completed
full-time or full-time
equivalent studies, or

(i) il a obtenu un diplôme
postsecondaire — autre
qu'un diplôme universitaire
— nécessitant trois années
d'études et a accumulé un
total de quinze années
d'études à temps plein
complètes ou l'équivalent
temps plein,

(ii) two or more university educational credentials at the bachelor's level and a total of at least 15 years of completed full-time or full-time equivalent studies; and

(ii) il a obtenu au moins deux diplômes universitaires de premier cycle et a accumulé un total d'au moins quinze années d'études à temps plein complètes ou l'équivalent temps plein;

(f) 25 points for a university educational credential at the master's or doctoral level and a total of at least 17 years of completed full-time or full-time equivalent studies.

f) 25 points, s'il a obtenu un diplôme universitaire de deuxième ou de troisième cycle et a accumulé un total d'au moins dix-sept années d'études à temps plein complètes ou l'équivalent temps plein.

(3) For the purposes of subsection (2), points

(3) Pour l'application du paragraphe (2), les points sont accumulés de la façon suivante:

(a) shall not be awarded cumulatively on the basis of more than one single educational credential; and

a) ils ne peuvent être additionnés les uns aux autres du fait que le travailleur qualifié possède plus d'un diplôme;

(b) shall be awarded

b) ils sont attribués :

(i) for the purposes of paragraphs (2)(a) to (d), subparagraph (2)(e)(i) and paragraph (2)(f), on the basis of the single educational credential that results in the highest number of points, and

(i) pour l'application des alinéas (2)a) à d), du sous-alinéa (2)e)(i) et de l'alinéa (2)f), en fonction du diplôme qui procure le plus de points selon la grille,

(ii) for the purposes of subparagraph (2)(e)(ii), on the basis of the combined educational credentials referred to in that paragraph.

(ii) pour l'application du sous-alinéa (2)e)(ii), en fonction de l'ensemble des diplômes visés à ce sous-alinéa.

[6] The Officer relied on the following statement in the Overseas Processing 6 – Federal Skilled Workers Manual [OP 6 Manual] to conclude that the Applicant’s PhD was a first degree at the bachelor level and awarded 20 points:

Medical doctor degrees are generally first-level university credentials, in the same way that a Bachelor of Law or a Bachelor of Science in Pharmacology is a first level, albeit “professional” degree and should be awarded 20 points. If it is a second-level degree and if, for example, it belongs to a Faculty of Graduate Studies, 25 points may be awarded. If a bachelor’s credential is a prerequisite to the credential, but the credential itself is still considered a first-level degree, then 22 points would be appropriate.

III. ANALYSIS

[7] While the Applicant argues that there is a breach of procedural fairness in not allowing the Applicant to address the Officer’s concerns about the education level, this is not an issue of credibility or authenticity or fraud. This is a case about the reasonableness of the Officer’s assessment (*Shirazi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 306, 406 FTR 290).

[8] The Applicant had indicated in her application that her PhD was a graduate level degree. A review of her courses suggests the same. The Board Certificate from the university refers to “the PhD in Dental”; the Medical Office Licence from the medical council refers to her as “Dr” and being a graduate in “General Dental”; a Permanent Dental Licence from the Ministry of Health also refers to the Applicant as “Dr” and a graduate in dental from Zahedan University of Medical Sciences.

[9] There is no evidence that a Phd in Dentistry is considered an undergraduate degree in Iran. The Officer never inquired or even considered how the PhD was viewed locally (see *Lak v Canada (Minister of Citizenship and Immigration)*, 2007 FC 350, 62 Imm LR (3d) 101).

[10] In my view, the Officer made an unreasonable finding by following the OP 6 Manual in respect of first degrees (as outlined in paragraph 6). The OP 6 Manual is not law and the Officer applied it blindly.

[11] The Officer failed to consider that the Applicant's full-time (or full-time equivalent) studies was 19 years, two years more than the requirement for credit at the doctoral level and four years more than at the Masters level or bachelor's level.

[12] In coming to this conclusion, I have placed no reliance on materials submitted by the Applicant in this judicial review which were not before the Officer.

IV. CONCLUSION

[13] Therefore, this judicial review is granted, and the Visa Officer's decision is quashed. The matter is referred back to a different officer for redetermination with leave to the Applicant to submit further evidence.

[14] There is no question for certification.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review is granted, the Visa Officer’s decision is quashed and the matter is to be referred back to a different officer for redetermination with leave to the Applicant to submit further evidence.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6505-12

STYLE OF CAUSE: PARASTOU NIKOUEIAN

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 8, 2013

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

DATED: May 17, 2013

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