Federal Court  Cour fédérale

Date: 20170804

Docket: IMM-1015-16

Citation: 2017 FC 758

Ottawa, Ontario, August 4, 2017

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

MAHVASH RAHIMI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mahvash Rahimi (Dr. Rahimi) seeks judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] of a decision made by an immigration officer [the Officer] at the Embassy of Canada in Warsaw on January 18, 2016 refusing her application for a permanent residence visa as a federal skilled worker in the occupation of Specialist Physician – NOC 3111.

[2] Specifically, Dr. Rahimi alleges that the Officer miscalculated the number of points to which she was entitled by:

i. counting Dr. Rahimi's medical specialization diploma as a second bachelor degree (22 points) instead of a master's degree (25 points); and

ii. failing to grant Dr. Rahimi an additional 5 points under adaptability because Dr. Rahimi's relative with permanent residence in Canada is the husband of Dr. Rahimi's husband's late aunt rather than Dr. Rahimi's uncle by blood.

[3] Dr. Rahimi received a total of 64 points whereas 67 points were required to qualify under the program. If, as alleged by Dr. Rahimi, the Officer erred in either of the two ways noted above then she would have had enough points to qualify.

[4] For the reasons that follow this application is dismissed.

[5] Any sections of the legislation referred to in these reasons are set out in the attached Annex. However, extracts are also contained in the body of these reasons for ease of reference.

II. Background facts

[6] Dr. Rahimi is an Iranian citizen who currently lives in Iran. She is a medical doctor with a speciality in gynecology. Her husband, Mr. Vajar, is an Installation Project Manager with a master's degree in engineering. Her daughter, born in 1987, possesses a degree in dentistry and as of the time of application was a student in psychology. A second daughter died in 2010 at age 17.

[7] Dr. Rahimi initially applied for permanent residence in 2009. That application was rejected on the basis that she did not have enough points to qualify for permanent residence.

However, Dr. Rahimi never received the rejection letter and only learned of it when her counsel submitted an Access to Information request in 2014. After Dr. Rahimi commenced an application for judicial review it was learned that her initial application and rejection letter had been destroyed. As a result, the Minister agreed to re-open her application and the original judicial review application was discontinued.

[8] On July 29, 2015, Dr. Rahimi re-submitted copies of all the documents that she had initially submitted as well as new materials consisting of the application record on the judicial review application. New evidence was also provided showing that Dr. Rahimi had a family member with permanent residence in Canada. Mr. Vajar's aunt's husband, a Mr. Darvishali Babapour Amirabadi, [Mr. Amirabadi] who was granted permanent residence in Canada in 2011.

[9] One of the central issues in this application is whether the fact that Mr. Vajar's aunt died in 2004 means Mr. Amirabadi did not qualify as a relative under the provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations]. The other central issue is whether the letter from the local authority stating that Dr. Rahimi's educational credentials equate to a Master of Science (MSc) was rejected by the Officer in error.

[10] On November 17, 2015, the Embassy sent a Procedural Fairness Letter [PFL] to Dr. Rahimi expressing the following concerns:

i. Based on the relevant guidelines (OP6), a degree granted to a medical doctor is normally considered a first-level university credential warranting 20 points. If, however, a first degree is required before the professional credential, the credential is worth 22 points. If the degree is a second-level degree issued, for example, by a faculty of graduate studies, 25 points may be awarded. There was no evidence that the specialization diploma was from a school of graduate studies

and there was no basis to conclude that it was equivalent to a master's degree. Therefore, it is only worth 22 points for having two bachelor-level credentials and at least 15 years of completed full-time or full-time equivalent study.

ii. Mr. Amirabadi is not Dr. Rahimi's spouse's uncle but the husband of Dr. Rahimi's spouse's aunt, who died on February 6, 2004. Dr. Rahimi therefore was not entitled to 5 points under the adaptability factor for having a relative in Canada as set out in subsection 83(5) of the Regulations.

[11] The Officer gave Dr. Rahimi thirty days in which to present any additional documentation that would address their concerns. On December 17, 2015, Dr. Rahimi provided additional documents and submissions to the Embassy. In those submissions counsel for Dr. Rahimi addressed what she believed to be each of the matters raised by the Officer in the fairness letter.

[12] With respect to adaptability, the submissions first set out subsection 83(5) of the Regulations, then explained that the relationship between Dr. Rahimi's spouse and Mr. Amirabadi's wife was that she was the aunt of Dr. Rahimi's spouse. Substantiating evidence to that effect was submitted previously. The submissions included the following comments, which track to the legislative requirements:

i. Mr. Vajar is the skilled worker's accompanying spouse;

ii. under the Regulations there is no requirement that the relative be a direct relation; a connection by marriage is eligible for consideration;

iii. the relationship, whether by blood or marriage, may be with the accompanying spouse and does not have to be with Dr. Rahimi;

iv. Mr. Amirabadi is a permanent resident of Canada, residing in Toronto.

[13] Accompanying the submissions made on July 29, 2015 were letters of support from Mr. Amirabadi's daughter, Tara Babapour, stating that he lived with her and her husband and

that he is very close to and very fond of the Rahimis. Ms. Babapour's husband, David Erwin, also submitted a separate letter of support where he offered not only to host the Rahimi family in his home but also to assist them with obtaining basic documents and navigating matters such as bank accounts, driving tests and searching for employment.

[14] Dr. Rahimi also submitted a certificate from the Ministry of Health, Treatment and Medical Education for the Islamic Republic of Iran, dated December 1, 2015, which stated that for "[g]raduates in General Practice/MD in the Islamic Republic of Iran, . . . after obtaining permanent doctor of medicine diploma . . . their level is evaluated at least as much as the level of Master of Science (MSc)."

[15] The Officer's decision, dated January 18, 2016 awarded Dr. Rahimi 64 points including 22 of a possible 25 points for education and 5 of a possible 10 points for adaptability. As a result, her application was rejected. Dr. Rahimi received no points for arranged employment as she did not have any offer of employment and she received 6 of 24 possible points for language proficiency. Only the education and adaptability points are challenged in this application.

[16] On February 12, 2016 counsel for Dr. Rahimi requested a reconsideration of both the education and adaptability determinations by the Officer. The reasons provided for the request were essentially the same as the original submissions with the application. One addition was that subsection 78(1)(f) in the then current version of the Regulations [2015-2016 Regulations] was persuasive as it provided that "an entry –to-practice professional degree" is equated with a master's level degree.

[17] On March 15, 2016 an email sent to counsel for Dr. Rahimi rejected the request for reconsideration. The application for judicial review had been filed on March 8, 2016.

III. Preliminary issues

[18] At the request of the Minister, the name of the Respondent in the style of cause is hereby immediately amended to The Minister of Citizenship and Immigration.

IV. Legislative provisions

[19] Dr. Rahimi applied as a member of the economic class on the basis of her ability to become economically established in Canada as set out in subsection 12(2) of the *IRPA*. Because her application was first filed before May 4, 2013, the Regulations provisions in force in January 2010 apply and all extracts in these reasons are from that version of the Regulations.

A. *The general scheme for federal skilled workers in the economic class*

[20] Subsection 12(2) of the *IRPA* provides that:

(2) A foreign national may be selected as a member of the economic class on the basis of their ability to become economically established in Canada.	**(2)** La sélection des étrangers de la catégorie « immigration économique » se fait en fonction de leur capacité à réussir leur établissement économique au Canada.

[21] Section 14 of the *IRPA* provides that the Regulations may prescribe and govern any matter relating to classes of permanent residence or foreign nationals including the classes referred to in section 12.

[22] Section 75 of the Regulations specifies that the federal skilled worker class is "a class of persons who are skilled workers and who may become permanent residents on the basis of their ability to become economically established in Canada" (s 75(1)). There is no dispute that Dr. Rahimi is a skilled worker within the provisions of the Regulations. The issue is whether she meets the requirement in section 76 of the Regulations that she "will be able to become economically established in Canada" (s 76(1)).

[23] In brief, section 76 of the Regulations establishes the criteria by which a foreign skilled worker will be assessed to determine if they "will be able to become economically established in Canada" (s 76(1)). Section 77 requires that the criteria be met on the date the application is made and the date the visa is issued.

[24] A system of points is established in sections 78 to 83 for each of the criteria set out in paragraph 76(1)(a). The minimum number of total points required from all the applicable criteria in order to be accepted as a member of the economic class, in this case, is 67 points. Subparagraph 76(1)(a)(i) requires that points for education be determined under section 78 and subparagraph 76(1)(a)(vi) requires that points for adaptability are to be determined under section 83.

B. *Adaptability points*

[25] Paragraph 83(1)(d) assigns 5 points to an applicant or their accompanying spouse "for being related to a person living in Canada who is described in subsection (5)". Paragraph 83(5)(a) provides that the relationship can be by way of "blood, marriage, common-law

partnership or adoption". The particular relationship by which Mr. Vajar claims to be related to Mr. Amirabadi is found in subparagraph 83(5)(a)(vi): "a child of the father or mother of their father or mother, other than their father or mother". In other words, because he was married to Mr. Vajar's mother's sister, Mr. Amirabadi is Mr. Vajar's uncle by marriage.

[26] The relevant parts of the legislative wording under consideration for awarding points for adaptability is as follows, with the critical parts underlined:

76 (1) For the purpose of determining whether a skilled worker, as a member of the federal skilled worker class, will be able to become economically established in Canada, they must be assessed on the basis of the following criteria:	**76. (1)** Les critères ci-après indiquent que le travailleur qualifié peut réussir son établissement économique au Canada à titre de membre de la catégorie des travailleurs qualifiés (fédéral) :
(a) the skilled worker must be awarded not less than the minimum number of required points referred to in subsection (2) on the basis of the following factors, namely,	**a)** le travailleur qualifié accumule le nombre minimum de points visé au paragraphe (2), au titre des facteurs suivants :
…	. . .
(vi) adaptability, in accordance with section 83;	**(vi)** la capacité d'adaptation, aux termes de l'article 83;
. . .	. . .
77 For the purposes of Part 5, the requirements and criteria set out in sections 75 and 76 must be met on the date on which an application for a permanent resident visa is made and on the date on which it is issued.	**77.** Pour l'application de la partie 5, les exigences et critères prévus aux articles 75 et 76 doivent être remplis au moment où la demande de visa de résident permanent est faite et au moment où le visa est délivré.
	. . .
	83. (1) Un maximum de 10 points d'appréciation sont attribués au travailleur qualifié

. . .

83 (1) A maximum of 10 points for adaptability shall be awarded to a skilled worker on the basis of any combination of the following elements:

. . .

(d) for being related to a person living in Canada who is described in subsection (5), 5 points;

. . .

(5) For the purposes of paragraph (1)(d), a skilled worker shall be awarded 5 points if

(a) the skilled worker or the skilled worker's accompanying spouse or accompanying common-law partner is related by blood, marriage, common-law partnership or adoption to a person who is a Canadian citizen or permanent resident living in Canada and who is

. . .

(vi) a child of the father or mother of their father or mother, other than their father or mother,

au titre de la capacité d'adaptation pour toute combinaison des éléments ci-après, selon le nombre indiqué :

. . .

d) pour la présence au Canada de l'une ou l'autre des personnes visées au paragraphe (5), 5 points;

. . .

(5) Pour l'application de l'alinéa (1)d), le travailleur qualifié obtient 5 points dans les cas suivants :

a) l'une des personnes ci-après qui est un citoyen canadien ou un résident permanent et qui vit au Canada lui est unie par les liens du sang ou de l'adoption ou par mariage ou union de fait ou, dans le cas où il l'accompagne, est ainsi unie à son époux ou conjoint de fait :

. . .

(vi) un enfant de l'un des parents de l'un de leurs parents, autre que l'un de leurs parents,

C. *Education points*

[27] Subparagraph 76(1)(a)(i) provides that points for education are to be determined in accordance with section 78. In addition an educational credential is defined in section 73. Once again, the relevant excerpts, with the critical parts underlined, are as follows:

78	**78**
…	. . .
(2) A maximum of 25 points shall be awarded for a skilled worker's education as follows:	**(2)** Un maximum de 25 points d'appréciation sont attribués pour les études du travailleur qualifié selon la grille suivante :
. . .	
(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 à temps plein 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.

V. The decision under review

[28] The Decision and reasons are found in a letter dated January 18, 2016 as well as notes in the Global Case Management System ("GCMS"). The email on March 15, 2016 refusing to reopen the decision contained a further explanation of the reasons for refusing to award more points for adaptability and education.

[29] The January 18, 2016 letter provides only the reasons for arriving at the educational assessment:

> *You were granted 22 points for Education.*
>
> *The Overseas Processing (OP) 6 indicates that: "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 the 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 its self is still considered a first-level degree, then 22 points would be appropriate." In this instance, you received a single degree from Iran University of Medical Sciences. There is no indication that there was a Bachelor's or Master's degree awarded prior to this degree or that the degree was awarded by a faculty of graduate studies. But since you undertook a specialization after completing your single degree 22 points are awarded for the combination of a medical degree and specialisation from a relevant organisation. Therefore I concluded that your education was equivalent to two university educational credential at the bachelor's level and at least 15 years of completed full-time or full-time equivalent studies.*

[30] While the letter does not address the reasons for the adaptability assessment the relevant portion of the GCMS notes does:

> Adaptability
>
> Submission[s] states that Mr. Vajar (spouse) is related to Mr. Amirabadi who was married to his aunt Touran Ghaznavi (deceased). The submission[s] state[] there is no requirement that the relative be in a direct relation i.e. that non-blood relations can be considered. I am of the opinion that because Mr[.] Vajar is not related by blood to his late aunt's husband five points are not being awarded by virtue of Mr[.] Amirabadi being married to spouse's aunt.
>
> Award five points if the applicant [Dr. Rahimi] or accompanying spouse or common-law partner has a relative (parent, grandparent, child, grandchild, child of a parent, child of a grandparent, or grandchild or a parent) who is residing in Canada and is a Canadian citizen or permanent resident.

[31] The March 15, 2016 email sent to counsel for Dr. Rahimi rejecting the request for reconsideration contained the following reasons:

> I have reviewed additional documentation received and concluded the following:
>
> This application for permanent residence in Canada was carefully considered according to the applicable section of the Immigration and Refugee Protection Act, and Rahimi Mahvash was sent a refusal letter containing the full reasons for refusing this application.
>
> []
>
> The Applicant was not entitled to points under adaptability for having a relative in Canada since relation by marriage between PA's spouse and aunt's husband was presumed terminated by the death of the aunt.
>
> []
>
> The Applicant is not entitled to additional three points for education since she was awarded 22 points for the combination of

> a medical degree from an academic institution and a specialization from a relevant organisation.
>
> []
>
> The decision was based upon the material before me at the time of assessment. [. . .] This application was finally refused on 18 January and will not be re-opened.

[32] As previously stated, during the hearing, the refusal to reopen the application is not before me for consideration but the submissions made by counsel requesting the reconsideration and the responding letter refusing to reopen are each in evidence in this application.

VI. Issues

[33] The parties identified three issues at the hearing of this application:

1. What is the appropriate standard of review?
2. Did the Officer err in finding there is no qualifying relative under subsection 83(5)? and;
3. Did the Officer err in assessing Dr. Rahimi's educational credentials?

[34] In addition, Dr. Rahimi alleges that the Officer never put his or her concerns about her education or the death of her husband's aunt to her for further submissions or an oral hearing and that was procedurally unfair. As a result, the fourth issue is:

4. Was the Officer's decision made in a procedurally unfair manner?

VII. Standard of review

[35] The parties disagree about the appropriate standard of review.

A. *Positions of the parties*

[36] Dr. Rahimi submits the standard of review for adaptability in this case is correctness as the Officer misinterpreted subsection 83(5) of the Regulations by either improperly requiring a blood relationship or by narrowly interpreting "marriage" in finding that Mr. Amirabadi ceased to be related by marriage to Mr. Vajar upon his wife's death. Similarly, Dr. Rahimi argues that the Officer's assessment of her education involved a non-discretionary application of the Regulations' provision on educational qualifications. By failing to appreciate that Dr. Rahimi's specialization was her second degree, and that only the "senior" credential should be assessed, the Officer made a legal error reviewable on the correctness standard.

[37] The Minister submits the issues involve questions of mixed fact and law therefore the standard of review is reasonableness. The Minister also submits that prior cases, particularly in the Federal Court to Appeal have been overtaken by more recent development in the common law principles of judicial review. He points out that the Supreme Court of Canada's jurisprudence post-*Dunsmuir v New Brunswick* 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*] and certainly post- *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559 [*Agraira*] represents a significant development in the principles surrounding standard of review. Specifically, the Minister submits that recently the Supreme Court applied the reasonableness standard to an ordinary immigration officer's interpretation of the *IRPA* (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 1, 42 - 45, [2015] 3 SCR 909 [*Kanthasamy*]).

B. *Analysis*

[38] Earlier cases of this Court that reviewed a visa officer's determination of eligibility for permanent residence under the skilled worker class found the analysis involves mixed findings of fact and law and is reviewable on a standard of reasonableness: *Malik v Canada (Citizenship and Immigration)*, 2009 FC 1283 at para 22, 183 ACWS (3rd) 817; *Veryamani v Canada (Citizenship and Immigration)*, 2010 FC 1268 at para 26, 379 FTR 153.

[39] The jurisprudence of this Court has recently been divided on whether visa officers are entitled to deference in statutory interpretation. In *Ijaz v Canada (Citizenship and Immigration)*, 2015 FC 67 at paras 20-32, 474 FTR 6 [*Ijaz*], Madam Justice Cecily Strickland found that the appellate decisions in *Khan v Canada (Citizenship and Immigration)*, 2011 FCA 339, [2013] 3 FCR 463 [*Khan*], and *Canada (Citizenship and Immigration) v Patel*, 2011 FCA 187, [2013] 1 FCR 340 [*Patel*] , in which the Court of Appeal found a correctness standard of review applied, did not satisfactorily determine the question. Applying the standard of review analysis from *Dunsmuir*, Justice Strickland found that the presumption of reasonableness had not been rebutted, and therefore visa officers are entitled to deference when interpreting the *IRPA* and the Regulations.

[40] However, in *Dashtban v Canada (Citizenship and Immigration)*, 2015 FC 160 at paras 22-30, 475 FTR 156 [*Dashtban*] Mr. Justice Keith Boswell applied the correctness standard of review. He found that *Ijaz* was distinguishable because the question of statutory interpretation was less extricable from the facts, but to the extent *Ijaz* stood for a general principle on standard of review, he respectfully declined to follow it (at para 26). He found that

the hierarchy of the courts required that he follow the Federal Court of Appeal's guidance post-*Dunsmuir* unless he could confidently state that they had been implicitly overruled by significant developments in the law (at paras 27-28).

[41] The Supreme Court of Canada determined in *Dunsmuir* and in *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] SCC 61 [*Alberta Teachers'*], that "[d]eference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity" (*Alberta Teachers'* at para 30 citing *Dunsmuir* at para 54). Recently several cases in the Supreme Court have confirmed and re-inforced this principle by holding that reasonableness is the presumptive standard of review when considering a decision by a tribunal reviewing its home statute: *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47, [2016] 2 SCR 293; *Green v Law Society of Manitoba*, 2017 SCC 20, 407 DLR (4th) 573; *Wilson v British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 47, [2015] 3 SCR 300; *McLean v British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 SCR 895.

[42] To rebut the presumption of reasonableness the issue must fall into one of the four categories articulated by the Supreme Court in *Dunsmuir*: "constitutional questions regarding the division of powers, issues "both of central importance to the legal system as a whole and outside of the adjudicator's specialized area of expertise", "true questions of jurisdiction or *vires*", and issues "regarding the jurisdictional lines between two or more competing specialized tribunals"": *Edmonton East* at para 24 citing *Dunsmuir* at paras 58-61. "The [p]resumption [of

reasonableness] is not easily rebutted": *Vavilov v Canada (Citizenship and Immigration)*, 2017 FCA 132 at para 31, [2017] FCJ No 638 (QL).

[43] In *Donovan v Canada (Citizenship and Immigration)*, 2015 FC 359, at para 14, [2015] FCJ No 316 (QL) [*Donovan*], released after both *Ijaz* and *Dashtban*, Mr. Justice James Russell relied on decisions in the Federal Court of Appeal - *Kanthasamy v Canada (Citizenship and Immigration)*, 2014 FCA 113, [2015] 1 FCR 335 [*Kanthasamy FCA*] and *Lemus v Canada (Citizenship and Immigration)*, 2014 FCA 114, 372 DLR (4th) 567, – which were heard together in the Court of Appeal. Justice Russell found that the Supreme Court in *Agraira* had determined the standard of review of a visa officer's decision under the *IRPA* was reasonableness. He saw no reason to find the standard would be different in the context of a permanent residence decision. I share that view as the examining officer is the same in each instance.

[44] The determination by Justice Russell that *Kanthasamy FCA* changed the standard of review to be applied to a visa officer's statutory interpretation of the *IRPA* and the Regulations was made clear when the Supreme Court determined *Kanthasamy*. There, the Court found the standard of review of a visa officer dealing with a humanitarian and compassionate application for permanent residence was that of reasonableness (at para 44).

[45] Notably, Mr. Justice Stratas has observed that in *Kanthasamy* the Supreme Court found that reasonableness was the standard of review for a visa officer even when the visa officer did not explicitly consider their statutory powers or engage in statutory interpretation: *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 300 at para 10, [2016] FCJ No 1311 (QL).

[46] In light of the several recent decisions from the Supreme Court stressing the presumption of reasonableness as first articulated in *Dunsmuir* it is my view that it would be irrational to find a visa officer interpreting sections of their home statute dealing with granting of permanent residence, with which they are very familiar, would be reviewed on a correctness basis for some decisions such as interpreting the provisions for federal skilled workers and on a reasonableness standard for others decisions such as humanitarian and compassionate relief. The same visa officer must interpret the legislation in each case.

[47] The Supreme Court found in *Kanthasamay* that a visa officer has the expertise to interpret the *IRPA* and the Regulations and it held that the application of such expertise is reviewable on the basis of reasonableness (at para 44). *Kanthasamay* was determined after *Ijaz* and *Dashtban.* It is my view that it is a positive answer to the question of whether the previous determination of the standard of review in jurisprudence such as *Khan* and *Patel* has been significantly displaced.

[48] The presumption of reasonableness has not been rebutted. The only category that could be considered is whether the Officer's interpretation of related by marriage is a question of law of central importance to the legal system and outside the adjudicator's specialized expertise. If it is, that would import a possible correctness review. The question though is narrow and specific to one particular section of this legislation. As counsel for Dr. Rahimi said, with respect to a possible certified question about the interpretation of the word "marriage", that the interpretation is specific to this case. Accordingly the decisions under review will be considered on the standard of reasonableness unless there is a legitimate issue of procedural fairness in which case

the standard will be correctness for such issue: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43, [2009] 1 SCR 339.

[49] As is well known, a decision is reasonable if the decision-making process is justified, transparent and intelligible resulting in a determination that falls within the "range of possible, acceptable outcomes which are defensible on the facts and law": *Dunsmuir* at para 47.

VIII. Did the Officer err in finding there is no qualifying relative under subsection 83(5)?

A. *Overview*

[50] The determinative issue with respect to the Officer's assessment of the adaptability factor is whether the relationship of uncle and nephew by marriage was terminated when Mr. Vajar's aunt died. In other words, did the marriage of Mr. Amirabadi to Mr. Vajar's aunt have to be subsisting at the time of the application and time of the Decision?

[51] The pertinent facts to consider in connection with this issue are:

- the aunt of Mr. Vajar died in February, 2004;
- the original application under consideration was made in 2009;
- Mr. Amirabadi became a permanent resident of Canada in 2011;
- Dr. Rahimi refiled the original application with updated submissions in July 2015;
- the decision under review occurred in early 2016;
- Mr. Amirabadi never remarried.

[52] Both sides agree there is no qualifying blood relationship to a permanent resident or citizen of Canada. Whether Mr. Amirabadi falls within the provisions of subparagraph

83(5)(a)(vi) so that he is related to Mr. Vajar by marriage is the question. It has been approached by the parties from two different perspectives.

[53] Dr. Rahimi's position is, in effect, "once a marriage always a marriage" and Mr. Amirabadi clearly falls within the provision, in that he is related to his former wife's nephew. The legislation does not require that the marriage remain in place in order to fall within the concept of "related by marriage".

[54] The Minister's position is that the death of Mr. Vajar's aunt terminated her marriage to Mr. Amirabadi. As a result, he cannot fit within subparagraph 83(5)(a)(vi) as, in order to have a relationship by marriage there must be an existing marriage creating the relationship.

[55] In my view, which I further elaborate below, the finding by the Officer that there was no marriage at the time the application was filed by Dr. Rahimi was both reasonable and correct. The legislation cannot be stretched to be read the way that Dr. Rahimi urges. There is no suggestion that there was a blood relationship between the Mr. Amirabadi and Mr. Vajar; the only possible relationship was by virtue of Mr. Amirabadi being married to Mr. Vajar's aunt. As his aunt died five years before the application was filed there was no subsisting marriage to support the claimed relationship.

B. *Position of Dr. Rahimi*

[56] Dr. Rahimi argues that the language in paragraph 83(5)(a) of the Regulations is broadly worded and it is plain and clear: non-blood relationships which are created by marriage or by

common law partners qualify for the purpose of awarding points under adaptability. As Mr. Amirabadi was married to Mr. Vajar's aunt he is related to Mr. Vajar by virtue of subparagraph 83(5)(a)(vi). Since Mr. Vajar is the accompanying spouse to the applicant, Dr. Rahimi, 5 points should have been awarded for having a family relationship in Canada.

[57] Dr. Rahimi also referred to the December 19, 2012 Regulatory Impact Analysis Statement ((2012) C Gaz II, Vol 146, No 26, 2902) [2012 RIAS] which indicated the legislative change to the adaptability factors made in 2012 was done partly to reflect the fact that having an adult relative in Canada would "play a role in facilitating the economic and social integration of the applicant" (at 2913), and by extension appears to argue that this was the purpose for the original inclusion in the adaptability factors of a relative who is a Canadian Citizen or permanent resident living in Canada. Dr. Rahimi urged that the letters of support from the family of Mr. Amirabadi indicating how important he has been in the life of Mr. Vajar shows he will be able to assist and that his ability to assist is what was anticipated when Parliament in 2012 (in force May 4, 2013) added as criteria for being a qualifying relative that the person be a minimum age of eighteen.

[58] Dr. Rahimi submits that subparagraph 83(5)(a)(vi) should be read harmoniously with the purpose of the regulation – to prioritize individuals with family in Canada that will be able to help them integrate economically and socially with Canadian society. There is no indication that a relative by marriage in Canada will become less likely to help with integration merely because the blood relative that links the two individuals has died.

[59] Finally, Dr. Rahimi urges that the marital relationship was not dissolved by the aunt's death and Mr. Amirabadi should be considered a relative by marriage until or unless he remarries.

C. *Position of the Minister*

[60] Although put forward in the written materials, the Minister does not rely on the fact that Mr. Amirabadi became a permanent resident after the date of the original application, contrary to section 77 of the Regulations. The Minister does state though that Mr. Amirabadi was not married to the aunt at the time he became a permanent resident in 2011 nor at the time of the original application. Section 77 requires that the criteria in section 76 be met on the date the application for permanent residency is made and on the date it is issued. The criteria under section 76 includes the awarding of points for adaptability under section 83.

[61] The Minister also submits that the fact that Mr. Amirabadi has not remarried is irrelevant to the determination of whether at the relevant time he was married to a person who falls within the list of relatives described in subparagraph 83(5)(a)(vi). As Mr. Vajar's aunt died five years before the original application was filed there was no longer a qualifying marriage in place when Dr. Rahimi submitted that application or the re-opened application in 2015.

[62] The Minister also relies upon the wording of the Regulations section 2 of which defines "marriage" as:

Interpretation **2** The definitions in this section apply in these Regulations.	**Définitions** 2 Les définitions qui suivent s'appliquent au présent règlement.

. . .	. . .
marriage, in respect of a marriage that took place outside Canada, means a marriage that is valid both under the laws of the jurisdiction where it took place and under Canadian law. (mariage)	**mariage** S'agissant d'un mariage contracté à l'extérieur du Canada, mariage valide à la fois en vertu des lois du lieu où il a été contracté et des lois canadiennes. (marriage)

[63] The Minister notes the definition is drafted in the present tense requiring that there is a valid marriage. Counsel also notes that paragraph 83(5)(a) is drafted in the present tense – "is related by marriage" – and section 77 stipulates that "the requirements and criteria … must be met at the time an application … is made as well as at the time the visa is issued" [emphasis added]. The provisions therefore clearly anticipate a presently subsisting marriage, not a former marriage.

[64] The Minister says that although Mr. Vajar may consider Mr. Amirabadi to be his uncle and may have a close relationship with him it is not the role of the parties or the Court to convert a familial notion of relationship into a legal relationship that is not set out in the legislation: *Biosa v Canada (Public Safety and Emergency Preparedness)*, 2014 FC 431 at para 27, 454 FTR 36 [*Biosa*].

[65] Dr. Rahimi responds that *Biosa* is distinguishable and does not apply because it dealt with a different regulation (section 159.1 of the Regulations) which specifically included that a family member could include an aunt, uncle, nephew or niece. Dr. Rahimi further points out that those relationships were not defined in the same manner nor did section 159.1 encompass the

expanded provision found in paragraph 83(5)(a) that a person could be related to another person by marriage or common-law partnership.

D. *Analysis*

[66] I agree that *Biosa* does not directly assist in answering the present question of whether the death of Mr. Vajar's aunt terminated his familial relationship to Mr. Amirabadi. However, in *Biosa* Mr. Justice Simon Noël makes the point that a term of convenience should not be imported into a legal context "where stability and predictability must prevail to ensure that everyone's claim is treated equally": *Biosa* at para 27. Applying that principle to this case it is important that the interpretation of the word marriage not lead to uncertainty as to who falls within the definition of being a family member who is "related by marriage".

[67] The argument between the parties is whether a marriage survives the death of one spouse when it comes to determining familial relationships as described in subparagraph 83(5)(a)(vi). To determine whether Parliament intended to include people not related by blood but who, prior to the death of a blood relation, were at one time related through marriage, is a matter of statutory interpretation which has not previously been determined in relation to subsection 83(5) of the Regulations.

[68] Statutory interpretation begins with the approach that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": (Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis, 2014) at 7 citing Elmer A. Driedger, *The*

Construction of Statutes, (Toronto: Butterworths, 1974) at 67; see also *Re Rizzo & Rizzo Shoes Ltd*, [1998] 1 SCR 27 at para 21, 36 OR (3d) 418). However, the grammatical and ordinary sense of a legislative provision is not determinative. The court must "consider the total context of the provision[s] to be interpreted, no matter how plain the disposition may seem upon initial reading" *ATCO Gas and Pipelines Ltd. v Alberta (Energy and Utilities Board)*, 2006 SCC 4 at para 48, [2006] 1 SCR 140.

[69] The plain reading of paragraph 83(5)(a) that is urged by Dr. Rahimi is only plain if the word marriage is interpreted as she suggests it ought to be which is that there is a marriage, even after death of a spouse, unless the surviving spouse remarries. The plain reading of that paragraph to the Minister is that the word "is" in the phrase "is related by . . . marriage" means there must be a presently existing marriage at the time of the application and issuance of a permanent residence visa.

[70] The objectives of Parliament for immigration are set out in subsection 3(1) of the *IRPA*. Included amongst them is the desire to see that families are reunited in Canada, to promote the successful integration of permanent residents into Canada and to support the attainment of immigration goals established by the Government of Canada. Recently the Federal Court of Appeal considered the interpretative approach to the federal skilled worker economic class:

> [21] It is the position of the Minister that the creation of the economic class is intended to further the objectives stated in paragraphs 3(*a*), (*c*), (*e*) and (*f*) of the IRPA, quoted above. That suggests that the interpretation and application of the provisions of the IRPA relating to the federal skilled worker class is informed by Parliament's stated intention to permit Canada to pursue the maximum social, cultural and economic benefits of immigration, to support the development of a strong and prosperous Canadian

> economy, to promote the successful integration of permanent residents into Canada, and to support the attainment of immigration goals established by the federal government.
>
> *Austria v Canada (Citizenship and Immigration)*, 2014 FCA 191, [2015] 3 FCR 346

[71] Of the four goals outlined above, "the successful integration of permanent residents into Canada" has been put forward by Dr. Rahimi as a factor to be considered under adaptability. Specifically, she says that the 2012 RIAS which accompanied the December 19, 2012 amendments to the Regulations notes that having a relative in Canada did not improve economic outcomes for skilled workers but having an adult relative in Canada could provide other benefits such as facilitating the economic and social integration of an applicant (at 2912-2913). Mr. Amirabadi, his daughter and her husband all submitted letters to the Officer confirming what a close relationship they had with Mr. Vajar and that they would be able to help Dr. Rahimi and Mr. Vajar obtain any necessary paperwork, such as driving licences, and to adjust to life in Canada in a variety of ways. I am urged to find that those letters show the relationship by marriage has survived the death of Mr. Vajar's aunt and such a broad interpretation is both supported by the 2012 RIAS and the facts of this case.

[72] While the 2012 RIAS does mention the benefit of assistance to skilled workers that a relative in Canada can supply and that this may be a reason why certain type of relations receive adaptability points, it does not suggest, nor could it, that points ought to be awarded for the presence of such a relative if the relationship is not specifically met in accordance with the Regulations. It does not in my view help in any way with the interpretation of whether Mr. Amirabadi's marriage survived the death of his spouse. If the marriage does not survive the

death of the spouse, an emotional attachment to and among family members cannot be substituted for the legislative requirement of being related by marriage.

[73] In considering the meaning of "related by marriage" Dr. Rahimi has also suggested that the objective of family reunification is involved. In the *IRPA* Parliament has distinguished family reunification in subsection 12(1) as being separate from being a member of the economic class set out in subsection 12(2). Dr. Rahimi applied specifically under subsection 12(2) as a federal skilled worker in the economic class which is considered entirely separately from being a member of the family class. In any event, it is not apparent to me how the selection criteria to be applied to the family class can assist with the question of whether Mr. Amirabadi's marriage survived the death of his spouse.

[74] Dr. Rahimi's main argument is that the language in the Regulations is broadly worded: it captures non-blood relationships, including those created by marriage and common-law partnership. It makes no distinction as to whether such relationship ceases to exist upon death of the blood-relative in common. In effect, Dr. Rahimi says that as the Regulations do not specifically address what happens if a qualifying spouse dies, the Governor-in-Council needs to assume there is still a marriage.

[75] With respect, I cannot agree with that proposition. I take it to be beyond debate that in order to be married, to have a marriage, both parties must be alive. Similarly in my view, unless the contrary is stated in the legislation, there can be no debate that a marriage ends on death. Marriage vows traditionally are made "until death us do part". On the death of a spouse, no

divorce is required in order to remarry. Legislatively, Parliament has the exclusive jurisdiction to regulate the legal capacity to enter into marriage. In that capacity Parliament has expressed its view of whether a marriage ends on death. Section 2.3 of the *Civil Marriage Act*, SC 2005, c 33, contains the declaratory statement that:

2.3 No person may contract a new marriage until every previous marriage has been dissolved by death or by divorce or declared null by a court order.	**2.3** Nul ne peut contracter un nouveau mariage avant que tout mariage antérieur ait été dissous par le décès ou le divorce ou frappé de nullité par ordonnance d'un tribunal.
[emphasis added].	[non souligné dans l'original]

[76] A dissolved marriage is not a marriage. Parliament's statement that death dissolves a marriage is a logical starting point for interpreting the word "marriage" in the Regulations. If the Governor-in-Council had intended that for the purpose of immigration to Canada a marriage that had been dissolved by death would still come within the provisions of paragraph 83(5)(a) then the Regulations would need to say so in very clear language. The Governor-in-Council could easily have said in paragraph 83(5)(a) that the accompanying spouse "is or once was" related by marriage, but it did not. It said in the paragraph that the accompanying spouse "is" related by marriage.

[77] Consistent with this interpretation is the provision in section 77 of the Regulations requiring the criteria in sections 75 and 76 to be met at the time the application for a permanent resident visa is made, as well as at issuance. Applying section 77 to the criteria in paragraph 83(5)(a), I would write the requirement as being that the accompanying spouse is related by marriage to the permanent resident living in Canada at the time of the application for permanent residence. Mr. Amirabadi cannot be legally related by marriage to his now deceased wife and her

family since the marriage was dissolved five years prior to Dr. Rahimi's application. For this reason there is no longer a legal connection by marriage between Mr. Amirabadi and Mr. Vajar since the death of Mr. Vajar's aunt. To find otherwise, particularly in light of the provisions of the *Civil Marriage Act*, is to do that which Mr. Justice Noël in *Biosa* warned against: it would convert a familial notion of relationship into a legal relationship that is not set out in the legislation.

[78] My view is strengthened on reviewing the two enactments put forward by Dr. Rahimi to support the proposition that death does not end a marriage. They confirm that when legislators intend to confer benefits on a surviving spouse, it is clearly stated, In each case the legislation put forward directly and specifically addresses the issue of the death of a spouse. The *Canada Pension Plan*, RSC 1985, c C-8 provides that a survivor's pension may be payable under certain circumstances. The legislation specifically addresses the death of a spouse; it details when a pension is payable to the survivor of that deceased spouse. It confirms that if the survivor remarries then the pension is not payable but, it may be payable again if the subsequent spouse dies. Similarly the *Family Compensation Act*, RSBC 1996, c 126 specifically defines spouse to include "a person who … was married to the deceased at the time of death" (s 1). In both of these cases the legislators have addressed the consequences of the death of a spouse. For the interpretation put forward by Dr. Rahimi to prevail, such clear language should be found in the Regulations.

[79] When considering whether to apply a broad versus a narrow interpretation of being related by marriage it is also important to look at the effect an interpretation will have on the

other categories of relationships where the relationship arises by marriage. In this case, the qualifying relationship arises not directly as a result of being uncle and nephew; it arises because the uncle was at one time many years ago the aunt's spouse. The problem is the wording in the Regulations does not only apply to aunts and uncles. It applies to the spouse (by marriage, or common-law partnership) of any of the relations described in paragraph 83(5)(a). The other categories of relationship included in the list found in paragraph 83(5)(a) are in addition to those by blood relation. Put in common language rather than that found in the Regulations, and assuming that there are the necessary subsisting marriage(s), common-law partnership(s), or adoption(s) at the time of application and issuance of permanent residence visa, the range of possible qualifying relationships are:

- Parent's spouse
- Grandparent's spouse
- Parent of Parent's spouse (who is not the blood-grandparent)
- Brother/Sister-in-law
- Son/Daughter-in-law
- Grandchild's spouse
- Child of a sibling's spouse (whether the child is born before or after the marriage to the sibling)
- Child of a child's spouse (whether the younger child is born before or after the marriage to the child)
- Step-sibling
- Step-sibling's spouse
- Step-sibling's child
- Step-sibling's spouse's child (whether the child is born before or after the marriage to the step-sibling)

[80] In terms of assisting an Applicant with adjusting to life in Canada, in some cases the same type of relationship will handle death of the blood relation quite differently. For example, someone who grows up in a blended family may be quite close to their step-siblings. If one of the two parents in the blended family dies decades later, that may have no impact on the step-sibling relationship. On the other hand, two elderly people who remarry after their spouses die

may already have adult children and grandchildren. The children of the two elderly people may technically be step-siblings, but may be far less likely to maintain a family relationship once one of the two elderly people die.

[81] The narrower interpretation is more in line with the object of the criteria introduced when adaptability was being introduced as an objective factor. Sorting out these kinds of questions brings in an uncertain, subjective element to the awarding of points for adaptability. That runs contrary to the stated intention in the 2002 RIAS of replacing the subjective Personal Suitability factor with an objective Adaptability factor that was designed "to be more transparent and consistent in the selection of Federal Skilled Worker immigrants" and "allows the full range of selection factors to be assigned on the basis of a paper application" (Regulatory Impact Analysis Statement, (2002) C Gaz II, Extra Vol 136, No 9, 177 at 224).

[82] In summary, the suggestion by Dr. Rahimi that a marriage subsists until there is a remarriage ignores the Regulations which define marriage in section 2 as "a marriage that is valid under both the laws of the jurisdiction where it took place and under Canadian law." Once death dissolves a marriage that marriage is no longer valid under Canadian law. It does not meet the requirements of section 2 of the Regulations and there can be no marriage under paragraph 83(5)(a) of the Regulations.

IX. Did the Officer err in assessing Dr. Rahimi's educational credentials

A. *Overview*

[83] Dr. Rahimi received 22 points for her educational credentials. She had submitted her medical diploma which the Officer considered to be a first-level university credential for which 20 points are awarded. Ultimately the Officer awarded a total of 22 points because, although she did not have a Master's degree or PhD equivalency, Dr. Rahimi did have a specialization. The Officer concluded Dr. Rahimi's education was therefore equivalent to two university educational credentials at the bachelor's level and at least 15 years of full-time or full-time equivalent studies for which 22 points could be awarded.

[84] On December 17, 2015, in response to the November 17, 2015 PFL, Dr. Rahimi included a letter from Iran's Ministry of Health, Treatment and Medical Education [Ministry of Health] which she submits indicates that the local authority treats her degrees at the level of a Master's degree:

> The graduates in General Practice/MD in the Islamic Republic of Iran, in addition to having permit for practicing medicine after obtaining permanent doctor of medicine diploma and as they are authorized to continue clinical specialized program of studies in respect of academic promotion to PhD level, their level is evaluated at least as much as the level of Master of Science (MSc).

[85] If the Officer had accepted Dr. Rahimi's degrees as being equivalent to a Master's degree awarded by a faculty of graduate studies, then 25 points would have been awarded under the provisions for applications received prior to May 4, 2013. That would have provided enough points to meet the requirement of the economic class criteria.

[86] The reasons provided by the Officer for not treating Dr. Rahimi's degrees as equivalent to a Master's degree state that the local authority letter did not contain any evidence as to why the Ministry of Health considered Dr. Rahimi's medical degree to be equivalent to a Master's degree and, without such supporting evidence, the statement was not satisfactory. The Officer found that Dr. Rahimi had received a single medical degree and there was no indication that it was awarded by a faculty of graduate studies. The Medical Specialty Diploma was viewed as a second bachelor's level degree.

B. *Position of Dr. Rahimi*

[87] Dr. Rahimi believes that her Medical Specialty Diploma in Gynaecology and Obstetrics [Diploma] from the University of Medical Sciences should have been evaluated as a master's degree instead of as a second bachelor's degree. She notes that under subsection 78(3) and (4) of the Regulations applicants are to be assessed on the basis of their single highest educational credential which she says is her Diploma: *Khan* at para 53. In addition, she points out that she has 24 years of education which is well in excess of the required minimum of 17 years associated with a Master's degree.

[88] Applying *Khan*, Dr. Rahimi, in her Further Memorandum of Argument, argues that her first degree, being the General Practice/Doctor of Medicine degree was equivalent to at least a Master's of Science and that she had provided evidence that her second, higher-level Medical Specialty Diploma, was a second-level degree at least equivalent to a Master's.

[89] Dr. Rahimi points to the fact that the certificate confirming graduation from the medical specialty program (dated July 18, 2010) was issued by the Registrar & Director of Postgraduate Studies Department as confirmation that it was a graduate degree.

[90] Dr. Rahimi submits that Overseas Processing Manual 6A (Canada, Citizenship and Immigration, *OP 6A Federal Skilled Workers – Applications received on or after February 27, 2008 and before June 26, 2010*, (Ottawa: CIC, 22 March 2012) [OP 6A]) states that it is important to look at how local authorities recognized the credentials, which she provided, but which the Officer wrongly did not accept.

[91] Finally, Dr. Rahimi submits that the Diploma separates her case on the facts from other decisions of this Court, such as *Mahouri v Canada (Citizenship and Immigration)*, 2013 FC 244, 428 FTR 263, in assessing medical degrees in Iran because she produced both two diplomas and a local authority letter.

C. *Position of the Minister*

[92] The Minister submits that while the Diploma required a medical degree as a prerequisite, this is not enough to indicate that it is equivalent to a Master's degree. The face of the two credentials indicates that they are at the same level. There is nothing to indicate that one degree is of a higher level than the other.

[93] The additional evidence submitted by Dr. Rahimi was simply an assertion that the medical degree is equivalent to a Master's degree with no explanation of the underlying reasons.

It was open to the Officer to conclude that neither degree was a Master's degree but then award 22 points in recognition of the two degrees.

[94] The letter from the Ministry of Health, Treatment and Medical Education does not specify that the degree comes from a faculty of graduate studies, but asserts that graduates of a General Practice or MD program are evaluated like Master of Science graduates "as they are authorized to continue clinical specialized program of studies in respect of academic promotion to the PhD level." To the Minister this just indicates that there are no degrees between the first-level degree and a PhD.

D. *Analysis*

[95] Dr. Rahimi says her Diploma was signed by the Registrar and Director of Postgraduate Studies Department which is evidence that it is equivalent to a Master's degree. The Diploma itself however is signed by the Registrar of Guilan University of Medical Sciences, Health and Treatment Service. There is no reference in the Diploma to graduate studies or a graduate school. The Diploma simply confirms that Dr. Rahimi obtained a medical specialty diploma in gynecology and obstetrics and that she "successfully fulfilled the requirements of a Three-Year and Six-Month Program of Assistantship". Given this language, the Officer cannot be faulted for doubting that the Diploma was equivalent to a Master's Degree.

[96] The certificate confirming completion of General Practice/Doctor of Medicine degree (dated June 6, 2010) was signed by a Registrar and Director of Postgraduate Studies Department but it is without doubt a first level degree, Dr. Rahimi having obtained it after graduating from

high school. From this it appears that the title of the person signing the certificates does not correlate to the calibre of the degree. That the Officer did not accept the submission that a signature by the Registrar of Postgraduate Studies shows the Diploma in question was a second-level degree was reasonable under those circumstances.

[97] The letter from the Ministry of Health does not address Dr. Rahimi's specialty degree. It states that after obtaining the first level MD, graduates are entitled to practice medicine and also to pursue a clinical specialty program for academic promotion to PhD level. There is no comment made regarding how the Specialty Diploma is viewed by the local authority.

[98] Dr. Rahimi argued that the Minister misunderstood her argument; she is arguing for the equivalence of the second degree, the Specialty Diploma not the Medical Degree. But the letter from the Ministry of Health does not refer to the specialization diploma. It simply says that the General Practice degree (a first-entry degree) is equivalent to an MSc for promotion to PhD status. This falls squarely in the language of *OP 6A* that medical degrees are generally first-level university credentials and if it, as a first-level (Bachelor's) degree is a prerequisite to a credential then the credential itself is still considered a first-level degree and 22 points would be appropriate.

[99] I note from reviewing the supporting evidence in the record that the local authorities refer on occasion to a "diploma" having been issued and, on other occasions the same credential is referred to as a "degree". Given the uncertainty of how the local authorities may view the specialist diploma, as it was not addressed in the letter from the Ministry of Health, and the use

of varying signatories and terminology between, the different letters, certificates, and diplomas presented, it was reasonable for the Officer to determine that Dr. Rahimi possessed the equivalent of two bachelor degrees. The Officer recognized this by awarding 22 points because even though an MD was a prerequisite, the Diploma was still considered a first level degree.

[100] Critically, the Officer states that the conclusion was arrived at based on the evidence presented. This is reasonable. The onus is on the applicant to provide sufficient evidence to the Officer. There is no evidence in the letter from the Ministry of Health or on the face of the Diploma that the diploma was issued by a Faculty of Graduate Studies. The letter states that Dr. Rahimi completed a three-year and six-month "Program of Assistantship" as result of which she may practice medicine in that field. There is no evidence in the record to indicate what an assistantship entails. Without such evidence it was open to the Officer to conclude it was not the same as a Master's degree.

[101] In addition, as a final argument, Dr. Rahimi submits paragraph 78(1)(f) in the 2015-2016 Regulations is persuasive as it provides that "an entry –to-practice professional degree" is equated with a Master's level degree.

[102] Dr. Rahimi cannot have it both ways. She wishes to use the 25 points for a Master's degree from the Regulations which were in place in January 2010 but apply the definition of a Master's degree from the 2015-2016 Regulations. However, paragraph 78(1)(f) in the 2015-2016 Regulations provides that for a master's degree only 23 points shall be awarded. To receive 25 points, a doctoral university-level credential is required. Even if the 23 points were awarded to

her, Dr. Rahimi would still fall short of the required 67 points. Be that as it may, the applicable regulations are those from January 2010, not the 2015 – 2016 Regulations.

X. Was the Officer's decision made in a procedurally unfair manner?

[103] Dr. Rahimi says that it was procedurally unfair for the Officer not to give her an opportunity to speak to the question of whether the aunt's death terminated Mr. Amirabadi's marriage for the purpose of subparagraph 83(5)(a)(vi). The Minister responds that the Officer did raise the issue by pointing out in the PFL that the aunt had died.

[104] Dr. Rahimi alleges that there is a procedural fairness issue because the Officer did not give notice that they were going to decide the matter of adaptability based on "opinion," and, they must have consulted extrinsic evidence to form such an opinion.

[105] Dr. Rahimi does not point to any materials in the Certified Tribunal Record to support her allegation about extrinsic evidence. The Minister states that when the Officer referred to his or her opinion they were simply stating a disagreement with the submission put forward by Dr. Rahimi.

[106] To isolate the word "opinion" used by the Officer and then try to leverage that into a procedural fairness argument is without any merit.

[107] Generally with respect to procedural fairness, and specifically with respect to the aunt's death, the Officer provided a PFL on November 17, 2015. In it the death of the aunt was mentioned:

> Additionally, it is stated that the Applicant has a family member living in Canada who is the Applicant's spouse's uncle. I noted that Darvishali Babapour Amirabadi is not the spouse's uncle but the husband of his aunt Toran Shahed Ghaznavi who died on February 06, 2004. Therefore, the Applicant is not entitled to 5 (five) points under adaptability factor for having a relative in Canada.
> (The provisions of 83(5)(a) are then reproduced).

[108] Dr. Rahimi's response to this letter was to re-iterate that there was an accompanying spouse related by marriage to a permanent resident and the relationship of Mr. Amirabadi and Mr. Vajar fell within the provision of subparagraph 83(5)(a)(vi).

[109] It is well established that the duty of fairness owed by visa officers to persons applying for permanent residence is at the low end of the spectrum: *Hamza* v *Canada (Citizenship and Immigration)*, 2013 FC 264 at para 23, 429 FTR 93.

[110] In *Khanoyan v Canada (Citizenship and Immigration)*, 2013 FC 446, [2013] FCJ No 470 (QL), Mr. Justice Donald Rennie who was then a member of this Court made two observations about procedural fairness in a similar situation:

> [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 (CanLII), paras 34-36.

[111] Here, the Officer gave Dr. Rahimi notice by way of the PFL of the concerns to be addressed. The reference to the death of the aunt in the PFL was not addressed by Dr. Rahimi, but that was not the fault of the Officer. Her death was mentioned in the PFL. The failure to do so simply means Dr. Rahimi did not meet the onus to establish she met the statutory criteria. The submissions ought to have addressed the foreseeable consequence that the aunt's death ended the marriage upon which the application for points under section 83(5)(a)(vi) was premised and no points for adaptability would be awarded for that prior marriage.

XI. Certified Question

[112] There was discussion at the hearing about a possible question for certification but, as mentioned, the issue of the interpretation of paragraph 83(5)(a) is specific to this matter and this paragraph. It is not an issue broad significance or of general importance. There is no serious question of general importance for certification.

JUDGMENT in IMM-1015-16

THIS COURT'S JUDGMENT is that:

1. The name of the Respondent is amended to The Minister of Citizenship and Immigration.

2. The application is dismissed.

"E. Susan Elliott"
Judge

Annex “A”

Immigration and Refugee Protection Regulations, SOR/2002-227 (2009-2010)	*Règlement sur l’immigration et la protection des réfugiés*, DORS/2002-227
2. The definitions in this section apply in these Regulations.	2. Les définitions qui suivent s’appliquent au présent règlement.
. . .	. . .
“marriage”, in respect of a marriage that took place outside Canada, means a marriage that is valid both under the laws of the jurisdiction where it took place and under Canadian law.	« mariage » S’agissant d’un mariage contracté à l’extérieur du Canada, mariage valide à la fois en vertu des lois du lieu où il a été contracté et des lois canadiennes.
73. The following definitions apply in this Division, other than section 87.1.	73. Les définitions qui suivent s’appliquent à la présente section, à l’exception de l’article 87.1.
“educational credential”	« diplôme »
“educational credential” means any diploma, degree or trade or apprenticeship credential issued on the completion of a program of study or training at an educational or training institution recognized by the authorities responsible for registering, accrediting, supervising and regulating such institutions in the country of issue. « diplôme »	« diplôme » Tout diplôme, certificat de compétence ou certificat d’apprentissage obtenu conséquemment à la réussite d’un programme d’études ou d’un cours de formation offert par un établissement d’enseignement ou de formation reconnu par les autorités chargées d’enregistrer, d’accréditer, de superviser et de réglementer les établissements d’enseignement dans le pays de délivrance de ce diplôme ou certificat. “educational credential”
75. (1) For the purposes of subsection 12(2) of the Act, the federal skilled worker class is hereby prescribed as a class of persons who are skilled workers and who may become permanent residents on the basis of their ability to become economically established in Canada and who intend to reside in a province other than the Province of Quebec.	75. (1) Pour l’application du paragraphe 12(2) de la Loi, la catégorie des travailleurs qualifiés (fédéral) est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada, qui sont des travailleurs qualifiés et qui cherchent à s’établir dans une province autre que le Québec.
76. (1) For the purpose of determining whether a skilled worker, as a member of the federal skilled worker class, will be able to become economically established in Canada, they must be assessed on the basis of the following criteria:	76. (1) Les critères ci-après indiquent que le travailleur qualifié peut réussir son établissement économique au Canada à titre de membre de la catégorie des travailleurs qualifiés (fédéral) :

(a) the skilled worker must be awarded not less than the minimum number of required points referred to in subsection (2) on the basis of the following factors, namely,

(i) education, in accordance with section 78,

(ii) proficiency in the official languages of Canada, in accordance with section 79,

(iii) experience, in accordance with section 80,

(iv) age, in accordance with section 81,

(v) arranged employment, in accordance with section 82, and

(vi) adaptability, in accordance with section 83;

a) le travailleur qualifié accumule le nombre minimum de points visé au paragraphe (2), au titre des facteurs suivants :

(i) les études, aux termes de l'article 78,

(ii) la compétence dans les langues officielles du Canada, aux termes de l'article 79,

(iii) l'expérience, aux termes de l'article 80,

(iv) l'âge, aux termes de l'article 81,

(v) l'exercice d'un emploi réservé, aux termes de l'article 82,

(vi) la capacité d'adaptation, aux termes de l'article 83;

77. For the purposes of Part 5, the requirements and criteria set out in sections 75 and 76 must be met at the time an application for a permanent resident visa is made as well as at the time the visa is issued.

77. Pour l'application de la partie 5, les exigences et critères prévus aux articles 75 et 76 doivent être remplis au moment où la demande de visa de résident permanent est faite et au moment où le visa est délivré.

78. (1) The definitions in this subsection apply in this section.

"full-time" means, in relation to a program of study leading to an educational credential, at least 15 hours of instruction per week during the academic year, including any period of training in the workplace that forms part of the course of instruction. « temps plein »

« temps plein » À l'égard d'un programme d'études qui conduit à l'obtention d'un diplôme, correspond à quinze heures de cours par semaine pendant l'année scolaire, et comprend toute période de formation donnée en milieu de travail et faisant partie du programme. "full-time"

"full-time equivalent" means, in respect of part-time or accelerated studies, the period that would have been required to complete those studies on a full-time basis. « équivalent temps plein »

« équivalent temps plein » Par rapport à tel nombre d'années d'études à temps plein, le nombre d'années d'études à temps partiel ou d'études accélérées qui auraient été nécessaires pour compléter des études équivalentes. "full-time equivalent"

Education (25 points)

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

Études (25 points)

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

(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 full-time or full-time equivalent studies, or

(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;

(d) 20 points for

(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

(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;

(e) 22 points for

(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

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

(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, si, selon le cas :

(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) 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, si, selon le cas :

(i) il a obtenu un diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant trois années d'études à temps plein 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

(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.

(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, 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.

Multiple educational achievements

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

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

(b) shall be awarded

(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

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

Résultats

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

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

b) ils sont attribués :

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

Special circumstances

(4) For the purposes of subsection (2), if a skilled worker has an educational credential referred to in paragraph (2)(b), subparagraph (2)(c)(i) or (ii), (d)(i) or (ii) or (e)(i) or (ii) or paragraph (2)(f), but not the total number of years of full-time or full-time equivalent studies required by that paragraph or subparagraph, the skilled worker shall be awarded the same number of points as the number of years of completed full-time or full-time equivalent studies set out in the paragraph or subparagraph.

Circonstances spéciales

(4) Pour l'application du paragraphe (2), si le travailleur qualifié est titulaire d'un diplôme visé à l'un des alinéas (2)b), des sous-alinéas (2)c)(i) et (ii), (2)d)(i) et (ii) et (2)e)(i) et (ii) ou à l'alinéa (2)f) mais n'a pas accumulé le nombre d'années d'études à temps plein ou l'équivalent temps plein exigé par l'un de ces alinéas ou sous-alinéas, il obtient le nombre de points correspondant au nombre d'années d'études à temps plein — ou leur équivalent temps plein — mentionné dans ces dispositions.

83. (1) A maximum of 10 points for adaptability shall be awarded to a skilled worker on the basis of any combination of the following elements:

(a) for the educational credentials of the skilled worker's accompanying spouse or accompanying common-law partner, 3, 4 or 5 points determined in accordance with subsection (2);

(b) for any previous period of study in Canada by the skilled worker or the skilled worker's spouse or common-law partner, 5 points;

(c) for any previous period of work in Canada by the skilled worker or the skilled worker's spouse or common-law partner, 5 points;

(d) for being related to a person living in Canada who is described in subsection (5), 5 points; and

(e) for being awarded points for arranged employment in Canada under subsection 82(2), 5 points.

Educational credentials of spouse or common-law partner

(2) For the purposes of paragraph (1)(a), an officer shall evaluate the educational credentials of a skilled worker's accompanying spouse or accompanying common-law partner as if the spouse or common-law partner were a skilled worker, and shall award points to the skilled worker as follows:

(a) for a spouse or common-law partner who would be awarded 25 points, 5 points;

(b) for a spouse or common-law partner who would be awarded 20 or 22 points, 4 points; and

(b) for a spouse or common-law partner who would be awarded 20 or 22 points, 4 points; and

83. (1) Un maximum de 10 points d’appréciation sont attribués au travailleur qualifié au titre de la capacité d’adaptation pour toute combinaison des éléments ci-après, selon le nombre indiqué :

a) pour les diplômes de l’époux ou du conjoint de fait, 3, 4 ou 5 points conformément au paragraphe (2);

b) pour des études antérieures faites par le travailleur qualifié ou son époux ou conjoint de fait au Canada, 5 points;

c) pour du travail antérieur effectué par le travailleur qualifié ou son époux ou conjoint de fait au Canada, 5 points;

d) pour la présence au Canada de l’une ou l’autre des personnes visées au paragraphe (5), 5 points;

e) pour avoir obtenu des points pour un emploi réservé au Canada en vertu du paragraphe 82(2), 5 points.

Études de l’époux ou du conjoint de fait

(2) Pour l’application de l’alinéa (1)a), l’agent évalue les diplômes de l’époux ou du conjoint de fait qui accompagne le travailleur qualifié comme s’il s’agissait du travailleur qualifié et lui attribue des points selon la grille suivante :

a) dans le cas où l’époux ou le conjoint de fait obtiendrait 25 points, 5 points;

b) dans le cas où l’époux ou le conjoint de fait obtiendrait 20 ou 22 points, 4 points;

c) dans le cas où l’époux ou le conjoint de fait obtiendrait 12 ou 15 points, 3 points.

(5) For the purposes of paragraph (1)(d), a skilled worker shall be awarded 5 points if

(a) the skilled worker or the skilled worker's accompanying spouse or accompanying common-law partner is related by blood, marriage, common-law partnership or adoption to a person who is a Canadian citizen or permanent resident living in Canada and who is

(i) their father or mother,

(ii) the father or mother of their father or mother.

(iii) their child,

(iv) a child of their child,

(v) a child of their father or mother,

(vi) a child of the father or mother of their father or mother, other than their father or mother, or

(vii) a child of the child of their father or mother; or

(b) the skilled worker has a spouse or common-law partner who is not accompanying the skilled worker and is a Canadian citizen or permanent resident living in Canada.

(5) Pour l'application de l'alinéa (1)d), le travailleur qualifié obtient 5 points dans les cas suivants :

a) l'une des personnes ci-après qui est un citoyen canadien ou un résident permanent et qui vit au Canada lui est unie par les liens du sang ou de l'adoption ou par mariage ou union de fait ou, dans le cas où il l'accompagne, est ainsi unie à son époux ou conjoint de fait :

(i) l'un de leurs parents,

(ii) l'un des parents de leurs parents,

(iii) leur enfant,

(iv) un enfant de leur enfant,

(v) un enfant de l'un de leurs parents,

(vi) un enfant de l'un des parents de l'un de leurs parents, autre que l'un de leurs parents,

(vii) un enfant de l'enfant de l'un de leurs parents;

b) son époux ou conjoint de fait ne l'accompagne pas et est citoyen canadien ou un résident permanent qui vit au Canada.

Immigration and Refugee Protection Regulations, SOR/2002-227 (2015-2016)

Education (25 points)

78 (1) Points shall be awarded, to a maximum of 25, for a skilled worker's Canadian educational credential or equivalency assessment submitted in support of an application, as follows:

(a) 5 points for a secondary school credential;

(b) 15 points for a one-year post-secondary program credential;

Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227 (2015-2016)

Études (25 points)

78 (1) Un maximum de 25 points d'appréciation sont attribués au travailleur qualifié pour tout diplôme canadien ou pour toute attestation d'équivalence fournis à l'appui de la demande, selon la grille suivante :

a) 5 points, pour le diplôme de niveau secondaire;

b) 15 points, pour le diplôme de niveau postsecondaire visant un programme nécessitant une année d'étude;

(c) 19 points for a two-year post-secondary program credential;

c) 19 points, pour le diplôme de niveau postsecondaire visant un programme nécessitant deux années d'études;

(d) 21 points for a post-secondary program credential of three years or longer

d) 21 points, pour le diplôme de niveau postsecondaire visant un programme nécessitant au moins trois années d'études;

(e) 22 points for two or more post-secondary program credentials, one of which must be a credential issued on completion of a post-secondary program of three years or longer;

e) 22 points, pour l'obtention d'au moins deux diplômes de niveau postsecondaire dont l'un des deux visant un programme nécessitant au moins trois années d'études;

(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; and

f) 23 points, pour le diplôme de niveau universitaire de deuxième cycle ou pour le diplôme visant un programme d'études nécessaire à l'exercice d'une profession exigeant un permis délivré par un organisme de réglementation provincial et appartenant au niveau de compétence A de la matrice de la *Classification nationale des professions*;

(g) 25 points for a university-level credential at the doctoral level

g) 25 points, pour le diplôme de niveau universitaire de troisième cycle

More than one educational credential

Plus d'un diplôme

(2) For the purposes of subsection (1), points

(2) Pour l'application du paragraphe (1), les points sont accumulés de la façon suivante :

(a) except as set out in paragraph (1)(e), shall not be awarded cumulatively on the basis of more than one educational credential; and

a) sauf dans le cas prévu à l'alinéa (1)e), ils ne peuvent être additionnés les uns aux autres du fait que le travailleur qualifié possède plus d'un diplôme;

(b) shall be awarded on the basis of the Canadian educational credentials or equivalency assessments submitted in support of an application for a permanent resident visa that result in the highest number of points

b) ils sont attribués en fonction du diplôme canadien ou de l'attestation d'équivalence fournis à l'appui de la demande de visa de résident permanent qui procure le plus de points.

Immigration and Refugee Protection Act, SC 2001, c 27

Objectives — immigration

3. (1) The objectives of this Act with respect to immigration are

(a) to permit Canada to pursue the maximum social, cultural and economic benefits of immigration;

(b) to enrich and strengthen the social and cultural fabric of Canadian society, while respecting the federal, bilingual and multicultural character of Canada;

(b.1) to support and assist the development of minority official languages communities in Canada;

(c) to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada;

(d) to see that families are reunited in Canada;

(e) to promote the successful integration of permanent residents into Canada, while recognizing that integration involves mutual obligations for new immigrants and Canadian society;

(f) to support, by means of consistent standards and prompt processing, the attainment of immigration goals established by the Government of Canada in consultation with the provinces;

(g) to facilitate the entry of visitors, students and temporary workers for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities;

Loi sur l'immigration et la protection des réfugiés, LC 2001, c 27

Objet en matière d'immigration

3. (1) En matière d'immigration, la présente loi a pour objet :

a) de permettre au Canada de retirer de l'immigration le maximum d'avantages sociaux, culturels et économiques;

b) d'enrichir et de renforcer le tissu social et culturel du Canada dans le respect de son caractère fédéral, bilingue et multiculturel;

b.1) de favoriser le développement des collectivités de langues officielles minoritaires au Canada;

c) de favoriser le développement économique et la prospérité du Canada et de faire en sorte que toutes les régions puissent bénéficier des avantages économiques découlant de l'immigration;

d) de veiller à la réunification des familles au Canada;

e) de promouvoir l'intégration des résidents permanents au Canada, compte tenu du fait que cette intégration suppose des obligations pour les nouveaux arrivants et pour la société canadienne;

f) d'atteindre, par la prise de normes uniformes et l'application d'un traitement efficace, les objectifs fixés pour l'immigration par le gouvernement fédéral après consultation des provinces;

g) de faciliter l'entrée des visiteurs, étudiants et travailleurs temporaires qui viennent au Canada dans le cadre d'activités commerciales, touristiques, culturelles, éducatives, scientifiques ou autres, ou pour favoriser la bonne entente à l'échelle internationale;

(h) to protect the health and safety of Canadians and to maintain the security of Canadian society;

h) de protéger la santé des Canadiens et de garantir leur sécurité;

(i) to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks; and

i) de promouvoir, à l'échelle internationale, la justice et la sécurité par le respect des droits de la personne et l'interdiction de territoire aux personnes qui sont des criminels ou constituent un danger pour la sécurité;

(j) to work in cooperation with the provinces to secure better recognition of the foreign credentials of permanent residents and their more rapid integration into society.

j) de veiller, de concert avec les provinces, à aider les résidents permanents à mieux faire reconnaître leurs titres de compétence et à s'intégrer plus rapidement à la société.

Objectives — refugees

(2) The objectives of this Act with respect to refugees are

Objet relatif aux réfugiés

(2) S'agissant des réfugiés, la présente loi a pour objet :

(a) to recognize that the refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted;

a) de reconnaître que le programme pour les réfugiés vise avant tout à sauver des vies et à protéger les personnes de la persécution;

(b) to fulfil Canada's international legal obligations with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement;

b) de remplir les obligations en droit international du Canada relatives aux réfugiés et aux personnes déplacées et d'affirmer la volonté du Canada de participer aux efforts de la communauté internationale pour venir en aide aux personnes qui doivent se réinstaller;

(c) to grant, as a fundamental expression of Canada's humanitarian ideals, fair consideration to those who come to Canada claiming persecution;

c) de faire bénéficier ceux qui fuient la persécution d'une procédure équitable reflétant les idéaux humanitaires du Canada;

(d) to offer safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group, as well as those at risk of torture or cruel and unusual treatment or punishment;

d) d'offrir l'asile à ceux qui craignent avec raison d'être persécutés du fait de leur race, leur religion, leur nationalité, leurs opinions politiques, leur appartenance à un groupe social en particulier, ainsi qu'à ceux qui risquent la torture ou des traitements ou peines cruels et inusités;

(e) to establish fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system, while upholding Canada's respect for the human rights and fundamental freedoms of all human beings;

e) de mettre en place une procédure équitable et efficace qui soit respectueuse, d'une part, de l'intégrité du processus canadien d'asile et, d'autre part, des droits et des libertés fondamentales reconnus à tout être humain;

(f) to support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members in Canada;

f) d'encourager l'autonomie et le bien-être socioéconomique des réfugiés en facilitant la réunification de leurs familles au Canada;

(g) to protect the health and safety of Canadians and to maintain the security of Canadian society; and

g) de protéger la santé des Canadiens et de garantir leur sécurité;

(h) to promote international justice and security by denying access to Canadian territory to persons, including refugee claimants, who are security risks or serious criminals.

h) de promouvoir, à l'échelle internationale, la sécurité et la justice par l'interdiction du territoire aux personnes et demandeurs d'asile qui sont de grands criminels ou constituent un danger pour la sécurité.

Application

(3) This Act is to be construed and applied in a manner that

Interprétation et mise en œuvre

(3) L'interprétation et la mise en oeuvre de la présente loi doivent avoir pour effet :

(a) furthers the domestic and international interests of Canada;

a) de promouvoir les intérêts du Canada sur les plans intérieur et international;

(b) promotes accountability and transparency by enhancing public awareness of immigration and refugee programs;

b) d'encourager la responsabilisation et la transparence par une meilleure connaissance des programmes d'immigration et de ceux pour les réfugiés;

(c) facilitates cooperation between the Government of Canada, provincial governments, foreign states, international organizations and non-governmental organizations;

c) de faciliter la coopération entre le gouvernement fédéral, les gouvernements provinciaux, les États étrangers, les organisations internationales et les organismes non gouvernementaux;

(d) ensures that decisions taken under this Act are consistent with the *Canadian Charter of Rights and Freedoms*, including its principles of equality and freedom from discrimination and of the equality of English and French as the official languages of Canada;

d) d'assurer que les décisions prises en vertu de la présente loi sont conformes à la *Charte canadienne des droits et libertés*, notamment en ce qui touche les principes, d'une part, d'égalité et de protection contre la discrimination et, d'autre part, d'égalité du français et de l'anglais à titre de langues officielles du Canada;

(e) supports the commitment of the Government of Canada to enhance the vitality of the English and French linguistic minority communities in Canada; and

(f) complies with international human rights instruments to which Canada is signatory.

e) de soutenir l'engagement du gouvernement du Canada à favoriser l'épanouissement des minorités francophones et anglophones du Canada;

f) de se conformer aux instruments internationaux portant sur les droits de l'homme dont le Canada est signataire.

Family reunification

12. (1) A foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident.

Regroupement familial

12. (1) La sélection des étrangers de la catégorie « regroupement familial » se fait en fonction de la relation qu'ils ont avec un citoyen canadien ou un résident permanent, à titre d'époux, de conjoint de fait, d'enfant ou de père ou mère ou à titre d'autre membre de la famille prévu par règlement.

Economic immigration

(2) A foreign national may be selected as a member of the economic class on the basis of their ability to become economically established in Canada.

Immigration économique

(2) La sélection des étrangers de la catégorie « immigration économique » se fait en fonction de leur capacité à réussir leur établissement économique au Canada.

Regulations

14. (1) The regulations may provide for any matter relating to the application of this Division, and may define, for the purposes of this Act, the terms used in this Division.

Application générale

14. (1) Les règlements régissent l'application de la présente section et définissent, pour l'application de la présente loi, les termes qui y sont employés.

Regulations

(2) The regulations may prescribe, and govern any matter relating to, classes of permanent residents or foreign nationals, including the classes referred to in section 12, and may include provisions respecting

Sélection et formalités

(2) Ils établissent et régissent les catégories de résidents permanents ou d'étrangers, dont celles visées à l'article 12, et portent notamment sur :

(a) selection criteria, the weight, if any, to be given to all or some of those criteria, the procedures to be followed in evaluating all or some of those criteria and the circumstances in which an officer may substitute for those criteria their evaluation of the likelihood of a foreign national's ability to become economically established in Canada;

a) les critères applicables aux diverses catégories, et les méthodes ou, le cas échéant, les grilles d'appréciation et de pondération de tout ou partie de ces critères, ainsi que les cas où l'agent peut substituer aux critères son appréciation de la capacité de l'étranger à réussir son établissement économique au Canada;

(b) applications for visas and other documents and their issuance or refusal, with respect to foreign nationals and their family members;

(c) the number of applications that may be processed or approved in a year, the number of visas and other documents that may be issued in a year, and the measures to be taken when that number is exceeded;

. . .

(g) any matter for which a recommendation to the Minister or a decision may or must be made by a designated person, institution or organization with respect to a foreign national or sponsor.

b) la demande, la délivrance et le refus de délivrance de visas et autres documents pour les étrangers et les membres de leur famille;

c) le nombre de demandes à traiter et dont il peut être disposé et celui de visas ou autres documents à accorder par an, ainsi que les mesures à prendre en cas de dépassement;

. . .

g) les affaires sur lesquelles les personnes ou organismes désignés devront ou pourront statuer ou faire des recommandations au ministre sur les étrangers ou les répondants.

FEDERAL COURT

SOLICITORS OF RECORD

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