

Federal Court



Cour fédérale

Date: 20220620

Docket: IMM-8956-21

Citation: 2022 FC 929

Vancouver, British Columbia, June 20, 2022

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

MAHNAZ HASHEMI AMIRI

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Vancouver, British Columbia, on June 20, 2022)

[1] Ms. Amiri applies for judicial review of the rejection of her application for permanent residence submitted as part of the Canadian Experience Class via the Express Entry system. I am allowing her application, for the following reasons.

[2] Ms. Amiri first sent her expression of interest through the Express Entry system. She then received an invitation to apply. She was informed that a minimum of 368 points were required to receive an invitation in the relevant draw.

[3] An Immigration Officer rejected Ms. Amiri's application for being incomplete pursuant to section 10 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, because her husband's education credential assessment [ECA] was not issued for immigration purposes.

[4] Ms. Amiri submits that her husband's ECA was not a mandatory document because she did not need the points associated with her husband's level of education to rank above the minimum number of points to obtain an invitation in the relevant draw. She was able to calculate that she had 370 points without those associated with her husband's level of education.

[5] I agree with Ms. Amiri. The requirements for an application in the Express Entry system are found in the *Ministerial Instructions Respecting the Express Entry System*, published in the Canada Gazette and available on IRCC's website [the Instructions]. These Instructions are issued pursuant to section 10.3 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. They distinguish between eligibility criteria, in section 5, which are essentially those of the relevant class, and the components of the Comprehensive Ranking System [CRS], which essentially give points to an applicant based on factors such as age, education, language skills and work experience.

[6] Relevant to Ms. Amiri's case is section 17 of the Instructions, which grants points for an applicant's spouse or common-law partner's level of education. Subsection 17(3) states that if that education was obtained outside Canada, it must be attested by an "education credential equivalency assessment" or ECA issued by an institution designated by the Minister. However, section 17 does not establish an eligibility requirement. One needs to comply with subsection 17(3) only if one wants the associated points.

[7] In this regard, it does not matter that Ms. Amiri was invited to submit an application based on a profile that included her husband's education. Given the minimum number of points required in the relevant draw, Ms. Amiri would have been invited anyway.

[8] I also note that a page from IRCC's website, reprinted in Ms. Amiri's application record, states that an ECA is a "mandatory document (if applicable)". I take this to mean that only an applicant who intends to claim points based on level of education is required to submit an ECA. Ms. Amiri had no such intention, because she did not need those points.

[9] Thus, it was unreasonable for the officer to reject Ms. Amiri's application merely because she had not submitted a valid ECA for her husband. Having found that Ms. Amiri had not submitted a valid ECA for her husband, the officer had to ascertain whether the remaining documents supporting her application demonstrated her eligibility for the class and substantiated a number of points above the minimum for the draw in which she participated.

[10] For these reasons, I will allow the application.

JUDGMENT IN IMM-8956-21

THIS COURT'S JUDGMENT is that:

1. Ms. Amiri's application for judicial review is allowed.
2. The decision dated November 23, 2021 is quashed.
3. Ms. Amiri's application for permanent residence is remitted to the Minister for reconsideration.
4. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8956-21
STYLE OF CAUSE: MAHNAZ HASHEMI AMIRI v MINISTER OF
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