Federal Court  Cour fédérale

Date: 20250107

Docket: IMM-9081-23

Citation: 2025 FC 38

Toronto, Ontario, January 7, 2025

PRESENT: Justice Andrew D. Little

BETWEEN:

MAHMOUDREZA ENTEZAMI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant asks the Court to set aside a decision dated July 10, 2023, refusing his application for permanent residence under an immigration program known as the "Temporary Public Policy: Temporary Resident to Permanent Resident Pathway (TR to PR Pathway): International Graduates" (the "Policy"), made under section 25.2 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA"*).

[2] The applicant submitted that that the decision was unreasonable under the principles in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[3] For the following reasons, I find the decision was reasonable. The application for judicial review must therefore be dismissed.

I. Facts and Events Leading to this Application

[4] The applicant is a citizen of Iran who entered Canada in 2018. He studied at Concordia University in Montréal and graduated with a master's degree in software engineering. Since then, he has worked as a software engineer in Canada. At the material times, he lived in the Montréal area.

[5] On April 14, 2021, the federal government announced the Policy to enable qualifying foreign nationals to apply for permanent residence in Canada. The Policy provided that a foreign national applicant must meet specific requirements. One was demonstrated language proficiency in either of Canada's two official languages.

[6] In the Policy, under the heading "Conditions (eligibility requirements) applicable to principal applicants", paragraph "e" provided that the applicant must have attained a level of proficiency of at least benchmark 5 in either official language for each of four language skill areas set out in specified documents. Such proficiency "must be demonstrated by results of an evaluation by an organization or institution" designated by the Minister and "the evaluation must be less than two (2) years old when the permanent residence application is received".

[7] The Policy stated that it came into effect on May 6, 2021, and would end on November 5, 2021, or once 40,000 applications have been received, whichever came first. The Policy advised

that Immigration, Refugees and Citizenship Canada ("IRCC") would not process any applications received after the intake cap of 40,000 was reached.

[8] On May 7, 2021, the applicant applied for permanent residence under the Policy.

[9] On May 7, 2021, applications for permanent residence under the Policy also reached the limit of 40,000 applicants. Thus, under the Policy, after this time IRCC would not process any additional applications.

[10] On May 8, 2021, the applicant took an IELTS English language test in an attempt to meet the language proficiency requirements of the Policy.

[11] On approximately May 21, 2021, the applicant obtained his IELTS test results dated May 19, 2021, which were sufficient to meet the requirements of the Policy.

[12] On June 9, 2021, the applicant attempted to submit a webform letter with a number of attached documents that were missing from his application, including the results of the language test (an IELTS Report Form). However, IRCC declined or was unable to add those documents to his application.

[13] In February 2022, the applicant uploaded his IELTS Report. I understand that IRCC accepted and acknowledged the receipt of the document at that time.

[14] By letter dated March 30, 2022, IRCC confirmed electronic receipt of his application on May 7, 2021.

[15] An entry in the Global Case Management System ("GCMS") on November 9, 2022, confirms that an officer found that the applicant did not meet the eligibility requirements for the Policy, because the "language test was taken after the date of application". It appears that this finding was not immediately communicated to the applicant.

[16] Following three access to information requests, the applicant uploaded a letter to IRCC in mid-February 2023, explaining that he was unable to find a spot to take the language test before May 8, 2021, and faced further difficulties in taking the test due to travel restrictions arising from the COVID-19 pandemic. He had travelled from Montréal to Sault Ste Marie, Ontario, and spent more than $1,000 to take the IELTS test on May 8, 2021.

[17] By letter dated June 28, 2023, IRCC advised the applicant that it appeared that he did not meet a requirement of the Policy, namely that the language proficiency "evaluation must be less than two (2) years old when the permanent residence application is received". IRCC asked for his response. The applicant's counsel responded by letter dated July 4, 2023, advising the following circumstances leading to the language proficiency test on May 8, 2021:

- The unavailability of any spot during the very close window of time for TR-to-PR applications throughout the country (from April 15th to May 8th);
- Strict quarantine was imposed in Montreal, where the Applicant lived at the time, due to the Corona Virus; and
- The impossibility of moving outside Canada for taking the IELTS exam due to the expiry of the Applicant's Temporary Resident Visa.

[18] The applicant's counsel also argued that the circumstances were exceptional and beyond his control.

[19] An officer reviewed the matter on July 10, 2023. The officer's GCMS entry stated:

> Eligibility failed. LANGUAGE PROFICIENCY: Min. CLB met: Yes Language test less than two years old: No IELTS test report form dated 2021/05/08 which is after the date the application for permanent residence was received, therefore PA has not met the following selection criteria: Have attained a level of proficiency of at least benchmark 5 in either official language for each of the four language skill areas, as set out in the Canadian Language Benchmarks or the Niveaux de compétence linguistique canadiens. This must be demonstrated by the results of an evaluation by an organization or institution designated by the Minister for the purpose of evaluating language proficiency under subsection 74(3) of the Regulations; and the evaluation must be less than two (2) years old when the permanent residence application is received. After reviewing all of the information before me, I am not satisfied on balance of probabilities that the principal applicant has demonstrated per IRPA 25.2 that they meet the eligibility requirements for the TR-PR Pathway public policy.
>
> [Underlining added.]

[20] IRCC advised the applicant of its negative decision by letter dated July 10, 2023.

II. **Analysis**

[21] The applicant submitted that the officer's decision was unreasonable because the reasons provided in the GCMS notes were unintelligible and lacked coherence. The applicant contended that the officer failed to consider the "exigent" circumstances related to his inability to take the language proficiency test before May 8, 2021, owing to the pandemic restrictions in Montreal, and did not consider his efforts to travel to Sault Ste Marie and back to take the test. According

to the applicant, the officer had discretion to consider such factors because of the overall context and purpose of the Policy.

[22] The applicant also contended that paragraph “e” of the Policy could be read to permit the language proficiency test results to be submitted up to the date of acknowledgement of receipt of an application under the Policy. In the applicant’s case, that date is either March 29 or March 30, 2022, when an officer reviewed his file and made a GCMS entry and then sent a letter confirming receipt of his application.

[23] Although I am sympathetic to the applicant’s circumstances, I am unable to agree with his submissions.

[24] As the respondent submitted, the Court has held that the officer did not have discretion to ignore, relax or waive the mandatory eligibility requirements in the Policy: *Rohani v. Canada (Citizenship and Immigration)*, 2024 FC 1037, at paras 2, 16-19, 50, 54, 56-57, 61; *Figueiredo v. Canada (Citizenship and Immigration)*, 2024 FC 1829, at para 5. See similarly: *Kumar v. Canada (Citizenship and Immigration)*, 2024 FC 1613, at paras 27-29; *Bello v. Canada (Citizenship and Immigration)*, 2023 FC 1094, at para 45; *Keke v. Canada (Citizenship and Immigration)*, 2024 FC 178, at para 27. The officer had to apply the express provisions of the Policy, including the requirements on language proficiency in paragraph “e”. In addition, the officer could not consider the circumstances that the applicant characterized in his Court submissions as “exigent” and that his counsel earlier characterized as exceptional and beyond his control in response to IRCC’s procedural fairness letter.

[25] It does not assist the applicant's position to argue that it was open to the officer to interpret the date that the applicant's application for permanent residence was "received" under paragraph "e" of the Policy as the date that IRCC acknowledged that the applicant's application for permanent residence was received. IRCC acknowledged receipt of his application by letter dated March 30, 2022, but that letter expressly confirmed that the application was received electronically on May 7, 2021. Receipt is the express requirement of the Policy, not acknowledgement of receipt.

[26] In my view, the officer's decision was substantively reasonable because it was intelligible, coherent, respected the factual constraints in the record and reasonably applied the terms of the Policy. The officer did not fundamentally misapprehend or ignore any material evidence. See *Vavilov*, at paras 101, 102-104, 125-126. The applicant did not meet the eligibility requirements of the Policy when he filed his application for permanent residence. When he submitted that application on May 7, 2021, the applicant had not attempted the IELTS test and so did not meet the language proficiency requirements of the Policy – which required him to demonstrate his language proficiency by the results of an evaluation by a designated organization or institution. He did the IELTS test the day after he submitted his application. By that time on May 8, 2021, IRCC had already reached the cap of 40,000 applications under the Policy. The applicant received the test results later in May and attempted to file them with IRCC on June 8, 2021. He did not successfully submit them to IRCC until February 2022.

[27] The applicant relied on *Kaur v. Canada (Citizenship and Immigration),* 2022 FC 1690. In my view, that decision is distinguishable from the present case on its facts. In *Kaur*, the applicant

mistakenly uploaded another document in place of her education documents. She subsequently filed the correct education documents *before* the required date. Her application was refused for failure to file a complete application because her education documents were not filed. This Court found that the officer should have considered the education documents because the applicant had made an innocent mistake when uploading the documents, and she took steps to correct the error within the required timeline and before a formal decision was made. Justice Furlanetto held that either the documents should have been treated as part of the application, or an explanation should have been given as to why not and the applicant given an opportunity to re-submit the full package of documents before the expiration of the applicable timeline: *Kaur,* at paras 4-5, 7, 21-23, 28.

[28] By contrast, in the present case, the applicant did not meet the substantive requirements of the Policy when his application was received by IRCC on May 7, 2021, because at that time he could not demonstrate that he met the language proficiency requirements by submitting the necessary evaluation by a designated organization or institution. After May 7, 2021, the applicant could not make up for that gap in his application because the cap of 40,000 applications had been reached before he took the IELTS test, before he received the positive results and before he uploaded them to IRCC. The applicant did not make the kind of "innocent mistake" by uploading incorrect documents, as occurred in *Kaur*. Finally, the respondent Minister in *Kaur* conceded that if the applicant had re-filed the entirety of the application on the date she filed the education documents, her application may not have been refused: *Kaur,* at para 27. The respondent made no such concession in the present case and indeed, could not have done so based on the evidence.

III. **Conclusion**

[29] Accordingly, this application for judicial review must be dismissed. While the respondent raised an objection that certain of the applicant's submissions were improper because they were not raised on his application for leave, I do not need to address that argument owing to the outcome of this application on its merits.

[30] Neither party raised a question to certify for appeal and none arises.

JUDGMENT IN IMM-9081-23

THIS COURT ORDERS that:

1. The style of cause is amended to state that the respondent is the Minister of Citizenship and Immigration.
2. The application for judicial review is dismissed.
3. No question is certified for appeal under paragraph 74(*d*) of the *Immigration and Refugee Protection Act.*

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-9081-23
STYLE OF CAUSE:	MAHMOUDREZA ENTEZAMI v THE MINISTER OF IMMIGRATION, REFUGEES, AND CITIZENSHIP
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	DECMEBER 19, 2024
REASONS FOR JUDGMENT AND JUDGMENT:	A.D. LITTLE J.
DATED:	JANUARY 7, 2025

APPEARANCES:

Sadeq Ziaee Bigdeli	FOR THE APPLICANT
Leila Jawando	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sadeq Ziaee Bigdeli Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT