

Federal Court



Cour fédérale

**Date: 20110706**

**Docket: IMM-4923-10**

**Citation: 2011 FC 824**

**Ottawa, Ontario, July 6, 2011**

**PRESENT: The Honourable Mr. Justice Beaudry**

**BETWEEN:**

**ZHALEH RABIEE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 26 (IRPA) of the decision rendered by a Visa Officer (Officer), dated July 11, 2010 denying the applicant's application for permanent resident as a skilled worker.

[2] For the reasons set out below, this application shall be denied.

**Facts**

[3] The applicant applied for permanent residence in the skilled worker class as a specialist physician (NOC 3111) in March 2009.

[4] The applicant completed medical school in Iran, followed by a two-year internship. She then took on a four year residency program at the completion of which she was recognized as certified specialist. The applicant presumed that the completion of the specialty is akin to a doctorate, and that she would therefore be awarded 25 point for education as per paragraph 78(2)(f) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations).

[5] When the applicant's application was assessed in January 2010, she received 64 units of assessment. As 67 units are required to pass selection, her application was refused.

[6] The applicant challenged the refusal decision by way of an application to the Federal Court. In this application, the applicant argued that the Officer had made three reviewable errors: First, that the Officer assessed the applicant under the "general practitioner" (NOC 3112) category, as opposed to the "specialist" category (NOC 3111). Second, the applicant argued that the Officer erred in the assessment of the applicant's language ability, and that she should have received an additional two points. Third, the applicant argued that the Officer awarded the applicant 22 points for her education, assuming that all of her credentials were at the university bachelor's level. The applicant maintained that she should have received 25 points because of the specialty she completed in dermatology.

[7] After reviewing the application record, counsel for the respondent, Mr. Joseph, wrote to counsel for the applicant to make the following offer to settle:

- i. The applicant discontinues the application for judicial review;
- ii. The matter will be re-assessed by another Officer;
- iii. No costs to either party.

[8] The applicant accepted this offer and filed a notice of discontinuance of her application for judicial review. There were no other discussions or terms of settlement.

[9] The applicant's application was reassessed by a different Officer who awarded 66 points, which again fell short of the 67 points required. The additional two points were awarded in the education category under paragraph 78(2)(e)(ii).

### **Impugned decision**

[10] The Officer assessed the applicant's application under the "Specialist Physician" category (National Occupation Category 3111), and made the following determinations:

	<b>Points Assessed</b>	<b>Maximum</b>
<b>Age</b>	8	10
<b>Education</b>	22	25
<b>Experience</b>	21	21
<b>Arranged Employment</b>	0	10
<b>Official Language Proficiency</b>	6	24
<b>Adaptability</b>	9	10
<b>Total</b>	66	100

## **Education**

[11] As shown above, the Officer granted the applicant 22 points under the education category. The Officer noted that the applicant's allegation is that she has a doctorate in medicine, but the Officer determined that within the Canadian context and the legislative framework of IRPA, the applicant could not be considered to have obtained a doctorate.

[12] The Officer reasoned that the very essence of the term "doctorate degree" implies study beyond that of a master's degree. Given that the applicant had never completed a master's degree, she could not be considered to hold a Ph.D. The Officer used the following definition of a doctorate from the University of Wisconsin to support his argument: "A Ph. D or equivalent award designated the completion of advanced graduate study beyond that required of a master's degree".

[13] Accordingly, the Officer awarded 22 points for "two or more university educational credentials at the bachelor's level and at least 15 years of study".

[14] The Officer also quoted the Overseas Processing Manual 6 (manual) which states that professional degrees, such as medical degrees are considered to be bachelors degrees to which 20 points should be awarded.

**Issues**

[15] The issue to be determined in this application is the following:

- a. Did the Officer commit a reviewable error in assessing the number of education points to be awarded to the applicant?
- b. Has there been an earlier admission by Mr. Joseph that the applicant should have received 25 points for her education?
- c. If the above questions are answered in the affirmative, should the applicant be awarded costs?

**Standard of review**

[16] The questions to be determined in this case are of mixed fact and law. Accordingly, the standard of reasonableness shall apply (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, para 47).

*a. Did the Officer commit a reviewable error in assessing the number of education points to be awarded to the applicant?*

**Applicant's arguments**

[17] The applicant states that the main issue in contention is whether or not the three educational degrees she has received (1- the original medicine degree, 2- the internship 3- the specialist designation) are all bachelor's level university credentials.

[18] The applicant submits that beyond her medical degree and her internship and license to practice medicine, she has obtained four extra years of training and exams in order to obtain her specialists degree. She states that this extra four years must be said to account to something more similar to a master's degree or a PhD, either of which would grant the applicant 25 points for education.

[19] She makes reference to the descriptions of the two NOC categories that she believes were confused by the Officer: The first is the General Practitioner category (NOC 3112) which requires a bachelor's degree, graduation from an approved medical school, and two or three years of family medicine residency or completion of the qualifying examinations of the Medical Council of Canada and licensing by a Province or Territory. The applicant emphasizes that it also states that "GPs and family physicians may become specialist physicians with additional training".

[20] In contrast, the applicant states that the Specialist Physician category (NOC 3111) requires applicants to have a Bachelor of Science degree, graduation from an approved medical school, and specific specialty training (4-5 years of specialty residency training).

[21] She says that the manual referred to by the Officer unfortunately provides only an explanation about "doctors" without specifying the distinction between a GP and a Specialist Physician. She contends that both Officers ignored the section of the manual which states that "If it is a second-level degree, and if for example, it belongs to a Faculty of Graduate Studies, 25 points may be awarded".

[22] She quotes the following portion of the manual: “If a bachelor’s credential is a prerequisite to the credential, but the credential itself is still considered a first-level degree, then 22 points would be appropriate”. The applicant submits that her medical degree and her specialist’s degree cannot be obtained at the same time as, for example, a degree in child psychology and a degree in experimental psychology, because the degrees are not considered to be at the same level. The applicant also submits that if it cannot be said that the educational credentials are at the same level, then the Officer must follow the Regulations and yield to 25 units under paragraph 78(2)(f).

[23] The applicant further argues that the Officer’s error is demonstrative of bad faith. The Officer had all of the submissions made in the first application (which was consented to by respondent’s counsel).

[24] She underscores that the material given to the Officer contained evidence that the visa post had traditionally and continually recognized a post-graduate degree of dermatology as being within the 25 point range. The applicant contends that this information was not mentioned by the Officer.

[25] She finally alleges that the Officer relied upon definitions from Wikipedia and from the University of Wisconsin and argues that the manual requires educational assessments to be made in accordance with the educational standards that apply at the particular visa post.

### **Respondent's arguments**

[26] The respondent submits the applicant holds a medical degree, which is considered a first-level degree. As such, he states that the degree, without specialization would have earned the applicant 20 points under paragraph 78(2)(d)(ii) (educational credential at the bachelor's level and a total of at least 14 years of completed full-time or full-time equivalent studies).

[27] Since the applicant also completed a specialization in dermatology, this made her eligible to receive an additional 2 points under paragraph 78(2)(e)(ii) (two educational credentials at the bachelor's level). The respondent therefore argues that it was reasonable for the Officer to award the applicant 22 points.

[28] The respondent further submits that the Officer was not satisfied that the applicant's specialist degree was not a credential at the master's or doctoral level as there was no satisfactory evidence that the specialization qualified as graduate studies as required by paragraph 78(2)(f) of the Regulations.

### **Analysis**

[29] The Officer's decision falls within the range of reasonable outcomes *Dunsmuir* para 47. The Officer justified her decision for believing that the applicant's specialist degree was not a credential at the master's or doctoral level. Given that there was no clear evidence showing that the specialization qualified as graduate studies, the decision was left to the Officer's discretion and the Court is not satisfied that this conclusion is unreasonable. It is not up to the Court to re-weigh the evidence (*Yu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1263).



[30] The applicant cites *Rabeya v Canada (Minister of Citizenship and Immigration)*, 2011 FC 370 [2011] FCJ no 479, to support her pretension that she should have been awarded 25 points for her education. The facts in that cases are quite different than the one at bar. In *Rabeya*, the applicant had completed a Masters' in Business Administration (MBA in Marketing) after having obtained a Masters' degree in Arts (MA). The Court came to the conclusion that it was unreasonable for the Officer to exclude the second (MBA in marketing) degree because it was of the same academic level as the first one (MA).

[31] The Officer in the present case explained clearly at paras 9-10 of her affidavit how she awarded 22 points instead of 25 to the applicant for education. There is no reviewable error.

***b. Has there been an earlier admission by Mr. Joseph that the applicant should have received 25 points for her education?***

[32] The applicant maintains that Mr. Joseph (respondent's counsel) by agreeing that the assessment made by the first Officer be returned for a reassessment is an indication that Mr. Joseph was convinced that there was an alleged error in the points awarded for education. The second Officer should have recognized that admission and give the applicant 25 points.

[33] There is no evidence that the respondent acknowledged any error in the assessment of the education points by the Officer. The offer to settle was made “without prejudice” and as such, the applicant’s arguments cannot be accepted by the Court.

[34] Given the Court's conclusions on the above two questions, the third question need not be addressed.

[35] The applicant proposes the following question for certification:

1. Whether or not a Specialist Degree of Dermatology, the educational criteria of which correspond to the NOC 3111 in which the application was submitted, is to be addressed under Section 78(2)(e)(ii) or 78(2)(f) in the absence of direct evidence that the Dermatology degree was pronounced by a faculty of graduate studies.

[36] The respondent opposes such a question because it is too narrow and not of general importance. The Court agrees and finds that the question deals only with the facts of the present case and should not therefore be certified.

**JUDGMENT**

**THIS COURT ORDERS that:**

1. The application for judicial review be dismissed.
2. No question is certified.

“Michel Beaudry”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4923-10

**STYLE OF CAUSE:** Zhaleh Rabiee and MCI

**PLACE OF HEARING:** Toronto

**DATE OF HEARING:** June 27, 2011

**REASONS FOR JUDGMENT:** BEAUDRY J.

**DATED:** July 6, 2011

**APPEARANCES:**

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