

Federal Court



Cour fédérale

**Date: 20130618**

**Docket: IMM-6512-12**

**Citation: 2013 FC 680**

**Ottawa, Ontario, June 18, 2013**

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

**BETWEEN:**

**MOHAMMAD DEGHAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (Act) for judicial review of the decision of a Visa Officer (Officer) of the Embassy of Canada, Visa Section, in Warsaw, Poland, dated 9 March 2012 (Decision), which refused the Applicant's application for permanent residence in Canada as a member of the Federal Skilled Worker class.

## **BACKGROUND**

[2] The Applicant is a 42-year-old citizen of Iran. He applied for permanent residence in Canada as a Federal Skilled Worker in December, 2009. The Applicant self-evaluated himself as having 70 points under the Federal Skilled Worker grid, and in his cover letter requested a substituted evaluation if he did not meet the required number of points.

[3] The Applicant received an eight-year Doctorate Degree in the field of Medicine from Shahid Beheshti University of Medical Sciences in 1997. He has submitted a letter along with this application from the Education Department of the Ministry of Health, Treatment and Medical Education in Iran verifying that this degree is considered a Master's degree in Iran (Applicant's Record, pages 126-127).

[4] After completing his Doctorate Degree, the Applicant obtained a specialization in dermatology from Shahid Beheshti University of Medical Sciences. This is a four-year program which the Applicant completed in 2001. In total, the Applicant studied for 24 years.

[5] The Applicant's wife also completed a Doctorate Degree in Medicine, and went on to do a four-year specialization in cardiology. In total, she studied for 23 years.

[6] By letter dated 9 March 2012, the Canadian Embassy in Warsaw informed the Applicant that he had not obtained the minimum number of points required for a permanent residence visa. The Officer awarded the Applicant 66 points; the minimum required is 67. The missing points were

due to the fact that the Officer did not consider the Applicant and his wife's Iranian Doctorate Degrees to be graduate degrees.

[7] The Applicant's representative wrote to the Officer on 23 April 2012 requesting a review of the Decision and providing an explanation with respect to the Iranian educational system. The Officer responded on 5 June 2012 stating that the Decision was final and would not be reconsidered.

### **DECISION UNDER REVIEW**

[8] The Decision in this case consists of the letter dated 9 March 2012 (Refusal Letter), as well as the Computer Assisted Immigration Processing System (CAIPS) Notes made by the Officer.

[9] The Officer stated that the Applicant had completed a single degree which allowed him to practice medicine; there was no indication that there was a degree awarded prior to this degree or that the degree was awarded by a faculty of graduate studies. With regards to his specialist certificate in dermatology, the Officer said there was no indication that this certificate was awarded by a faculty of graduate studies. In coming to this conclusion, the Officer cited Operational Manual 6a (OP 6a), which says 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 a first level, albeit "professional" degree and should be awarded 20 points. If it is a second-level degree and if, for example, it belongs to a Faculty of Graduate Studies, 25 points may be awarded. If a bachelor's credential is a prerequisite to the credential, but the credential itself is still considered a first-level degree, then 22 points would be appropriate.

[10] As the Officer considered the Applicant to have obtained a single degree followed by a specialist certificate, the Applicant was awarded 22 points for two or more university educational credentials at the bachelor's level and at least 15 years of full-time studies. The Applicant's spouse was awarded 4 points for the same level of studies. This rendered the Applicant's total 66 points, which was insufficient to meet the minimum level of 67 points. As such, the Applicant did not meet the requirements for permanent residence under the Federal Skilled Worker class.

## **ISSUES**

[11] The Applicant raises the following issue in this application:

- a. Was the Officer's finding unreasonable in awarding the Applicant 22 points for education, despite evidence indicating that the Applicant had completed a specialization in dermatology?
- b. Did the Officer err in failing to exercise his discretion to approve the Applicant's skilled worker application, given the unique circumstances of this case?

## **STANDARD OF REVIEW**

[12] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the

reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[13] The first issue involves an evaluation of the Officer's award of points under the Federal Skilled Worker category. This is a fact-based assessment, and the case law has established that this is reviewable on a reasonableness standard (*Zhong v Canada (Minister of Citizenship and Immigration)*, 2011 FC 980 at paragraph 11; *Malik v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1283 at paragraph 22).

[14] The second issue is a review of the exercise of the Officer's discretion in consideration of the Applicant's application. This is reviewable on a standard of reasonableness (*Kniazeva v Canada (Minister of Citizenship and Immigration)*, 2006 FC 268; *Ali v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1247; *Hamza v Canada (Minister of Citizenship and Immigration)*, 2013 FC 264). However, issues around whether the Officer failed to actually consider the Applicant's request for a substituted evaluation are evaluated on a standard of correctness (*Khan v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1314 at paragraph 23).

[15] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that

it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

[16] In his arguments, the Applicant takes issue with the adequacy of the Officer’s reasons. He submits that this is a matter of procedural fairness. However in *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*], the Supreme Court of Canada held at paragraph 14 that the adequacy of reasons is not a stand-alone basis for quashing a decision. Rather, “the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes.” Thus, the adequacy of the reasons will be analysed along with the reasonableness of the Decision as a whole.

[17] The Applicant also raises an alternative argument to the first issue which involves his opportunity to adequately respond to the Officer’s concerns. This is a matter of procedural fairness (*Kuhathasan v Canada (Minister of Citizenship and Immigration)*, 2008 FC 457 at paragraph 18), and as stated by the Supreme Court in *Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)*, [2003] 1 SCR 539 at paragraph 100, “it is for the courts, not the Minister, to provide the legal answer to procedural fairness questions.” Accordingly, these issues will be reviewed on a standard of correctness.

## **STATUTORY PROVISIONS**

[18] The following provisions of the Act are applicable in these proceedings:

**Application before entering Visa et documents**

## Canada

**11.** (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

[...]

**87.3** (1) This section applies to applications for visas or other documents made under subsection 11(1), other than those made by persons referred to in subsection 99(2), to sponsorship applications made by persons referred to in subsection 13(1), to applications for permanent resident status under subsection 21(1) or temporary resident status under subsection 22(1) made by foreign nationals in Canada, to applications for work or study permits and to requests under subsection 25(1) made by foreign nationals outside Canada.

(2) The processing of applications and requests is to be conducted in a manner that, in the opinion of the Minister, will best support the attainment of the immigration goals established by the Government of Canada.

**11.** (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

[...]

**87.3** (1) Le présent article s'applique aux demandes de visa et autres documents visées au paragraphe 11(1) — sauf à celle faite par la personne visée au paragraphe 99(2) —, aux demandes de parrainage faites par une personne visée au paragraphe 13(1), aux demandes de statut de résident permanent visées au paragraphe 21(1) ou de résident temporaire visées au paragraphe 22(1) faites par un étranger se trouvant au Canada, aux demandes de permis de travail ou d'études ainsi qu'aux demandes prévues au paragraphe 25(1) faites par un étranger se trouvant hors du Canada.

(2) Le traitement des demandes se fait de la manière qui, selon le ministre, est la plus susceptible d'aider l'atteinte des objectifs fixés pour l'immigration par le gouvernement fédéral.

(3) For the purposes of subsection (2), the Minister may give instructions with respect to the processing of applications and requests, including instructions

(a) establishing categories of applications or requests to which the instructions apply; (a.1) establishing conditions, by category or otherwise, that must be met before or during the processing of an application or request;

(b) establishing an order, by category or otherwise, for the processing of applications or requests;

(c) setting the number of applications or requests, by category or otherwise, to be processed in any year; and

(d) providing for the disposition of applications and requests, including those made subsequent to the first application or request.

(3.1) An instruction may, if it so provides, apply in respect of pending applications or requests that are made before the day on which the instruction takes effect.

(3.2) For greater certainty, an instruction given under paragraph (3)(c) may provide that the number of applications or requests, by category or otherwise, to be processed in

(3) Pour l'application du paragraphe (2), le ministre peut donner des instructions sur le traitement des demandes, notamment des instructions :

a) prévoyant les groupes de demandes à l'égard desquels s'appliquent les instructions; a.1) prévoyant des conditions, notamment par groupe, à remplir en vue du traitement des demandes ou lors de celui-ci;

b) prévoyant l'ordre de traitement des demandes, notamment par groupe;

c) précisant le nombre de demandes à traiter par an, notamment par groupe;

d) régissant la disposition des demandes dont celles faites de nouveau.

(3.1) Les instructions peuvent, lorsqu'elles le prévoient, s'appliquer à l'égard des demandes pendantes faites avant la date où elles prennent effet.

(3.2) Il est entendu que les instructions données en vertu de l'alinéa (3)c) peuvent préciser que le nombre de demandes à traiter par an, notamment par groupe, est de



any year be set at zero.

zéro.

(4) Officers and persons authorized to exercise the powers of the Minister under section 25 shall comply with any instructions before processing an application or request or when processing one. If an application or request is not processed, it may be retained, returned or otherwise disposed of in accordance with the instructions of the Minister.

(4) L'agent — ou la personne habilitée à exercer les pouvoirs du ministre prévus à l'article 25 — est tenu de se conformer aux instructions avant et pendant le traitement de la demande; s'il ne procède pas au traitement de la demande, il peut, conformément aux instructions du ministre, la retenir, la retourner ou en disposer.

[19] The following provisions of the Regulations are applicable in this proceeding:

**Circumstances for officer's substituted evaluation**

**Substitution de l'appréciation de l'agent à la grille**

**76** (3) Whether or not the skilled worker has been awarded the minimum number of required points referred to in subsection (2), an officer may substitute for the criteria set out in paragraph (1)(a) their evaluation of the likelihood of the ability of the skilled worker to become economically established in Canada if the number of points awarded is not a sufficient indicator of whether the skilled worker may become economically established in Canada.

**76** (3) Si le nombre de points obtenu par un travailleur qualifié — que celui-ci obtienne ou non le nombre minimum de points visé au paragraphe (2) — n'est pas un indicateur suffisant de l'aptitude de ce travailleur qualifié à réussir son établissement économique au Canada, l'agent peut substituer son appréciation aux critères prévus à l'alinéa (1)a).

[...]

[...]

**Education (25 points)**

**Études (25 points)**

**78** (2) A maximum of 25

**78** (2) Un maximum de 25

points shall be awarded for a skilled worker's education as follows:

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

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

(c) 15 points for

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

points d'appréciation sont attribués pour les études du travailleur qualifié selon la grille suivante :

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

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

c) 15 points, si, selon le cas :

(i) il a obtenu un diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant une année d'études et a accumulé un 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) a two-year university educational credential at the bachelor's level and a total of at least 14 years of completed full-time or full-time equivalent studies;                                  | (ii) il a obtenu un diplôme universitaire de premier cycle nécessitant deux années d'études et a accumulé un total d'au moins quatorze années d'études à temps plein complètes ou l'équivalent temps plein;             |
| (e) 22 points for   | e) 22 points, si, selon le cas :  |
| (i) a three-year post-secondary educational credential, other than a university educational credential, and a total of at least 15 years of completed full-time or full-time equivalent studies, or | (i) il a obtenu un diplôme postsecondaire — autre qu'un diplôme universitaire — nécessitant trois années d'études et a accumulé un total de quinze années d'études à temps plein complètes ou l'équivalent temps plein, |
| (ii) two or more university educational credentials at the bachelor's level and a total of at least 15 years of completed full-time or full-time equivalent studies; and                            | (ii) il a obtenu au moins deux diplômes universitaires de premier cycle et a accumulé un total d'au moins quinze années d'études à temps plein complètes ou l'équivalent temps plein;                                   |
| (f) 25 points for a university educational credential at the master's or doctoral level and a total of at least 17 years of completed full-time or full-time equivalent studies.                    | f) 25 points, s'il a obtenu un diplôme universitaire de deuxième ou de troisième cycle et a accumulé un total d'au moins dix-sept années d'études à temps plein complètes ou l'équivalent temps plein.                  |

[...]

[...]

**Adaptability (10 points)**

**Capacité d'adaptation (10 points)**

**83.** (1) A maximum of 10 points for adaptability shall be

**83.** (1) Un maximum de 10 points d'appréciation sont

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

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

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

(c) for a spouse or common-law partner who would be awarded 12 or 15 points, 3 points.

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.

## **ARGUMENTS**

### **The Applicant**

#### **Points Awarded for Education**

[20] The Applicant points out that had the Officer assessed him as having a masters or doctor level degree, he would have had the required number of points for his application. As such, the success of his application turned on this issue.

[21] There was evidence before the Officer that in Iran a doctorate degree in medicine is equivalent to a master's degree. The Applicant's medical specialization was also listed as a Ph.D. degree in his application forms. Thus, contrary to the Officer's statement that "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,” this evidence was put before the Officer as part of the Applicant’s application. In light of this evidence, the Applicant submits that the Officer’s conclusion was unreasonable.

[22] Moreover, OP 6a states that “It is important to refer to how the local authority responsible for educational institutions recognizes the credential: i.e. as a first-level or second-level or higher university credit.” There is nothing in the Decision to indicate that the Officer even turned her mind to how a medical degree is recognized in Iran. Case law has indicated that an Officer’s neglect to follow the relevant immigration manual can constitute a reviewable error (*Canada (Minister of Public Safety and Emergency Preparedness) v Martinez-Brito*, 2012 FC 438). In this case, the Officer was guided by parts of OP 6a and ignored other parts; the Applicant submits that this was an error.

[23] The Applicant has submitted a letter which clearly states that a doctorate degree in medicine in Iran is recognized as a master’s level degree. Had the Officer viewed the Applicant’s educational credentials in the same way as Iranian authorities do – which is the approach mandated by OP 6a – the Applicant would have earned sufficient points to qualify as a skilled worker. The Applicant submits that it was an error for the Officer to assess his doctorate degree in medicine and specialization at a bachelor’s level.

[24] In the alternative, the Applicant submits that the Officer erred by not abiding by principles of procedural fairness in failing to advise the Applicant of the concerns about his educational credentials (*Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284), especially given that the Applicant had made a prima facie case of eligibility as a skilled worker. Had the Applicant been advised that the Officer was going to assess his educational credentials in a

different manner than how they are assessed in Iran, the Applicant could have made submissions to this effect.

### **The Officer's Discretion**

[25] The Applicant points out that he was assessed by the Officer as having 66 points, which is only 1 point short of the required 67. The Applicant had requested substituted evaluation in the event that he fell short of the required points. Under subsection 76(3) of the Regulations, the Officer may substitute the points assessment with his or her own evaluation of an applicant's likelihood of becoming economically established in Canada if the "number of points awarded is not a sufficient indicator of whether the skilled worker may become economically established in Canada."

[26] In this case, there is no indication that the Officer considered anything besides the points. The Officer did not consider the unique aspects of the Applicant's case, such as his and his spouse's high level of education, in refusing to exercise her discretion. This has been found to be a reviewable error in other, similar cases (*Choi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 577; *Hernandez v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1398).

[27] In the alternative, the Applicant submits the reasons provided by the Officer are inadequate to explain the refusal to exercise her discretion in favour of the Applicant. In *Adu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 565, the Court said at paragraph 11:

The importance of providing 'reasoned reasons' was reiterated by the Supreme Court three years later in *R. v. Sheppard*, [2002] 1 S.C.R. 869, 2002 SCC 26, where the Court noted that unsuccessful litigants should not be left in any doubt as to why he or she was not successful. Although *Sheppard* was a criminal case, the reasoning in that case has been applied in the administrative law context generally, and in the immigration context in particular, in cases such

as *Harkat (Re)*, [2005] F.C.J. No. 481, *Mahy v. Canada*, [2004] F.C.J. No. 1677, *Jiang v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 597 and *Ahmed v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 1415.

[28] In this case, the Officer simply states “I am satisfied that the points awarded accurately reflect the applicant’s ability to establish economically in Canada.” The Officer does not provide any reasons beyond this, or any indication as to why the Applicant’s unique characteristics, such as his designation to practice dermatology, were insufficient to enhance the Applicant’s slight lack of points. The Applicant submits that the Officer’s reasons are deficient and, as such, constitute a reviewable error (*Jogiat v Canada (Minister of Citizenship and Immigration)*, 2009 FC 815).

## **The Respondent**

### **Points Awarded for Education**

[29] The Respondent points out that OP 6a states that two or more credentials at the bachelor’s level, even where a bachelor’s level degree is a prerequisite, are properly awarded 22 points under the Regulations. The Applicant claims that his medical degree is a graduate degree and his specialization in dermatology is a Ph.D., but this contention is not supported by the record that was before the Officer.

[30] The Applicant contends that the Officer failed to consider how a medical degree is viewed in Iran, as suggested by OP 6a, but there was no evidence before the Officer to suggest that a medical degree in Iran is considered a second-level degree. Rather, the evidence suggests that the Applicant entered medical school directly after finishing high school.



[31] Moreover, the letter included in the Applicant's record referring to a medical degree as a Master's degree was not before the Officer. Thus, the Officer cannot be faulted for not considering this evidence, nor can the Applicant rely on it now (*Hanif v Canada (Minister of Citizenship and Immigration)*, 2009 FC 68 [*Hanif*] at paragraphs 31-32). In the Affidavit of Julia Gurr-Lacasse, the Officer notes that the letter does not evidence that the degree was granted by a school of graduate studies or provides any basis for its conclusions. The Respondent states that this letter is not sufficient to demonstrate that the Officer's conclusion on equivalency is not accurate.

[32] Furthermore, the Respondent submits that the recent decision in *Mahouri v Canada (Minister of Citizenship and Immigration)*, 2013 FC 244 [*Mahouri*] is indistinguishable from the present case. In that case, an Iranian national was awarded 22 points for a medical degree and specialization. The Court affirmed that it was reasonable for the Officer to grant 22 points as a result of the applicant's failure to provide sufficient evidence that the degree was granted by a school of graduate studies and how the degrees would be viewed in Iran.

[33] In this case, although the Applicant referred to the degrees as PhDs in his application form, there was no evidence on the record to demonstrate that the degrees would be viewed as more than first-level degrees in Iran. Given that the Applicant did not provide evidence that the degrees would be viewed as second or higher level degrees, the Officer did not commit an error in not addressing the issue in the reasons for the Decision.

[34] The Respondent further submits that the Officer was not required to apprise the Applicant of any concerns with his application. The onus is on the Applicant to put forward all the relevant information and documents to support his application (*Oladipo v Canada (Minister of Citizenship and Immigration)*, 2008 FC 366 at paragraph 24 [*Oladipo*]). There is no obligation on an officer to

seek clarification or provide an application with an opportunity to address any concerns (*Mahouri*, above; *Bellido v Canada (Minister of Citizenship and Immigration)*, 2005 FC 452 at paragraph 35 [*Bellido*]; *Liao v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1926 [*Liao*]).

### **The Officer's Discretion**

[35] The discretion afforded in section 76(3) is only intended to be exercised in “clearly exceptional” cases, and should not displace the underlying intent to achieve a consistent process for assessing applications (*Requidan v Canada (Minister of Citizenship and Immigration)*, 2009 FC 237 [*Requidan*] at paragraph 29). The decision is highly discretionary, and an applicant must provide good reasons why the points awarded do not reflect his or her ability to become economically established in Canada (*Fernandes v Canada (Minister of Citizenship and Immigration)*, 2008 FC 243 at paragraph 7).

[36] In this case, the Applicant requested substituted evaluation, but provided no additional reasons why it would be warranted in his case. The Officer considered the Applicant and his wife’s ages, education, and experience, and determined that the points awarded accurately reflected the Applicant’s ability to become economically established in Canada. There was no evidence presented to the contrary, and the Officer accordingly committed no error in this regard.

[37] This Court has confirmed that the duty to give reasons on a substituted evaluation is limited (*Lee v Canada (Minister of Citizenship and Immigration)*, 2011 FC 617 at paragraph 61). Evidence that the Officer turned his or her mind to such an evaluation is sufficient (*Mina v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1182 at paragraph 18).

[38] In this case, the Applicant's request for substituted evaluation was limited and the decision was of a highly discretionary nature. Thus, the duty to give reasons was minimal. Moreover, the Officer's reasons adequately explain the result: there was no evidence to indicate that the points awarded were an inaccurate reflection of the Applicant's ability to become economically established and the Officer was therefore satisfied that the points were accurate.

### **The Applicant's Reply**

[39] The Applicant submits that the Respondent's arguments have failed to address the central issue in this case: that the Applicant's medical specialization should have been assessed taking into consideration how his educational credentials are recognized in his country of residence. This is specified in OP 6a.

[40] The Applicant says that the Officer need not have seen the letter provided with this application regarding the evaluation of medical doctorates in Iran to know that these degrees are evaluated as graduate level degrees. The information and documents provided by the Applicant were sufficient for the Officer to carry out an assessment of the educational credentials in the context of the "local authority." There is no evidence in the CAIPS notes or in the affidavit provided by the Officer that indicates that how the Applicant's education is assessed by the local authorities that oversee educational credentials in Iran was a matter that was even considered by the Officer.

[41] With regards to procedural fairness, the Applicant says that the Respondent has cited a number of cases stating that an officer need not apprise an applicant of all his or her concerns; however, those cases specifically refer to instances where the applicant was afforded an opportunity to respond to the officer and did not do so completely.

[42] In *Oladipo*, the applicant was provided with an opportunity to respond to credibility issues with an interview. In *Bellido*, the applicant did not provide any documents in support of her language ability, and the Court said that an officer is not required to inform applicants where a basic requirement, such as a language test, is not met. In *Liao*, the Court held that an officer ought to adopt a line of questioning or make reasonable inquiries that give the applicant an opportunity to respond.

[43] In this case, the Applicant was not afforded an opportunity to provide the Officer with information about how his degree is assessed in Iran. There is no evidence from the Officer's affidavit or the CAIPS notes that the Officer adopted a line of questioning or made reasonable inquiries either of the Applicant or from anyone else about how the Applicant's educational credentials are evaluated by local authorities. Therefore, the Applicant reiterates that there was a breach of procedural fairness in the failure of the Officer to afford the Applicant an opportunity to disabuse him of his concerns about the assessment of his educational credentials, in spite of the clear assertions of the Applicant in his application.

[44] As to substituted evaluation, the Applicant points out that the Officer's affidavit says that no reasons were provided for the request, and the Respondent's memorandum states that no "additional reasons" were provided by the Applicant. However, the Applicant's letter of 23 April 2012 clearly sets out reasons why the Applicant's education, profession, age and family status, warrant the exercise of positive discretion.

[45] In *Nayyar v Canada (Minister of Citizenship and Immigration)*, 2007 FC 199, the Court held that providing details of the applicant's experience and credentials are good reasons. Therefore, the Officer erred in not exercising her discretion in this case.

[46] The CAIPS notes do not reflect any reasoning for the Officer's determination that the points awarded to the Applicant "accurately reflect" his ability to become established in Canada. The Officer states that she took note of the Applicant's request for substituted evaluation, but provides no insight or explanation as to why she found that the points awarded and the information provided "accurately reflect" the Applicant's ability to become economically established. The Applicant does not know why the Officer arrived at this conclusion, and submits that the lack of sufficient reasons constitutes an error of natural justice (*Jogiat v Canada (Minister of Citizenship and Immigration)*, 2009 FC 815).

## **ANALYSIS**

[47] As regards the educational assessment and procedural fairness issues, I agree with the Respondent that this case is indistinguishable from *Mahouri*, above, and *Sedighi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 445.

[48] The onus was upon the Applicant to provide sufficient evidence that the medical qualifications of himself and his wife — however they might be designated — are regarded in Iran as more than first-level degrees. The Applicant submitted insufficient evidence to demonstrate that more points should have been awarded for education.

[49] Also, on these facts, as in *Mahouri* and *Sedighi*, above, the Officer was under no duty to seek additional information from the Applicant regarding the nature of the degrees. The question of whether the Applicant had sufficient credentials to warrant more points is squarely within the requirements of the legislation, and the onus is clearly on the Applicant to demonstrate that fact.

[50] The Applicant argues that he “was not accorded procedural fairness as he was not provided with an opportunity to provide the officer with information about how his degree is assessed in Iran.” This is clearly not the case. The Applicant had the opportunity to submit whatever evidence he chose with his application to demonstrate how his credentials would be viewed in Iran. He simply chose not to avail himself of this opportunity. The onus is upon the Applicant to establish the worth of his credentials in his application. See *Mahouri* and *Sedighi*, above.

[51] The Applicant has raised the argument that the Officer was under an obligation to know the situation in Iran regarding medical degrees and, if he did not, procedural fairness dictates that he should have contacted the Applicant and given him a chance to present evidence on this point. A similar argument was rejected by Justice Yvan Roy in *Sedighi* at paragraph 15.

[52] The Applicant has attempted to overcome the jurisprudence established by *Mahouri* and *Sedighi* by citing the decision of Justice Sean Harrington in *Sharifi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 453 at paragraphs 14-16.

[53] In *Sharifi*, Justice Harrington found that the “visa officer should be taken to know the functions of a third engineer, even if they had not been spelled out”:

Consequently, the visa officer is taken to know the *Marine Personnel Regulations* issued under the *Canada Shipping Act, 2001*. He would know that a fourth class engineer has at least six months of sea service as an engineer in charge of machinery on vessels that have a propulsive power of at least 500 kW, has attended various training courses and has successfully been examined with respect to applied mechanics, thermodynamics, electro technology, engineering knowledge of motor vessels and steamships and, once again, much, much more.

[54] In *Sharifi*, Justice Harrington cites no authority for the degree or scope of expertise required of a visa officer and he does not refer to or distinguish the jurisprudence of the Court embodied in cases such as *Mahouri* and *Sedighi*. Consequently, I have to assume that *Sharifi* is confined to the facts of that case and, in particular, what the visa officer in *Sharifi* was deemed to know about the *Marine Personnel Regulations* issued under the *Canada Shipping Act, 2001*.

[55] In my view, then, the present case is more in line with the reasoning applied in *Mahouri* and *Sedighi* which follows previous jurisprudence of this Court, and I feel I must follow that jurisprudence in this case.

[56] The other issue raised by the Applicant is whether the Officer reasonably dealt with his clear request for substituted evaluation.

[57] As the Respondent points out, the discretion to consider substituted evaluation under section 76(3) of the Act is highly discretionary, and it should only be exercised in clearly exceptional cases so that it does not displace the consistency achieved by using a points system. See *Requidan*, above.

[58] In the present case, the Applicant requested substituted evaluation, but he provided no evidence or reasons to demonstrate why the Officer should, notwithstanding the points awarded, apply substituted evaluation. Hence, there was nothing unreasonable or inadequate about the Officer's conclusion that

I am satisfied that the points awarded and the information provided accurately reflect the PA's ability to become economically established in Canada.

[59] The Applicant must be aware that the problem with his application was insufficiency of evidence because he has, as part of this judicial review application, attempted to place before me additional evidence to support his case that he did not place before the Officer. The jurisprudence is clear, however, that apart from certain well-recognized exceptions — none of which is present on these facts — I can only review the Decision on the basis of the record before the Officer. See *Hanif*, above.

[60] Counsel agree there is no question for certification and the Court concurs.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application is dismissed.
2. There is no question for certification.

“James Russell”

---

Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-6512-12

**STYLE OF CAUSE:** MOHAMMAD DEHGHAN

- and -

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 2, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT:** HON. MR. JUSTICE RUSSELL

**DATED:** June 18, 2013

**APPEARANCES:**

Krassina Kostadinov

**APPLICANT**

Jane Stewart

**RESPONDENT**

**SOLICITORS OF RECORD:**

Waldman & Associates  
Barristers & Solicitors  
Toronto, Ontario

**APPLICANT**

William F. Pentney  
Deputy Attorney General of Canada

**RESPONDENT**