

Federal Court



Cour fédérale

**Date: 201306018**

**Docket: IMM-6968-12**

**Citation: 2013 FC 682**

**Toronto, Ontario, June 18, 2013**

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

**BETWEEN:**

**MOHAMMAD NAEEM AHRAIROODI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of the decision of an officer of Citizenship and Immigration Canada rejecting the applicant's application for permanent residence in Canada in the "federal skilled worker class."

[2] The applicant is a medical doctor from Iran. The narrow issue in this application is the officer's assessment of the applicant's education, and in particular her decision to award the

applicant 22 out of a possible 25 points for having earned a medical degree and a specialty diploma.

For the reasons that follow, this application is dismissed.

[3] On April 23, 2012, the officer assessed the applicant's application for permanent residence. No issue is taken with the points she awarded for his age, experience, arranged employment, official language proficiency, and adaptability. Education was the sole remaining criterion and worth a maximum of 25 points, and was to be awarded according to then in-force subsection 78(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations], the relevant paragraphs of which read as follows:

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

...

(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

(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

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

...

e) 22 points, si, selon le cas :  
 (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) 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

completed full-time or full-time equivalent studies.	moins dix-sept années d'études à temps plein complètes ou l'équivalent temps plein.
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[4] In his application for permanent residence dated November 9, 2010, under the heading “What is your highest level of education,” the applicant checked the box indicating that he had a “PhD.” In the covering letter submitted by an immigration consultant, on behalf of the applicant, it was similarly stated that the applicant “achieved his Ph.D. Degree in field of Physiatrist from Shahid Behesti University of Medical Sciences in 08/2002 and he graduated his MD Degree from Kerman University of Medical Sciences in 02/1997,” and it was thus submitted that the applicant ought to receive the maximum of 25 points for his education.

[5] However, in the supporting documents provided by the applicant with his application, the certificate or diploma from Shahid Behesti University only stated that the applicant had earned a “Specialty Degree” in the field of “Physical Medicine and Rehabilitation”.

[6] The officer’s notes in the Global Case Management System [GCMS] dated April 23, 2012, show that she awarded the applicant 22 points for his education:

EDUCATION: 22 Based on all information/docs on file, PA has Degree in Medicine with Specialty in Physical Medicine and Rehabilitation. Degree and transcripts seen. However, the applicant has indicated highest level of completed education as a PhD. I am satisfied that both are considered 1<sup>st</sup> level degrees – no indication of a Bachelor’s degree awarded prior. As such, I am awarding 22 points for 2 or more Bachelor degrees and at least 15 years of study. This is also in line with OP6 which states 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, they are awarded 20 point. [...] Application is therefore refused. ECP: pls prepare refusal letter and

include the following: Your degrees in Medicine, although professional, under IRPA I am only satisfied that they are a first level degree at the Bachelor level. As such I have awarded 22 points.”

[7] A refusal letter did not issue immediately, however. On the contrary, the officer and the immigration consultant communicated between April 23, 2012, and May 10, 2012. The immigration consultant couriered and emailed the following letter:

May 10, 2012

[...]

Dear Immigration Officer,

I represent Dr. Ahrairoodi in respect to his application for permanent residence to Canada.

Please find attached confirmation of Dr. Ahrairoodi's specialty Degree was a separate degree from his medical degree.

Thrusting [*sic*] that the above are satisfactory and will allow you to continue with the processing of this application.

[8] The attached “confirmation,” a letter from Shahid Behesti University, stated not that the applicant had received any Ph.D., but rather stated: “This is to certify that ... [the applicant] began the medical program in “Physical and Rehabilitation” at Shohada Medical, Educational and Treatment Center on 20.11.1999 and after 3 years completed his studies at the level of specialty diploma on 20.11.2002” [emphasis added].

[9] On May 11, 2012, the applicant was sent a refusal letter in line with the officer's above-excerpted direction providing these short reasons relating to his educational points: “Your degrees

(General Medicine with Specialty in Psychiatry [*sic*]), although professional, I am satisfied that they are a first level degree at the Bachelor level. As such I have awarded 22 points.”

[10] The record also shows that the officer responded to the immigration consultant’s May 10, 2012 email. The response was as follows:

Please be advised that the applicant was in fact awarded 22 point on account of his clinical specialisation diploma.

Although a bachelor’s degree may be a prerequisite to the clinical specialisation certificate, the clinical specialisation certificate is not at the masters level. Instead, there is an academic program available in Iran that is higher than the clinical specialisation program. This is in line with the Operational Procedure (OP6) Manual, which states “*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 decision to allot 22 points for the specialty degree stands.

[11] There are two issues to be addressed:

1. Did the officer err in her interpretation and application of the Regulations with respect to the applicant’s educational credentials?
2. Did the officer err by failing to allow the applicant an opportunity to respond to her concerns after the applicant had *prima facie* met the application requirements?

[12] A third issue was raised in that each party objected to affidavit evidence filed by the other. The applicant filed information regarding the status of his educational qualifications in Iran, but which was not before the officer. I agree that as such it is inadmissible. The respondent filed an affidavit by the officer. The applicant objects to paragraphs 8 and 9 on the basis that the officer is

attempting to expand the reasons given for her decision. I agree, and those paragraphs are also struck from the record.

*Assessment of the Educational Qualifications*

[13] The thrust of the applicant's argument is that the officer erred by failing to refer to how the "local authority" recognized his credentials. He points to two documents in his application record which he submits demonstrate how the local authority in Iran recognizes his degrees and therefore impugn the officer's decision. The first has been ruled inadmissible as it was not submitted by the applicant in his application, was not reviewed by the officer, and is not in the certified tribunal record. The second document is "a letter submitted by the Applicant with his application for permanent residence [which] indicated that he ranked first among his classmates at the Kerman University of Medical Science and was signed by the "Registrar & Director General of Postgraduate Studies" [emphasis added].

[14] I agree with the respondent that this document does not show that the officer's decision was unreasonable. It is irrelevant that the author of the letter is an official of "Postgraduate Studies." Absent proof that the institution does not provide any postgraduate studies that do not result in a master's or Ph.D. degree, and there is none, nothing can be taken from this letter that was not already known, namely that the applicant took courses.

[15] Importantly, there is no evidence whatsoever in the applicant's application for permanent residence or in the certified tribunal record that establishes that he holds a Ph.D., that the applicant's

medical degree is the equivalent of a master's degree, or that the specialization certificate is the equivalent of a Ph.D. degree.

This case is distinguishable from *Nikoueian v Canada (Minister of Citizenship and Immigration)*, 2013 FC 514, a case advanced by the applicant for the proposition that an officer must have regard to how the local authorities recognize an applicant's educational credentials (a point conceded by the respondent and set out in OP-6). That is because in *Nikoueian*, the applicant's university certificate expressly stated that she had received a "Ph.D.;" here the applicant's certificate only indicated that he received a "diploma." In other words, the difference here is that Mr. Ahrairoodi's materials did not purport that his medical degree is considered a master's degree, or that his specialisation program is considered a Ph.D., in Iran.

#### *Procedural Fairness*

[17] The applicant submits that the officer erred by failing to put her concerns to him and allow him an opportunity to respond.

[18] The law on procedural fairness in this context was aptly summarized by Justice Mosley in *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283, at para 24:

[I]t is clear that where a concern arises directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns. Where however the issue is not one that arises in this context, such a duty may arise. This is often the case where the credibility, accuracy or genuine nature of information submitted by the applicant in support of their application is the basis of the visa officer's concern...

[19] This case comes squarely within the first scenario described by Justice Mosley in that the requirement to establish level of education arose directly out of the Regulations. The applicant simply failed to submit evidence in his application for permanent residence purporting to establish that his medical degree or diploma are, respectively, considered a master's degree and Ph.D. in Iran.

[20] Furthermore, the applicant did submit additional evidence to the officer regarding his education in and around the time the decision was being made and the officer considered but rejected it as establishing that he held a master's degree or Ph.D. This additional opportunity was not required by the duty of fairness in the circumstances. The applicant's complaint that he has been denied fairness is without merit.

[21] There is no question for certification.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-6968-12

**STYLE OF CAUSE:** MOHAMMAD NAEEM AHRAIROODI v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 17, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** ZINN, J.

**DATED:** June 18, 2013

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