

Centralized Network – Case Processing Aid

Last updated July, 2022

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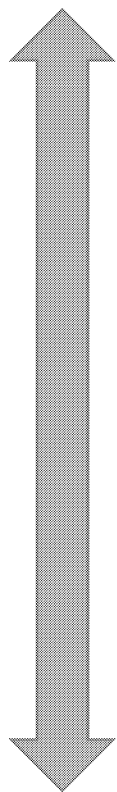
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Case Processing Aid for Caregiver applications submitted under the Category A stream

Purpose of the document

This document will not replicate the functional guidance currently available. The information in this document will serve as a sounding board, to help you balance your decision making instincts with specific indicators on the application (or lack thereof). As such, look to this tool if you feel you need to work through your concerns and are experiencing some challenges in explaining why, how it's relevant and what your concerns mean in terms of the outcome of the assessment.

Decisions are made in good faith and on the premise of being satisfied upon a balance of probabilities (51%). In theory and in practice, this means you can have a significant amount of residual concern remaining surrounding a particular assessment on the application and still be satisfied *enough* to make a decision. Rarely do we come across applications that allow us to be fully satisfied – this tool may help encourage you to validate that your decision making barometer (aka, push/pull process) is taking into account the required level of confidence in the information presented to you in an application.



Highest threshold of evidentiary requirement

- **Proven as fact/can be replicated by third parties**
 - 100% certainty backed up by solid evidence, such as documents or photos
- **Beyond a reasonable doubt**
 - Clear and convincing evidence that is close to an absolute certainty.
- **Balance of probabilities (more likely than not)**
 - A balance of probabilities means that it is more likely than not to have occurred.
 - It means that it is probable, i.e., the probability that some event happens is more than 50%. So mathematically, proof on a balance of probabilities is a 50% + 1% likelihood of something being true/materializing.
- **Reasonable grounds to believe**
 - The point where credibly-based probability replaces suspicion.
 - It is the reasonable belief that "an event not unlikely to occur for reasons that rise above mere suspicion".
- **Mere suspicion**
 - Little to no proof, a feeling or "hunch".

Lowest threshold of evidentiary requirement

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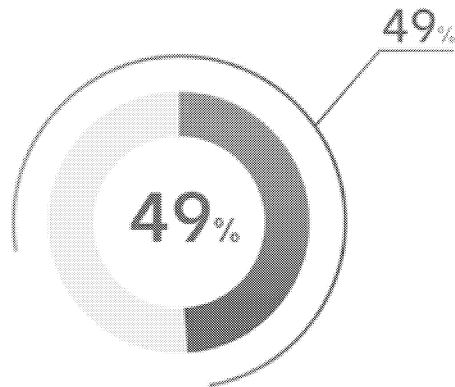
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A visual interpretation of balance of probabilities means that your level of concern could represent 49%, as shown on the graph below. This means a significant amount of concern can remain, while one can still fulfill the requirement of “balance of probabilities”.

Again, clients have to demonstrate their genuineness on balance of probabilities (50%+1% = 51%). As mentioned earlier, this means that it is possible to approve while still having some concerns.



It is understood that you know and are familiar with these concepts and that this is nothing new. However, we hope visual representations help to show how concerns can legitimately co-exist alongside a degree of satisfaction that the facts are more likely than not to be true.

The scenarios below may help to unpack the decision making process you will be required to perform on Caregiver applications. As you read the “sounding board” sound bites, keep in mind that a good, generally reliable indicator of being satisfied (aka, reaching the 51% mark) is being able to identify the following, with relative confidence:

- Indicators of concern within the application;
- Explain clearly how the client’s application is deficient in alleviating the concern(s) referenced;
- Drawing a clear and intelligible link between the concern and the requirements of the program under which the client has applied (materiality of the concerns);

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If you are struggling to justify or explain why you are concerned (aside from a “gut feeling” or “instinct”) and are not able to clearly explain how your concerns are material to the application, it is highly likely and probable that your concerns do not tip the balance of probabilities (aka, your concerns do not amount to 51%). In these cases, a favourable decision is likely the appropriate outcome.

CONCERN			
There is a family relationship between employer and applicant, which is concerning in terms of genuineness of the offer of employment			
Prompting flow			
What is the nature of the concern? Are there any other facts that support this concern on the application?	Is there a possibility that, despite suspicions, the PA could legitimately end up working for the family in Canada?	Are there considerations that could give credibility to a family wanting to employ a family member to perform HCCP or HSW work?	It's not prohibited in the MIs for employers in Canada to offer jobs to family members.
Some employers may have dual intent (find additional home support) and reunify with family members – this doesn't take away from genuineness of job offer	Applicants can legitimately change employers after the OROWP is authorized and issued	Applicants will be asked to demonstrate sufficient proof that they have acquired 24 months of F/T work experience	

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CONCERN		
The applicant does not have any related education and/or related work experience		
Prompting flow		
Applicants are not required to have related education or work experience, as per the MI eligibility criteria	If you are unsure of what documents could provide to satisfy you that they are able to perform this work, clients may be as well. This doesn't necessarily mean that they are unable to perform the work.	Is your concern more related to genuineness (I don't believe that the PA, while being potentially able to do the work will do the work) or related to inability to do the work (the PA does not appear to have the knowledge, skills and awareness necessary to perform the work safely)
Is there a possibility that clients could have considered the MI eligibility criteria and used that criteria as an indication of their fitness to perform the work? Remember, the Mis don't stipulate (related) work experience or related education are required.	Do clients have volunteer experience? This would be a mitigating factor	Clients may legitimately seize opportunities to perform a change in career progression, if it would allow them to immigrate.
Are you expecting the client to satisfy you beyond what they need to demonstrate as per the Mis?	Are there reasons as to why training and work experience are insufficient, despite being unrelated?	Officer should be mindful on whether there are negative inferences stemming from declared previous experiences/ career progression, as drawn from deficiencies in the PA's personal history.
How does this compare/ align with the requirements in NOC 4411 and NOC 4412?	NOC 4411 does <u>not</u> require any related education / work experience. Since this is not required in the NOC, a comparable LMIA would also not require a candidate to have related education / prior related work experience.	NOC 4412 does <u>not</u> require any related education / work experience. Since this is not required in the NOC, a comparable LMIA would also not require a candidate to have related education / prior related work experience.

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Are there any particular duties for which you believe that education / work experience is required?

If you are concerned about a lack of related education / prior related work experience, are you imputing more eligibility requirements on the applicant than what the NOC and the Ministerial Instructions require? What in the application is making you believe that the applicant's ability to perform the work is insufficient specifically as a result of a lack of related education / prior related work experience?

How would you explain your analysis on how the lack of education/related work experience is material to the assessment at hand and the application requirements? One needs to show that the lack of education/related work experience directly impacts the ability to perform the work – as the Ministerial Instructions do not impose a requirement for related work experience or specific education, it can be assumed that the program intent is not to find a correlation between related education/work experience and fitness to perform the employment sought.

How are you defining “related”? Individuals can learn the required skills for many occupations by having unrelated work experience. Multitasking can be learned through secretarial work, shift work can develop the ability to stick to a routine schedule for specific tasks, etc.

Do you believe it's reasonable to believe that skills that will be used in the employment sought could only be learned through related education and work experience? In other words, is it reasonable to believe that the skills required to perform the job duties can only be obtained through related education and/or work experience?

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<div style="border: 1px solid black; padding: 10px; margin: 10px auto; width: 80%;"> <p>Is it reasonable that you take issue with the lack of related education / prior related work experience if the NOC, the employer, the Ministerial Instructions do not impose this requirement? If the information was not required from the applicant, how is it material to your assessment?</p> </div>	
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CONCERN				
Genuineness of the offer of employment				
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 10px; border: 1px solid black;"> <p>What is the nature of the concerns? Are there facts in the application or in the PA's application history? What are they? How old/recent are they?</p> </td> <td style="width: 50%; padding: 10px; border: 1px solid black;"> <p>Is it lack of information or specific pieces of information that are present that is generating the/these concern(s)?</p> </td> </tr> <tr> <td style="padding: 10px; border: 1px solid black;"> <p>How do your concerns relate to the MI eligibility criteria?</p> </td> <td style="padding: 10px; border: 1px solid black;"> <p>Is there a <i>possibility</i> that the job offer could be genuine?</p> </td> </tr> </table>	<p>What is the nature of the concerns? Are there facts in the application or in the PA's application history? What are they? How old/recent are they?</p>	<p>Is it lack of information or specific pieces of information that are present that is generating the/these concern(s)?</p>	<p>How do your concerns relate to the MI eligibility criteria?</p>	<p>Is there a <i>possibility</i> that the job offer could be genuine?</p>
<p>What is the nature of the concerns? Are there facts in the application or in the PA's application history? What are they? How old/recent are they?</p>	<p>Is it lack of information or specific pieces of information that are present that is generating the/these concern(s)?</p>			
<p>How do your concerns relate to the MI eligibility criteria?</p>	<p>Is there a <i>possibility</i> that the job offer could be genuine?</p>			

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<p>If you are unsure of what documents could provide to satisfy you that they are able to perform this work, clients may be as well. This doesn't necessarily mean that they are unable to perform the work.</p>	<p>Do clients have any indications in their background (career progression, etc.) that could mitigate any concerns with genuineness?</p>
<p>Is the fact that the Category A WP will be occupation-restricted help to mitigate any possible concern or abuse of the work authorization?</p>	<p>Are you expecting the client to satisfy you beyond what they need to demonstrate as per the Mis?</p>
<p>Are you conflating insufficient evidence to establish ability to perform the work with genuineness of the job offer?</p>	<p>Could the position/job have reasonably been offered to someone else with a similar career progression/personal history?</p>
<p>Officer should be mindful on whether there are negative inferences stemming from declared previous experiences/ career progression, as drawn from deficiencies in the PA's personal history.</p>	

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CONCERN		
Proof of language and education cannot be validated		
<p>Have you contacted the clients to request additional information?</p>	<p>Does the client have transcripts, language test receipt/booking confirmation?</p>	<p>Is it possible to do an activity-based verification?</p>
<p>Is an interview required to assess language skills?</p>	<p>Does the client have previous work experience internationally or in Canada?</p>	<p>Did the client supply an ECA? Is the concern with the educational credential that was presented to the equivalency service provider or with the ECA itself?</p>
<p>Do open searches reveal more information about the education credential?</p>		

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CONCERN	
PA appears to have insufficient funds to economic establish successfully in Canada	
<p>Is it possible that the client is unaware of the type of funds they may require?</p>	<p>Do you have concerns that lack of funds will compromise a bility to economically establish and as a result the PA will seek unauthorized employment?</p>
	<p>Will meals be provided to the Caregiver, saving on certain expenses?</p>
<p>Is it possible that the PA may work additional hours (over 40 hrs a week) to help offset any income limitations?</p>	<p>Will the Caregiver have any scheduled raises, bonuses or benefits?</p>
<p>Is the ability to financially establish oneself required at Stage 1? Or is this of greater importance at the Stage 2 approval?</p>	<p><i>If applicable:</i> Is there an intent that the spouse or common-law partner will apply for an OWP? Can the application for the OWP give weight to the fact they would like to seek employment?</p>

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Helpful Sound Bites from the Federal Court of Canada

The jurisprudence of this Court on procedural fairness in this area is clear: Where an applicant provides evidence sufficient to establish that they meet the requirements of the Act or regulations, as the case may be, and the officer doubts the “credibility, accuracy or genuine nature of the information provided” and wishes to deny the application based on those concerns, the duty of fairness is invoked: *Perez Enriquez v Canada (Citizenship and Immigration)*, 2012 FC 1091 at para 26; See also among many decisions *Patel v Canada (Citizenship and Immigration)*, 2011 FC 571; *Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264; *Farooq v Canada (Minister of Citizenship and Immigration)*, 2013 FC 164; and *Ghannadi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 515.

[25] This Court has held in a number of cases it is unreasonable for officers to import suitability requirement [in relation to ability to perform work sought from an offer of employment], without explanation, which were not considered necessary by the employer. In *Portillo v Canada (Minister of Citizenship and Immigration)*, 2014 FC 866, Justice Russell explained:

[56] ...the Officer in this case was not in a position to assess their suitability and experience, or unreasonably imported suitability requirements that the employers did not consider necessary for the employment in question. There is no dispute that the Applicants’ were offered the positions as part of an organized recruitment process on behalf of McDonald’s and that they were offered positions based upon their résumés, interviews and revealed past experience. McDonald’s was entirely happy with all aspects of their Applications and offered the Applicants jobs. It is entirely unreasonable for the Officer to say, on these facts, that he is not sure the Applicants meet the requirements when the employer is sure that they do. Without some explanation for the Officer’s Decisions to override the employer on the issue of suitability, this aspect of the Decision is unreasonable.

Would you preference to see this information in a flow format?



Caregiver 2019
Pilots Risk Matrix Pr



Caregiver 2019
Pilots Risk Matrix Pr

Link to the CN Caregiver Resource Folder: [Caregiver Guidance for CPCE \(ci.gc.ca\)](#)

Link to the template PFL letter (reviewed by IPG, IB and LMB): [Document Overview: Caregivers - Non-Genuineness PFL Template \(2022\) HSW and HCCP Pilots.docx \(ci.gc.ca\)](#)