

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Vikas Rathor,
Petitioner

v.

Docket No. OC-25-0156

Department of Early Education and Care,
Respondent

Appearance for Petitioner:

Vikas Rathor, *pro se*

Appearance for Respondent:

Ryan Foreman, Esq.

Administrative Magistrate:

Melinda E. Troy, Esq.

SUMMARY OF RECOMMENDED DECISION

The Petitioner applied to the Department of Early Education and Care (“EEC”) for a license to operate a family childcare program. The EEC conducted a background check and learned that in 2021, the Petitioner had been charged with two criminal offenses. One of those charges was never prosecuted, and one was continued without a finding and then dismissed. The EEC concluded that the Petitioner is not a “suitable” family childcare candidate. I recommend that the EEC reverse that decision because the Petitioner has presented “clear and convincing evidence demonstrating his suitability ... in light of the concern for children’s safety.” 606 CMR 14.12(e).

RECOMMENDED DECISION

Vikas Rathor (“the Petitioner” or “Mr. Rathor”) appeals a determination by the Department of Early Education and Care (“EEC”) that he is not a “suitable”¹ “family childcare candidate.” Mr. Rathor submitted a notice of claim and requested an adjudicatory hearing concerning the EEC’s determination. The matter was referred to the Division of Administrative Law Appeals (“DALA”).

I held a virtual hearing via the Webex platform on June 3, 2025. The hearing was digitally recorded with the parties’ consent. I admitted 10 exhibits into evidence. A list of these exhibits is included as an addendum at the end of this decision.

Vincent Kelly, an EEC Background Record Check Unit specialist, testified on behalf of the EEC. Mr. Rathor represented himself and testified on his own behalf. Neither party submitted a written closing memorandum, so the record closed at the conclusion of the hearing.

LEGAL FRAMEWORK

In or around July 2024, Mr. Rathor applied to the EEC for a family childcare license. (Exhibit 1.) Since 2005, the EEC has been the agency responsible for, among other things, the licensing of early education and care programs. G.L. c. 15D, §§ 7-8. The EEC’s mission is to support children in their development as lifelong learners and contributing members of their community. 606 CMR 7.01. In accordance with its mission, the EEC has developed specific regulations to be met by all providers of early care and education. *Id.*

¹ A “final suitability determination” is “a conclusion that a candidate is ‘suitable’ or ‘not suitable’ after completing all mandatory components of the EEC’s Background Record Check process.” 606 CMR 14.04. A “child care candidate” “includes all candidates who operate...a program...” *Id.*

Family childcare is one type of program that the EEC licenses and oversees. 606 CMR 7.03(5). “Family childcare” is defined, in relevant part, as “temporary custody and care provided in a private residence during part or all of the day for no more than ten children under 14 years old.” 606 CMR 7.02. When an individual applies for a family childcare license, the EEC is authorized to conduct a Background Record Check (“BRC”). A BRC is a review of certain information, including, but not limited to (if applicable), the individual’s history of involvement with the criminal justice system. 606 CMR 14.05(2)(a). Depending on the results of the BRC, an applicant may be found to be eligible for licensure or the applicant may be disqualified from licensure.

There are three types of disqualification: mandatory disqualification, presumptive disqualification, and discretionary disqualification. An applicant “shall have a discretionary disqualifying background if the BRC discloses either certain criminal charges or... (c) [t]hey have been found to be the person responsible for the abuse or neglect of a child....” 606 CMR 14.10(6). If an applicant’s BRC reveals a discretionary disqualifying background event, the individual is afforded an opportunity for a further review of their application and is provided an opportunity to submit additional information in support of the application. 606 CMR 14.11(7). An applicant must present “clear and convincing evidence demonstrating the candidate’s suitability for licensure, employment or affiliation in light of the concern for children’s safety.” 606 CMR 14.12(e). Mr. Rathor’s appeal proceeds in the context of these laws and regulations.

FINDINGS OF FACT

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. The Petitioner is originally from the outside of the United States and his first language is not English. He came to the United States in 2019. (Testimony, Rathor.)
2. When he first arrived in the United States, Mr. Rathor was not as proficient in English as he is at the present time, and he was not familiar with American social customs.

(Testimony, Rathor.)
3. Mr. Rathor provides assistance to a family business that includes a licensed childcare center. The childcare center is already open. The license was previously in his brother's name, but that brother is no longer involved with the business. Mr. Rathor sought to obtain a family childcare license in his name because he has been managing the business-related activities of the center. (Testimony, Rathor.)
4. Mr. Rathor seeks the license to be able to interact with the staff who teach and the children who attend the childcare center if that were to become necessary. He works full-time in Information Technology, not at the childcare center, but he "manages the business and the people" and occasionally provides maintenance on the building in which the childcare center operates. (Testimony, Rathor; Exhibit 1.)
5. On November 9, 2020, there was an incident at the apartment building in which Mr. Rathor then resided.² The police reports describe the incident as follows³: An individual later identified as Mr. Rathor approached an adult female resident in the common laundry room of the apartment building and offered to assist her in carrying her laundry baskets back to her apartment upstairs. When they arrived at the other resident's apartment, Mr. Rathor communicated to her that he wanted to pursue a personal relationship with her.

² Mr. Rathor no longer lives at this location. (Testimony, Rathor.)

³ This is a summary of the police reports. I am not making a finding that the incident occurred as described in the reports.

The female resident did not wish to do so. She felt threatened by Mr. Rathor's advance and asked him to leave, which he did. (Exhibit 3.)

6. The female resident spoke with her landlords, who called the police the following day. (Exhibit 3.)
7. As a result of the incident, Mr. Rathor was charged in Attleboro District Court with two counts: one count of misdemeanor assault, in violation of G.L. c. 265, § 13A(a), and one count of misdemeanor annoying and accosting another person in violation of G.L. c. 272, § 53.
8. The Commonwealth declined to pursue the assault charge, and that charge was dismissed at the request of the Commonwealth on October 19, 2022. (Exhibit 4.)
9. The charge of annoying and accosting another person was Continued Without a Finding on October 19, 2022. The charge was dismissed on April 19, 2023, after the Continuance Without a Finding. (Exhibit 4.)
10. Mr. Rathor has no criminal convictions. (Exhibit 4.)
11. In or around July 2024, Mr. Rathor applied to the EEC for a family childcare license. (Exhibit 1.)
12. As a result of Mr. Rathor's background check, the EEC learned about Mr. Rathor's criminal record resulting from the November 2020 incident mentioned above. (Exhibit 1.)
13. The EEC informed Mr. Rathor that, as a result of his criminal history, he had a potentially disqualifying background. It invited him to provide additional information as part of the EEC's review process. (Testimony, Kelly; Exhibit 2).

14. In response, Mr. Rathor provided a candidate statement and additional references.

(Testimony, Kelly; Exhibit 2.)

15. Vincent Kelly was the EEC Background Check Unit specialist who conducted Mr.

Rathor's review. Mr. Kelly has been employed at the EEC for approximately 3 ½ years and is currently a Background Record Check Specialist II. (Testimony, Kelly.)

16. In conducting his review, Mr. Kelly considered the police report, court dockets, and the materials submitted by Mr. Rathor. (Testimony, Kelly.)

17. In his review of Mr. Rathor's application, Mr. Kelly considered the factors set forth in 606 CMR 14.12(f). The findings below relating to Mr. Kelly's consideration of these factors are based on his testimony, as well as his written report. (Testimony, Kelly; Exhibit 2.)

18. The first factor ("Time since the incident(s)") was one that Mr. Kelly determined to be unfavorable to Mr. Rathor because the incident occurred approximately 3 years before Mr. Rathor applied to the EEC for licensure. (Testimony, Kelly.)

19. Mr. Kelly concluded that the second factor ("Age of the candidate at the time of the incident(s)") weighed against Mr. Rathor because he was 44 years old (i.e., an adult) at the time of the incident. (Testimony, Kelly.)

20. Mr. Kelly weighed the third factor ("Seriousness and specific circumstances surrounding the incident(s)") against Mr. Rathor. This is because Mr. Kelly felt the conduct described in the police reports and docket involved serious allegations and they "didn't sit well" with him. (Testimony, Kelly.)

21. The same analysis applied to the fourth factor that Mr. Kelly considered ("Relationship of the incident(s) to the ability of the candidate to care for children"), which also weighed

against Mr. Rathor because in Mr. Kelly's opinion, in light of the charges brought against him, Mr. Rathor should not take care of children unsupervised. (Testimony, Kelly.)

22. In his assessment of the fifth factor ("Number of criminal offenses or findings of abuse/neglect"), Mr. Kelly noted that there were multiple criminal charges that were initially brought. This factor weighed against Mr. Rathor. (Testimony, Kelly.)
23. As for the sixth factor ("Dispositions of criminal offenses or findings of abuse/neglect"), Mr. Kelly found that the manner of the disposition of the criminal charges weighed against Mr. Rathor. He did not specify why. (Testimony, Kelly.)
24. Mr. Kelly weighed the seventh factor ("Relevant evidence of rehabilitation or lack thereof") unfavorably to Mr. Rathor because, in his view, there was no such evidence provided. (Testimony, Kelly.)
25. The eighth factor ("Other relevant information, including information submitted by the candidate") involved Mr. Kelly's consideration of Mr. Rathor's personal statement and the references he provided. Mr. Kelly acknowledged that these references were favorable to Mr. Rathor but did not weigh this factor favorably for Mr. Rathor. He did not specify why, other than to say that he looked at all 8 of the regulatory factors together. (Testimony, Kelly.)
26. Weighing the 8 factors together, Mr. Kelly determined that Mr. Rathor was "not suitable" as an EEC licensee. This determination was reviewed and approved by Mr. Kelly's supervisors. (Testimony, Kelly; Exhibit 2.)
27. The EEC informed Mr. Rathor that it had denied "discretionary approval of the Background Record Check" and that he could file a Notice of Claim requesting an

adjudicatory hearing. Mr. Rathor filed a Notice of Claim and requested an adjudicatory hearing. (Exhibit 8.)

CONCLUSION AND ORDER

For the reasons set forth below, I recommend that the EEC reverse its decision that Mr. Rathor is not a “suitable” “family childcare candidate.” Mr. Rathor has produced clear and convincing evidence that he is a suitable candidate for licensure. He was able to prove that despite the incident several years ago, he would be able to provide a safe educational environment for children. The EEC’s concerns focused on the criminal charges that were brought against Mr. Rathor, which will be further discussed below.

Based upon the incident that occurred in November 2020, Mr. Rathor initially faced two misdemeanor charges. However, the Commonwealth declined to prosecute the misdemeanor assault charge, ultimately voluntarily dismissing it. The other charge was Continued Without a Finding for six months and then dismissed in April 2023 when Mr. Rathor had no further involvement with the criminal justice system during the relevant time frame. Mr. Rathor has no criminal convictions and has had no involvement with the criminal justice system before or since.

Mr. Kelly, the EEC reviewer, was clearly troubled by the nature of the charges that were initially brought against Mr. Rathor, but he appears to have considered at least some of the eight factors that the EEC is permitted to review collectively rather than separately, ultimately concluding that the (now resolved) charges as described in the police report “didn’t sit well” with him. Even assuming that to be true, Mr. Kelly was not able to clearly articulate a rationale for analyzing at least two of the factors (disposition of criminal offenses and the additional factor of

the positive references that Mr. Rathor provided) in the manner that he did, which made evaluating the EEC decision challenging.

For his part, Mr. Rathor presented clear and convincing evidence – including his own testimony – that the interaction did not occur as described in the police report, particularly with respect to its most serious allegations. Mr. Rathor also was able to describe that his interaction with the female resident was confusing to him because he was new to the United States at the time. He described that at the time, he was not as proficient in English as he has since become, and he was unfamiliar with American social customs. He no longer lives in the apartment complex where this confrontation took place. The female resident involved in the case was another adult, not a child. Mr. Rathor has not interacted with her since the incident occurred and he will not do so in the future because he lives elsewhere now. Overall, Mr. Rathor was able to show that the interaction that resulted in criminal charges being brought against him was an isolated incident that will not recur. Moreover, the charges brought against him in 2021 did not result in any criminal conviction. The additional context provided at the hearing provided clear and convincing evidence that Mr. Rathor's involvement with the criminal justice system is a thing of the past.

CONCLUSION

Taken together, the evidence in the record shows that Mr. Rathor presented clear and convincing evidence of suitability for licensure. For the foregoing reasons, I recommend that the EEC's final agency decision reverse its initial determination that Mr. Rathor is not a suitable family childcare candidate.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW
APPEALS,



Melinda E. Troy, Esq.
Administrative Magistrate

Dated: August 7, 2025

Exhibit List

1. EEC Discretionary Review Application.
2. EEC Discretionary Review Results.
3. North Attleboro Police Department Incident Report, Incident No. 202000023617.
4. Docket No. 2134CR001313 Case Details.
5. Docket No. 2134CR001313 Summary.
6. Letter of Reference from Sanjeev Siwach.
7. Letter of Reference from Avnish Gupta.
8. Notice of Claim.
9. Letter of Reference from Isa Price.
10. Email from the Petitioner to Amit Singh dated June 11, 2022.