

Federal Court



Cour fédérale

Date: 20190221

Docket: IMM-1924-18

Citation: 2019 FC 212

Ottawa, Ontario, February 21, 2019

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

BERNICE OFORI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Bernice Ofori, is a citizen of Ghana. She arrived in Canada in August 2015, having been granted temporary resident status as a student. She graduated from the University of Ottawa in June 2017. Her student visa expired on August 31, 2017. Having completed her studies, Ms. Ofori indicates that it was her intention to apply for a post-graduate work permit [PGWP].

[2] In October of 2017, Ms. Ofori submitted an application for restoration of her status and a PGWP. Her application was denied. The visa officer [Officer] found that Ms. Ofori was not eligible for restoration of her temporary resident status as she no longer had a valid study permit and was therefore ineligible for a PGWP.

[3] Ms. Ofori argues that the Officer unreasonably interpreted and applied the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*], in refusing her application. Specifically, the Officer failed to consider that her application for restoration of status had been submitted within 90 days of the expiration of her student visa and that she satisfied the other criteria set out in the *Regulations*.

[4] I am unable to conclude that the Court's intervention is warranted. The application is dismissed for the reasons that follow.

II. Issue

[5] The sole issue that arises is whether the Officer erred in interpreting and applying section 182 of the *Regulations*.

III. Standard of Review

[6] The Officer's interpretation and application of the *Regulations* engages a question of mixed fact and law. The parties agree that the decision is to be reviewed against a standard of

reasonableness (*Udodong v Canada (Citizenship and Immigration)*, 2018 FC 234 at para 5; *Abubacker v Canada (Citizenship and Immigration)*, 2016 FC 1112 at para 17 [*Abubacker*]).

IV. Preliminary Issues

[7] Prior to considering the merits of the application, there are two preliminary matters to be addressed.

A. *Style of cause*

[8] Counsel for the respondent requests an amendment to the style of cause. The respondent notes that the applicant has named the Minister of Immigration, Refugees and Citizenship Canada as the respondent and that the Minister of Citizenship and Immigration is the proper respondent (*Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2); *Immigration and Refugee Protection Act*, SC 2001, c 27, s 4(1) [IRPA]). The applicant does not oppose the amendment. Accordingly, the respondent in the style of cause is amended to the Minister of Citizenship and Immigration.

B. *Request for an extension of time*

[9] In the application for leave and judicial review, the applicant sought an extension of time for the filing of the leave application. The respondent opposed the extension of time in written submissions, but the question was not addressed in the order granting leave.

[10] The jurisprudence teaches that the granting of an extension of time is not to be inferred simply on the basis that leave has been granted; the request for an extension of time is to be addressed explicitly. Where an order granting leave does not explicitly address the request for an extension of time, the jurisdiction to decide the question resides with the judge hearing the application (*Deng Estate v Canada (Public Safety and Emergency Preparedness)* 2009 FCA 59 at paras 14–17).

[11] In oral submissions on this question, the respondent advised the Court that it did not oppose the applicant’s request. The extension of time is granted.

V. Analysis

A. *The legal framework*

[12] An officer shall issue a temporary resident permit where a foreign national establishes compliance with the criteria set out in the regulations (*Regulations*, s 179). A visitor, worker, or student who applies within 90 days of losing their temporary resident status shall have their status restored where the visitor, worker, or student “meets the initial requirements for their stay,” has complied with any other conditions, and otherwise satisfies the requirements of the IRPA (*Regulations*, s 182(1)). Where a foreign national is seeking temporary residence as a student, an officer shall issue a study permit where, among other conditions, the foreign national has been accepted to undertake a program of study at a designated learning institution (*Regulations*, s 216(1)).

[13] Relevant extracts from the *Regulations* are reproduced in the Annex to these reasons for ease of reference.

[14] To be eligible for a PGWP, an applicant must possess a valid study permit at the time of application. This requirement is set out in the respondent's program delivery instructions in a document entitled *Post-Graduation Work Permit Program*. This Court has repeatedly held that it is reasonable for an officer to apply the criteria set out in the program delivery instructions strictly (*Abubacker* at para 16; *Nookala v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1019 at paras 11–12 [*Nookala*]).

B. *Did the Officer err in interpreting and applying section 182 of the Regulations?*

[15] In this case, the Officer refused Ms. Ofori's application for a work permit and restoration of her temporary resident status, finding she did not meet the conditions for restoration of her status as she did not "have a valid study permit when applying for the work permit." The Officer further concluded that, as she was not in possession of a valid study permit, she was not eligible for a PWGP.

[16] The applicant argues that the Officer denied her application for restoration without assessing the circumstances. She submits that she sought to restore her status solely to obtain a PGWP, which she was entitled to before her student visa expired. It is argued that it was immaterial to the section 182 analysis that her request was not for an extension of her student status, as the request was directly related to her initial student status. She submits the phrase "meets the initial requirements for their stay" means meeting the initial requirements of the status

the party wishes to have restored, regardless of the status previously held. Consequently, she argues she needed only to establish that she met the requirements for a PGWP, not a study permit. In the applicant's view, had the Officer considered her circumstances, it would have been apparent that she had applied for restoration within 90 days of her visa expiring to obtain a work permit, not to study, and that she complied with all the other conditions for restoration. I disagree.

[17] To obtain a study permit, an applicant must “undertake a program of study at a designated learning institution.” In seeking restoration of her study permit, Ms. Ofori had no intention to pursue further studies. In fact, it is not in dispute that she sought to have her study permit restored solely for the purpose of satisfying the requirements for a PWGP. In these circumstances, it was not unreasonable for the Officer to conclude that Ms. Ofori had failed to “meet the initial requirements for her stay” and was therefore ineligible to have her status restored, even though she applied within 90 days of her status expiring.

[18] Ms. Ofori argues that the Officer was required to consider her application on the basis that she was seeking a PGWP.

[19] The Officer did in fact consider that the purpose of the application for restoration was to obtain a work permit. In doing so, the Officer also addressed whether Ms. Ofori met the initial requirements for the issuance of a PGWP and concluded she did not—she did not hold a valid study permit at the time of application.

[20] As noted above, the requirement to hold a valid study permit at the time a PGWP is sought is set out in the respondent's program delivery instructions, and this Court has held it is reasonable for officers to apply this requirement strictly (*Abubacker* at para 16; *Nookala* at paras 11–12; *Rehman v Canada (Citizenship and Immigration)*, 2015 FC 1021 at para 17). It was not unreasonable for the Officer to have done so in this case.

VI. Conclusion

[21] The application is dismissed. The parties have not identified a serious question of general importance for certification and none arises.

JUDGMENT IN IMM-1924-18

THIS COURT'S JUDGMENT is that:

1. The applicant's request for an extension of time is granted;
2. The application is dismissed;
3. No question is certified; and
4. The style of cause is amended to name the Minister of Citizenship and Immigration as the respondent.

"Patrick Gleeson"

Judge

ANNEX***Immigration and Refugee Protection Regulations, SOR/2002-227
Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227*****Issuance**

179 An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national

(a) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class;

(b) will leave Canada by the end of the period authorized for their stay under Division 2;

(c) holds a passport or other document that they may use to enter the country that issued it or another country;

(d) meets the requirements applicable to that class;

(e) is not inadmissible;

(f) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and

(g) is not the subject of a declaration made under

Délivrance

179 L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

a) l'étranger en a fait, conformément au présent règlement, la demande au titre de la catégorie des visiteurs, des travailleurs ou des étudiants;

b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;

c) il est titulaire d'un passeport ou autre document qui lui permet d'entrer dans le pays qui l'a délivré ou dans un autre pays;

d) il se conforme aux exigences applicables à cette catégorie;

e) il n'est pas interdit de territoire;

f) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);

g) il ne fait pas l'objet d'une déclaration visée au

subsection 22.1(1) of the Act.

paragraphe 22.1(1) de la Loi.

Restoration

182 (1) On application made by a visitor, worker or student within 90 days after losing temporary resident status as a result of failing to comply with a condition imposed under paragraph 185(a), any of subparagraphs 185(b)(i) to (iii) or paragraph 185(c), an officer shall restore that status if, following an examination, it is established that the visitor, worker or student meets the initial requirements for their stay, has not failed to comply with any other conditions imposed and is not the subject of a declaration made under subsection 22.1(1) of the Act.

Rétablissement

182 (1) Sur demande faite par le visiteur, le travailleur ou l'étudiant dans les quatre-vingt-dix jours suivant la perte de son statut de résident temporaire parce qu'il ne s'est pas conformé à l'une des conditions prévues à l'alinéa 185a), aux sous-alinéas 185b)(i) à (iii) ou à l'alinéa 185c), l'agent rétablit ce statut si, à l'issue d'un contrôle, il est établi que l'intéressé satisfait aux exigences initiales de sa période de séjour, qu'il s'est conformé à toute autre condition imposée à cette occasion et qu'il ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi.

Study permits

216 (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national

Permis d'études

216 (1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

(a) applied for it in accordance with this Part;

a) l'étranger a demandé un permis d'études conformément à la présente partie;

(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

(c) meets the requirements of this Part;

c) il remplit les exigences prévues à la présente partie;

(d) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and

(e) has been accepted to undertake a program of study at a designated learning institution.

d) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);

e) il a été admis à un programme d'études par un établissement d'enseignement désigné.

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: BERNICE OFORI v THE MINISTER OF CITIZENSHIP
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