Federal Court  Cour fédérale

Date: 20200110

Docket: IMM-2961-19

Citation: 2020 FC 31

Ottawa, Ontario, January 10, 2020

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

KAMALJEET KAUR SAGGU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This judicial review application, made pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c 27 [IRPA], is concerned with a decision made by an officer regarding an application made for a work permit and restoration of temporary residence status.

[2] The formal decision itself fits in one paragraph:

> Foreign students in Canada are eligible for a work permit for post-graduation employment if they submit an application within 90 days of issuance of notification that they have successfully completed all of the requirements for their course of studies or program. As your application was not mailed within the prescribed period of time, it has been determined that you are not eligible for a work permit in this category.

The decision letter goes on to state that the applicant is without status and is therefore required to leave Canada immediately.

[3] The Global Case Management System (GCMS) notes, which are part of the decision (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, para 44), flesh out somehow the reasons for the decision. The following is taken from the one paragraph appearing in the GCMS notes:

> Client has failed to comply with the condition imposed under R185(a) to leave Canada by 18/12/18. As per A47(a) temporary resident status has been lost. Has applied for and is eligible for restoration under R182. WP refused as per R205(c)(ii). Client is requesting a PGWP [Post-Graduation Work Permit], having provided education transcripts and letter of completion from Douglas College indicating client completed the 2 year 'Computer and Information Systems' post-baccalaureate diploma as of 2018/08/24. PGWP eligibility requirements stipulate a client's request for C43 consideration must be made within 90 days of completing program of study. Appears client's request for C43 consideration was made after allotted 90 day eligibility period, as application was received 2019/01/24.

Basically, the decision is that in order to satisfy the requirement for obtaining a Post-Graduation Work Permit, such application must be made within 90 days of completing the program of study. Given that the program was completed on August 24, 2018, the application had to be made

within 90 days of that date. Since the application was received on January 24, 2019, well passed the 90-day window, the application was denied.

[4] A chronology of events may be of assistance in understanding this case:

- August 13, 2015: Ms. Saggu entered into Canada as an international student on a study permit;
- August 24, 2018: Ms. Saggu graduates with a two-year diploma in Computer and Information System from Douglas College;
- September 10, 2018: a letter from the Office of the Registrar states that Ms. Saggu completed all program requirements to graduate with the two-year post-baccalaureate diploma in Computer and Information System as of August 24, 2018;
- October 12, 2018: Ms. Saggu applies for a Post-Graduate Work Permit;
- December 18, 2018: Ms. Saggu's application for a Post-Graduate Work Permit is refused by an officer of the Case Processing Centre of Vegreville, because she did not submit the required documentation regarding completion of studies;
- January 12, 2019, Ms. Saggu applies for a Post-Graduate Work Permit and Restoration of Status;
- January 24, 2019: Ms. Saggu's application for C43 consideration is received by the respondent;
- April 26, 2019: Ms. Saggu's application for a Work Permit and Restauration of Temporary Residence Status is refused by an officer at the Case Processing Center of Edmonton.

[5] Fundamentally, Ms. Saggu's PGWP (Post-Graduation Work Permit) application was refused because her request was made after the 90-day eligibility period. Instead, the complete application was received 153 days after she had completed her study program, on August 24, 2018. The applicant argues the unfairness of a system applied without any flexibility, arguing that she should benefit from a change to the Post-Graduation Work Permit Program, which was published on February 14, 2019. More particularly, the applicant claims that she is entitled to a period of 180 days from the educational institution indicating that she has met the requirements for completing the program of study. If that were the case, her second application would be well within the 180-day window (second application having been made on January 24, 2019).

[6] In support of her claim, the applicant relies heavily on the nature of the policy change of February 14, 2019, which was intended to be a facilitative measure. Furthermore, the officer ought to have accepted a flexible approach in view of the purpose of the change, which was to facilitate such applications. Indeed, the applicant alleges that the officer had discretion, which should have been exercised in favour of the applicant, especially in view of the fact that a first application had been made well within the 90 days that were then enforced prior to February 14, 2019. Finally, the applicant asserts that the way the policy was applied constitutes a form of retroactivity, or retrospectivity of the old rule instead of applying the new window of 180 days.

[7] Unfortunately for the applicant, she does not account for the important note spelled out on the front page of the Post Graduation Work Permit Program, which is to be found as exhibit A to the affidavit of Vivian Yiu of July 9, 2019. As a matter of fact, the applicant did not dispute the existence of the very significant note which reads:

> **Important note**: the following guidelines are effective for all post-graduation work permit applications received on or after **February 14, 2019**. The previous guidelines apply to all applications received before February 14, 2019. Post-graduation work permit applicants who have been refused the work permit based on the previous guidelines may submit a **new** application under the new guidelines, effective February 14, 2019, if they are eligible to apply.
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> [Bold in original.]

[8] If the first sentence in the paragraph could perhaps be read by some as leaving some ambiguity, the second sentence cannot be, in my view, any clearer: "The previous guidelines apply to all applications received before February 14, 2019". It follows that the applicant's argument collapses. Instructions are given to immigration officials to apply the 90-day window where the applications for the work permit is made prior to February 14, 2019. That is the situation with which the applicant is faced in this case.

[9] It cannot be said that the officer enjoyed a discretion that does not exist. There is no interpretation that can be given, using the purpose of the policy to facilitate the applications, the language used (in both official languages) and the context simply because the policy is remarkably clear. The suggestion that the applicant had a legitimate expectation against retroactive or retrospective application of the old policy is simply inappropriate. There is no retroactive effect as the policy declares that the rules that existed prior to February 14, 2019 apply to the applications that were made prior to February 14, 2019. In effect, the Minister instructs his officials to operate in a particular way and the official in this case simply applied the policy as it was intended. For retroactivity, or retrospectivity, to operate, it would have been for the new policy, that which came into effect after February 14, 2019, to apply retrospectively to

fact situations prior to that date. The fact that a first application had been denied within the 90-day period does not change the fact that the new application was well outside the 90 period.

[10] The existence of the new policy with its restriction as to the time period was known to the applicant in July 2019. The respondent's factum is based on the program delivery instructions of February 14, 2019, with its clear cut off date. There was not in the submissions offered on behalf of the applicant any argument to counter the statement in the policy. In fact, nothing was challenged.

[11] The absence of discretion and the need to follow the program delivery instructions has been applied by this Court in a number of cases. The case of *Nookala v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1019 (and its progeny: *Osahor v Canada (Minister of Citizenship and Immigration)*, 2017 FC 666; *Kaur v Canada (Minister of Citizenship and Immigration)*, 2019 FC 572; *Ofori v Canada (Minister of Citizenship and Immigration)*, 2019 FC 212) established the principle. At paragraph 12, Madam Justice Mactavish, then of this Court, stated:

> [12] The Program document at issue in this case establishes criteria that *must* be satisfied for a candidate to qualify for a Post-Graduation Work Permit. While the Program document also provides information and guidance as to how the program is to be administered, nothing in the document confers any discretion on immigration officers to modify or waive the Program's eligibility requirements. Consequently, no fettering of discretion occurred when the immigration officer determined that Mr. Nookala was required to hold a valid study permit in order for him to be eligible for a Post-Graduation Work Permit.
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> [Italics in original.]

[12] I have reviewed the decision in *Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65*, 2019 SCC 65, which makes adjustments to the framework to be applied in administrative law cases. The Supreme Court confirmed that the standard of review is presumptively reasonableness. That is the standard applied in this case. Furthermore, the Court provided guidance on what makes a decision lacking in reasonableness. In the case at hand, the text of the policy was remarkably clear and it was applied, as it should.

[13] In the absence of any argument to the contrary, the Court has no choice but to follow this well-established jurisprudence of our Court. Accordingly, the judicial review application must be dismissed. The parties are in agreement that there is no question to be certified in accordance with section 74 of IRPA.

JUDGMENT in IMM-2961-19

THIS COURT'S JUDGMENT is that:

1. The judicial review application is dismissed.

2. There is no serious question of general importance that ought to be certified.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Veena C. Gupta	FOR THE APPLICANT
Margherita Braccio	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nanda & Lawyers Professional Corporation Barristers & Solicitors Mississauga, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT