

Federal Court



Cour fédérale

**Date: 20200415**

**Dockets: IMM-2407-19  
IMM-2409-19**

**Citation: 2020 FC 513**

**Ottawa, Ontario, April 15, 2020**

**PRESENT: Mr. Justice McHaffie**

**Docket: IMM-2407-19**

**BETWEEN:**

**SANDEEP KAUR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**Docket: IMM-2409-19**

**AND BETWEEN:**

**JASPREET KAUR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

## **JUDGMENT AND REASONS**

### I. Overview

[1] Ms. Sandeep Kaur and Ms. Jaspreet Kaur each applied for a Post-Graduation Work Permit (PGWP) after graduating from their academic programs at Sarnia's Lambton College. The PGWP Program Delivery Instructions (PGWP-PDI) required them to apply for the PGWP within 90 days of receiving written confirmation from the college (*e.g.*, an official letter or transcript) that they met the requirements for completing the program.

[2] The Kaur's filed their PGWP applications within days of receiving this written confirmation. Immigration, Refugees and Citizenship Canada (IRCC) refused those applications on the basis that they had not submitted the required documentation in regard to the completion of their studies. The Kaur's filed an application for restoration and a further request for the PGWP application within days of the refusal. These applications were refused because the examining officer concluded that they had filed the necessary documentation more than 90 days after receiving their diplomas, which the officer assumed was their date of graduation.

[3] I find the officer's decisions unreasonable. In these circumstances, and given the information that was or ought to have been before the officer, the assumption that the Kaur's received their diplomas on the date of graduation printed on the diploma was unreasonable. There was thus no reason to conclude that the Kaur's' applications were untimely, as they were filed within 90 days of the date that the evidence showed they had received their written

confirmation from the college. Given this conclusion, I need not decide whether the initial refusal was reasonable, although it appears to have been inconsistent with the PGWP-PDI.

[4] The Kaur's applications for judicial review are therefore granted.

## II. The Kaur's Applications for Post-Graduation Work Permits

[5] The situation of the two applicants is essentially identical for the purpose of these applications. The applications were therefore joined by order of Prothonotary Milczynski dated September 4, 2019, and were heard together. As the Court understands that the applicants are related, and as their situations are the same with respect to the issues raised, I will refer to them as the "Kaur's."

[6] The Kaur's each entered Canada from India in December 2016. They received study permits to attend two-year programs at Lambton College, which is an IRCC designated learning institution in Ontario. Sandeep was in the Marketing Management & Professional Sales program while Jaspreet was in the Business Management program. Their study permits were valid until November 30, 2018.

[7] The Kaur's graduated from their programs on August 17, 2018, and sought to take advantage of the Post-Graduation Work Permit Program administered by IRCC. In the words of Justice Mactavish, "the PGWP Program allows foreign students who have graduated from a participating Canadian post-secondary institution to gain Canadian work experience. Skilled Canadian work experience gained through the Program then helps graduates qualify for

permanent residence in Canada”: *Nookala v Canada (Citizenship and Immigration)*, 2016 FC 1019 at para 1.

[8] The PGWP Program is not expressly provided for in the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] or the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]: see *Osahor v Canada (Citizenship and Immigration)*, 2017 FC 666 at para 13. Rather, it derives from section 205 of the IRPR, which grants the Minister the authority to create programs allowing foreign nationals to receive work permits where the Minister deems it necessary for reasons of public policy relating to the competitiveness of Canada’s academic institutions or economy: IRPR, s 205(c)(ii); *Nookala* at para 13; *Osahor* at paras 13–14, 17.

[9] The criteria for the issuance of a PGWP are set out in the PGWP-PDI: *Nookala* at para 12; *Osahor* at paras 14–15. This Court has repeatedly held that IRCC is to apply the PGWP-PDI strictly and has no discretion to disregard its mandatory requirements: *Nookala* at paras 11–12; *Abubacker v Canada (Citizenship and Immigration)*, 2016 FC 1112 at para 16; *Ofori v Canada (Citizenship and Immigration)*, 2019 FC 212 at paras 14, 20; *Kim v Canada (Citizenship and Immigration)*, 2019 FC 526 at para 11.

[10] At the time of the Kaur’s applications, the PGWP-PDI stated that an applicant was eligible for a PGWP if they had (i) a valid study permit when applying for the work permit; (ii) continuously studied full time in Canada and completed a program of study of at least eight months in duration; and (iii) completed and passed the program of study at a qualified educational institution, and received written notification from the institution that they are eligible

to obtain a degree, diploma or certificate. The PGWP-PDI stated the following regarding the timing of an application:

Applicants must apply for a work permit **within 90 days of receiving written confirmation** (e.g., an official letter or transcript) from the educational institution indicating that they have met the requirements for completing their program of study. Calculation of the 90 days begins the day the student's marks are issued or the day formal notification of program completion is received, whichever comes first.

[Bold in original; underlining added.]

[11] On October 2 and 3, 2018, respectively, Lambton College issued transcripts to Jaspreet and Sandeep. Those transcripts confirm that they had each met the requirements for completing their program of studies, as each concludes with the name of the program and the notation “GRADUATED (Aug 2018).” The Kaurs filed these transcripts with their applications for PGWPs on October 6, 2018.

### III. Refusals, Restoration and Reconsideration

[12] By letters dated December 21 and 24, 2018, respectively, an IRCC officer refused Jaspreet and Sandeep’s applications. IRCC’s refusal letters stated that the Kaurs were not eligible for a work permit under the PGWP Program as they had “not submitted the required documentation in regard to the **completion** of your studies” [emphasis in original]. IRCC advised that their temporary resident status expired effective the date of the letter, and that they could apply for restoration of their temporary resident status within 90 days.

[13] The Kaurs quickly obtained letters from the Registrar of Lambton College confirming that they had completed the necessary requirements for graduation. They filed those letters, dated December 25, 2018, together with copies of their graduation certificates (which the parties referred to as “diplomas,” terminology I will maintain), further copies of their transcripts, and other documents, under cover of letters from their immigration consultant that sought restoration of their temporary resident status and issuance of PGWPs, on December 26, 2018.

[14] On March 28, 2019, a different IRCC officer refused the Kaurs’ restoration applications on the basis that they had not paid the requisite fees. Since refusal of restoration meant they did not hold temporary resident status, their PGWP applications were also refused. However, the Kaurs had paid the necessary fees. They therefore requested reconsideration of the refusals on April 10, 2018, and commenced these applications for judicial review a few days later.

[15] On May 2, 2019, a third IRCC officer rejected the reconsideration requests, despite acknowledging that the Kaurs had submitted the required fees. The applications were rejected on the basis that they were filed on December 26, 2018, which was not within 90 days of the August 17, 2018 graduation date. The Global Case Management System (GCMS) notes in respect of each application are identical, save for the application number, program title and the relevant date on the transcripts. The GCMS notes for Jaspreet’s application read as follows:

Enquiry dated April 10, 2019, requesting reconsideration.  
Application was refused on March 28, 2018, for insufficient fees.  
Upon review the required fees were submitted and discovered under Representative submissions. Application W304010722 was received at CPCE on December 26, 2018. Client submitted evidence of course completion at Lambton College Business Management. 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. Client submitted evidence she graduated August 17, 2018, via copy of diploma. Client submit transcripts date October 02, 2018 however client was first notified on August 17, 2018, as she received her diploma. Client was required to apply for work permit on or before November 15, 2018, to be eligible for a work permit in this category. Client does not meet the eligibility of the new guidelines as application was submitted prior to February 14, 2019. Application has been re-opened and refused for not eligible to apply under this category. Advised client she no longer has status and must leave Canada.

[Emphasis added.]

[16] As noted, these applications for judicial review were filed after the restoration applications were refused for non-payment of fees. However, as the intervening reasons of May 2, 2019 recognized that the fees were paid but refused the applications on the timing issue, the judicial review applications were argued on the basis of the May 2, 2019 reasons.

#### IV. Issue

[17] The determinative issue on this application is whether the IRCC's conclusion that the Kaurs' PGWP applications were filed late was reasonable.

[18] There is no dispute that the reasonableness standard applies to this question: *Saggu v Canada (Citizenship and Immigration)*, 2020 FC 31 at para 12; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25.

V. IRCC's Decision was Unreasonable

[19] Both the Kaur's original applications and those filed on December 26, 2018, were filed within 90 days of the date on which the Kaur's received their transcripts in early October. The IRCC officer concluded that the Kaur's PGWP applications were untimely since (a) the diplomas they submitted showed the graduation date of August 17, 2018; and (b) they were each "first notified on August 17, 2018 as she received her diploma." Using the August 17, 2018 date meant that the December 26, 2018 applications were filed beyond the 90-day limit. The conclusion that the Kaur's received their diplomas on the graduation date is thus central to the officer's conclusion.

[20] The diplomas in question do not indicate when they were issued to or received by the Kaur's. They identify the recipient and confirm they have satisfied the requirements for graduation. They then say "In witness whereof: we herewith affix our seal and signatures at Sarnia, Ontario this 17<sup>th</sup> day of August, 2018." The signatures of the President, Chair of the Board, and Registrar follow, together with the seal of Lambton College. Taking at face value the statement that the seal and signatures were affixed "this 17<sup>th</sup> day of August, 2018" [emphasis added], one might conclude that the documents were prepared on August 17, 2018. However, even accepting this, an inference is necessary before one can conclude that the diplomas were received by the Kaur's on that date.

[21] The letter applications filed by the Kaur's on December 26, 2018 that enclosed their respective diplomas does not specify when they received the diplomas. Rather, they focused on



the fact that the separate confirmation letters from the Registrar of Lambton College—that were obtained and were being filed in apparent response to IRCC’s initial refusals—were not received until the day before. It certainly would have been clearer had the cover letter specified when the Kauras received their diplomas. Indeed, as counsel for the Minister noted, this application would likely not have been necessary had it done so.

[22] However, the question is whether it was reasonable for the officer to infer that the diplomas were received on the date they were prepared given that nothing was said about when they were received. In this regard, I agree with the Minister that the evidence the Kauras filed on these applications that they received the diplomas in November 2018 should not be considered in the assessment, since it was not before the officer at the time of the decision: *Kim* at para 8, citing *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19.

[23] The inference that the Kauras received their diplomas on the graduation date makes certain assumptions about how and when diplomas at Lambton College are provided to graduating students. Even so, in other circumstances, and in the absence of any other information, such an inference might be reasonable. However, in these particular circumstances, and with the other information available, I conclude that it was not a reasonable inference.

[24] The circumstances before the officer include that the Kauras’ transcripts show that they were not issued until early October, and that the college did not prepare or send a letter of confirmation until months later. Each of these facts undermines an inference that the college

prepared and issued the diplomas on the effective day of graduation and that graduates received their diplomas that same day. I note in this regard that there was no evidence before the officer that there was a ceremony or any other event on the day of graduation at which diplomas were conferred. In addition, the circumstances include the fact that the Kaur's original applications were filed within days of their transcripts being issued, but did not include the diplomas even though it was well after the graduation date. Although it is not clear from the certified tribunal record that the officer had the Kaur's October applications in front of them, those applications and their rejection were clearly referred to in the December cover letters such that those circumstances were or should have been known to the officer. Again, these additional circumstances indicate that the "earliest date" the Kaur's received official notification was the date of their transcripts. Nevertheless, rather than rely on this clear and unmistakable date, IRCC ignored the receipt of the transcripts in favour of an inference that the date on the diplomas corresponded to the date of formal notification.

[25] I conclude that on the specific facts of this case, and given the documents and application history that were or should have been before the officer, it was unreasonable for the officer to infer that the Kaur's received their diplomas on August 17, 2018. It was therefore unreasonable to conclude that the 90-day period for filing a PGWP application began to run on that day, and that the applications filed on December 26, 2018 were filed out of time.

[26] In this regard, I reject the Minister's argument that it was "reasonable to rely on the graduation certificate dates because the Applicants acknowledged that they knew they graduated in August 2018 and received their certificate in November 2018," for two reasons. First, the

PGWP-PDI is clear that the time for application runs not from the date that an applicant graduates or “knows” they graduated, but from the date they receive written confirmation from the institution. Second, the argument relies on the very evidence filed on these applications that the Minister correctly submits should not be considered since it was not before the officer.

[27] As I conclude that the officer’s decision that the PGWP applications were filed out of time was unreasonable, it is unnecessary for me to decide the other issues raised by the Kaur. These include their arguments that IRCC’s processing delays should not be held against them, that the new PGWP-PDI in force as of February 2019 (which provides for, among other things, a 180-day period for application) should apply notwithstanding the apparent transitional wording of the new policy, and that the officer had an inherent discretion under sections 25, 25.1 and 25.2 of the *IRPA* to waive specific requirements.

[28] I also need not decide whether the original decision to reject the Kaur’s applications filed on October 6, 2018 on the basis that they had not submitted the required documentation “in regard to the completion of their studies” was reasonable. However, in the circumstances, having put this question to the parties and having received their submissions on it, I will address the issue briefly.

[29] As set out above, in October 2018 the Kaur filed academic transcripts that confirmed they had “GRADUATED (August 2018)”. The PGWP-PDI in place at that time expressly stated that a transcript may constitute the written confirmation from the educational institution that they have met the requirements for completing their program. Nevertheless, IRCC refused the

applications and required the Kauras to file additional confirmation of completion of their studies. While counsel for the Minister stated that IRCC required two separate documents, there was nothing in the old version of the PGWP-PDI—which the Minister insists contains “strict” program requirements—that required the filing of a separate document to confirm completion. To the contrary, it said that a transcript could fulfill the purpose of demonstrating completion, which the Kauras’ transcripts did on their face.

[30] The Minister argues that it is not open to the Court to consider this earlier rejection, describing it as an earlier decision and citing the Supreme Court of Canada’s observation in *Nacho Nyak Dun* that “[a]n application for judicial review does not invite the court to assess the legality of every decision that preceded the challenged decision”: *First Nation of Nacho Nyak Dun v Yukon*, 2017 SCC 58 at para 32. The Kauras respond that they are challenging the refusal of their request to reconsider the PGWP applications, and this can and ought to be done based on the entirety of the file. The Kauras note that IRCC did reconsider the original ground for the second refusal—the non-payment of fees—but nonetheless went on to refuse the applications on the basis of the timing issue. They submit that IRCC could and should have equally recognized on the reconsideration that the first applications were complete and should have been approved.

[31] I do not believe that *Nacho Nyak Dun* forbids a decision maker to consider decisions preceding the challenge when they are relevant to the reasonableness of the decision at issue in the specific context of the case. The reasoning of Justice de Montigny at paragraphs 27-31 of *Zhang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1381, cited by the Kauras, seems applicable. Here, the Kauras each filed an application on a timely basis, which apparently

contained all of the information required by the PGWP Program. The applications were nonetheless rejected by IRCC with an apparently mistaken assertion that more documents were needed and that restoration applications could be filed. The Kauras each followed the approach proposed by IRCC and filed the apparently unnecessary additional documents, only to be told that their applications were now out of time as a result of their having followed IRCC's instructions. In such circumstances, I find it difficult to conclude that either the officer or this Court would be precluded from considering IRCC's initial refusal, even if that decision is not directly the subject of the judicial review application.

#### VI. Conclusion

[32] The refusal of the Kauras' PGWP applications and associated restoration applications, on the basis that they did not qualify for a PGWP because their applications were filed outside the applicable 90-day window, was unreasonable. The Kauras' applications for judicial review are granted. IRCC's decisions are quashed and the matters are sent back for redetermination to a different IRCC officer in accordance with these reasons.

[33] No certified questions were proposed and none arise from this matter.

**JUDGMENT IN IMM-2407-19 AND IMM-2409-19**

**THIS COURT'S JUDGMENT is that**

1. Sandeep Kaur and Jaspreet Kaur's applications for judicial review are granted.

IRCC's decisions are quashed and the matters are sent back for determination by a different IRCC officer.

\_\_\_\_\_  
"Nicholas McHaffie"

Judge

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

**DOCKET:** IMM-2407-19

**STYLE OF CAUSE:** SANDEEP KAUR v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**AND DOCKET:** IMM-2409-19

**STYLE OF CAUSE:** JASPREET KAUR v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 19, 2020

**JUDGMENT AND REASONS:** MCHAFFIE J.

**DATED:** APRIL 15, 2020

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