

Federal Court



Cour fédérale

Date: 20211015

Docket: IMM-2616-21

Citation: 2021 FC 1083

Ottawa, Ontario, October 15, 2021

PRESENT: Madam Justice Go

BETWEEN:

CLIFFORD WESTWOOD DRAKES

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Clifford Westwood Drakes [Applicant] was an international student at the Canadian Southern Baptist Seminary & College [Seminary] in Alberta. After his graduation, he applied for a Post-Graduation Work Permit [Work Permit] on March 13, 2021.

[2] By a decision dated April 9, 2021 [Decision], an Immigration Officer refused the Applicant's application under the Post-Graduation Work Permit Program [PGWPP]. The Officer found that the Applicant failed to meet the requirements of subparagraph 205(c)(ii) of the *Immigration and Refugee Protection Regulations, SOR/2002-227 [IRPR]* as he engaged in part-time studies beyond the allowable part-time exclusion of his final semester.

[3] In the application for judicial review, the Applicant submits that the Officer's decision is unreasonable because they failed to consider that the Applicant's school-approved leave from his studies was an exception to the requirement to maintain full-time status during each semester of the study program. For the reasons stated below, I grant the application and refer the matter back for re-determination by a different immigration officer.

II. Background

A. *Factual Context*

[4] From September 2016 to December 2020, the Applicant was a student in the Bachelor of Christian Ministry program at the Seminary. The Applicant requested and was granted an authorized leave by the Seminary during the Spring 2018 semester due to financial stress. He continued part-time studies in this one semester and completed one course.

[5] In support of his application for a Work Permit, the Applicant submitted a letter from the Seminary, dated February 9, 2021, confirming that the Applicant requested and was granted an authorized leave during the Spring 2018 semester, that he continued in this one semester with

part-time studies, and that he completed his degree by December 31, 2020. The letter also indicated that the Applicant had applied to Immigration, Refugees and Citizenship Canada [IRCC] for an extension of his study permit, which was granted and extended until August 31, 2021.

B. *Decision under Review*

[6] In the decision letter, the Officer noted the Applicant failed to meet the following policy:

Foreign students in Canada are eligible for a work permit for post-graduation employment only if they have maintained full time student status in Canada during each academic session of the program or programs and have completed a program of study that is at least eight months in duration at:

- University, community college, CEGEP
- Publicly funded trade/technical school or
- Private institution authorized by provincial statute to confer degree

[7] The Officer's Global Case Management System notes, which constitute the reasons for the decision, were brief. The notes reveal that the Applicant's Work Permit was refused because the Applicant engaged in part-time studies in the Spring 2017/18 term "beyond the allowable part-time exclusion of the final semester". The notes also indicate that in the Spring 2017/18 term, the Applicant was enrolled in one class resulting in three credits for the semester.

III. Issues

[8] The sole issue in this case is whether the Officer's decision was reasonable, taking into account the facts and the law.

IV. Analysis

A. *Standard of Review*

[9] The parties agree that the applicable standard of review of the Officer's substantive decision is that of reasonableness under the Supreme Court of Canada's revised framework in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[10] The reasonableness standard requires a deferential but robust form of review: *Vavilov*, at paras 12-13, 75, 85. A reviewing court must determine whether the decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility: *Vavilov*, at para 99. The reviewing court is to review the decision maker's reasoning, process, and outcome while refraining from deciding the issue itself: *Vavilov*, at para 83. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov*, at para 85. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov*, at para 100.

B. *Applicable Regulatory Framework and Guidelines for the PGWPP*

[11] Subparagraph 205(c)(ii) of the *IRPR* states that a work permit may be issued to a foreign national who intends to perform work that is “designated by the Minister as being work that can be performed by a foreign national” based on the rationale that “limited access to the Canadian labour market is necessary for reasons of public policy relating to the competitiveness of Canada's academic institutions or economy”.

[12] Under this broad framework, the PGWPP is created to allow international students to apply for a work permit, provided that they meet certain eligibility requirements. These eligibility requirements are described in detail on the IRCC website under: Immigration, Refugees and Citizenship Canada, “Post-Graduation Work Permit eligibility requirements” [PGWPP Guidelines].

[13] According to the PGWPP Guidelines, to obtain a Work Permit, an applicant must have maintained “**full-time student status in Canada** during each academic session of the program or programs of study they have completed and submitted as part of their post-graduation work permit application” [emphasis in original]. Exceptions can be made only for the following circumstances:

- a. Leave from studies, or;
- b. Final academic session

[14] With respect to the final academic session, the PGWPP Guidelines allow students to have part-time status and still be considered eligible for the PGWPP.

[15] With respect to leave from studies, the PGWPP Guidelines do contemplate students taking leave from their studies during their program, I note, however, it is not stated that the leave can only be taken during the final academic session. To be eligible for the PGWPP, students who are taking leave must still be enrolled at the Designated Learning Institution [DLI], remain enrolled, and be actively pursuing their course or program of study. Specifically, the PGWPP Guidelines state:

If the officer determines that the student **actively pursued studies during their leave**, the student may still be eligible for the Post-Graduation Work Permit Program (PGWPP).

If it is determined that the student has not met the conditions of their study permit, they may be banned from applying for a post-graduation work permit for 6 months from the date they stopped their unauthorized study or work, per subparagraph R200(3)(e)(i).

[emphasis added]

[16] In addition, international students must also meet their study permit requirements under IRCC's Study Permit Guidelines which can be located online at Immigration, Refugees and Citizenship Canada, "Study Permits: Assessing study permit conditions". As part of those requirements, all study permit holders must actively pursue their course or program of study. Students must generally maintain part-time status with their institution to be considered actively pursuing their studies. If a student is on leave, in order to be actively pursuing their studies, any such leave should not exceed 150 days from the date the leave commenced and must be authorized by their DLI.

C. *Was the Officer's Decision Unreasonable?*

[17] Both parties submit that the Officer was supposed to follow the PGWPP Guidelines and Study Permit Guidelines. The parties also agree that the PGWPP Guidelines offer eligibility criteria deriving from the Officer's statutory authority under subparagraph 205(c)(ii) of the *IRPR*.

[18] The Applicant submits that the PGWPP Guidelines allow students to take an authorized leave from their studies if they continue to comply with their study permit conditions per

subsection 220.1(1) of *IRPR*. The Applicant argues that he maintained full-time status, except for when he obtained authorized leave from the Seminary in the Spring 2018 semester. He also argues that he undertook part-time studies during his authorized leave, in fulfillment of the Study Permit Guidelines that he should be actively pursuing his studies.

[19] In contrast, the Respondent submits that the Applicant's part-time status does not count as an exception to the PGWPP Guidelines. The Respondent submits that the exception to maintain full-time studies only applies if a student becomes part-time during their final academic session, and the Applicant's leave did not occur during his final term. The Respondent also argues that the Applicant did not truly take a leave, as he was a part-time student in the Spring 2018 semester.

[20] Citing case law, the Respondent submits that the IRCC must apply the PGWPP Guidelines strictly and that it has no discretion to disregard its mandatory requirements: *Osahor v Canada (Citizenship and Immigration)*, 2017 FC 666, at para 14.

[21] I agree that the Officer was legally authorized to follow the PGWPP Guidelines and did not have discretion to disregard its requirements. In this case, however, I find that the Officer has failed to consider whether the Applicant's authorized leave during the Spring 2018 semester brings him under the exception from the full-time studies requirement.

[22] As noted above, the Decision itself simply referred to the requirements that students are eligible for a Work Permit only if they have "maintained full time student status in Canada

during each academic session of the program”. The notes elaborated the Officer’s decision a bit further by indicating that the Applicant’s part-time studies were taken during the Spring 2017/18 term “beyond the allowable part-time exclusion of the final semester”. Neither the Decision nor the notes indicate that the part-time studies were taken under an authorized leave issued by the Seminary.

[23] The Respondent submits that the Officers are not required to outline every strand of their reasons. The Respondent also argues that the Applicant’s transcript indicating part-time studies in the Spring 2018 semester was part of the materials that were considered by the Officer. It is trite law that the presumption that a decision maker has considered all the evidence is a rebuttable one, and where the evidence in question is of significant probative value this Court can make a negative inference from the decision maker's failure to mention it. The more important the evidence that was not mentioned, the more the Court will be inclined to find that a finding of fact was made without regard to it: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425, 1998 CanLII 8667 (FC), at paras 15, 17.

[24] In this case, given that the Officer did not mention a crucial piece of evidence, namely the authorized leave granted by the Seminary, I find that the Officer never turned their mind to the fact that the Applicant took part-time studies pursuant to an authorized leave. Instead, the Officer solely focused on the fact that the part-time studies did not take place during the final semester. In effect, the Officer has considered only one out of the two possible exceptions from the full-time studies requirement, and ignored the exception that directly applied to the Applicant’s circumstances.

[25] The Respondent contests whether the Applicant took a leave at all, given that he enrolled part-time during his claimed leave term. I do not find this argument persuasive, as the PGWPP Guidelines do not dictate what constitutes a “leave”. In fact, both the PGWPP Guidelines and the Study Permit Guidelines require a student on leave to be “actively pursuing their course or program of study”. This lends credence to the Applicant’s position that undertaking part-time studies while on leave does not invalidate an authorized leave.

[26] In this particular case, the Officer either failed to consider the letter from the Seminary confirming that the Applicant was granted an authorized leave for the Spring 2018 semester, or the Officer simply ignored the fact that the part-time studies were undertaken during an authorized leave. Either way, it was unreasonable for the Officer not to consider the Applicant’s part-time studies in the context of an authorized leave, which falls under one of the exceptions from the full-time studies requirement, and thereby rendered him eligible for a Work Permit under the PGWPP Guidelines.

[27] In view of the above, I set aside the Officer’s decision and refer it back for redetermination by a different officer.

V. Conclusion

[28] The application for judicial review is allowed.

[29] Neither party proposed a serious question of general importance for certification and I find that none arises in this case.

JUDGMENT in IMM-2616-21

THIS COURT'S JUDGMENT is that:

1. The Applicant's judicial review application is granted.
2. The decision under review is set aside and the matter referred back for redetermination by a different decision maker.
3. There is no question for certification.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2616-21

STYLE OF CAUSE: CLIFFORD WESTWOOD DRAKES v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 6, 2021

**REASONS FOR JUDGMENT
AND JUDGMENT:** GO J.

DATED: OCTOBER 15, 2021

APPEARANCES:

Stanley Leo FOR THE APPLICANT

Rupinder Gosal FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stanley Leo FOR THE APPLICANT
Lowe and Company
Vancouver, British Columbia

Attorney General of Canada FOR THE RESPONDENT
Vancouver, British Columbia