

Federal Court



Cour fédérale

Date: 20211224

Dockets: IMM-2247-20

Citation: 2021 FC 1474

Ottawa, Ontario, December 24, 2021

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

DEVINDER SINGH VIRK

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Virk, applied for a post-graduate work permit (“PGWP”) following his completion of a Bachelor of Business Administration at the University of Fraser Valley. The immigration officer at the Case Processing Centre – Edmonton (“Officer”) denied his application because they found there was a four-year gap in his studies and therefore he had not maintained full-time student status as is required.

[2] Mr. Virk challenges this refusal. He argues, first, that the gap in his studies was a result of a series of refusals of his immigration applications that he successfully challenged and therefore he should not be penalized for this gap. He also argues that there was in fact no gap in his full-time studies, that the Officer ought to have recognized that his separate diploma program, which he completed four years prior, had been credited towards his bachelor's degree, and therefore his study should have been characterized as a one-year program.

[3] I do not agree with Mr. Virk. Upon a review of the timing of the successfully challenged previous refusals in light of the requirements for continuous study, I do not find that these refusals are relevant, as even without them, Mr. Virk would not have met the requirement for continuous full-time study. I also find that the Officer's assessment accorded with what was provided in the application and how Mr. Virk characterized his studies to the Officer.

[4] For the reasons set out below, I find the Officer's decision to be reasonable and dismiss the application for judicial review.

II. Background facts

[5] Mr. Virk is a citizen of India. In September 2011, he was admitted into the University of Fraser Valley's satellite campus in India, where he was pursuing a diploma in business administration. He completed two years of his diploma in India before moving to Canada to complete his studies.

[6] On July 2013, he was granted a student visa and entered Canada on August 23, 2013. He spent the next two semesters (2013-2014) as a full-time student at the University of Fraser Valley's Abbotsford campus. At the end of September 2014, the Applicant received his diploma in business administration.

[7] On December 19, 2014, Mr. Virk applied for a PGWP. The PGWP was refused on May 6, 2015, on the basis that he did not apply within 90 days of the expiry of his study permit. On May 15, 2015, the Applicant reapplied for a PGWP. The application was once again refused on November 24, 2015. These refusals were not challenged by Mr. Virk.

[8] From November 2015 until December 2018, Mr. Virk made a number of immigration applications.

[9] First, he applied to restore his temporary resident visa ("TRV"). This application was refused and successfully challenged on three occasions, with Mr. Virk ultimately being granted restored visitor status in November 2017. He was then able to successfully extend his visitor status and apply to the Bachelor of Business Administration program at the University of Fraser Valley.

[10] Mr. Virk was accepted into the Bachelor of Business Administration program to begin in the fall of 2018. He received approval from the university to use his previously completed courses from 2011-2014 (that he completed to obtain the diploma in business administration)

towards his program requirements for the Bachelor of Business Administration program. This meant that he would be able to obtain a bachelor's degree with only a further one year of study.

[11] On January 15, 2018, Mr. Virk applied for a study permit to study in the Bachelor of Business Administration program. This application was refused and then successfully judicially reviewed and sent back for redetermination. On December 6, 2018, the Applicant received a study permit. In January 2019, Mr. Virk began the Bachelor of Business Administration program as a full-time student. He completed the program and obtained a Bachelor's degree at the end of 2019.

[12] On January 11, 2020, Mr. Virk applied for a PGWP. The application was refused on April 6, 2020. It is this refusal which is being challenged in this judicial review.

III. Issues and standard of review

[13] The only issue raised on judicial review is with respect to the Officer's determination that Mr. Virk did not study continuously on a full-time basis. Both parties agree that this decision is to be reviewed on a reasonableness standard. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

IV. Analysis

[14] Under the PGWP operational instructions and guidelines (“PGWP Guidelines”), an applicant has to maintain full-time student status in Canada during the completion of their academic studies (s 220.1(1) of the *Immigration and Refugee Protection Regulations* (SOR /2002-227)). There are only two exceptions to this requirement: 1) where the applicant has taken a leave from their studies authorized by their designated learning institution and not exceeding 150 days; and 2) where the applicant was not in full-time status only in their final academic session.

[15] The Officer found that Mr. Virk had not maintained full-time student status during his studies for his Bachelor of Business Administration as the transcripts provided showed that he was not enrolled in study after the Winter 2014 semester until Winter 2019.

A. *Previous refusals not relevant to gap in study*

[16] Mr. Virk first argues that he should not be penalized for the gap in his studies because it was primarily due to the delays from being unreasonably refused his TRV and study permit applications. I do not accept this argument because the gap in Mr. Virk’s studies that was not attributable to any of these successfully challenged refusals was longer than 150 days.

[17] As was conceded by Mr. Virk’s counsel at the oral hearing, the successfully challenged refusals were not the only reason for the delay in studying between 2014 until 2019. The delays caused by the successfully challenged refusals were from between November 2015 until

December 2018. There was still a gap of approximately 14 months from when he completed his diploma program until when he applied for the first restoration application that was unreasonably refused. In that interim 14-month period, Mr. Virk applied for a PGWP twice based on his diploma program (May 2015 and November 2015); both applications were refused and neither were challenged.

[18] The PGWP Guidelines only allow for a 150-day period where an applicant can request permission from their school to take a leave from full-time study. Even if the time period from November 2015 until December 2018 during which Mr. Virk was in the process of applying and then challenging various refusals was disregarded, Mr. Virk would still be left with a 14-month gap in study, which far exceeds the 150 days that is permissible.

[19] Moreover, even if the period of time where he successfully challenged the refusals was relevant to the gap in studies, which as outlined above I do not find is the case, Mr. Virk did not raise this as an explanation for the gap in his studies in his application.

B. *Reasonable assessment of the request and evidence on file*

[20] Mr. Virk also argues that the Officer erred in considering his study period as beginning in 2011 and ending in 2019. He argues that the Officer should have considered that he completed an earlier program from 2011 to 2014, the diploma in business administration, and subsequently completed the final year of a Bachelor of Business Administration program in 2019. Mr. Virk argues that if the Officer had characterized the program in this way, as two separate programs, there would have been no gap in his studies.

[21] The problem with this submission is that this is not how the request for the PGWP was characterized by Mr. Virk in his application. Mr. Virk stated that he completed a four-year degree and requested that he receive a PGWP that was in accordance with this length of study. There is no explanation provided to the Officer about the nature of the program and that periods of study on his transcript from 2011-2014 ought to be considered as a separate program.

[22] There is a notation at the top of the transcript that states “credentials awarded: business administrative diploma 30-Apr-2014” but the courses taken from 2011-2014 are not listed separately as part of the diploma program; each are classified as part of the Bachelor of Business Administration. There was no documentation provided that explained that these periods of study should be treated separately. Mr. Virk did not explain this in his letter with the application.

[23] Given how the request was made and the evidence in the record before the Officer, I find the Officer reasonably assessed the request and the evidence that was provided. There is no basis for the Court to intervene. Accordingly, the application for judicial review is dismissed.

[24] No question for certification was raised by either party and none arises.

JUDGMENT IN IMM-2247-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. There is no question for certification.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2247-20

STYLE OF CAUSE: DEVINDER SINGH VIRK v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: AUGUST 26, 2021

JUDGMENT AND REASONS: SADREHASHEMI J.

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