Federal Court  Cour fédérale

Date: 20220225

Docket: IMM-3132-21

Citation: 2022 FC 254

Ottawa, Ontario, February 25, 2022

PRESENT: Madam Justice St-Louis

BETWEEN:

MARY MICHELLE RIMANDO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Ms. Mary Michelle Rimando's challenges the decision rendered by an Immigration Officer at Citizenship and Immigration Canada (CIC) on April 27, 2021, rejecting her application for Canadian permanent residence status as a member of the Live-In Caregiver Class.

[2] In their decision, the Immigration Officer determined that Ms. Rimando did not meet the requirements for immigration to Canada under this Class. The Immigration Officer cited paragraphs 113(1)(b) and (c) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations] as they read before being repealed in May 2017. These paragraphs state that a foreign national becomes a member of the Live-In Caregiver Class if they are a temporary resident and if they hold a work permit as a live-in caregiver. The Immigration Officer indicated that Ms. Rimando has not shown compliance with this requirement, as she did not hold a work permit under the live-in caregiver program [the LCP] anymore and that her current work permit was issued after November 30, 2014, when the LCP ended.

[3] It is not disputed among the parties that the LCP ended on November 30, 2014. The parties also agree that there are still persons to whom the program applies and the question before the Court is to determine whether or not it was reasonable for the Immigration Officer to conclude that Ms. Rimando was not one of them.

[4] For the reasons exposed below, I find the Immigration Officer's decision reasonable and will thus dismissed Ms. Rimando's application for judicial review.

II. Context

[5] On September 3, 2014, Ms. Rimando entered Canada and was issued a work permit as a live-in caregiver in the LCP. Her work permit was valid for four years, hence until September 2, 2018. It is not disputed that in order for this LCP work permit to have been approved and issued, the required Labor Market Impact Assessment had first been issued by Service Canada.

[6] On October 20, 2016, due to a change of employer and while still in status with a work permit under the LCP, Ms. Rimando went at the port of entry of St-Armand Phillipsburg to apply for and obtain a new work permit, under the same LCP, but for another employer.

[7] In July 2018, prior to the expiration of her LCP work permit, Ms. Rimando applied for a new work permit under the same category. However, on September 25, 2018, CIC refused this work permit application as Ms. Rimando had failed to submit the necessary Labour Market Impact Assessment. CIC informed Ms. Rimando of the possibility for her to apply to try and restore her status, but she did not do so. Therefore, Ms. Rimando's work permit under the LCP expired on September 30, 2018 and her status as a live-in caregiver ended on that same day.

[8] On March 19, 2019, Ms. Rimando was issued visitor's record valid for one month, thus allowing her to remain in Canada as a visitor, and on August 1, 2019, her visitor status was extended until October 17, 2019.

[9] On September 25, 2019, Ms. Rimando received a new work permit, but under another category, hence as an "at home caregiver". Her application was supported by a new Labour Market Impact Assessment. The "at home caregiver" work permit is not issued under the LCP and it is not a "live-in caregiver" work permit.

[10] On February 10, 2020, Ms. Rimando signed her permanent residence application, and on May 25, 2020, CIC received it. In her application, Ms. Rimando confirmed that she was applying

under the LCP, and she selected option 1, i.e., 24 months of authorized full-time employment as a live-in caregiver, for calculating the employment requirements.

[11] On April 27, 2021, her application for permanent residence in Canada as a member of the Live-In Caregiver Class was refused by the Immigration Officer, decision under review in these proceedings.

III. Issues before the Court

[12] The parties agree that the Immigration Officer's decision must be reviewed under the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). The Court must thus determine if Ms. Rimando has shown the decision to be unreasonable.

[13] Ms. Rimando submits that the Immigration Officer committed a reviewable and fatal error by failing to follow and apply the clear guidelines and requirements prescribed by the Government of Canada, which are published online. She adds that these guidelines permit a temporary resident to apply for a permanent resident visa under the LCP after the program had been abolished.

[14] Ms. Rimando points to the guidelines that indicate that caregivers can apply through the LCP only if they have at least 2 years of work experience in the program and have been, *inter alia*, approved for their first LCP work permit based on a Labour Market Impact Assessment

submitted to Employment and Social development Canada on or before November 30, 2014. She submits having met this condition.

[15] Ms. Rimando adds that the Immigration Officer clearly overlooked the fact that the transitional provisions pertaining to the now repealed section 113 of Regulations, as well as the guidelines, confirmed she was not required to be holding a LCP work permit at the time of her application for Canadian permanent resident status. Ms. Rimando adds that, based on those guidelines, she had a legitimate and reasonable expectation that she would qualify for permanent resident status.

[16] The Minister of Citizenship and Immigration [the Minister] essentially responds that Ms. Rimando did apply for Canadian permanent resident status under the Live-In Caregiver Class, that the requirements of section 113 continued to apply to the Class after the LCP was abolished, that paragraph 113(1)(c) clearly requires the applicant to hold an LCP work permit, and that Ms. Rimando did not hold an LCP work permit at the time she applied for Canadian permanent resident status. Given that Ms. Rimando is not a member of the Live-In Caregiver Class, the Minster responds that the Immigration Officer's decision is reasonable. The Minister adds that no legitimate expectations can arise that is contrary to the law.

IV. Decision

[17] As the Minister outlined, the LCP ended on November 30, 2014, and certain parts of the regulations remained in force until May 5, 2017.

[18] Per the evidence adduced by the Minister, on May 5, 2017, the definition of "live-in caregiver", found at section 2 of the Regulations and the entire Division 3 of Part 6 of the Regulations pertaining to the LCP, were repealed. However, those who entered Canada as part of the LCP, and who still are in the LCP, may apply for permanent residence in the Live-In Caregiver Class if they meet the criteria that apply to this Class, pursuant to sections 112 and 113 of the Regulations as they read prior their abrogation.

[19] As indicated in the Canada Gazette part II, volume 151, number 10 published on May 17, 2017 : "[s]pecifically, line-in caregivers continue to be eligible for permanent residence under the Live-In Caregiver program if their initial Live-In Caregiver work permit was based on a Labour Market Impact Assessment that was requested from Service Canada by their employer on or before November 30, 2014, and they continue to meet program requirements" [Emphasis added.]

[20] There is no doubt that Ms. Rimando's initial work permit was under the LCP and that it was based on a Labour Market Impact Assessment that was requested from Service Canada by their employer on or before November 30, 2014.

[21] There is also no doubt, despite her arguments to the contrary, that Ms. Rimando had to meet the LCP requirements at the time she applied for Canadian permanent residence status under the Live-In Caregiver Class.

[22] Pursuant to the now repealed section 110 of the Regulations, the Live-In Caregiver Class is a class of foreign nationals who may be eligible to become permanent residents of Canada if they meet the very specific requirements of the Class. Section 113 of the now repealed Regulations sets out the requirements that must be met to be granted permanent residence under this Class. Amongst other requirements, paragraph 113(1)(c) requires that the person "[…] hold a work permit as a live-in caregiver".

[23] Though the extract of the guidelines on which Ms. Rimando bases herself does not explicitly mentions that the person must hold a work permit as a live-in caregiver at the time of the application for permanent resident status in order to be a member of the Live-In Caregiver Class, paragraph 113(1)(c) of the pre 2017 Regulations unequivocally confirms this requirement.

[24] In September 2018, as she had not met the requirements to extend her work permit under the LCP, and as she did not file any application to restore her status in the following 90 days, Ms. Robert lost her status as a live-in caregiver under the LCP.

[25] Ms. Rimando did subsequently obtain a new work permit under a different program, not under the LCP. However, she nonetheless applied for Canadian permanent residence status under the Live-In Caregiver Class.

[26] A reasonable decision is "[…] one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para 85). Given the clear requirement of the applicable Regulations, it was

reasonable for the Immigration Officer to conclude Ms. Rimando did not qualify for permanent residence under the Live-In Caregiver Class. The transitional provisions published in the Canada Gazette clearly confirm the now repealed regulatory requirements continue to apply to the Live-In Caregiver Class, and Ms. Robert did not meet the requirement stated at paragraph 113(1)(c) of the now repealed Regulations.

[27] Lastly, I agree with the Minister that no legitimate expectation could have arisen from the partial reading of the guidelines as no legitimate expectation can arise that is contrary to law, and in this case, to the regulatory requirements, whose application was confirmed in the transitional provisions (B*aker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 26).

[28] Given the applicable law and the record, the Immigration Officer's decision is reasonable.

JUDGMENT in IMM-3132-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question are certified.

3. No costs are awarded.

"Martine St-Louis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3132-21
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