Federal Court  Cour fédérale

Date: 20220608

Docket: IMM-7102-21

Citation: 2022 FC 855

Ottawa, Ontario, June 8, 2022

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

HARJOT SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Harjot Singh, the Applicant, seeks the judicial review of the decision of a Visa Officer, made on October 2, 2021, which denied a work permit for which the Applicant applied. The judicial review application is made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

I. The facts

[2] Mr. Harjot Singh is a citizen of India who followed an education program at the Langara College, in British Columbia. He studied from May 2016 to August 2019; he obtained a "Continuing Studies Post-Degree Diploma in Supply Chain and Logistics".

[3] The Applicant sought a work permit which is referred to as a Post-Graduation Work Permit (PGWP) in order to be able to work in Canada following graduation. He applied in August 2019; the application included a "graduation letter" from the Langara College which stated that there was a scheduled break in the program from September 2018 to December 2018. The Applicant left Canada to return to India on September 19, 2019 and his then current study permit expired on November 30, 2019.

[4] The PGWP was denied on November 26, 2019 because the Applicant had not studied full time for at least eight months. The letter also advised the Applicant that his temporary resident status was to expire on November 30, 2019.

[5] Having been refused a visa in order to come to Canada from India on December 20, 2019, it is an Applicant's friend in Canada who returned to him some documents in February 2020. Those documents were for the purpose, the Applicant claims, of deciding on the future course of action concerning the refusal for a PGWP. It is only on July 24, 2020 that the Applicant applied for information (Global Case Management System (GCMS)) about the refusal of his application for a PGWP. Such notes were received on August 14, 2020. The Applicant

claims that there was an error in the "graduation letter" in that the scheduled break was in effect from September 1, 2017 to December 1, 2017, instead of the dates being in 2018.

It remained unclear, in spite of questions during the hearing, what the difference may be given that the GCMS notes report on gaps in the study program which are more problematic.

> Client is requesting a PGWP. Client completed 2 years Supply Chain and Logistics program at Langara College. Transcripts submitted by client indicate that client did not maintain full time studies. Transcripts show that client began program in Summer/2016 semester. However, client was not registered for Fall/2016, Spring/2017, Fall/2017, Fall/2018, or Spring/2019 semesters. Completion of studies letter does indicate that there was a scheduled term break for Fall/2018; however, letter only excuses this one semester. As client did not maintain full time student status during each academic session of the program, client is not eligible for C43 Issuance. Application refused as per R205(c)(ii). Advised status and restoration.
>
> [My emphasis.]

It seemed that counsel sought to suggest that the break in the Fall of 2018 was in fact in the Fall of 2017. As appears from the notes, there seems to have been many gaps, including gaps in the Fall of 2017 and the Fall of 2018. As the notes explain, the application excuses the gap in only one semester. Whether it be Fall 2018 or Fall 2017 does not address the other gaps.

[6] It is only on August 25, 2020, that the Applicant contacted the Langara College for the "error" to be corrected. A letter correcting the dates of the "scheduled break" was sent on October 2, 2020. There was never any challenge launched against the refusal of the PGWP of November 26, 2019. It is not clear, on this record, whether different dates for the "scheduled break" would have made any difference on a possible issuance of a PGWP. At any rate, there

was a more determinative issue in this case. It is whether the Applicant had the possibility to apply for a second time.

[7] Rather, what happened is that the Applicant applied again for the same kind of work permit, but this time on October 26, 2020. That second application was denied on October 2, 2021 by a Visa Officer. That constitutes the only decision before the Court on judicial review. In fact, matters relating to the first application are for all intents and purposes irrelevant.

II. The decision under review

[8] The decision letter of October 2, 2021 declares that the work permit is denied because "[a]s your study permit has expired, you are not eligible for a post-graduate work permit". The GCMS notes are not elegantly expressed but provide a more complete rationale for the decision. The notes are part of the decision (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 44). The paragraph created on October 2, 2021 reads:

> Applicant provided a transcript dated 22-August-2019 from Langara College showing he was awarded a post-degree diploma in supply chain and logistics in Aug-2019. Applicant applied for this WP on 26-Oct-2020 and finished his program of study in Aug-2019. As a result, I am not adequately satisfied the applicant is eligible for the PGWP as it has been well over 180 days since he was advised by his DLI of program completion. Refused.

[9] What is to be understood in spite of the convoluted language is that the Applicant had 180 days from the completion of the study program to make an application for a PGWP. The program having been completed in August 2019, an application made in October 2020 is well

out of time. The reference to the DLI is to the Designated Learning Institution. Here, it is the Langana College which provided the “graduation letter” that is the DLI.

III. The arguments

[10] In effect, the Applicant challenges the decision under review on two bases. First, the Applicant contends that the decision to deny the PGWP was unreasonable because it is based only on the fact that the application came more than 180 days after the expiration date of the original work permit. This is not accurate. The decision under review was based on the fact that the application came more than 180 days since the study program was completed. However, either way, whether the 180-day period is calculated following the expiry of the work permit or the completion of the study program, the result is the same: the Applicant was well outside the 180-day period.

[11] The Applicant argues that the decision is unreasonable because the decision maker did not exercise a discretion that supposedly exists to consider exceptional circumstances. These are essentially related to the global pandemic which resulted, claimed the Applicant, in a lockdown in India starting in March 2020, for four months and the less than normal functioning of the Langara College.

[12] Second, the decision is argued to be procedurally unfair because the Applicant was not provided with the opportunity to explain why he did not make a second attempt at making a valid application for a PGWP during the 180-day window period.

[13] The Respondent denies that there exists any discretion to waive the 180-day eligibility period. There was no violation of procedural fairness either. It is for an applicant to a visa to show that the requirements were met. The decision under review is simply based on the deficiencies of the application: the basic requirements were not met. There is no obligation on the decision maker to raise concerns where the application is insufficient.

IV. Standard of review and analysis

[14] The parties argue a violation of the procedural fairness requirements is considered on a correctness standard, that is that the reviewing court does not owe any deference to the administrative decision maker (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339). I note that the Federal Court of Appeal found in *Lipskaia v Canada (Attorney General)*, 2019 FCA 267, that questions of procedural fairness are not truly decided in accordance to any particular standard of review because the reviewing court must be satisfied that procedural fairness has been met. In my view, this is a distinction without a difference in the instant case as the Court on a standard of correctness reached its own conclusion on procedural fairness, without having to show any deference as it does where the standard is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 13-14). As for the standard of review of decisions denying visas, the jurisprudence of the Court has been consistent that it is that of reasonableness (*Ju v Canada (Citizenship and Immigration)*, 2021 FC 669).

[15] There are many reasons why the argument around the reasonableness of the decision cannot succeed. First, the Applicant never showed that there exists a discretion in a Visa Officer

to waive the requirements, one of which is that an application must be made within a 180-day period of obtaining the degree studied for. Additionally, the study permit has to have been valid at some point during the 180-day period. In the case at bar, the Applicant is ineligible because his application came well beyond the 180 days that followed August 2019 when he completed the program.

[16] As became apparent during the hearing of this case, the Applicant relies exclusively on a discretion that a Visa Officer would have to grant an application in spite of the most fundamental requirement: that the application be made within the 180-day window. Counsel was unable to offer any authority or a source that could be considered to infer such discretion. On the other hand, there is case law in this Court which asserts that no discretion exists.

[17] In *Nookala v Canada (Citizenship and Immigration)*, 2016 FC 1019, Mactavish J, then of this Court, wrote at para 12:

> [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.

Similarly, in *Marsh v Canada (Citizenship and Immigration)*, 2017 FC 408, Russell J could not find any discretion to modify or waive the eligibility requirements, even where the applicant seeks to find support on humanitarian and compassionate grounds. Justice Russell

found that “[t]he Visa Officer cannot simply ignore the required conditions precedent for the grant of a PGWP” (para 47). In the case at bar, the Applicant did not even seek an exemption from any applicable criteria or obligations based on section 25 of the Act.

[18] Without a discretion to waive requirements, the Applicant cannot succeed in his judicial review application.

[19] Moreover, there is no evidence on this record that the pandemic prevented the Applicant from making an application within the 180-day window. The only evidence comes from the Applicant who claims that there was a complete lockdown in India starting in March 2020 (Applicant’s affidavit, para 10). There is no evidence of what the lockdown in India implied, when it started precisely in March 2020 and how he would have been prevented from following up with due diligence.

[20] Indeed, it appears that the 180-day window closed before the pandemic took hold in March 2020. The 180-day period starts with an official letter from the school which, in this case, is dated August 12, 2019. Accordingly, by March 2020, more than 180 days had already elapsed. That in turn makes the pandemic irrelevant.

[21] The Applicant also argues that he was entitled to be afforded an opportunity to address concerns about the requirements for the program not having been met.

[22] The argument has no merit. There is a long list of cases in this Court confirming that the "principle of procedural fairness does not stretch to the point of requiring that a visa officer has an obligation to provide an applicant with a "running score" of the weaknesses in their application (…). And there is no obligation on the part of a visa officer to apprise an applicant of her concerns that arise directly from the requirements of the former Act or Regulations …" (*Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284 at para 23). Here, the requirement that an application be made within a 180-day window clearly falls in the category of issues that do not call for the "running score" to be given to an applicant. It follows that there is no violation of a principle of procedural fairness.

V. Conclusion

[23] Accordingly, the judicial review application must be dismissed. The parties are in agreement that there is no question to be certified pursuant to section 74 of the Act. The Court concurs.

JUDGMENT in IMM-7102-21

THIS COURT'S JUDGMENT is:

1. The judicial review application is dismissed.

2. There is no question to be certified pursuant to section 74 of the Act.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7102-21
STYLE OF CAUSE:	HARJOT SINGH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MAY 16, 2022
JUDGMENT AND REASONS:	ROY J.
DATED:	JUNE 8, 2022

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