Federal Court  Cour fédérale

Date: 20220804

Docket: IMM-2841-20

Citation: 2022 FC 1167

Ottawa, Ontario, August 4, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

RADHIKA VERMA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Radhika Verma, seeks judicial review of a decision of a visa officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC"), dated March 2, 2020, refusing the Applicant's application for a Post Graduate Work Permit ("PGWP") on the grounds that she had not engaged in continuous full-time studies in Canada.

[2] The Applicant submits that the Officer erred by not considering her valid reasons for not engaging in continuous full-time studies in Canada. The Applicant also submits that the Officer breached procedural fairness by not giving her an opportunity to address the Officer's concerns with her PGWP application.

[3] For the reasons that follow, I find the Officer's decision reasonable, and there has been no breach of procedural fairness. This application for judicial review is dismissed.

II. **Facts**

A. *The Applicant*

[4] The Applicant is a 24-year-old citizen of India. On August 25, 2016, the Applicant was issued a Canadian study permit, which expired on July 30, 2018. She was issued another study permit on May 29, 2019, which expired on November 11, 2019.

[5] The Applicant came to Canada on September 6, 2016 and registered to study Computer Networking and Technical Support at Durham College in Oshawa in the Fall 2016 semester. The Applicant transferred to St. Lawrence College for the Winter 2017 semester.

[6] On August 16, 2019, the Applicant completed a two-year program in Computer Networking and Technical Support from St Lawrence College. She studied at St Lawrence College in the following semesters: Winter 2017, Summer 2017, Fall 2017, Winter 2018, Summer 2018 and Summer 2019.

[7] The Applicant's transcript indicates that she was enrolled in six courses in Fall 2017 and did not pass any of them. The Applicant states that while she remained enrolled as a full-time student in Fall 2017, she failed her Fall 2017 semester due to a health condition involving kidney stones. The Applicant also only passed three out of six courses in the Winter 2018 semester.

[8] While the Applicant passed all her courses in Summer 2018, she states that her kidney stone issue resurfaced, resulting in a serious infection around her uterus and kidneys that required treatment. As a result, she did not attend classes in the Fall 2018 semester. In July 2018, the Applicant applied for a study permit extension. However, since she did not receive her study permit until January 2019, she was unable to register for the Winter 2019 semester.

[9] On November 21, 2019, the Applicant applied for a PGWP.

B. *Decision Under Review*

[10] By letter dated March 2, 2020, the Officer refused the Applicant's PGWP application because she did not meet the requirements of the *IRPA* and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*"). The Applicant was not eligible for a PGWP because she had not continuously studied full time in Canada. The decision states:

> Foreign students in Canada are eligible for a work permit for post-graduation employment only if they have **continuously studied full time** in Canada and have completed a program of study that is at least eight months in duration at a:
>
> - University, community college, CEGEP,

- publicly funded trade/technical school or
- private institution authorized by provincial statute to confer degrees

As you do not meet this requirement, it has been determined that you are not eligible for a work permit in this category.

[Emphasis in original]

III. **Issues and Standard of Review**

[11] This application for judicial review raises the following issues:

A. *Whether the Officer's decision is reasonable.*

B. *Whether there was a breach of procedural fairness.*

[12] The applicable standard of review of the Officer's decision is reasonableness (*Zhang v Canada (Citizenship and Immigration)*, 2019 FC 764 at para 12). The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 ("*Canadian Pacific Railway Company*") at paras 37-56). I find this conclusion accords with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paragraphs 16-17.

[13] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[14] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

[15] Correctness, in contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company* at para 54).

IV. **Analysis**

A. *Whether the Officer's decision is reasonable.*

[16] The PGWP is established pursuant to paragraph 205(c)(ii) of the *IRPR*, which stipulates:

Canadian interests	**Intérêts canadiens**
205 A work permit may be issued under section 200 to a foreign national who intends to perform work that	**205** Un permis de travail peut être délivré à l'étranger en vertu de l'article 200 si le travail pour lequel le permis est demandé satisfait à l'une ou l'autre des conditions suivantes :
[…]	[…]
(c) is designated by the Minister as being work that can be performed by a foreign national on the basis of the following criteria, namely,	**c)** il est désigné par le ministre comme travail pouvant être exercé par des étrangers, sur la base des critères suivants:
[…]	[…]
(ii) 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;	(ii) un accès limité au marché du travail au Canada est justifiable pour des raisons d'intérêt public en rapport avec la compétitivité des établissements universitaires ou de l'économie du Canada;

[17] The eligibility criteria to apply for a work permit under the PGWP are outlined on IRCC's website ("Program Delivery Instructions"). As part of the requirements for a PGWP, applicants must have completed a study program at a designated learning institution that was at least eight months long and maintained full-time status as a student in Canada during each semester of their study program. The Program Delivery Instructions stipulate that this does not include a situation where an applicant took an approved leave from their studies and provide the following information about an authorized leave:

What counts as an authorized leave from your studies?

There are a few cases where you may be able to take a leave of up to a maximum of 150 days from your program of studies and still be considered to be actively pursuing your studies.

You don't need to tell us if you're taking an authorized leave. However, if we ask for it, you must provide proof that your leave is

- authorized by your DLI and
- no longer than 150 days

It counts as authorized leave if

- your school has authorized a leave from your study program for
    - medical reasons or pregnancy
    - family emergency
    - death or serious illness of a family member
    - any other type of leave your school authorizes
- your school has closed permanently or because of a strike you've changed schools
- you or your school deferred your program start date
    - In this case, you must start your studies the next semester, even if it starts sooner than 150 days, and get an updated letter of acceptance.

[18] The Applicant submits that the Officer's finding that she was not eligible for a PGWP is unreasonable in light of the facts in her case. The Applicant maintains that the reasons for her absence from her program of study from September 2018 to April 2019 were beyond her control. The Applicant argues that the Officer was aware that the Applicant was battling severe health issues. It should have been clear to the Officer that the Applicant applied to renew her study

permit in the summer of 2018 but only received it in January 2019, thus preventing her from enrolling in the Winter 2019 semester.

[19] The Respondent submits that the Officer's decision is reasonable because the Applicant did not meet the eligibility requirements for the PGWP program. While the Applicant's record discloses that she took leave for medical reasons, the gap in her studies exceeded 150 days and the Applicant failed to provide evidence that her educational institution authorized her leave.

[20] I agree with the Respondent. This Court has found that the Program Delivery Instructions do not confer any discretion on immigration officers to modify or waive any of the eligibility requirements for the PGWP: they establish criteria that must be satisfied (*Nookala v Canada (Citizenship and Immigration)*, 2016 FC 1019 at para 12; *Abubacker v Canada (Citizenship and Immigration)*, 2016 FC 1112 at para 16).

[21] I find it was reasonable of the Officer to conclude that the Applicant did not meet the requirements for the PGWP, as she did not complete her program without interruption, nor did she provide IRCC with a reason for her extended leave. There is also no indication that the Applicant sought a leave authorization from St. Lawrence College, or that she meets any of the requirements of an authorized leave under the Program Delivery Instructions. Given the lack of discretion afforded to officers to stray from the Program Delivery Instructions, I find the Officer reached a reasonable decision based on the facts and law.

B. *Whether there was a breach of procedural fairness.*

[22] The Applicant submits that the Officer breached procedural fairness by not sending her a procedural fairness letter regarding concerns about the gaps in the Applicant's studies. The Applicant states that the Officer was aware of her health issues and her attempt to renew her study permit in the summer of 2018. The Applicant maintains that procedural fairness required that she be given an opportunity to explain why she was not enrolled for eight months of her studies for reasons beyond her control.

[23] The Respondent contends that there was no breach of procedural fairness in this case. The jurisprudence of this Court confirms that an officer owes no duty to alert an applicant that they do not meet the eligibility requirements for a PGWP, nor do officers have any discretion to deviate from the requirements of the PGWP. The Respondent further argues that the case law relied on by the Applicant is not relevant or applicable to the context of a PGWP, as the cases cited by the Applicant all involved applications for permanent residence and are distinguishable: *Yazdanian v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 7710 (FC) is a permanent residence case involving the entrepreneur class; *Fong v Canada (Employment and Immigration)*, [1990] 3 FC 705 is a permanent residence case; *Keymanesh v Canada (Minister of Citizenship and Immigration)*, 2006 FC 641 is a permanent residence case involving whether an individual could be considered landed in Canada without having obtained a criminal pardon; and *Beltran Velasquez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1024 is a permanent residence case involving inadmissibility for violating human rights for committing war crimes and crimes against humanity.

[24] I agree with the Respondent's position. This Court's decision in *Marsh v Canada (Immigration, Refugees and Citizenship),* 2017 FC 408 ("*Marsh*") involved a similar situation of a refused work permit application because the applicant did not meet the criteria for a PGWP. At paragraph 35, my colleague Justice Russell writes:

> [35] What the Applicant is really suggesting is that if an officer concludes, on the basis of the information contained in an application, that the relevant criteria are not met and the application must be refused, then the officer must give the applicant an opportunity to persuade the officer to, nevertheless, grant the permit. This is not the law. If this proposition were accepted then every negative decision would require such an opportunity to respond, so that there would be no need for an applicant to submit a full and complete application in the first place. The jurisprudence is clear that, in this kind of situation, the onus is on an applicant to provide a full and complete application. It is not up to an officer to contact applicants and assist them in making an application that will ensure a positive decision. See *Singh v Canada (Citizenship and Immigration),* 2016 FC 509 at para 26.
>
> [Emphasis added]

[25] At paragraph 9 of *Kim v Canada (Citizenship and Immigration),* 2019 FC 526, my colleague Justice Norris affirms the findings in *Marsh* and cites this Court's summary of the applicable principles of procedural fairness in the PGWP context at paragraph 11 of *Masam v Canada (Citizenship and Immigration),* 2018 FC 751:

> [11] While a duty of fairness to applicants exists in PGWP cases, the duty does not require an officer to notify an applicant of a concern that arises directly from the legislation or related requirements or to provide the applicant with an opportunity to make submissions regarding the concern (*Hassani v Canada (Minister of Citizenship and Immigration),* 2006 FC 1283; *Penez v Canada (Minister of Citizenship and Immigration),* 2017 FC

> 1001at para 37). In each case, the applicant bears the onus of submitting to the officer all information relevant to eligibility with his or her initial application. It is in cases where an officer considers issues or facts extraneous to the application requirements that a duty arises to advise the applicant of the issue or concern. In those cases, the applicant would not have known that the particular issue or concern was relevant to his or her application and, in fairness, should be given an opportunity to make submissions.

[26] In my view, the same can be said of the Applicant's arguments here: the PGWP eligibility requirements are mandatory and the duty of fairness did not require the Officer to give the Applicant the opportunity to explain the gaps in her studies. I find that the requirements of procedural fairness were met in this case, as the Officer's decision hinged on the fact that the Applicant failed to meet the eligibility requirements for a PGWP.

V. **Conclusion**

[27] For the reasons above, I find the Officer's decision is reasonable and meets the requirements of procedural fairness. Accordingly, this application for judicial review is dismissed. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-2841-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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