

Federal Court



Cour fédérale

Date: 20220907

Docket: IMM-6627-21

Citation: 2022 FC 1267

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 7, 2022

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

**JOHN ADEWALE ADEYEMI
HANNAH OLAJUMOKE
AYANFEOLUWA OYINKANSOLA
ADEYEMI
AFIJINFOLUWA ADELANI ADEYEMI
OBATOUNSEBEBE OLUWANIFISE
ADEYEMI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicants are members of a Nigerian family whose refugee protection claim in Canada was rejected. The principal applicant, the father of this family, subsequently made an unsuccessful attempt to qualify under the *Temporary public policy to facilitate the granting of permanent residence for certain refugee claimants working in the health care sector during the COVID-19 pandemic*.

[2] This application was rejected on the basis that he did not meet one of the eligibility criteria set out in the policy, specifically to have worked in the health sector for at least 120 hours between March 13, 2020, and August 14, 2020, the date on which the government announced its intention to implement the policy.

[3] The applicants admit that the principal applicant did not meet this first criterion but argue that he did not have to because the eligibility criteria are non-cumulative and non-binding; he only needed to show that he had worked in the health sector for at least six months full-time prior to August 31, 2021. Therefore, they are of the view that the immigration officer's decision is unreasonable, as it is based on an erroneous interpretation of the policy.

[4] For the following reasons, I dismiss their application.

II. Analysis

[5] The policy in this case was implemented during the COVID-19 pandemic that broke out in Canada in March 2020. It was announced by the government on August 14, 2020, came into force in December 2020 and remained in effect until August 31, 2021. It describes the

extraordinary contribution of refugee protection claimants who have worked in the health sector since the beginning of the pandemic, often at the risk of their health or even their life. It applies to refugee protection claimants whose claims have been rejected or are awaiting a decision and who meet the eligibility conditions set out in the policy. It exceptionally offers them permanent resident status.

[6] The portion of the *Conditions (eligibility requirements) applicable to the principal applicants* that interest us reads as follows:

A) The foreign national:

...

4. Worked in Canada in one or more designated occupations (see Annex A) providing direct patient care in a hospital, public or private long-term care home or assisted living facility, or for an organization/agency providing home or residential health care services to seniors and persons with disabilities in private homes:

a. for a minimum of 120 hours (equivalent to 4 weeks full-time) between March 13, 2020 (the date when Canadian travel advisories were issued) and August 14, 2020 (the date the public policy was announced); and,

A) L'étranger :

...

4. A travaillé au Canada dans une ou plusieurs professions désignées (voir l'annexe A) où l'étranger offrait des soins directs aux patients dans un hôpital, un établissement de soins de longue durée ou un foyer avec services public ou privé, ou encore pour un organisme où l'étranger offrait des services de soins de santé aux aînés à domicile ou en établissement ou aux personnes handicapées dans des résidences privées :

a. pendant au moins 120 heures (équivalent à 4 semaines à temps plein) entre le 13 mars 2020 (date de publication des conseils aux voyageurs canadiens) et le 14 août 2020 (date de l'annonce de la politique d'intérêt public);

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|---|--|
| b. for a minimum of 6 months full-time (30 hours per week) or 750 hours (if working part-time) total experience (obtained no later than August 31, 2021); and, | b. pendant au moins 6 mois à temps plein (30 heures par semaine) ou 750 heures (s'il s'agissait d'un emploi à temps partiel) d'expérience au total (acquise au plus tard le 31 août 2021); |
| c. for greater certainty, periods of work in a designated occupation must be paid unless the applicant was doing an internship that is considered an essential part of a post-secondary study program or vocational training program in one of the designated occupations, or an internship performed as part of a professional order requirement in one of the designated occupations. | c. pour plus de précision, les périodes de travail dans une profession désignée doivent être payées sauf si le demandeur effectuait un stage considéré comme une partie essentielle d'un programme de niveau postsecondaire ou d'une formation professionnelle dans le cadre d'un emploi dans une des professions désignées ou si le demandeur a effectué un stage dans une des professions désignées requis par un ordre professionnel. |

...

...

[7] As noted above, the applicants argue that the criteria in paragraphs 4(a) and 4(b) are disjunctive and that only one needs to be satisfied. An applicant must show that he or she worked either at least 120 hours in the first period or 6 months in the second period (for the applicants, this period begins at the end of the first period, on August 14, 2020).

[8] I disagree. While the French version of this text may leave the reader perplexed, there is no ambiguity in the English version; the use of the coordinating conjunction *and* clearly indicates that the conditions listed therein are cumulative and not disjunctive. In my view, the immigration officer's interpretation was both reasonable and correct.

[9] The context and timing of the policy also explain this interpretation. The policy was announced at the end of the first wave of the pandemic, when no one could have predicted what was going to happen next. It was adopted in December 2020, in the middle of the second wave, when hardly anyone could have predicted when the pandemic would end.

[10] It is logical that the policy is primarily intended to reward those who readily helped others and worked during the first wave without even knowing that they were likely to benefit from doing so. That is why the first condition is important.

[11] In December 2020, the second wave was at its peak, and it was important to conserve resources in health systems across the country, hence the importance of the second condition.

[12] According to the applicants, the immigration officer's rejection letter confirms their interpretation that the conditions are disjunctive. This letter is in English because the applicant submitted his application in English. The officer wrote as follows:

You are not eligible under the new temporary public policy, because:

[X] you did not work in Canada in one or more designated occupations providing direct patient care in a hospital, public or private long-term care home or assisted living facility, or for an organization/agency providing home or residential health care services to seniors and persons with disabilities in private homes:

- **for a minimum of 120 hours (equivalent to 4 weeks full-time) between March 13, 2020 and August 14, 2020;**

or

- for a minimum of 6 months full-time (30 hours per week) or 750 hours (if working part-time) total experience (obtained no later than August 31, 2021);

[13] It is important to note that the first condition is highlighted in yellow in the version found on the Certified Tribunal Record, and I will come back to it later.

[14] For the applicants, the use of the coordinating conjunction *or* confirms the disjunctive nature of the conditions.

[15] I disagree. The use of “or” is required because this portion of the rejection letter is in the negative form. This means that the rejection is due to the applicant not meeting either of the conditions (not both). It is well known that immigration officers use standard letters in these types of cases and that the notes in the file are part of their decisions. The officer could have checked which condition or conditions were not met but instead chose to highlight it in yellow. In doing so, the officer clarified that the rejection was based on the failure to meet the first condition and that he did not consider the conditions to be disjunctive.

[16] As promised, I now return to the emphasis placed on the first condition by the immigration officer. In the Applicants’ Record, the applicants submitted a different version of the rejection letter. In this version, the excerpt quoted above reads as follows:

You are not eligible under the new temporary public policy, because:

[X] you did not work in Canada in one or more designated occupations providing direct patient care in a hospital, public or private long-term care home or assisted living facility, or for an organization/agency providing home or residential health care services to seniors and persons with disabilities in private homes:

- **for a minimum of 120 hours (equivalent to 4 weeks full-time) between March 13, 2020 and August 14, 2020;**

or

- **for a minimum of 6 months full-time (30 hours per week) or 750 hours (if working part-time) total experience (obtained no later than August 31, 2021);**

(The portion in bold type above is, once again, highlighted in yellow in the applicants' version.)

[17] Emphasis is placed on both conditions, now suggesting that neither of the conditions has been met and that they could be cumulative.

[18] The Court has the electronic version of the Applicants' Record on which the identity of the person who altered the document after it was issued can be seen. It seems that that this person is the applicants' counsel.

[19] Altering a document that is on the Certified Tribunal Record is serious and must be condemned.

[20] However, the applicants also reproduce this portion of the decision letter in their memorandum, this time without any emphasis. The part where the immigration officer stipulates that the claim has been rejected because of a failure to meet the first of the two conditions is missing.

[21] This proves that the applicants—or at least their counsel—understood that, in the officer's view, the criteria were disjunctive.

III. Conclusion

[22] Since I am of the view that the immigration officer correctly interpreted and applied the public policy in this case, and that his interpretation is consistent with its intent and the objectives of the government, intervention by the Court is not required. The parties did not propose any question of general importance for certification, and I am of the view that this matter does not give rise to any.

JUDGMENT in IMM-6627-21

THIS COURT ORDERS as follows:

1. The applicants' application for judicial review is dismissed.
2. No question of general importance is certified.
3. No costs are awarded.

"Jocelyne Gagné"
Associate Chief Justice

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6627-21

STYLE OF CAUSE: JOHN ADEWALE ADEYEMI, HANNAH
OLAJUMOKE, AYANFEOLUWA OYINKANSOLA
ADEYEMI, AFIJINFOLUWA ADELANI ADEYEMI,
OBATOUNSEBEBE OLUWANIFISE ADEYEMI v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: AUGUST 31, 2022

JUDGMENT AND REASONS: GAGNÉ A.C.J.

DATED: SEPTEMBER 7, 2022

APPEARANCES:

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