

Federal Court



Cour fédérale

Date: 20221012

Docket: IMM-2782-21

Citation: 2022 FC 1397

Halifax, Nova Scotia, October 12, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

ABAYOMI OLUMIDE OGUNDIRAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Abayomi Olumide Ogundiran (the “Applicant”) seeks judicial review of the decision of an Officer (the “Officer”) refusing his application for permanent residence pursuant to the “Pathway for Health Workers” program, developed pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant, a failed refugee claimant from Nigeria, worked 821.5 hours for a health care provider in Brampton, Ontario.

[3] In the decision, the Officer rejected the application on the grounds that the Applicant “was given a stipend and was not engaged in paid employment for work performed as a Home Support Worker”.

[4] The Applicant, relying on the description of “work” in a document published by the Government of Canada from “Help Centre”, published online at <https://www.cic.gc.ca/english/helpcentre/answer.asp?qnum=1288&top=17>, argues that the Officer unreasonably denied his application since his activities fall within the definition of “work” and the stipend meets the requirements of “paid” employment.

[5] The Minister of Citizenship and Immigration (the “Respondent”) submits that the “Pathway” policy requires payment for the work performed, as a qualifying condition, and that a “stipend” is not payment. He relies on section 4(c) of the policy that provides as follows:

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.

[6] The decision of the Officer is reviewable on the standard of reasonableness, following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.).

[7] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on that decision"; see *Vavilov, supra* at paragraph 99.

[8] In *Vavilov, supra* at paragraph 98, the Court said the following about the need for transparency in reasons:

[98] [...] In *Alberta Teachers*, this Court also reaffirmed the importance of giving proper reasons and reiterated that “deference under the reasonableness standard is best given effect when administrative decision makers provide intelligible and transparent justification for their decisions, and when courts ground their review of the decision in the reasons provided”: para. 54. Where a decision maker’s rationale for an essential element of the decision is not addressed in the reasons and cannot be inferred from the record, the decision will generally fail to meet the requisite standard of justification, transparency and intelligibility.

[9] In my opinion, the Applicant’s reliance upon the definition of “work” in the “Help Centre” document is misplaced. There is nothing to suggest that this document is a policy related to the “Pathway” program.

[10] I note that the “Pathway” policy refers to paid employment but the Officer does not explain why a stipend does not meet this requirement.

[11] This failure, in my opinion, means that the reasons lack transparency. It follows that the reasons do not meet the standard in *Vavilov, supra*.

[12] Accordingly, the application for judicial review will be allowed, the decision will be set aside and the matter remitted to another officer. There is no question for certification.

JUDGMENT in IMM-2782-21

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision is set aside and the matter is remitted to another officer for redetermination. There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2782-21

STYLE OF CAUSE: ABAYOMI OLUMIDE OGUNDIRAN v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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BETWEEN TORONTO, ONTARIO AND OTTAWA,
ONTARIO

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