

Federal Court



Cour fédérale

Date: 20221205

Docket: IMM-628-22

Citation: 2022 FC 1675

Ottawa, Ontario, December 5, 2022

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

DORCAS OLUWATOMIWA ABIODUN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of an immigration officer [Officer] dated January 5, 2022, refusing the Applicant's permanent residence application made from within Canada 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* [Temporary Public Policy].

[2] For the reasons outlined below, the application is granted.

II. Background

[3] The Applicant, Dorcas Oluwatomiwa Abiodun, is a citizen of Nigeria.

[4] On June 7, 2021, the Applicant submitted a permanent residence application from within Canada under the Temporary Public Policy. The period to file applications ended on August 31, 2021.

[5] To be eligible under the Temporary Public Policy, the foreign national was required to fulfill a number of criteria, including that:

You 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,
- 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,
- 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] As part of her application, the Applicant submitted proof of a 150-hour internship she completed at Residence Saint Ambrose through Agile Poly-Services Inc. between April 11, 2020 and May 14, 2020 as part of the Applicant's Personal Support Worker [PSW] program at Divine Rock Academy.

[7] The Applicant's application was initially refused on October 25, 2021. The Applicant submitted a request for reconsideration and the Officer granted her request on November 3, 2021.

[8] The Officer sent a procedural fairness letter to the Applicant expressing concern that her internship as part of her PSW program at Divine Rock Academy did not meet the Temporary Public Policy criteria. The Officer noted that:

As a foreign national, study and work experiences must be performed in accordance with the Immigration Refugee Protection Act (IRPA) and the Immigration Refugee Protection Regulations (IRPR).

As per IRPR, study undertaken in Canada is required to be completed at a *designated learning institution*. [Emphasis in original.]

[9] The Officer noted in the letter that an open source search revealed that Divine Rock Academy did not meet the criteria for an accredited program by the province of Quebec or of any other provinces or territories of Canada. The Officer allowed the Applicant to submit further information to address the Officer's concern over the Applicant's internship hours.

[10] On November 11, 2021, the Applicant responded in writing that there is no requirement under the Temporary Public Policy that internship hours be exclusively performed under an internship program at a designated learning institution [DLI] pursuant to section 211.1 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] and that to limit the Applicant's internship program to one that complies with section 211.1 is illegal.

[11] On January 5, 2022, the application was refused on the basis that the Applicant 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.

III. Issue

[12] The parties agree that the standard of review is reasonableness. The issue therefore is whether the Officer's decision refusing the Applicant's permanent residence application is unreasonable.

IV. Analysis

[13] The Applicant submits the Officer's reliance on section 211.1 of the IRPR is flawed and constitutes a reviewable error. She argues that there is nothing in the Temporary Public Policy that requires an internship to come from or be associated with a DLI.

[14] The Applicant contends that section 211.1 of the IRPR exclusively applies to the “Student Class,” and is not applicable to her situation: a refugee claimant who submitted a permanent residence application. The Applicant adds that a requirement to complete an internship with a DLI would be counterintuitive to the purpose and legislative intent of the Pathway Program, which was put in place in recognition of the exceptional service of certain refugee claimants working in Canada’s health care sector, providing direct patient care, during the COVID-19 pandemic and to facilitate the granting of permanent residence to these refugee claimants.

[15] The Respondent submits that the Officer rendered a reasonable decision. According to the Respondent, the Officer did not deny the application on the basis that the Applicant did not pursue a course of study in a DLI. Rather, the application was denied because the Applicant provided insufficient evidence of her studies at Divine Rock Academy and information regarding her internship. I disagree.

[16] The sole concern expressed by the Officer in the penultimate paragraph of the impugned decision is that Divine Rock Academy does not meet the criteria for an accredited program by the province of Quebec or of any other provinces or territories of Canada. The Officer was clearly focused on whether the Applicant complied with section 211.1 of IRPR, and not on the sufficiency of the information she provided regarding her hours of work and training received during her internship.

[17] In my view, the Officer fettered their discretion by treating the requirements of section 211.1 as binding upon them. On its face, the section only applies to applicants of the “student class,” more specifically, foreign nationals seeking to enter Canada as students who must attend their studies at a DLI. However, the Applicant did not apply under the student class. Nor did she request a study permit or seek to become a temporary resident. She submitted a permanent resident application from within Canada under the Temporary Public Policy.

[18] The Temporary Public Policy does not explicitly nor implicitly require that an internship be completed through a DLI. In fact, it specifically provides that internships may be completed as part of a “vocational training program in one of the designated occupations” without any reference to attendance at a DLI.

V. Conclusion

[19] For the above reasons, I find that it was unreasonable for the Officer to refuse the Applicant’s application for the reasons provided. The application for judicial review is accordingly granted.

[20] There is no question of general importance for certification.

JUDGMENT IN IMM-628-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matter is remitted to a different officer for reconsideration.
3. There is no question of general importance for certification.

“Roger R. Lafrenière”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-628-22

STYLE OF CAUSE: DORCAS OLUWATOMIWA ABIODUN v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 29, 2022

JUDGMENT AND REASONS: LAFRENIÈRE J.

DATED: DECEMBER 5, 2022

APPEARANCES:

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