

Federal Court



Cour fédérale

Date: 20230406

Docket: IMM-1264-22

Citation: 2023 FC 495

Toronto, Ontario, April 6, 2023

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

**VIRIDIANA ITZEL SALAZAR GODINEZ
JULIO CESAR BEDOLLA RIOS**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of the decision of a representative of the Minister of Immigration, Refugees and Citizenship Canada [Officer] dated January 25, 2022, in which the Officer denied their application for permanent residence made 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* [Pathway Program]. The application was

denied on the basis that the job of the Principal Applicant, Viridiana Itzel Salazar Godinez, as a housekeeper did not meet the requirements of the Pathway Program as it was expressly excluded as a “designated occupation”.

[2] For the reasons that follow, I find that the Applicants have not established that the Officer’s decision was unreasonable and accordingly, the application for judicial review shall be dismissed.

I. Background

[3] The Principal Applicant and her common law partner, Julio Cesar Bedolla Rios, are citizens of Mexico.

[4] On March 13, 2019, the Applicants entered Canada and in September 2019, they made a claim for refugee protection, which was denied by the Refugee Protection Division. Their appeal to the Refugee Appeal Division [RAD] was denied and they were unsuccessful on their application for judicial review of the negative RAD decision.

[5] In May of 2020, the Principal Applicant began working as a housekeeper within a long-term care facility called Humber Valley Terrace [HVT]. She was first employed through S&I Cleaning and later by HVT in the same capacity. Her occupation falls under the National Occupation Classification [NOC] code of 4412 as “home support workers, housekeepers and related occupations”. Her employment letter describes her role as that of a housekeeper and confirms her daily duties as follows:

- Collecting clothing, gowns, sheets, towels, and personal items from patients along with gowns, gloves, and any other garments from doctors, nurses, and assistant personnel, on a constant basis to have them laundered
- Collecting and disposing of patients' (who have been tested for COVID-19) biological waste
- Terminal cleaning rooms of deceased patients positive for COVID-19, as well as patients that are ill
- Sterilizing medical equipment and nursing work areas
- Sanitizing patients' rooms that include: beds, tables, walls, doors, windows, washrooms, and personal belongings of patients
- Deep cleaning, high-touch point cleaning, and disinfecting rooms for new patients
- Assist the residents (who have been tested positive for COVID-19) to walk to designated washrooms
- Assist nurses and PSW to change the residents (who have been tested positive for COVID-19) to a different bed or room

[6] On November 23, 2020, the Pathway Program was created by the Minister of Citizenship and Immigration through their public policy power under section 25.2 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The impetus for the Pathway Program (which was operational only from December 14, 2020 to August 31, 2021) was the recognition by the government of the “extraordinary contribution of refugee claimants working in Canada’s health care sector during the COVID-19 pandemic” and that “as these individuals face an uncertain future in Canada, ... current circumstances merit exceptional measures to provide these individuals with Permanent Residence status in recognition of their service during the pandemic”.

[7] The text of the Pathway Program set out specific eligibility requirements, including the type of health care work that would qualify.

[8] On June 3, 2021, the Applicants applied for permanent residence under the Pathway Program. On July 21, 2021, the Applicants' application under the Pathway Program was approved in principle. The interim approval letter noted the application was reviewed, that the Principal Applicant met the eligibility requirements and that a positive eligibility decision was made. The letter requested additional information and documents for the second stage approval, which information and documentation was provided by the Principal Applicant on August 19, 2021 and January 20, 2022.

[9] However, on January 25, 2022, the Principal Applicant received a refusal letter advising that the Applicants' application had been assessed based on the eligibility requirements of the Pathway Program and, as the Principal Applicant did not meet those requirements, her application had been refused. Specifically, the refusal letter stated, in part, 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 :

It was determined that your occupation does not meet the designated occupation requirements. Specifically, sub-occupations of NOC 4412 – Housekeeping and related occupations are excluded. [...]

[10] On January 31, 2022, the Principal Applicant requested reconsideration of the negative decision, asserting that her work experience under NOC code 4412 was eligible for consideration due to the nature of her work. Her reconsideration request was rejected, with the rejection letter providing:

Your HCW application was considered on its substantive merits and has been refused. You were provided with the decision by letter dated (January 25, 2022), thereby fully concluding your application. After considering the additional information/submissions, I have decided not to re-open your case.

As per the public policy, applicants must be employed in a designated occupation. It is the onus of the applicant to satisfy the officer that they predominantly provided personal care and support services as per the main duties listed in the NOC occupational description, with any performance of routine housekeeping duties being incidental to their primary role providing direct in-home care. To note, sub-occupations under NOC 4412- Houskeepers [sic.] and related occupations are excluded from the designated occupations under the public policy.

II. Analysis

[11] The sole issue for determination is whether the Officer's decision refusing the Applicants' permanent residence application under the Pathway Program was reasonable.

[12] When reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. 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 [see *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene

only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

[13] While there were a number of eligibility requirements for the Pathway Program, the sole eligibility requirement at issue on this application is the following requirement:

4. Worked in Canada in one or more designated occupations (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...

[14] Annex A lists the designated occupations using NOC codes. Included in the list of designated occupations is “4412 - home support workers, housekeepers and related occupations”.

However, Note 1 of Annex A goes on to provide:

Among the sub-occupations under NOC 4412, housekeepers and related occupations are excluded from the designated occupations under the public policy.

To be eligible under the NOC code 4412 for this public policy:

The applicant **must** be engaged in providing basic personal care services and offering physical assistance directly to patients by primarily performing some or all of these duties:

- Provide care and companionship for individuals and families during periods of incapacitation, convalescence or family disruption
- Administer bedside and personal care to clients such as aid in ambulation, bathing, personal hygiene, and dressing and undressing

- May perform routine health-related duties such as changing non-sterile dressings, assisting in the administration of medications and collecting specimens under the general direction of a home care agency supervisor or nurse

The applicant **may** also perform duties listed below, in addition to the above mentioned duties:

- Plan and prepare meals and special diets, and feed or assist in feeding clients
- Perform routine housekeeping duties such as laundry, washing dishes and making beds

[Emphasis added].

[15] Note 2 to Annex A further clarifies that home support workers are included, so long as any performance of routine housekeeping duties is incidental to an applicant's primary role in providing direct in-home care:

For greater certainty, as per the objective of the public policy, the applicant must demonstrate that the principal care services provided are for the patient and not their family. In addition, the onus is on the applicant to satisfy the officer that they predominantly provided personal care and support services as per the main duties described in the NOC occupational description, with any performance of routine housekeeping duties such as laundry, washing dishes, etc., being incidental to their primary role providing direct in-home care.

[Emphasis added].

[16] The Applicants assert that the Officer failed to properly assess the substantive merits of the Principal Applicant's application and ignored her relevant employment evidence, as her work experience is eligible for consideration given that she has been providing personal care services and physical assistance directly to residents and patients consistent with the main duties of the

NOC code 4412. The Applicants assert that the reasons are silent as to why the Principal Applicant's work experience and duties are not eligible for consideration under the Pathway Program in light of the evidence, particularly given the preliminary determination that she met the eligibility requirements. The Applicants assert that the reasons appear to indicate that the Officer did not look beyond her job title and ignored the employment evidence surrounding the scope and nature of her main duties. The Applicants state that the Officer must engage with relevant evidence that runs contrary to the decision and failed to do so.

[17] Moreover, the Applicants assert that the Officer who refused their application fettered their discretion in their assessment because they "blindly followed" the public policy. The Applicants assert that guidelines contained in public policies are not legally binding nor intended to be exhaustive or restrictive. The Applicants submit that the decision-maker should be prepared to make an "exception" on the basis of an individual's case despite what is contained in the public policy, particularly given the moral debt owed to immigrants who worked on the frontlines during the pandemic.

[18] While there is no doubt that the Principal Applicant completed important work during the height of the COVID-19 pandemic at a risk to her own health (and that of her family), I see no basis to interfere with the Officer's decision.

[19] The Principal Applicant's employment letter describes eight job duties, two of which (assisting patients to walk to the washroom and assisting in moving patients move to a different room) are properly characterized as providing direct support services to patients. However, there

was no suggestion in any of the evidence before the Officer that these two duties constituted the Principal Applicant's predominate or primary duties. To the contrary, I find that, based on the description of the various duties performed, it was reasonable for the Officer to find that such services were incidental to the Principal Applicant's primary housekeeping duties. Moreover, while an officer made a preliminary determination that the Principal Applicant met the eligibility requirements, I find that it remained open to the Officer to consider all aspects of the application (including the eligibility requirements) in making a final determination on the application.

[20] While the Officer could have gone into further detail in their reasons, I find that the reasons provided permit the Court "to connect dots on the page where the lines, and the direction they are headed, may be readily drawn" [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 97 citing *Komolafe v Canada (Minister of Citizenship and Immigration)*, 2013 FC 431 at para 11].

[21] With respect to the second argument raised by the Applicants, I am not satisfied that the Applicants have demonstrated any fettering of the Officer's discretion. While the Applicants assert that the Officer should have made an exception for them even though the Principal Applicant did not meet the requirements of the Pathway Program, the Applicants have not satisfied me that the Officer had the discretion to make any exception in the circumstances, particularly when the Applicants did not seek a humanitarian and compassionate exemption from any of the criteria of the Pathway Program.

[22] Accordingly, the application for judicial review shall be dismissed.

[23] Neither party proposed a question for certification and I agree that none arises.

JUDGMENT in IMM-1264-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Mandy Ayleen"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1264-22

STYLE OF CAUSE: VIRIDIANA ITZEL SALAZAR GODINEX AND
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PLACE OF HEARING: TORONTO, ONTARIO

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