Federal Court  Cour fédérale

Date: 20240209

Docket: IMM-8968-21

Citation: 2024 FC 220

Ottawa, Ontario, February 9, 2024

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

ABIODUN EMMANUEL FATOMILUYI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Abiodun Emmanuel Fatomiluyi [Applicant] seeks judicial review of an October 4, 2021 decision [Decision], of an Officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC], finding the Applicant ineligible for permanent residence 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].

[2] The application for judicial review is allowed. The Officer applied a criterion regarding the accreditation of the Applicant's internship program, which had no source in the Pathway Program.

II. Background

[3] The Applicant is a Nigerian citizen who applied for permanent residence under the Pathway Program. IRCC received his application in July 2021.

[4] The Pathway Program enabled certain pending or failed refugee claimants, who worked in Canada's health care sector or who provided direct care to the vulnerable, to gain permanent residence status.

[5] Between May 18 and July 22, 2020, the Applicant completed 220 hours at an unpaid clinical internship placement at Weston Village Seniors Center [Weston]. Weston's Director confirms the internship in a July 24, 2020 letter and states, "[t]his clinical internship placement is considered an essential part of the Home Support Worker certificate program."

[6] During the period of January 15, 2021 to August 13, 2021, the Applicant worked 663 hours at Helencare Inc. as a Home Support Worker, a designated occupation listed in Annex A of the Pathway Program.

[7] On October 4, 2021, the Officer determined the Applicant did not meet the eligibility requirements of the Pathway Program.

III. The Decision

[8] The Officer determined that the Applicant was ineligible under the Pathway Program because he did not work the required 120 hours between March 13, 2020 and August 14, 2020.

[9] The Officer noted that the letter from Weston addressed two things. First, the Applicant was an intern without remuneration from May 18, 2020 to July 22, 2020. Second, the Applicant's clinical internship placement, was considered an essential part of the Home Support Worker certificate program.

[10] The Officer's rationale finding the Applicant ineligible for the Pathway Program was as follows:

> However, upon verification, [Weston] does not meet the criteria for an accredited program by the province of Ontario or of any other provinces or territories of Canada. As such, [Weston's] in-house certificate and accompanying number of hours of internship without remuneration performed by the applicant cannot be counted towards the work experience eligibility requirement.
>
> Therefore, you have not demonstrated you have completed the required 120 hours in the designated occupation(s) between 2020-03-13 and 2020-08-14. As a result, the application is refused.
>
> [Emphasis added.]

IV. Issues and Standard of Review

[11] The only issue is whether the Decision is reasonable.

[12] The standard of review for the merits of the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]; *Aje v Canada*

(Immigration, Refugees and Citizenship), 2022 FC 811 at para 22 [*Aje*]). A reasonableness review requires the Court to examine the outcome of the Decision and its underlying rationale to assess "whether the decision 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 the decision" (*Vavilov* at paras 87, 99). A decision will be unreasonable where there are shortcomings in the decision that are sufficiently central or significant (*Vavilov* at para 100). The party challenging the decision bears the burden of showing that the decision is unreasonable (*Vavilov* at para 100).

V. Analysis

A. *Applicant's Position*

[13] The Officer's finding that the Centre "does not meet the criteria for an accredited program" inappropriately imposed an additional criterion of accreditation by the Province on the Applicant that has no source in the Pathway Program. Such a criterion does not appear anywhere in the Pathway Program application form, nor in the accompanying Application Guide (Guide 1016). If the vocational training program was required to meet a certain accreditation standard, the Pathway Program should have expressly stated so. The only condition regarding internships was that it be "considered an essential part of a post-secondary study program or vocational training program in one of the designated occupations". The Officer did not take issue with the Applicant's supporting document from Weston stating it was an essential part of the certificate program.

[14] The Pathway Program does not grant discretion to officers to determine what programs should qualify. Officers cannot import additional requirements into the criteria for an immigration program (*Cheng v Canada*, [1994] FCJ No 1318, 25 Imm LR (2d) 162).

[15] The Applicant also submits that the fact he secured work as a Home Support Worker after completing his vocational program demonstrates the program was credible. He also submits that the Officer disregarded the sacrifices he made by working in a high-risk setting during the height of the COVID-19 pandemic *(Mohammed v Canada (Citizenship and Immigration)*, 2022 FC 1 at paras 40-43).

B. *Respondent's Position*

[16] The Applicant has not demonstrated that the Officer erred. The Court's decision in *Aje* holds that it is reasonable for an officer to interpret the Pathway Program as requiring that unpaid work performed in the course of vocational training be part of an accredited program in order to qualify (at paras 21, 27). In oral submissions, the Respondent added that it is common sense that there should be some requirement for accreditation otherwise any person or organization could simply write a letter like Weston did.

C. *Conclusion*

[17] The Decision is unreasonable as the Officer imported the criterion of accreditation that did not exist under the Pathway Program.

[18] This Court has found that it is a breach of an applicant's right to procedural fairness when an officer does not advise applicants of their concerns regarding accreditation (*Iriafe v Canada (Citizenship and Immigration)*, 2022 FC 1428 [*Iriafe*]; *Okedayo v Canada (Citizenship and Immigration)*, 2023 FC 60 [*Okedayo*]). This Court has also found that the standard relied upon by IRCC to assess accreditation was unreasonable (*Abiodun v Canada (Citizenship and Immigration)*, 2022 FC 1675 [*Abiodun*]).

[19] In *Iriafe*, an officer's reasons stipulated that internships must be from an "accredited private career college" (at para 1). Associate Chief Justice Gagné found that this extra requirement constituted external information which should have properly been put to the Applicant and granted the judicial review based on a breach of procedural fairness (at paras 9-12).

[20] In a number of cases, the Respondent has argued internships must be completed at a "Designated Learning Institution" [DLI], a term defined in section 211.1 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*]. This provision is found in Part 12 of the *Regulations*, which deals with students and study permits.

[21] In *Abiodun*, Justice Lafrenière addressed circumstances where an officer relied on section 211.1 of the *Regulations* in their impugned decision. Justice Lafrenière concluded that the officer had fettered their discretion by treating section 211.1 as binding on them in a Pathway Program application, noting in particular that this section on its face only applies to applicants of the "student class" (at para 17). Justice Lafrenière granted judicial review, concluding:

> [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.
>
> [Emphasis added.]

[22] In the present case, the Respondent's initial memorandum relied on section 211.1 and the same arguments that Justice Lafrenière went on to reject. In its further memorandum, the Respondent has changed course, but does not fill the resulting gap of how "accredited" was, or is to be, defined.

[23] *Okedayo* dealt with a refusal under the Pathway Program on the same grounds as the present Applicant. In that case, like here, the officer's reasons indicated that "upon verification" each respective seniors' center at which the applicants had completed their internship was not an "accredited program by the province of Ontario or of any other provinces or territories in Canada" (at para 16).

[24] Ultimately, Justice Sadrehashemi, relying on *Iriafe*, found that the officer breached the applicant's procedural fairness rights by not providing any notice of the officer's concerns with accreditation and not providing any opportunity to respond to these concerns (*Okedayo* at paras 22-23).

[25] Nowhere does the Pathway Program's public policy, application form, nor application guide indicate an applicable accreditation standard for vocational training programs. The Officer's reference to accreditation does not produce a justified or intelligible decision (*Vavilov*

at para 86). In this case, as in *Okedayo*, the Applicant still has no information as to what accreditation standard was considered in relation to their internship program. The Decision is not justified, intelligible, and transparent.

[26] It is not for individual immigration officers to be determining the requirements of public policy. The addition of such an eligibility criterion by individual immigration officers goes beyond their proper role (*Dawkins v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13587 (FCTD) at page 651).

[27] Finally, the *Aje* decision relied upon by the Respondent is distinguishable on two main grounds. Firstly, Justice Southcott found that it was reasonable for an officer to interpret that unpaid on-the-job training from an employer did not constitute an unpaid "internship" within the meaning of the *Public Policy*. The focus of the decision was the clear distinction between an internship that is part of a formal education or training program delivered by a school or education institution and the applicant in that case having completed unpaid training and practical work for her employer (at paras 4, 25-26). The application materials for the Pathway Program are clear that on the job training would not qualify; they require applicants to identify the "School/educational institution where the program was delivered" and the "Name of the health care program" (at para 25).

[28] In contrast, in the case at hand, the Officer acknowledged that the Applicant had completed an internship as part of a vocational program, and the application materials did not suggest any specific accreditation standard that needed to be met beyond "school/institution".

[29] Secondly, in *Aje*, the applicant was made aware of the officer's concerns regarding their internship before they made a final reconsideration request, and thus could still have addressed the concerns (at para 18). In the present case, the first time the Applicant was made aware of the Officer's concerns appears to be upon receiving the Decision.

VI. Conclusion

[30] For the above reasons, the application for judicial review is allowed.

JUDGMENT in IMM-8968-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. There is no question for certification.

3. There is no order as to costs.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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