Federal Court  Cour fédérale

Date: 20240216

Docket: IMM-9274-22

Citation: 2024 FC 258

Toronto, Ontario, February 16, 2024

PRESENT: Madam Justice Go

BETWEEN:

Lovedeep KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Lovedeep Kaur [Applicant] is a 25-year old citizen from India who came to Canada on a student permit.

[2] The Applicant started her studies at Bow Valley College [Bow Valley], a Designated Learning Institution [DLI] in the Fall 2018 semester to pursue a two-year Diploma in Business

Administration. In Fall 2019, the Applicant was placed on academic probation and suspended after she failed a course. The Applicant was not allowed to enroll in courses at Bow Valley for the Winter 2020 semester. The Applicant enrolled at ABM College [ABM] on April 6, 2020 and obtained a Diploma in Business Administration from ABM in September 2020. The Applicant resumed her studies at Bow Valley College in the Fall 2020 semester and acquired her diploma from Bow Valley on May 28, 2021.

[3] The Applicant then applied for a post-graduation work permit [PGWP] on June 3, 2021, which was refused on September 15, 2021. The Applicant sought a request for reconsideration of her PGWP application on September 17, 2021. An immigration officer at the Case Processing Centre in Edmonton [Officer] rejected the Applicant's request for reconsideration of her PGWP refusal on August 3, 2022 [Decision], finding that Applicant did not maintain her full-time student status during each of her academic sessions and that her time at ABM did not satisfy the PGWP requirement as ABM is not PGWP eligible.

[4] The Applicant seeks judicial review of the Decision. For the reasons set out below, I dismiss the application.

II. Issues and Standard of Review

[5] The only issue before this Court is whether the Officer's Decision to refuse the applicant's request for reconsideration was reasonable.

[6] In her memorandum of argument in support of the application, the Applicant submits that the Officer erred in finding the Applicant did not meet the full-time status requirement, and failed to consider that the Applicant was on "authorized leave" from her studies when she transferred from Bow Valley to ABM. I put the term "authorized leave" in quotation marks as the Applicant's position has evolved since the filing of her application for judicial review.

[7] The Respondent submits that:

a. The Officer was not required to consider whether the Applicant was on an "authorized leave" because it was not raised by the Applicant; and, in the alternative,

b. The Applicant failed to demonstrate that she was on authorized leave; and

c. The Applicant did not meet the full-time status requirement.

[8] The parties agree that the standard of review for the Decision is reasonableness, as noted in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[9] Reasonableness is a deferential, but robust, standard of review: *Vavilov* at paras 12-13. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Vavilov* at para 15. 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: *Vavilov* at para 85. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov* at paras 88-90, 94 and 133-135.

[10] For a decision to be unreasonable, the applicant must establish that the decision contains flaws that are sufficiently central or significant: *Vavilov* at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov* at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep:" *Vavilov* at para 100.

III. Analysis

[11] That the Officer was not required to consider the "authorized exception" as the issue was not raised before the Officer is, in my view, dispositive of the application.

[12] I am using the term "authorized exception," as suggested by the Respondent, to encompass the Applicant's ever-changing position. In her memorandum of argument, the Applicant asserts that the period between her suspension from Bow Valley and subsequent enrollment at ABM falls under the "authorized leave" exception, which lists "changing school" as one of the accepted reasons for leave from studies. The Applicant relies on the section entitled "Your conditions as a study permit holder in Canada" under the Post-Graduation Work Permit Program Operational Instructions and Guidelines [PGWPP Guidelines] to support her position. The subsection under the subheading "What counts as an authorized leave from your studies?" notes in part, "It counts as authorized leave if …. you've changed schools."

[13] In her reply to the Respondent's memorandum of argument, the Applicant revises her argument and states that the Respondent is confusing two distinct tests for when a student is

authorized to have a gap in their studies. The Applicant cites the operational instructions and guidelines manual on "Study permits: Assessing study permit conditions," at Section C: *Changing institutions or changing programs of study at the same institutions* [Section C] which reads in part:

> Students engaging in post-secondary studies in Canada are authorized to change institutions or programs of study within the same institution, provided they are not limited from doing so by conditions imposed on their study permit. However, to assess if a student who has changed institutions or programs of study a number of times should be considered to be actively pursuing their studies, the officer should consider the student's reasons for the changes. In cases where multiple program or institutional changes do not appear to support the expectation that the student is making reasonable progress toward the completion of a Canadian credential, the officer may determine that the study permit holder has not fulfilled their study permit condition to actively pursue their course or program of study.

[14] The Applicant argues there are two different types of "authorized leave" when a student may have a gap in their studies not exceeding 150 days. The first type of "authorized leave" is when a student changes institutions or programs of study; in such a case a student is not required to have their DLI authorize the leave. The second type is when a student is on "leave from their studies."

[15] At the hearing before me, the Applicant advanced a third argument and conceded that she should not have used the term "authorized leave." Instead, the Applicant argued she was engaged in a leave from her studies or what she called a "transfer window;" when she transferred to ABM on April 6, 2020, and then transferred back to Bow Valley to finish her program of study. The Applicant argued that she maintained her full-time student status the entire time by engaging in full-time studies at a DLI in each semester, thus meeting the requirements of the PGWP to a) be

enrolled at a DLI, b) remain enrolled, and c) be actively pursuing her course or program of study. The Applicant referenced a section under the PGWPP Guidelines that addresses and permits transfers between educational institutions, and she noted that only time spent at the eligible DLI counts to qualify for a PGWP. In sum, the Applicant argued that during her leave or "transfer window," she maintained her eligibility for PGWP.

[16] However, as the Respondent points out, the particular section on transfers between educational institutions was not in the PGWPP Guidelines at the time the Applicant applied for the PGWP, and as such does not assist the Applicant.

[17] But more to the point, none of these arguments, including the latest one, that the Applicant raises before the Court was put to the Officer.

[18] In her application for reconsideration, the Applicant's former immigration consultant did not once suggest that the Applicant was on "authorized leave" from Bow Valley, on a leave from study, or in a "transfer window" for that matter. Instead, the consultant submitted that due to her academic performance, "she had to withdraw from the courses at Bow Valley." The consultant noted the Applicant "got the notice of probation on September 06, 2019, that she will be on probation until Spring 2020 if her performance isn't satisfactory in the Fall session." The consultant reported that the Applicant appealed her probation to no avail. The consultant explained the Applicant acted promptly and got admission at ABM and stated:

> Even though, she was on probation in Bow Valley, she did respect the Immigration Regulations and maintained her full-time status as a student by getting admission into AMB College and did the required credits to maintain the full-time student status in Canada.

[19] The immigration consultant went on to suggest that the Applicant "followed the [Immigration, Refugees and Citizenship Canada] regulation" which states "[a] student should begin or resume their studies at their new institution within 150 days from the day that they ceased or completed their studies at the previous institution." The consultant finally submitted that the Applicant followed that regulation and joined ABM within 150 days of her "leaving" Bow Valley.

[20] I pause here to note that the immigration consultant did not provide the specific provision of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] that they relied on.

[21] I agree with the Respondent that the Applicant's former consultant may have been referring to Section C, but mischaracterized this as part of the *IRPR*. The relevant part of Section C reads as follows:

> A student should begin or resume their studies at their new institution **within 150 days** from the day that they ceased or completed their studies at the previous institution. If a student does not resume their studies within 150 days, they should do either of the following:
>
> - change their status (that is, change to visitor status or worker status)
> - leave Canada
>
> If they do not change their status or leave Canada, they are considered non-compliant with their study permit conditions.

[22] However, as the Respondent notes, Section C does not deal with leave from studies. The relevant section is Section D, titled "Leave from studies," which states, among other things that

"any leave taken from a program of studies in Canada **should not exceed 150 days from the date the leave commenced and must be authorized by their DLI**."

[23] By relying on Section C, which speaks to students who have "ceased or completed" their studies at the previous institution, and by asserting that the Applicant joined ABM within 150 days within her ***leaving*** Bow Valley, it would appear that the consultant did not argue that the Applicant was on authorized leave from Bow Valley. Instead, the Applicant left Bow Valley because she was put on probation. This position was reinforced by the following statement from the consultant:

> She got readmitted in Bow Valley College and had a full-time course load of 9 credits.
>
> [Emphasis added]

[24] The consultant continued to state that:

> As [*sic*] her final semester of education at Bow Valley College, she did maintain her full-time status in it. She did 3 courses of overall 9 credits and maintained her full-time status at Bow Valley College.

[25] Taken as a whole, at the time of her reconsideration request, the Applicant did not assert that she was on leave, authorized or otherwise, from Bow Valley when she attended ABM.

[26] Further, even assuming that the Applicant was relying on Section C in her reconsideration request, the Applicant still did not explain how that section fit into the PGWPP regime and made her eligible for a PGWP.

[27] As the Respondent notes, in the relevant portions of the PGWPP Guidelines that were in effect at the relevant time, there were only two authorized exceptions from the requirement that a student must maintain full-time student status in Canada during each academic session of the program or programs of study they have completed and submitted as part of their PGWP application. They are:

> Leaves from studies
> Final academic session

[28] Changing institutions was not one of the two authorized exceptions.

[29] The Respondent submits that the Court cannot consider an issue which was not previously raised to the decision-maker as it may unfairly prejudice the respondent, citing *Oleynik v Canada (Attorney General)*, 2020 FCA 5 at para 71 and *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 21-26.

[30] I agree.

[31] Specifically, I agree with the Respondent that officers are not required to consider an exception where the applicant fails to raise or explain how the exception applies. The Respondent cites *Muniz v Canada (Citizenship and Immigration)*, 2020 FC 872 [*Muniz*] at paras 10-11, and concedes that while the facts in *Muniz* differ from the facts at hand, the same principle applies.

[32] I note that none of the arguments the Applicant raises before me was reflected in her request for reconsideration. The Applicant never stated that she was on “authorized leave” from Bow Valley and the Applicant never provided any proof that Bow Valley authorized her leave. The Officer never had a chance to ask for the proof, as the policy allows them to do. To the extent that the Applicant was relying on Section C to assert that she maintained her full-time status, the Applicant never explained how Section C fits into the authorized exceptions set out under the PGWPP Guidelines.

[33] As noted by the Court in *Muniz* at para 11, reviewing courts cannot expect administrative decision-makers to respond to every argument or line of possible analysis especially when an applicant did not raise the argument with the officer.

[34] Even before the Court, the Applicant’s position appeared to be evolving over time. The Court cannot fault the Officer for not responding to the Applicant’s submissions when the Applicant herself keeps shifting from one argument to another.

[35] As I find this issue determinative of the application, I need not address the remaining arguments raised by the parties.

IV. Conclusion

[36] The application for judicial review is dismissed.

[37] There is no question for certification.

JUDGMENT in IMM-9274-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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