

Federal Court



Cour fédérale

Date: 20240212

Docket: IMM-12199-22

Citation: 2024 FC 229

Ottawa, Ontario, February 12, 2024

PRESENT: Mr. Justice McHaffie

BETWEEN:

ADEDAMOLA MICHAEL ADENIRAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Adedamola Michael Adeniran graduated from York University in April 2022. In the Fall/Winter 2021 academic session, which ran from September 2021 to April 2022, he took two final courses to complete his degree. He applied for a post-graduate work permit [PGWP] in June 2022. A visa officer with Immigration, Refugees and Citizenship Canada [IRCC] refused his application, finding that because of his part-time enrollment, he did not meet the PGWP

eligibility requirement of being enrolled in full-time studies. Mr. Adeniran seeks judicial review of that refusal.

[2] As the parties agree, the visa officer's decision is to be reviewed on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Lawrence v Canada (Citizenship and Immigration)*, 2021 FC 607 at paras 19–20. A reasonable decision is one that is internally coherent and justified in light of the legal and factual constraints that bear on it, such that it is justified, transparent, and intelligible: *Vavilov* at paras 15, 94–95, 99–100.

[3] In the present case, the relevant legal constraints on the visa officer's decision include the program delivery instructions for the PGWP program, issued by the Minister pursuant to subparagraph 205(c)(ii) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The relevant factual constraints included Mr. Adeniran's academic history as presented in his application for a PGWP. The sole question on this application for judicial review is whether the visa officer reasonably assessed Mr. Adeniran's application for a PGWP in light of the program requirements.

[4] As the visa officer noted, the PGWP program requirements applicable at the time of Mr. Adeniran's application included a general requirement that the applicant have maintained full-time student status. However, the program requirements also set out an exception to the full-time study requirement for an applicant's final "academic session":

Part-time status for final academic session

Students must maintain their full-time student status during each academic session of the program or programs of study they complete and submit as part of their post-graduation work permit application. However, if a student meets all the eligibility requirements, with the exception of full-time status during their final academic session (that is, they have part-time status only in their final academic session), they are still considered eligible for the PGWPP.

[Emphasis added.]

[5] Mr. Adeniran's transcript shows that for undergraduate programs, York University defines each academic year, from September to April, as the "Fall/Winter" academic session. Thus for the 2018 academic year, his transcript sets out his course enrollment and results under the heading "Academic Session/Term: Fall/Winter 2018." Mr. Adeniran's transcript shows he was enrolled full-time in each of the Fall/Winter 2018, 2019, and 2020 academic sessions, and that he took his final two courses during the "Academic Session/Term: Fall/Winter 2021."

[6] Mr. Adeniran contends that the Fall/Winter 2021 session in which he was a part-time student was his final academic session. He argues he had part-time status only in this final academic session, and therefore met the eligibility requirements of the program. He argues the visa officer failed to reasonably apply those requirements and unreasonably refused his PGWP application.

[7] The Minister argues that even though York University uses the term "academic session" to refer to the academic year, the term "academic session" in the program delivery instructions means a four-month academic term or semester (such as the fall term from September to

December). Since Mr. Adeniran's transcript does not show whether he took his final two courses in late 2021, early 2022, or throughout the year, the Minister contends that Mr. Adeniran provided equivocal evidence to establish that he was in part-time status only in his final "academic session." The Minister therefore argues that it was unclear whether he qualified for the "final academic session" exception, and that it was reasonable for the visa officer to reject his application.

[8] Despite the deference that must be shown to a visa officer, I agree with Mr. Adeniran that the decision in this case was unreasonable.

[9] Nothing in the visa officer's decision indicates they gave any consideration at all to the "final academic session" exception. The visa officer's reasons for decision, as reflected in notes in the Global Case Management System, read as follows, in their entirety:

Client is requesting a PGWP. Client graduated from York University in April 2022. According to the transcript that the client provided, it appears that the client was enrolled in part time studies during Fall 2021. Client[s] must be enrolled in full time studies in order to be eligible for a PGWP as per R205(c)(ii). Application refused, letter sent.

[Emphasis added.]

[10] As the Minister agrees, the officer's reference to "Fall 2021" must be read as simply shorthand for "Fall/Winter 2021" as it appears on Mr. Adeniran's transcript. While York University has a "Fall" session, it is only applicable to graduate studies, and there is no reference to Mr. Adeniran having been involved in a "Fall 2021" session. Thus, the visa officer's

reasoning was simply that Mr. Adeniran was part-time in the Fall/Winter 2021 session, and that an applicant must be enrolled in full-time studies to be eligible for a PGWP.

[11] The visa officer's reasons do not suggest that they considered the "final academic session" exception but were uncertain as to when Mr. Adeniran took his courses, or that they considered the term "academic session" to be limited to a four-month term, as the Minister now contends. Rather, the reasons indicate the exception was simply overlooked. While the Minister now puts forward an interpretation of the program delivery instructions in which "academic session" means a four-month term, the visa officer's reasons must be read as they are given and it is not open to the Minister or the Court to supplement them with reasons for the refusal that were not given: *Vavilov* at paras 95–96.

[12] Having failed to consider the application of an exception in the program delivery instructions that was clearly at least potentially relevant, the visa officer's decision does not demonstrate the justification, transparency, and intelligibility required of a reasonable decision: *Vavilov* at paras 15, 81, 85–86, 95–96, 99–100, 108. It must be set aside.

[13] By way of remedy, Mr. Adeniran asks the Court to direct the Minister to issue a PGWP, rather than simply referring his application back for redetermination. He argues such a remedy of indirect substitution is appropriate since no other reasonable outcome is available: *Vavilov* at para 142; *Canada (Citizenship and Immigration) v Tennant*, 2019 FCA 206 at paras 68–75, 79–80. He notes that no other eligibility grounds were raised by the visa officer, and that the "final academic session" exception clearly applies in his case, such that he is eligible for a PGWP.

Given the time that has already passed since he graduated and has been unable to work in Canada because of the unreasonable refusal of his PGWP application, and the amount of time such applications typically take to process, he argues the Court should simply order the Minister to issue the work permit.

[14] The Minister argues this not an appropriate case for a remedy of indirect substitution. He contends there is more than one possible outcome or interpretation, given the contrary interpretation proposed, namely that an “academic session” means a four-month term rather than a full academic year, regardless of how York University may use the term “academic session.”

[15] There is some attraction to Mr. Adeniran’s argument. Indeed, it seems difficult to reconcile the Minister’s proposed interpretation of “academic session” with the PGWP program, which is broad enough to cover a variety of different programs at a variety of academic institutions, provided they are at least eight months in length. The use of the general term “academic session” in the instructions, including in the “final academic session” exception, appears designed to provide flexibility and to recognize that different institutions may have different academic sessions. The Minister pointed to nothing in the program delivery instructions, other policy documents, administrative decisions, or jurisprudence to support his proposed interpretation. Nor did the Minister even provide a sound theoretical basis for imposing a definition of “academic session” that is not set out in the program delivery instructions, is not otherwise made known to foreign nationals pursuing studies in Canada, and that may, as here, directly conflict with the academic program at a particular institution.

[16] Nonetheless, this Court should be cautious in concluding that there is only one reasonable outcome, particularly where an initial decision maker has not addressed an issue. Given this, and the possibility that there are other eligibility issues that were simply not addressed in light of the conclusion with respect to part-time studies, I conclude that this is not an appropriate case in which to provide a remedy of indirect substitution by ordering the Minister to issue a PGWP. At the same time, Mr. Adeniran's concerns about timing, and the difficulty faced by being unable to work, are serious ones. I see no reason why the Minister should not be able to reassess Mr. Adeniran's application in a very short period, and shall therefore order that the redetermination of the matter occur within four weeks of the date of this decision.

[17] Mr. Adeniran also asks that the Court award costs of this application. He notes that the unreasonableness of the visa officer's decision in failing to apply the "final academic session" exception has always been clear, that there were numerous occasions on which the Minister ought to have recognized this and resolved this application for judicial review, and that he was put to additional time and expense of having to bring this matter through to a hearing.

[18] Again, Mr. Adeniran's arguments have some force. In the Court's view, the visa officer's decision very plainly failed to consider the "final academic session" exception, and the Minister's arguments regarding the reasonableness of the decision are equally plainly an effort to supplement the decision with additional reasons that the officer did not give.

[19] That said, Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, is clear that costs will only be awarded in immigration matters

where justified for “special reasons.” This is a high bar: *Ghaddar v Canada (Citizenship and Immigration)*, 2023 FC 946 at paras 44–46, citing *Almuhtadi v Canada (Citizenship and Immigration)*, 2021 FC 712 at para 56. “Special reasons” can relate to the nature of the case or to the behaviour of the applicant, the Minister, an immigration official, or counsel, and can include instances where such behaviour is unfair, oppressive, improper, or actuated by bad faith: *Ghaddar* at paras 45–46. The mere issuance of an unreasonable decision does not constitute special reasons: *Saeed v Canada (Citizenship and Immigration)*, 2024 FC 129 at para 59.

[20] While the decision in this case was unreasonable, I cannot conclude that the decision itself, the Minister’s arguments, or the Minister’s decision to respond to the application and proceed to a hearing in the circumstances rise to the level of “special reasons.” No costs will therefore be awarded.

[21] Neither party proposed a question for certification and I agree that none arises in the matter.

JUDGMENT IN IMM-12199-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted.
2. The refusal of Adedamola Michael Adeniran's application for a post-graduate work permit, dated November 18, 2022, is set aside and his application is remitted for redetermination by another officer, such redetermination to occur within four weeks of the date of this judgment.
3. No costs are awarded.

"Nicholas McHaffie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12199-22

STYLE OF CAUSE: ADEDAMOLA MICHAEL ADENIRAN v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 8, 2024

JUDGMENT AND REASONS: MCHAFFIE J.

DATED: FEBRUARY 12, 2024

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