Federal Court  Cour fédérale

Date: 20240619

Docket: IMM-2204-23

Citation: 2024 FC 952

Toronto, Ontario, June 19, 2024

PRESENT: Mr. Justice Diner

BETWEEN:

ABHIJIT SINGH CHEEMA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Cheema seeks judicial review of a decision made by an Immigration Officer [Officer] refusing his third application for extension of his study permit and restoration of his status, dated February 3, 2023 [Decision]. For the reasons below, this application is dismissed.

[2] By way of brief background, Mr. Cheema is an Indian national. He entered Canada in September 2020 and remained in Canada as a temporary resident on a study permit for Matrix College in Montreal that was valid until January 31, 2022. Mr. Cheema submitted a first

application for a study permit extension and restoration of his status on April 30, 2022 (First Application) – within the 90 day restoration period. The First Application was refused on August 5, 2022. The refusal letter states that his status has expired as of August 5, 2022, and that he may apply for restoration of status within 90 days after the expiry of his status.

[3] Mr. Cheema then submitted a subsequent application for a study permit extension and restoration of his status on September 1, 2022 (Second Application). This was refused on September 29, 2022, noting that his status expired on January 31, 2022, while the Second Application was made on September 1, 2022 – this time outside the 90-day period. The September 29, 2022 refusal letter does not mention the First Application, or the August 5, 2022 date contained in the refusal letter.

[4] Mr. Cheema then submitted another application for a study permit extension and restoration of his status on November 1, 2022 (Third Application). The Officer refused this Third Application on the basis that Mr. Cheema submitted it after the 90 day period provided under section 182 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*]. The Decision notes state:

> Client entered Canada on 2020/09/02 and was authorized to remain in Canada as a temporary resident on a Study Permit until 2022/01/31. Applicant has submitted an application for restoration on (2022/04/30) which was refused on 2022/08/05. Client submitted a second application for SP-EXT with restoration on (2022/09/01), refused on 2022/09/29. Client is applying now for SP-EXT with restoration received on (2022/11/01). Has remained in Canada since without authorization. Has failed to comply with the condition imposed under R185(a) to leave Canada by 2022/01/31. As per A47(a) temporary resident status has been lost. This application was received 2022/11/01 beyond the regulatory 90 day period described

> in R182 and not eligible for restoration. Application refused; client advised status expired must leave Canada.

[5] Mr. Cheema argues before this Court that the Decision on the Third Application was unreasonable in that the Officer ignored key evidence, namely the fact that his status did not expire on January 31, 2022, as held in response to both the Second Application and Third Application. Rather, he contends it expired on August 5, 2022, the date found in the letter refusing the First Application.

[6] I disagree. To begin, I see no basis in law for the first Officer validly extending status from January 31, 2022 to August 5, 2022, and nor did Mr. Cheema's counsel point me to anything in to establish a legal basis for having done so. Counsel for the Respondent conceded that it was likely a mistake.

[7] I find that the case law cited by Applicant's counsel would support a finding that the first officer erred because Mr. Cheema filed his First Application after the expiry of his status by operation of sections 182, 183 and 185 (see explanation of these provisions in *Lawrence v Canada (Citizenship and Immigration)*, 2021 FC 607 [*Lawrence*], where Justice Lafrenière explains the law of extensions and restoration at paras 24–29, and *Shekhtman v Canada (Citizenship and Immigration)*, 2018 FC 964 [*Shekhtman*], where Justice Gascon also explains the restoration regime at paras 12–13). Here, according to the operation of sections 182(1) and 183(5) of the *Regulations*, as described in *Lawrence* and *Shekhtman*, Mr. Cheema had 90 days from January 31, 2022 to apply to restore his status, which he attempted to do in his First Application. That attempt was unsuccessful, resulting in the August 5, 2022 refusal.

[8] Even if I am wrong and the first officer somehow had a proper legal basis under which to extend status until August 5, 2022, Mr. Cheema's Second Application was duly refused on September 29, 2022. In that decision, the second officer found that Mr. Cheema's status had indeed expired on January 31, 2022. Mr. Cheema never sought judicial review of that Second Application decision.

[9] In his Third Application, Mr. Cheema - at his peril - chose to revisit the matter once again, notwithstanding the refusal arising from his Second Application. That decision explained in explicit terms why he could not obtain restoration:

> Your temporary resident status in Canada expired on January [3]1, 2022 [*sic*] and your application was made on September 1, 2022.
>
> An application for restoration must be made within 90 days after loss of temporary resident status. You are not eligible for restoration of your temporary resident status because your application was submitted after the regulated 90-day period. Since you no longer hold temporary resident status in Canada your application for a study permit is also refused.
>
> You are a person in Canada without temporary resident status who is not eligible for restoration under Section 182 of the Immigration and Refugee Protection Regulations.

[10] Given all the circumstances included in the Second Application, it was entirely reasonable for the Officer to refuse the Third Application on the basis of the original January 31, 2022 expiry date, being the same basis upon which the second officer had refused his Second Application. In other words, Mr. Cheema's third attempt at restoration did not vitiate the earlier (Second Application) decision which had found that his status expired on January 31, 2022, namely on the date on which his Study Permit expired. Mr. Cheema has pointed to nothing that

would make the Decision under review unreasonable, even though I acknowledge that he prefers the August 5, 2022 date.

[11] Mr. Cheema, however, could and should have challenged the September 29 (Second Application) decision had he wished to challenge the January 31, 2022 date stated in that refusal, and the August 5, 2022 date provided in the First Application refusal, but failed to do so. He now attempts to question that Second Application decision in this judicial review, stating that earlier decisions are open to challenge when a later decision is involved, citing *Kaur v Canada (Citizenship and Immigration)*, 2020 FC 513 [*Kaur*] at para 31 and *Zhang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1381 [*Zhang*] at paras 21, 23, 29.

[12] I disagree with this proposition. Mr. Cheema is seeking to overturn a (second) administrative decision which he chose not to judicially review, through challenging the subsequent (third) Decision. As the Supreme Court has stated, "[a]n application for judicial review does not invite the court to assess the legality of every decision that preceded the challenged decision:" *First Nation of Nacho Nyak Dun v Yukon*, 2017 SCC 58 at para 32. To attempt to do so is known as a collateral attack and is generally not permitted (see, for instance, *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at para 33, and *R v Bird*, 2019 SCC 7 at paras 25–32).

[13] Indeed, *Kaur* and *Zhang* hold that this Court may consider past decisions where it is relevant to do in the context of the decision under review. That is not equivalent to saying that the Court should adjudicate the propriety of past, final decisions. They can no longer be

challenged directly, and thus should not be able to be challenged indirectly. That is precisely what Mr. Cheema is asking the Court to do here, in contesting the reasonableness of the Second Application refusal. Apart from it being an improper collateral attack on a spent decision, I would further note that the Second Application decision was entirely reasonable in finding that Mr. Cheema's status had expired on January 31, 2022 conterminously with the study permit expiry, and not on August 5, 2022.

[14] Ultimately, given the constraints described above in these facts and in the law as explained in *Lawrence* and *Shekhtman*, I find that the reasons for the Decision were transparent, intelligible, and justifiable (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 59–63; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99). Consequently, this application for judicial review is dismissed.

JUDGMENT in file IMM-2204-23

THIS COURT'S JUDGMENT is that:

1. The judicial review is dismissed.
2. There is no question to certify.
3. No costs will issue.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2204-23
STYLE OF CAUSE:	ABHIJIT SINGH CHEEMA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JUNE 18, 2024
JUDGMENT AND REASONS:	DINER J.
DATED:	JUNE 19, 2024

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