Federal Court  Cour fédérale

Date: 20240723

Docket: IMM-10116-22

Citation: 2024 FC 1146

Ottawa, Ontario, July 23, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

VINEET TOOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, a citizen of India, became a person without status in Canada after her application for a work permit extension was refused on April 22, 2022. In refusing the extension, the Respondent advised the Applicant that she may apply for restoration of her temporary status in Canada.

[2] In May 2022, the Applicant submitted an application for permanent residence [PR], and in July 2022, she submitted an application for restoration of her temporary status.

[3] In a decision dated October 4, 2022, the Applicant's PR application was refused on the basis that the Applicant was in Canada without status and was therefore non-compliant with the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Applicant applies under subsection 72(1) of the IRPA for judicial review of the Immigration Officer's [Officer] October 4, 2022 decision.

[4] Although the Applicant seeks judicial review of the PR refusal, the restoration application is of relevance to the arguments advanced. It will be helpful to therefore begin with a brief overview of the authority to restore temporary status and the requirements, as provided for in the *Immigration and Refugee Protection Regulations,* SOR/2002-227 [IRPR] and the Respondent's guidelines, which set out requirements applicants applying for restoration must satisfy.

II. Restoration of Temporary Resident Status

[5] Restoration of temporary resident status is provided for at subsection 182(1) of the IRPR. Where an application for restoration is made within 90 days of the loss of status, and other conditions are met, an "officer shall restore that status":

Restoration	**Rétablissement**
182 (1) On application made by a visitor, worker or student within 90 days after losing	**182 (1)** Sur demande faite par le visiteur, le travailleur ou l'étudiant dans les quatre-

temporary resident status as a result of failing to comply with a condition imposed under paragraph 185(a), any of subparagraphs 185(b)(i) to (iii) or paragraph 185(c), an officer shall restore that status if, following an examination, it is established that the visitor, worker or student meets the initial requirements for their stay, has not failed to comply with any other conditions imposed and is not the subject of a declaration made under subsection 22.1(1) of the Act.	vingt-dix jours suivant la perte de son statut de résident temporaire parce qu'il ne s'est pas conformé à l'une des conditions prévues à l'alinéa 185a), aux sous-alinéas 185b)(i) à (iii) ou à l'alinéa 185c), l'agent rétablit ce statut si, à l'issue d'un contrôle, il est établi que l'intéressé satisfait aux exigences initiales de sa période de séjour, qu'il s'est conformé à toute autre condition imposée à cette occasion et qu'il ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi.

[6] The Respondent's Guideline entitled *Restoration of temporary resident status* [Restoration Guideline] sets out the eligibility requirements for restoration of status:

> **Applicant requirements**
>
> The applicant must
>
> - apply within 90 days of having lost their status
> - meet the initial requirements for their stay
> - remain in Canada until a decision is made
> - have not failed to comply with any condition imposed automatically by regulation [R183] or by an officer [R185], other than those stated below
>
> […]
>
> **Leaving Canada**
>
> […]

> During the processing of a restoration application, should an officer determine that the foreign national has left Canada, the officer shall refuse the application restoration as the foreign national is no longer eligible. In this situation, processing fees are not refunded.

[7] Subsection 183(5) of the IRPR provides that an application for an extension of temporary status has the effect of extending the period of an authorized stay in Canada. Subsection 183(5) does not apply where an applicant is seeking restoration under subsection 182(1) of the IRPR:

Extension of period authorized for stay	**Prolongation de la période de séjour**
(5) Subject to subsection (5.1), if a temporary resident has applied for an extension of the period authorized for their stay and a decision is not made on the application by the end of the period authorized for their stay, the period is extended until	**(5)** Sous réserve du paragraphe (5.1), si le résident temporaire demande la prolongation de sa période de séjour et qu'il n'est pas statué sur la demande avant l'expiration de la période, celle-ci est prolongée :
(a) the day on which a decision is made, if the application is refused; or	**a)** jusqu'au moment de la décision, dans le cas où il est décidé de ne pas la prolonger;
(b) the end of the new period authorized for their stay, if the application is allowed.	**b)** jusqu'à l'expiration de la période de prolongation accordée.

[8] In summary, IRPR subsection 182(5) provides applicants the opportunity to restore their temporary status after the period authorized for their stay in Canada has expired. An application for restoration does not extend the period of authorized stay; therefore, restoration applicants have no status in Canada while the restoration application is processed. The Restoration

Guideline in turn requires that applicants for restoration remain in Canada until a decision is made. The result is non-compliance with IRPA subsection 29(2), which requires that a person with temporary status "leave Canada by the end of the period authorized for their stay." Individuals applying for restoration in accordance with the Restoration Guideline therefore appear to be in contravention of the IRPA and inadmissible under paragraph 41(a) of the IRPA.

III. Decision under review

[9] The Officer's October 2022 refusal decision followed a September 26, 2022 letter to the Applicant advising her that she was out of status in Canada and proof that she had departed Canada was required before the processing of the PR application could continue. The Applicant responded to that letter advising the Officer as follows:

> I am writing to you in reference to the letter sent to me on 26 [September], 2022 [...] I want to update you that I applied for a restoration and bridging work permit within the validity of the due date from my rejection of my previous work permit. I am attaching the confirmation of submission along with the previous rejection letter where you can check my eligibility of applying for restoration. Please contact me if you have any further inquiries or concerns.

[10] On October 4, 2022, the Officer rejected the PR application noting that the Applicant has been a person without status since her extension application was refused in April 2022. The Officer concluded that the Applicant was inadmissible to Canada, as per paragraph 41(a) and subsection 29(2) of the IRPA, as a result of non-compliance with the obligation to depart Canada at the end of the Applicant's authorized period of stay. The Officer's GCMS Notes state:

> Out of Status Refusal
>
> On application W304925576, the PA was authorized to work in Canada until 2021/12/01 when her work permit expired. According to GCMS, the PA then submitted an application, W306266775, for a work permit, and was on maintained status until it was refused on 2022/04/22. In the refusal letter the PA was invited to apply for restoration but was advised [that] her temporary resident status expired on 2022/04/22. At this time the PA became a person without status in Canada and there is no indication that she departed Canada. On 2022/09/26 the PA was sent a request letter to provide proof that she had left Canada. On 2022/10/02 the PA replied that she had applied for restoration and a bridging work permit and did not supply the needed proof that she was outside of Canada. The PA is inadmissible to Canada under sections 41(a) and 29(2) of the Immigration and Refugee Protection Act for failing to comply with their obligation as a temporary resident to leave Canada by the end of the period of her authorized stay.
>
> A11.2/R87.1 eligibility criteria not assessed as PA is inadmissible to Canada.
>
> Application refused.

IV. Analysis

[11] The Applicant relies on the Restoration Guideline to argue the PR decision was procedurally unfair and that the Restoration Guideline generated a reasonable expectation that a decision on the permanent residence application would not be made until after her application for restoration had been considered and disposed of.

[12] The Respondent submits there was no breach of procedural fairness. The Officer considered and applied the provisions of the IRPA and the IRPR. The doctrine of legitimate expectations is in turn of no application where the Applicant was non-compliant with the IRPA

because the doctrine only provides procedural rights and therefore cannot be relied upon to support an alternate outcome.

[13] Although the Applicant has framed the core issue as a breach of fairness, I agree with the Respondent that the issues raised are not issues of fairness but instead require that the Court consider whether the Officer's decision is reasonable. The issue of reasonableness is determinative and therefore I need not address the applicability of the reasonable expectation doctrine.

[14] A reasonable decision is one that falls within the range of possible and acceptable outcomes that are defensible in consideration of the facts and the law (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 99 and 102 [*Vavilov*].

[15] While an outcome may be reasonable, that is not enough. The outcome must be supported by logical and rational reasons that are responsive to the issues raised (*Vavilov* at para 87). A decision maker is expected to meaningfully grapple with the core issues or central arguments raised by an applicant. This requirement assures affected parties that their concerns have been heard and also allows decision makers to identify gaps or flaws in their reasoning (*Vavilov* at para 128).

[16] In this case, the Respondent argues that the outcome itself is reasonable, and I take no issue with that position. I am nonetheless of the view that the decision is unreasonable.

[17] Although the Officer acknowledged the Applicant's pending restoration application, the Officer failed to grapple with this issue in any meaningful way. The pending restoration application was the central or core issue identified by the Applicant in responding to the September 26, 2022 letter. Although the Applicant did not specifically mention the requirement that she remain in Canada to obtain a positive decision on the restoration application, this is readily understood when her response is read in context. The Officer was, in my opinion, required to address the issue.

[18] The failure to the address the Applicant's core issue and the dilemma it appears to have presented for the Applicant prevents the Court from considering whether the outcome is based on reasoning that is rational and logical. The decision is unreasonable.

V. Conclusion

[19] For the above reasons, the Application is granted. The parties have not identified a question of general importance and none arises.

JUDGMENT IN IMM-10116-22

THIS COURT'S JUDGMENT is that:

1. The Application is granted.

2. The matter is returned for redetermination by a different decision maker.

3. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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