

Federal Court



Cour fédérale

**Date: 20110531**

**Docket: IMM-6132-10**

**Citation: 2011 FC 605**

**Ottawa, Ontario, this 31<sup>st</sup> day of May 2011**

**Present: The Honourable Mr. Justice Pinard**

**BETWEEN:**

**Vladislav VIDA KOVIC**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review in respect of a decision of an immigration officer of Citizenship and Immigration Canada (the “Officer”), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”) by Vladislav Vidakovic (the “applicant”). The Officer refused the applicant a temporary residence permit.

[2] The applicant is a citizen of Bosnia-Herzegovina, born on August 16, 1955.

[3] On June 7, 2006, the applicant entered Canada on a work permit valid until April 30, 2010.

[4] The applicant suffered a leg injury at work on September 12, 2007, while working as a temporary resident worker in British Columbia. The applicant submitted claims to Workers Compensation authorities, seeking monetary compensation for his injury.

[5] The applicant's passport expired on May 31, 2010. The Bosnia-Herzegovina Embassy informed the applicant that due to equipment problems, they were unable to either extend his prior passport or issue a new passport. A citizen of Bosnia-Herzegovina may not apply for a new passport or renewal in Bosnia-Herzegovina itself without being present in person. In April 2010, the applicant sought a temporary residence permit valid until May 30, 2011.

[6] The applicant sought this permit as he had an appeal pending at the Workers Compensation Appeal Tribunal. He alleges that he was under the impression that this appeal would determine all of his claims arising out of the injury (paragraph 6 of the applicant's affidavit, at page 13 of the Application Record).

[7] The applicant states that the Workers Compensation Appeal Tribunal's (WCAT) decision of July 21, 2010 determined only a portion of his claims, namely the claim for a permanent partial disability award for chronic pain, but did not determine the remainder of the claims such as a loss of

earnings award or compensation for psychological conditions. The WCAT website marked the case as “Decided”.

[8] The Officer’s negative decision was issued on October 14, 2010, and received by the applicant on October 18.

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[9] The Officer determined from the Workers Compensation Appeal Tribunal’s website that a final decision was made on the applicant’s appeal on July 21, 2010. The Officer was therefore satisfied that the applicant had had sufficient time in Canada to deal with his appeal.

[10] The Officer was not satisfied that the issuance of a temporary resident permit was warranted, and found that the applicant had not presented evidence to suggest that he would be unable to obtain a Travel Certificate from the Embassy of Bosnia-Herzegovina that would allow him to return.

[11] As the applicant was now without status in Canada, he was required to depart.

\* \* \* \* \*

[12] The relevant portion of the Act is as follows:

### Temporary resident permit

24. (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.

### Exception

(2) A foreign national referred to in subsection (1) to whom an officer issues a temporary resident permit outside Canada does not become a temporary resident until they have been examined upon arrival in Canada.

### Instructions of Minister

(3) In applying subsection (1), the officer shall act in accordance with any instructions that the Minister may make.

### Restriction

(4) A foreign national whose claim for refugee protection has been rejected or determined to be withdrawn or abandoned by the Refugee Protection Division or the Refugee Appeal Division may not request a temporary resident permit if less than 12 months have passed since their claim was last rejected or determined to be withdrawn or abandoned.

### Permis de séjour temporaire

24. (1) Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps.

### Cas particulier

(2) L'étranger visé au paragraphe (1) à qui l'agent délivre hors du Canada un permis de séjour temporaire ne devient résident temporaire qu'après s'être soumis au contrôle à son arrivée au Canada.

### Instructions

(3) L'agent est tenu de se conformer aux instructions que le ministre peut donner pour l'application du paragraphe (1).

### Réserve

(4) L'étranger dont la Section de la protection des réfugiés ou la Section d'appel des réfugiés a rejeté la demande d'asile ou dont elle a prononcé le désistement ou le retrait de la demande ne peut demander de permis de séjour temporaire que si douze mois se sont écoulés depuis le dernier rejet de la demande d'asile ou le dernier prononcé du désistement ou du retrait de celle-ci.

[13] The only issue in this application is as follows:

- a. Did the duty of fairness require the Officer to follow up with the applicant regarding the WCAT decision?

[14] This is an issue of procedural fairness, to which the standard of correctness applies. No deference is due to the Officer's decision (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paras 129, 151; *Sketchley v. Canada (Attorney General)*, 2005 FCA 404, [2006] 3 F.C.R. 392 (F.C.A.) at para 46).

[15] The applicant has raised a question of whether the Officer made an erroneous finding of fact with regard to the WCAT decision. For the reasons set out below, this question is not in fact relevant in the present case. In any case, the respondent notes that temporary residence permits are exceptional, and subject to a highly discretionary decision on the part of the Officer (*Farhat v. Minister of Citizenship and Immigration*, 2006 FC 1275 at para 17). The applicable standard of review would therefore be reasonableness.

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A. *Duty of fairness*

[16] The applicant alleges that he was not aware that the Officer had consulted the Workers Compensation Appeal Tribunal's website, and that the Officer did not inform him of her findings. The applicant alleges that the Officer should have sought additional comments from the applicant before coming to her decision, so that he could have informed the Officer that the WCAT decision did not come to a final determination on his entire claim, and that there were still outstanding claims. The applicant alleges that administrative fairness requires that he know the case he has to meet and be given a reasonable opportunity to present evidence and make representations in response.

[17] I note that the Tribunal Record contains only a printout from the WCAT website (at pages 7 and 8) stating that the applicant's case has been "Decided". The Tribunal Record does not contain the decision itself; no copy was received by the Officer. In my view, the respondent is correct in arguing that the Officer was entitled to rely upon the information on the website, which was also available to the applicant. The Officer had no way of knowing that a case labeled "Decided" was not in fact complete. The applicant was aware that the determination of his case was relevant to his temporary residence permit application. The applicant is correct in noting that without the reasons for the decision, the Officer did not know the applicant's exact situation. However, the applicant had received a copy of this decision and was aware that his case was not fully complete. Had he provided this information to the Officer, the Officer would have been able to take this into account in reaching her decision. In my view, the Officer did not have the onus to investigate whether the case was not complete despite the supposed finality of the WCAT decision; this was pertinent information that should have been provided to the Officer by the applicant when he became aware that his claim was not completely decided. As held in *Kisana v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, [2010] 1 F.C.R. 360 (F.C.A.) at para 45, the duty of fairness is variable and contextual, and I do not find that it was breached in this case.

#### B. *Error of fact*

[18] The applicant submits that the Officer's expression of absolute finality of the applicant's claims for compensation suggests that the Officer thought that the determination of the claims was complete. The applicant argues that this is not the case, as there has only been a determination of a fraction of the applicant's monetary claims. A first-level determination of the other claims has yet to be made. The applicant submits that the Officer had no information as to whether the applicant

considered himself aggrieved by the WCAT decision and wanted to pursue legal remedies at a higher level.

[19] In the alternative, the applicant submits that if the Officer's inquiries resulted in the Officer being aware of the limited scope of the WCAT decision, then the decision is based on a perverse or capricious finding of fact.

[20] While the Officer's understanding of the WCAT case was in fact mistaken, this was not her fault, as the Certified Tribunal Record shows that she did not have the WCAT decision before her. The WCAT website stated that the case was "Decided" and the applicant did not provide any further information to show that this was not the case. I do not find any error in the Officer's finding of fact, based on the information in the record before her at the time of her decision.

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[21] For the above-mentioned reasons, the application for judicial review is dismissed. I agree with counsel for the parties that this is not a matter for certification.

**JUDGMENT**

The application for judicial review of a decision of an immigration officer of Citizenship and Immigration Canada refusing the applicant a temporary residence permit is dismissed.

“Yvon Pinard”

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Judge



**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-6132-10

**STYLE OF CAUSE:** VLADISLAV VIDA KOVIC v. MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** May 11, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Pinard J.

**DATED:** May 31, 2011

**APPEARANCES:**

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Ms. Helen Park FOR THE RESPONDENT

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