

Federal Court



Cour fédérale

**Date: 20161005**

**Docket: IMM-197-16**

**Citation: 2016 FC 1112**

**Ottawa, Ontario, October 5, 2016**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**FAHAD THARUPEEDIKAYIL ABUBACKER**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant has applied for judicial review of a decision dated December 30, 2015 in which an Immigration Officer [the Officer] refused the applicant's application for restoration of his temporary resident status and his application for a Post-Graduation Work Permit [PGWP].

[2] The applicant is an Indian national who came to Canada to study at Concordia University [Concordia] in its two-year Master of Mechanical Engineering Program. The applicant was

granted a Study Permit which ran from August 21, 2013 to August 30, 2015, and Temporary Resident Status [Status] which also expired on August 30, 2015.

[3] As he approached the end of his studies, the applicant intended to apply for a PGWP. In order to make that application, he required written confirmation from Concordia to show that he had met the requirements for his Master's program (for example, a transcript or letter).

[4] The applicant completed his final exams on Tuesday, August 18, 2015. He stated in his affidavit that, based on Concordia's "policy", he "expected" that his grades would be released and that he would have a letter or transcript for his PGWP within seven calendar days of the end of his exams. However, there was no evidence of a policy that supported the applicant's expectation.

[5] The applicant's grades did not arrive by August 25<sup>th</sup> and he took no steps to renew his study permit under section 217 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the IRPR]. Instead, he allowed both his Status and his Study Permit to expire on Sunday, August 30, 2015.

[6] Three days later, on September 2, 2015, the applicant received a letter from Concordia confirming that he had met the requirements for a Master of Engineering Degree. The next day, on September 3, 2015, the applicant applied for restoration of his Status and for the issuance of a PGWP.

I. Regulations and Program Delivery Instructions

[7] If a student's Status expires, he or she can apply to have their Status restored based on subsection 182(1) of the IRPR. It reads:

**Restoration**

**182 (1)** On application made by a visitor, worker or student within 90 days after losing 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.  
[my emphasis.]

**Rétablissement**

**182 (1)** Sur demande faite par le visiteur, le travailleur ou l'étudiant dans les quatre-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.  
[Je souligne.]

[8] The "initial requirements for a stay" mentioned in subsection 182(1) are set out in section 179. Paragraph (d) is relevant to this application. It reads:

**Issuance**

**179** An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national  
[...]

**Délivrance**

**179** L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :  
[...]  
d) il se conforme aux exigences applicables à cette

(d) meets the requirements applicable to that class; [...] catégorie; [...]

[9] The Program Delivery Instruction [PDI] on restoration of Status is entitled “Restoration of temporary resident status” [the Restoration PDI]. The relevant version was last modified on April 25, 2014.

[10] The parties agreed and I accept that the Restoration PDI provides that the phrase “meets the initial requirements for their stay” in subsection 182(1) of the IRPR can be interpreted so that a student in the applicant’s situation whose study permit has expired and who needs a PGWP is required to show that he or she meets the requirements for a PGWP and not those for a study permit. As well, the Restoration PDI indicates that in the applicant’s situation, paragraph 179(d) of the IRPR means that the applicant must show that he meets the requirements for a PGWP.

[11] The requirements for a PGWP are found in a PDI entitled “Study Permits: Post Graduate Work Permit Program” [the PGWP-PDI]. The version at issue was last modified on February 5, 2016. It provides that to obtain a PGWP, an applicant “must,” among other requirements, “have a valid study permit when applying for the work permit.”

## II. The Decision Under Review

[12] The Officer concluded that the applicant did not meet the requirement for a PGWP because his study permit expired on Sunday, August 30<sup>th</sup>, and he applied for the PGWP four days later on September 3, 2015.

[13] The applicant did not have a valid study permit, which he was required to hold when he applied for the PGWP. This meant he did not meet the requirements for restoration in sections 182 and 179, which required him to satisfy the requirements for a PGWP. For these reasons, both his applications to restore his Status and issue a PGWP were denied.

### III. The Issues

[14] Is the decision unreasonable because the PGWP-PDI requirement for a valid study permit conflicts with section 182 of the IRPR?

### IV. Discussion and Conclusions

[15] The applicant submits that the PGWP-PDI is not binding on the Officer because it is merely a guideline and because it conflicts with section 182 of the IRPR.

[16] I have not been persuaded by this submission. I do not see a conflict. There will be many students who have valid study permits when they apply for a restoration of their Status and a PGWP. The simple fact that the section does not apply to the applicant because he let his study permit lapse does not create a conflict between the PGWP-PDI and the IRPR. I also note that in her decision in *Nookala v Canada (Minister of Citizenship and Immigration)* 2016 FC 1019 at paras 11-12, Madam Justice Mactavish decided that the PGWP-PDI is not a “guideline” because it establishes criteria that “must” be satisfied. I agree with her conclusion.

[17] The Decision will be upheld if it is reasonable. According to the Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process, and with whether a decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. The PGWP-PDI and the Restoration PDI require applicants to hold valid study permits both when they apply for a PGWP and when they seek relief under section 182. Since the Officer based the decision on those requirements, the Decision is reasonable.

V. Certification

[18] No questions were posed for certification for appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

“Sandra J. Simpson”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-197-16

**STYLE OF CAUSE:** FAHAD THARUPEEDIKAYIL ABUBACKER v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 7, 2016

**JUDGMENT AND REASONS:** SIMPSON J.

**DATED:** OCTOBER 5, 2016

**APPEARANCES:**

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