Federal Court  Cour fédérale

Date: 20200113

Docket: IMM-2421-19

Citation: 2020 FC 40

Ottawa, Ontario, January 13, 2020

PRESENT: Associate Chief Justice Gagné

BETWEEN:

JOSÉE FLORENCE NGO NTAMAG

Applicant

and

MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA

Respondent

JUDGMENT AND REASONS

I. Background

[1] Josée Florence Ngo Ntamag came to Canada on a student permit that was valid until November 30, 2018. She completed her studies and received an official confirmation of completion on December 4, 2018. However, she waited until February 16, 2019 to request that her status be changed to that of a visitor, so that she would not be without status until and when she applied for a work permit under the Post-Graduation Work Permit Program [PGWPP].

[2] Ms. Ntamag submitted an *Application to Change Conditions, Extend my Stay or Remain in Canada as a Visitor or Temporary Resident Permit Holder* (IMM 5708), accompanied by a letter from counsel stating that she relied on section 182(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], which gives temporary residents a 90-day grace period after the lapse of their status to apply for the restoration of that status.

[3] Ms. Ntamag now seeks judicial review of the decision made by the Officer to refuse her application.

II. Impugned Decision

[4] The Officer refused to re-establish Ms. Ntamag's temporary resident status for the following reasons:

- She failed to submit any proof of funds with her application;
- Although her stated purpose for seeking an extension was to apply for a Post-Graduation Work Permit, to this day, she still has not submitted an application for the Program;
- She had sufficient time to fulfill her purpose for staying in Canada;
- She did not provide any information showing that she has strong ties to her home country, thus failing to convince the Officer that she would leave Canada at the end of her stay.

III. Issues and Standard of Review

[5] This application for judicial review raises the following issues:

A. *Did the Officer breach his duty of procedural fairness?*

B. *Did the Officer err in his interpretation of section 182 of the Regulations?*

[6] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*), the decision recently released by the Supreme Court of Canada, the Court has revisited in some regards, and clarified in others, the framework for determining the standard of review applicable to administrative decisions. Having carefully reviewed the reasons issued by the majority of the Court, I am of the view that they do not change the standard applicable to both questions raised by the present application. With respect to the interpretation of section 182 of the *Regulations*, the presumption of reasonableness cannot be rebutted, so that standard applies as it would have prior to *Vavilov*.

[7] With respect to the issue of procedural fairness, since the Supreme Court is silent on the topic (*Vavilov*, para 23) – it is fair to conclude that the previous jurisprudence still applies. Therefore, if the Court finds that the duty of procedural fairness owed to the Applicant was breached, it should quash the decision.

IV. Analysis

A. Did the Officer breach his duty of procedural fairness?

[8] Ms. Ntamag cites the decision of the Court in *Zhang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1381 to stand for the proposition that an applicant placed in her situation is entitled to either a procedural fairness letter or an examination. Her main argument is that the Officer failed to bring his concerns to her attention prior to rendering a final decision, nor did he provide her with an opportunity to respond. Though this is often done either with a procedural fairness letter sent to an applicant, or during an examination, this is not a hard and fast requirement. In *Bui v Canada (Citizenship and Immigration)*, 2019 FC 440, Justice René LeBlanc summarized where an Officer is required to inform an applicant of issues with their application:

> [26] In the context of a visa application, the case law has held that the level of procedural fairness owed by a visa officer to a visa applicant is on the lower end of the spectrum (*Chiau v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16793 (FCA), [2001] 2 FC 297 (FCA) at para 41; *Sapojnikov* at para 26; Yang at para 22).
>
> […]
>
> [28] When, however, a visa officer's concern arises directly from the requirements of the Act or regulations, the officer is not normally under an obligation to inform or provide the applicant with an opportunity to address the concerns (*Al Aridi v Canada (Citizenship and Immigration)*, 2019 FC 381 (CanLII) at para 20; *Saatchi v Canada (Citizenship and Immigration)*, 2018 FC 1037 (CanLII) at para 40; *Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264 (CanLII) at para 24).

[9] The Officer's concerns arise directly from the requirements of the *Regulations*: with respect to the proof of funds or the evidence that Ms. Ntamag would leave at the end of her stay

(section 179), and to the apparent confusion she made between a fresh application for a different Temporary Resident status (sections 179 and 192) and the restoration of a pre-existing status (section 182). Therefore, the Officer was not under the obligation to issue a procedural fairness letter or conduct an examination, as Ms. Ntamag suggests.

[10] In addition, Ms. Ntamag's reliance on *Zhang* is, in my view, misplaced. *Zhang* does not stand for the proposition that a fairness letter or examination are required in all circumstances, including when concerns arise from the plain requirements of the *Regulations*. In *Zhang*, the applicant had submitted evidence to support his claim that he was a bona fide student, including a letter which provided details of his program of study at that institution, his successful completion of that program, and his acceptance to a different institution. On that basis, Justice Yves de Montigny found that he was entitled to some explanation as to why these documents were inadequate to show that he was a bona fide student. Yet the reasons provided by the officer did not allow the Court to understand why the application was denied.

[11] In the present case, the Officer was not presented with proof of funds or evidence that Ms. Ntamag was a bona fide visitor and that she would leave at the end of her authorized stay. In addition, she admits in counsel's letter attached to her application that she is no longer a student, that she does not meet the initial conditions for her stay, and that, consequently, she is without status in Canada.

[12] The Officer simply applied the *Regulations* to the set of facts presented to him and explained which of its requirements were not met. I see no breach of procedural fairness on his part.

A. *Did the Officer err in his interpretation of section 182 of the Regulations?*

[13] Ms. Ntamag blames the Officer for having provided "boilerplate" and thus insufficient reasons.

[14] She further argues that the Officer erred in his interpretation and application of section 182 of the *Regulations*, which provides the following:

> 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 220.1(1) of the Act.
>
> (2) Despite subsection (1), an officer shall not restore the status of a student who is not in compliance with a condition set out in subsection 220.1(1).

[15] In her view, the use of the term "shall" in Section 182(1) means that an Officer has no discretion in choosing whether to restore the status of a visitor, worker, or student if they meet the initial requirements for their stay in Canada. Therefore, she maintains that the Officer mistakenly exercised his discretion in refusing to restore her status.

[16] First, I am of the view that the Officer provided sufficient reasons, especially given that the GCMS Notes are considered as part of those reasons (*Paddayuman v Canada (Citizenship and Immigration)*, 2019 FC 287 at para 13; *Song v Canada (Citizenship and Immigration)*, 2019 FC 72 at para 18). In addition, the Supreme Court in *Vavilov* states that, in accordance with well-established law, reasons are not required for all administrative decisions (*Vavilov* at paras 77, 119, 136-137).

[17] The requirements for an IMM 5708 Application are clearly listed on the IRCC's Document Checklist Form IMM-5558. These requirements include proof of means of support, as well as all documents related to study or work permits. While Ms. Ntamag's record does include a letter dated September 7, 2017 from her brother attesting that he was supporting her during her academic studies at La Cité, no further or update to this proof of support is enclosed. Therefore, the Officer's finding that she had not included sufficient proof of support is reasonable. If her brother was to continue to support her during her stay in Canada, then it was incumbent on her to provide documentation to this effect. Ms. Ntamag provided no explanation why this proof was not included in her Application.

[18] Ms. Ntamag also did not include any proof that she had applied to the PWGPP, nor does her Application mention any intention to do so. Yet, Ms. Ntamag was represented by counsel who was likely familiar with the IMM 5708 process for visa extensions and restoration of status. However, Ms. Ntamag has offered no explanation as to why she failed to include these two pieces of required information. She has also not submitted any evidence that she has applied for a PGWPP since February 2019.

[19] Given that the application is missing several required elements, and that Ms. Ntamag has not explained these gaps in her materials, I find the Officer's conclusions reasonable.

[20] Second, I am also of the view that the officer did not err in his interpretation of section 182 of the *Regulations*. Subsection 220.1(1), which is referenced in Subsection 182(2), makes it clear that an Officer must not restore the status of temporary resident's Study Permit if they are not currently enrolled at a designated learning institution or actively pursuing their course or program. As Ms. Ntamag was not in compliance with these conditions at the time of her Application, the Officer's interpretation of Section 182 and its relevant provisions was reasonable.

[21] One of the conditions imposed on a PGWPP applicant is that the application be sent before the expiry of the applicant's Study Permit. As Ms. Ntamag did not meet that condition, she asked to be granted a Visitor permit to be valid until January 1st, 2021.

[22] However, just as section 182 and the 90-day grace period that it provides do not apply to a former student seeking a PGWPP, they do not apply to a former student seeking to obtain a Visitor Permit. Ms. Ntamag could not simply rely on section 182 to obtain a different Temporary Residence status than the one she had held before she applied (*Nookala v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1019).

V. Conclusion

[23] Given that Ms. Ntamag did not provide key documents in her Application, and that the Officer's assessment of her Application and interpretation of Section 182 of the *Regulations* is reasonable, this application for judicial review is dismissed.

[24] Neither party has submitted a question for certification, and none arises from the facts of this case.

JUDGMENT in IMM-2421-19

THIS COURT'S JUDGMENT is that:

1. This Application for judicial review is dismissed;

2. No question of general importance is certified.

"Jocelyne Gagné"
Associate Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

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