Federal Court Cour fédérale

Date: 20210615

Docket: IMM-7628-19

Citation: 2021 FC 607

Ottawa, Ontario, June 15, 2021

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

MELODIE ANN NEDRA LAWRENCE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] On June 20, 2019, the Applicant submitted an application to Immigration, Refugees and Citizenship Canada [IRCC] to restore her temporary resident status under section 182 of the *Immigration and Refugee Protection Regulations,* SOR/2002-227 [the *Regulations*] and for a work permit.

[2] By decision dated December 3, 2019 [the Decision], an IRCC Officer denied the application upon concluding that the Applicant did not meet the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and the *Regulations*. The IRCC Officer noted that the Applicant was not eligible for restoration under section 182 of the *Regulations* as her temporary status in Canada expired on November 22, 2018 and that her application was made on June 20, 2019, beyond the 90 day application period specified in section 182.

[3] The Applicant seeks judicial review of the Decision. According to the Applicant, the IRCC Officer erred in concluding that the Applicant was out of time to apply for restoration of her status.

[4] For the following reasons, I am not satisfied that the IRCC Officer committed any error. The Decision, albeit brief, is transparent, intelligible, and well supported by the relevant facts and law. The application is accordingly dismissed.

II. Background

[5] The Applicant is a citizen of Trinidad and Tobago.

[6] In September 2013, the Applicant came to Canada on a study visa and began her studies at the Faculty of Arts of the University of British Columbia. The study permit, which was renewed in 2015 and again in 2017, stated that the Applicant must actively pursue studies at a designated learning institution.

[7] On July 3, 2018, the Applicant finished her studies.

[8] On September 13, 2018, the Applicant applied for a Post Graduate Work Permit [PGWP]. There is very little information about the content of the PGWP application in the certified tribunal record or before this Court other than the fact that the Applicant's passport was mistakenly not included in the application.

[9] The Applicant was required to leave Canada by October 1, 2018 based on the terms of her 2017 study permit.

[10] On November 22, 2018, an officer [PGWP Officer] refused the PGWP application because the Applicant failed to produce evidence that she was in possession of a passport and that it was valid for the duration of her stay in Canada.

[11] According to Applicant's counsel, he had two options at that point: either apply for restoration of the Applicant's temporary resident status under section 182 of the *Regulations*, or seek judicial review of the negative decision of the PGWP Officer. The Applicant elected to commence an application for leave and for judicial review on December 6, 2018, but took no steps at the time to restore the Applicant's status.

[12] On May 23, 2019, Mr. Justice Sébastien Grammond dismissed the application for leave filed on December 6, 2018.

[13] The Applicant subsequently made an application for restoration of her status and for a work permit on June 20, 2019. In a letter tendered along with the application, counsel for the Applicant addressed the issue of delay in making the application. He wrote that “the counting of the 90-day period” to apply for restoration under section 182 of the *Regulations* “was suspended” once the application for leave and for judicial review was filed. From the Applicant’s perspective, “the counting towards the 90-day delay for the restoration resumed” once he received the Certificate of Order dismissing the application for leave on May 27, 2019.

A. *The IRCC Officer’s Decision*

[14] The IRCC Officer states in the Decision that immigration legislation requires that foreign nationals wishing to remain longer in Canada submit an application for extension of their temporary resident status.

[15] The Global Case Management System [GCMS] notes prepared the same date as the Decision reflect that the Applicant was authorized to remain in Canada until November 22, 2018 (when her PGWP application was refused), and that she has remained in Canada thereafter, without authorization. The notes further reflect that pursuant to section 47(a) of the *IRPA*, the Applicant’s temporary status has been lost and that the restoration eligibility period ended on February 20, 2019.

[16] The IRCC Officer concluded that when the Applicant submitted her application on June 20, 2019, she was no longer eligible for the restoration of her status as it was beyond the regulatory 90 day period described in section 182 of the *Regulations*.

[17] The Applicant was advised that her status had expired and she must leave Canada. The Applicant returned to Trinidad and Tobago on December 31, 2019.

III. Issue to be Determined

[18] This application for judicial review raises one issue: whether the IRCC Officer rendered an unreasonable decision.

IV. Standard of Review

[19] There is no dispute regarding the applicable standard of review. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], at paragraph 10, the Supreme Court of Canada concluded that the presumptive standard of review is reasonableness, and a reviewing Court should only derogate from that presumption "where required by a clear indication of legislative intent or by the rule of law." There is no such indication in this case.

[20] When reviewing for reasonableness, the Court asks whether the decision bears the hallmarks of reasonableness (i.e., justification, transparency and intelligibility) and whether the decision is justified in relation to the relevant factual and legal constraints that bear on the decision: *Vavilov*, at para 99.

V. Analysis

[21] The Applicant submits that the IRCC Officer erred by concluding that the deadline to apply for restoration under section 182 of the *Regulations* had expired by the time the Applicant submitted her application on June 20, 2019.

[22] I disagree for the following reasons.

[23] First, subsection 222(1) of the *Regulations* provides that a study permit becomes invalid when the first of three events occur: (1) the studies are completed, (2) a removal order becomes enforceable, or (3) the permit expires. The Applicant does not dispute that her study permit expired on October 1, 2018.

[24] Second, notwithstanding the expiry date of her study permit, the Applicant held an implied status until November 22, 2018, when the PGWP Officer rendered the decision refusing her application. The extension of the period the Applicant was authorized to remain in Canada was granted automatically by section 183(5)(a) of the *Regulations*.

(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	a) jusqu'au moment de la décision, dans le cas

application is refused; or	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.

[25] On the day the PGWP Officer made the decision refusing the PGWP application, the Applicant lost her status of temporary resident by operation of law, as set out in subsection 47(a) of *IRPA*:

47. A foreign national loses temporary resident status	47. Emportent perte du statut de résident temporaire les faits suivants :
(a) at the end of the period for which they are authorized to remain in Canada;	a) l'expiration de la période de séjour autorisé;
[…]	[…]

[26] This is not disputed by the Applicant.

[27] Third, a foreign national may, within 90 days after losing temporary resident status, request a restoration of their temporary resident status pursuant to subsection 182 of the *Regulations*:

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,	182. 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

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.	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.
(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).	(2) Malgré le paragraphe (1), l'agent ne rétablit pas le statut d'un étudiant qui ne se conforme pas à l'une ou l'autre des conditions prévues au paragraphe 220.1(1).

[28] The Applicant concedes that she was required to apply for restoration within 90 days of the loss of her temporary resident status. However, she contends that her status was suspended or put on hold while she pursued her application for leave and for judicial review against the decision of the PGWP Officer.

[29] According to the Applicant, there were 76 days remaining to apply to restore her status when she applied for leave of this Court. She claims that once the application for leave was dismissed, the computation of time under section 182 of the *Regulations* resumed. By this logic, she was well within the deadline when she applied for restoration on June 20, 2019.

[30] The Applicant cites no authority, statutory provision or rule in support of the proposition that one's temporary resident status is somehow resurrected and remains valid while pursuing legal proceedings before this Court in circumstances such as occurred here.

[31] When questioned at the hearing, counsel for the Applicant conceded that there was no legal foundation for the Applicant's position that there is an automatic suspension of the restoration eligibility period upon bringing an application for leave and for judicial review.

[32] The provisions of the *Regulations* are clear. They set out the circumstances when a study permit expires and when it may be extended. Section 183(5)(a) of the *Regulations* automatically extends the period authorized for a temporary resident's stay if they have applied for an extension of the period and a decision is not made on the application by the end of the period authorized for their stay. However, section 182 clearly states that the application must be made within 90 days of loss of temporary resident status. It brooks no exception.

[33] The Applicant's loss of status did not result from any ruling, decision or action of IRCC, but flowed directly from the operation of the provisions of the *IRPA* and its *Regulations*. It follows that pending disposition of her leave application against the PGWP refusal, the Applicant was required to either apply to renew her temporary resident status or otherwise leave Canada.

[34] For the above reasons, I am satisfied that the IRCC Officer did not err and in fact correctly concluded that the Applicant was not eligible for restoration of her status under section 182 of the *Regulations*. On June 20, 2019, the Applicant's application for restoration was plainly and obviously submitted beyond the 90 day deadline.

[35] Although no argument was advanced by the Applicant on this point, it is important to note that the IRCC Officer had no discretion to waive the eligibility requirements in this case, as

noted by Madam Justice Anne Mactavish in *Nookala v. Canada (Citizenship and Immigration)*, 2016 FC 1019 at para 12:

> [12] The Program document at issue in this case establishes criteria that *must* be satisfied for a candidate to qualify for a Post-Graduation Work Permit. While the Program document also provides information and guidance as to how the program is to be administered, nothing in the document confers any discretion on immigration officers to modify or waive the Program's eligibility requirements. Consequently, no fettering of discretion occurred when the immigration officer determined that Mr. Nookala was required to hold a valid study permit in order for him to be eligible for a Post-Graduation Work Permit.
>
> [Underlining added.]

[36] Finally, I agree with the Respondent that it is unfortunate that when the Applicant challenged the work permit refusal before this Court, she failed to request an extension of her study permit. However, decisions of this Court must not be based upon sympathy, but rather upon reason and common sense.

[37] It is unclear why the PGWP Officer did not contact the Applicant when dealing with her application to point out that her passport was missing. Assuming that this was the only deficiency in the material, one would have expected the PGWP Officer to afford the Applicant the opportunity to submit the overlooked document. The Court trusts that IRCC would be open to considering a new application from the Applicant in the future and that the error of counsel not be visited on his client.

VI. Conclusion

[38] For the above reasons, I see no reviewable error in the IRCC Officer's determination that the Applicant missed the deadline to apply for restoration of her temporary status pursuant to section 182 of the *Regulations*. There was transparency and intelligibility in the decision making process of the IRCC Officer, and their decision falls within a range of possible, acceptable outcomes, which are defensible in respect of the facts and law.

[39] The application for judicial review is accordingly dismissed.

[40] There are no questions for certification.

JUDGMENT IN IMM-7628-19

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

"Roger R. Lafrenière"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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