

Federal Court



Cour fédérale

**Date: 20210928**

**Docket: IMM-2588-20**

**Citation: 2021 FC 1012**

**Ottawa, Ontario, September 28, 2021**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**CHETAN MEHMI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant, Mr. Chetan Mehmi, seeks judicial review of the decision of a visa officer (the “Officer”) of Immigration, Refugees and Citizenship Canada (“IRCC”) dated May 6, 2020 (the “May Decision”), refusing the Applicant’s application for a Post-Graduate Work Permit (“PGWP”) and the restoration of his temporary resident status. The Officer refused the PGWP

application on the basis that the Applicant did not hold a valid study permit at the time he applied for the PGWP. After making this finding, the Officer refused the restoration application on the basis that the Applicant's PGWP application was refused.

[2] The Applicant submits that the May Decision is unreasonable because the Officer relied on the findings of a previous decision dated January 27, 2020 (the "January Decision") that denied the Applicant's previous PGWP application and which the Applicant says was flawed. The Applicant further submits that the May Decision was unreasonable because the Officer did not provide an analysis as to why the Applicant was not eligible for restoration. In addition, the Applicant submits that his procedural fairness rights were breached because the visa officer who made the January Decision (the "Previous Officer") did not request further information from him.

[3] In my view, the Officer's decision does not follow a rational chain of analysis and is not justified in relation to the relevant facts and law. The Officer appears to misapprehend the requirements of the PGWP, and, in any event, fails to explain intelligibly how the Applicant did not meet the requirements. I therefore grant this application for judicial review.

II. **Facts**

A. *The Applicant*

[4] The Applicant is a 28-year-old citizen of India. In November 2017, the Applicant was issued a student visa with an expiry date of March 31, 2019. The Applicant was issued a study permit upon his arrival in Canada in December 2017.

[5] In January 2018, the Applicant began studying at St Lawrence College in the Health Care Administration program. In May 2018, the Applicant applied for a second course of studies at St Lawrence College in Supply Chain Management. The Applicant completed his Health Care Administration program in September 2018 and began his Supply Chain Management program immediately after.

[6] The Applicant received his transcripts and diploma for the completion of his Health Care Administration studies in October 2018 and applied for an extension of his study permit at that time. On February 21, 2019, a second study permit was issued to the Applicant with an expiry date of November 30, 2019.

[7] On April 18, 2019, the Applicant completed his Supply Chain Management program. On June 25, 2019, the Applicant received transcripts showing the completion of his Supply Chain Management program, which also displayed the completion of his Health Care Administration program.

[8] On July 2, 2019, the Applicant applied for a PGWP. In his application, he mistakenly included two copies of his diploma and transcript for his Health Care Administration program, rather than including one diploma and one transcript for each of his completed programs.

[9] On November 26, 2019, the Applicant contacted IRCC because he had not received any communication regarding his PGWP application. On November 30, 2019, the Applicant's study permit expired. On December 2, 2019, the Applicant received a response from IRCC confirming that his application was being forwarded to the responsible officer. The IRCC agent stated that the Applicant would be contacted if any further information was needed or a decision was rendered.

[10] In the January Decision, dated January 27, 2020, the Previous Officer refused the Applicant's PGWP application on the grounds that he did not apply for a PGWP within 180 days of receiving written confirmation from the education institution indicating that he had met the requirements for completion of their program, as required.

[11] The Previous Officer noted that the Applicant completed his Health Care Administration program in August 2018, yet applied for a PGWP in July 2019. The Previous Officer further noted that the transcripts submitted showed that the Applicant was enrolled in the Supply Chain Management program in the fall of 2018, but that none of the courses for that program were completed.

[12] On February 5, 2020, the Applicant filed a second PGWP application and a restoration application.

B. *Decision under Review*

[13] In the May Decision, dated May 6, 2020, the Officer denied both the Applicant's PGWP application and restoration application.

[14] The May Decision consists of a refusal letter and the Officer's Global Case Management System ("GCMS") notes, which form part of the reasons for the Officer's decision (*Torres v Canada (Citizenship and Immigration)*, 2019 FC 150 at para 19).

[15] In the letter, the Officer refuses the Applicant's second PGWP application on the basis that the Applicant did not hold a valid study permit at the time he applied for a PGWP. The letter goes on to state that a student who loses temporary resident status for failure to comply with conditions imposed under section 185 of the *Immigration and Refugee Protection Regulations*, SOR2002-227 (the "IRPR") may be eligible for restoration if they meet the initial requirements of their stay. The Officer concludes, however, that the Applicant's temporary resident application has been refused, and therefore, he is not eligible for restoration.

[16] In the GCMS notes, the Officer's first entry on May 6, 2020 states that the Applicant has lost temporary resident status, but is eligible for restoration. The second entry on that same day states that the Applicant does not hold a valid study permit, and he is therefore ineligible for a

PGWP. The Officer goes on to write that the PGWP application is refused and the Applicant is no longer restorable.

III. **Preliminary Issue: Decision Under Review**

[17] The Applicant makes submissions with respect to the reasonableness of the January Decision, which is not the subject of this application for judicial review.

[18] The Respondent submits that the Applicant is making an impermissible attack on the January Decision because that decision is not the subject matter of the underlying judicial review application. The Respondent submits that Rule 302 of the *Federal Courts Rules*, SOR/98-106 (the “*Rules*”) requires the Applicant to bring a separate application for each decision the Applicant seeks to have judicially reviewed.

[19] Rule 302 of the *Rules* provides:

**Limited to single order**

**302** Unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought.

**Limites**

**302** Sauf ordonnance contraire de la Cour, la demande de contrôle judiciaire ne peut porter que sur une seule ordonnance pour laquelle une réparation est demandée.

[20] Rule 302 will be contravened where an Applicant challenges two decisions within one application, unless the Court orders otherwise or the Applicant can show the two decisions form

part of a continuous course of conduct. Decisions will not form a continuous course of conduct where they involve different factual situations, different forms of relief sought, or were made by different decision-making bodies (*Sevier Canada Inc v Canada (Health)*, 2007 FC 196 at para 17). This Court has not issued an order permitting the Applicant to judicially review both the January Decision and the May Decision in this application for judicial review.

[21] The Applicant cites *Kaur v Canada (Citizenship and Immigration)*, 2020 FC 513 (“*Kaur*”) at para 31, for the proposition that the Court may consider decisions preceding the challenged decision when they are relevant to the reasonableness of the decision at issue. In *Kaur*, my colleague Justice McHaffie relies on the reasoning in *Zhang v Canada (Minister of Citizenship and Immigration)* 2006 FC 1381 at paras 27-31, wherein Justice de Montigny held that an earlier decision could be considered to the extent that it was relied on in refusing a restoration application.

[22] The Applicant seeks to judicially review the May Decision, however, submits that the Officer relied on the January Decision in making his findings. Both decisions were made by the same decision making body, IRCC, and were based on the same set of facts. Therefore, in my view, the Applicant’s arguments with respect to the January Decision may be considered as they relate to the reasonableness of the May Decision.

#### IV. Issues and Standard of Review

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

- A. *Was the Previous Officer's decision reasonable and made in accordance with the principles of procedural fairness?*
- B. *Is the Officer's refusal of the Applicant's PGWP application reasonable?*
- C. *Is the Officer's refusal of the Applicant's restoration application reasonable?*

[24] Aside from the issue of procedural fairness, I find the applicable standard of review is reasonableness (*Lawrence v Canada (Citizenship and Immigration)*, 2021 FC 607 at para 19, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (“Vavilov”) at para 10; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 687 at para 9).

[25] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[26] For a decision to be unreasonable, an applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing the evidence that was before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).



[27] Issues concerning breaches of procedural fairness are reviewed upon what is best reflected in the correctness standard (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). The central question is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21-28 (see also: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

## V. Analysis

[28] The criteria for issuing a PGWP are set out in IRCC's PGWP Program Delivery Instructions (the "*PDI*"). IRCC has no discretion to disregard those mandatory requirements (*Kaur* at para 9).

[29] The current *PDI* applies to all PGWP applications received on or after February 14, 2019, and therefore applies to both the January Decision and the May Decision.

[30] Under the "PGWP Validity and Application" section of the *PDI*, applicants must apply for a PGWP within 180 days of obtaining written confirmation of completing their program of study, such as an official letter or transcript.

[31] Under the "PGWP Eligibility Requirements" section of the *PDI*, applicants must also meet one of the following criteria within 180 days of applying for a PGWP:

- A. They hold a valid study permit.
  - B. They held a study permit.
  - C. They were authorized to study in Canada without the requirement to obtain a study permit under subsections 188(1)(a) and (b) of the *IRPR*.
- A. *Was the Previous Officer's decision reasonable and made in accordance with the principles of procedural fairness?*

[32] When the Applicant submitted his first PGWP application in July 2019, he had completed both his Health Care Administration program and his Supply Chain Management program. However, the Applicant admits that he did not provide his transcripts and official letter of completion for his Supply Chain Management program in his application. Because of that omission, the Previous Officer assessed the Applicant's PGWP application based on the date of completion of his Health Care Administration program: August 31, 2018.

[33] The Applicant submits that it was unreasonable for the Previous Officer to infer that the Applicant completed his Health Care Administration program in August 2018. He says he received confirmation of completion of his first program in October 2018. Further, the Applicant asserts that the Previous Officer should have instead counted 180 days starting from June 25, 2019, which is the date the Applicant received the transcripts for his Supply Chain Management program.

[34] I am not convinced that the Previous Officer erred by considering the end date of the Applicant's first program in Health Care Administration program to be August 31, 2018. The

Applicant's transcript states the date of conferral of the Applicant's degree was August 31, 2018. It was therefore reasonable for the Previous Officer to find that it was this date that the Applicant completed his studies. The Applicant did not provide the Previous Officer with any evidence to establish that he had completed his second course of studies in Supply Chain Management.

[35] In my view, the January Decision is reasonable. The Officer assessed the evidence submitted by the Applicant and reasonably concluded, based on the Applicant's transcript and diploma in Health Care Administration, that the completion date of his studies was August 31, 2018. The Officer therefore refused the Applicant's first PGWP application because it was not submitted within 180 days of the Applicant receiving confirmation that he completed that program, as required under the *PDI*.

[36] The Applicant further alleges that the Previous Officer breached his procedural fairness rights by not requesting further information from the Applicant with regard to his second course of studies in Supply Chain Management.

[37] I am not convinced by the Applicant's argument. Instructive on the issue of procedural fairness is *Ntamag v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 40 ("*Ntamag*").

[38] In *Ntamag*, Associate Chief Justice Gagné found that an officer is not under an obligation to issue a procedural fairness letter where the officer's concerns arise directly from the requirements of the *IRPR* (*Ntamag* at para 9). The officer in that case applied the *IRPR* to the

facts presented to him and explained which requirements were not met. The Court found this approach did not amount to a breach of procedural fairness (*Ntamag* at para 12).

[39] The case at hand is analogous to *Ntamag*. The Applicant, albeit mistakenly, failed to provide the Previous Officer with evidence that he had completed his studies within the 180-day requirement. The Previous Officer reasonably relied upon the evidence that was before them and was not required to request more evidence from the Applicant to uphold their duty of fairness.

B. *Is the Officer's refusal of the Applicant's PGWP application reasonable?*

[40] The Applicant had a valid study permit within 180 days of submitting his second PGWP application. The Applicant submitted his second PGWP application on February 5, 2020. The Applicant's study permit expired on January 27, 2020, the date of the January Decision, pursuant to section 183(5)(a) of the *IRPR*.

[41] However, the Applicant's second PGWP application was not submitted within 180 days of him receiving the final marks for his second course of studies in Supply Chain Management on June 25, 2019, as required under the "PGWP Validity and Application" section of the *PDI*.

[42] In the May Decision, the Officer denied the Applicant's PGWP application because the Applicant "no longer [held] a valid study permit at the time of [his] application." The Officer cites the requirement to apply for a PGWP within 180 days of holding a valid study permit under the "PGWP Eligibility Requirements" section of the *PDI*. However, the Officer does not

mention the requirement to apply for a PGWP within 180 days of receiving final marks under the “PGWP Validity and Application” section of the *PDI*.

[43] In my view, the Officer’s decision does not follow a rational chain of analysis and is not justified in relation to the *PDI* (*Vavilov* at para 85). The Officer mistakenly concludes that the Applicant was required to have a valid study permit at the time he applied for his PGWP, when the *PDI* clearly states the Applicant was only required to have such a permit within 180 days of applying. The Officer correctly cites the *PDI*, yet their conclusion clearly contradicts those guidelines.

[44] The Officer fails to mention that the Applicant did not submit his second PGWP application within 180 days of receiving his final marks, as required by the *PDI*. While the Officer’s conclusion to deny the Applicant’s PGWP application may have been reasonable in light of the Applicant’s failure to do so, a reasonable conclusion alone is not sufficient to withstand judicial review. Reasonableness review is concerned with both rationale and outcome (*Vavilov* at para 15). In this case, the Officer’s rationale contains internal contradictions and is not justified in relation to the guidelines cited in their decision, thus rendering their decision unreasonable.

[45] I note that several cases of this Court hold that to be eligible for a PGWP, an applicant must possess a valid study permit at the time of application, as required under the *PDI* (*Ofori v Canada (Citizenship and Immigration)*, 2019 FC 212 at paras 14, 20). However, those cases

were decided under a previous version of the *PDI*. As of February 2019, the *PDI* provides for a 180-day period for an application (*Kaur* at para 27).

C. *Is the Officer's refusal of the Applicant's restoration application reasonable?*

[46] When applying for his second PGWP, the Applicant also applied for the restoration of his temporary status, which expired on January 27, 2020.

[47] Under subsection 182(1) of the *IRPR*, a visitor, worker, or student who applies within 90 days of losing their temporary resident status shall have their status restored where the visitor, worker, or student “meets the initial requirements for their stay,” has complied with any other conditions, and otherwise satisfies the requirements of the *IRPA*:

#### **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

#### **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

of a declaration made under subsection 22.1(1) of the Act. visée au paragraphe 22.1(1) de la Loi.

[48] Noting the requirements under subsection 182(1) of the *IRPR*, the Officer concludes that the Applicant is not eligible for restoration because his temporary resident application has been refused:

In your case, your temporary resident application has been refused; therefore you are not eligible to have your temporary resident status restored.

[49] Given that the Officer found the Applicant ineligible for a PGWP, I find it was reasonable for the Officer to conclude that the Applicant was ineligible for the restoration of his temporary resident status. The Applicant was required to meet the criteria for the PGWP to be eligible for restoration (*Abubacker v Canada (Citizenship and Immigration)*, 2016 FC 1112 at para 13). This requirement is reflected under the “Restoration of temporary resident status” of the *PDI*, which states that to be eligible for restoration, an applicant must “continue to meet the requirements of a temporary resident and the requirements of the work or study permit, as applicable.”

## VI. Conclusion

[50] I find that the Officer’s May Decision is unreasonable because it does not follow a rational chain of analysis and is not justified in relation to the *PDI*, which allows the Applicant to

apply for a PGWP within 180 days of holding a valid study permit (*Vavilov* at para 85). I therefore grant this application for judicial review.

[51] The parties have not proposed a question for certification, and I agree that none arises.



**JUDGMENT in IMM-2588-20**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is granted.
2. No question is certified.

"Shirzad A."  
\_\_\_\_\_  
Judge

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

**DOCKET:** IMM-2588-20

**STYLE OF CAUSE:** CHETAN MEHMI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 9, 2021

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** SEPTEMBER 28, 2021

**APPEARANCES:**

Deepak Chodah FOR THE APPLICANT

Helen Park FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

CGM Lawyers FOR THE APPLICANT  
Barristers and Solicitors  
Surrey, British Columbia

Attorney General of Canada FOR THE RESPONDENT  
Vancouver, British Columbia