

Federal Court



Cour fédérale

Date: 20220117

Docket: IMM-4714-20

Citation: 2022 FC 51

Ottawa, Ontario, January 17, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

AMRITPAL SINGH KAURA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Amritpal Singh Kaura, is seeking judicial review of an April 1, 2020 decision (the Decision) by a case processing officer (the Officer) in which it was determined that the Applicant did not meet the requirements for a Temporary Resident Visa – Work Permit under the Post-Graduation Work Permit Program (PGWPP).

[2] The Applicant seeks an order setting aside the Decision and substituting a determination that they meet the requirements for a work permit. In the alternative, the Applicant seeks a direction that the application be referred back to either the original tribunal or a differently constituted tribunal for redetermination.

[3] The Respondent submits that the application should be dismissed.

[4] For the reasons that follow, this application is dismissed.

II. **Relevant Facts**

[5] The Applicant first applied for a Post-Graduation Work Permit (PGWP) on September 15, 2019. That application was refused on December 13, 2019. On December 25, 2019, the applicant applied for restoration of their status to remain as a visitor.

[6] The Applicant then re-applied for a PGWP on December 28, 2019. Langara College was the Designated Learning Institution (Langara). The refusal of that application is the subject matter of this application.

[7] With the PGWP application, the Applicant provided a personal letter conceding they were not a full-time student in the Fall 2018 session because they were unable to get into the third course at Langara College.

[8] In an attempt to meet the PGWP requirements, the Applicant then enrolled at Thompson Rivers University, but did not pass the course or receive any credits for it.

III. **Decision under Review**

[9] The Decision states that foreign students in Canada are eligible for a work permit for post-graduation employment only if they have continuously studied full-time in Canada and have completed a program of study that is at least eight months in duration at a designated learning institution, as itemized in the Decision.

[10] The GCMS notes, which provide reasons for the Decision, indicate that the Applicant studied part-time at Langara College during the Fall 2018 semester and completed 6 credits. The Officer noted a minimum of 9 credits were required by Langara College to be considered full-time attendance.

[11] The application was refused because the Applicant did not meet the requirements of the PGWPP when they did not maintain full-time studies for the duration of the program.

IV. **Issues and Standard of Review**

[12] The Applicant raises two issues, each with two sub-issues, as follows:

1. Was the Decision procedurally unfair because:

- (1) the Officer did not provide the Applicant with an opportunity to respond to concerns about whether their study had been on a full-time basis; or,

- (2) the Applicant held a legitimate expectation of receiving a PGWP and should have been provided with an opportunity to present additional evidence relevant to their case.

[13] Issues of procedural fairness are reviewed on what amounts to a correctness standard, although technically no standard of review applies. No matter how much deference is accorded to the decision maker in the exercise of their discretion to make procedural choices, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54 and 56.

2. Was the Decision unreasonable because, when assessing the application, the Officer:

- (1) did not give due regard to the material before them, or
- (2) made erroneous findings of fact regarding the Applicant's studies.

[14] Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 100 and 125.

V. **The Decision was Procedurally Fair**

[15] The Applicant claims the Officer was required to ask for documentation to clarify the Applicant's full-time status since the Officer based the refusal on a transcript provided by the institution, and not the Applicant. They rely on *Sandhu v Canada (Citizenship and Immigration)*, 2010 FC 759 [*Sandhu*] to submit that the Officer should have asked for clarification of anything about which they had a doubt. By not doing so, the Applicant says the decision was made in a procedurally unfair manner.

[16] The Applicant has overstated the ratio in *Sandhu* which is found at paragraph 33:

When a Visa Officer has a doubt which has no foundation in the facts and the Applicant puts her best foot forward by submitting a complete application; the Officer should seek clarification to either substantiate or eliminate the doubt. Without seeking clarification, the Officer was in no position to do either.

[17] In *Sandhu* it was found that the Applicant had filed a complete application and the facts raised no doubt.

[18] That is not the case for the Applicant. In this case, as explained in more detail below, the Applicant simply failed to meet the requirement of being in full-time studies as they acquired only 6 credits when 9 credits were required.

[19] The PGWPP eligibility requirements include that an applicant shall "have maintained full-time student status in Canada during each academic session of the program or programs of

study they have completed and submitted as part of their post-graduation work permit application.”

[20] According to the GCMS notes, the transcript from Langara College that was submitted by the Applicant shows that the Applicant required 9 credits but earned only 6 credits during the relevant period. On consulting the Langara College website, the Officer confirmed that full-time studies was equivalent to at least 9 credits so the Applicant, with only 6 credits, was in part-time studies. The Officer reasonably concluded from that information that the Applicant did not meet the PGWP eligibility requirements.

[21] The Applicant also submits that the Officer was required to ask for documentation to clarify the full-time attendance issue, since the Officer based the refusal on a transcript provided by the institution, a third party, and not by the Applicant who had no control over the content of the document.

[22] Provision of a transcript from the designated learning institution is a stipulation in the PGWP eligibility requirements. On December 28, 2019 the Applicant submitted transcripts from both Langara and Thompson Rivers. Other than the Applicant’s bald assertion that they did not have control over the document, there is no reason to believe either official transcript is inaccurate. Had the Applicant thought either transcript to be inaccurate it would be reasonable to expect that they would have contacted the institution to obtain a correct transcript.

[23] The Applicant has failed to show that they did not know the case to be met nor have they shown that they did not have a fair chance to respond to the case.

[24] The Applicant separately submits that they had “a legitimate expectation of receiving a PGWP to obtain a meaningful Canadian experience and, consequently, he should have been provided with an opportunity to represent (*sic*) additional evidence relevant to his case.”

[25] This argument is without merit.

[26] The doctrine of legitimate expectations addresses procedural protections; it does not confer substantive rights. Procedurally, the Applicant was aware of and attempted to comply with the PGWP eligibility requirements. Substantively, the Applicant did not meet the requirements for PGWP eligibility. I note as well that the Applicant has not identified what such evidence would have been or how it would have overcome the strict requirements of having studied full-time.

[27] The Applicant has not persuaded me that any aspect of the process employed by the Officer was procedurally unfair.

VI. **The Decision was Reasonable**

[28] The onus is on the Applicant to show that the decision is unreasonable.

[29] The Applicant argues the Decision is unreasonable because the Inland Processing manual (Guidelines) instructs officers to schedule an interview with an applicant if the officer intends to refuse the application and requires additional detailed information. Effectively, this is the same argument that the Applicant raised under procedural fairness and it fails for the same reason. The Officer was not lacking any information. The Langara transcript contained all the necessary facts to show that the Applicant was not in full-time attendance as he had only completed 6 credits of the 9 credits that were necessary.

[30] In addition, there is the December 28, 2019 letter from the Applicant conceding to the Officer that they were unable to get into the third course at Langara and failed the course they took at Thompson Rivers University.

[31] The Officer reasonably found the Applicant was not in full-time attendance in the Fall 2018 session at Langara based on the evidence they submitted. There is no evidence from Langara in the record to indicate that the Applicant studied there full-time.

[32] The Applicant failed the Langara English Test (LET) and argues that they consulted a Langara Student Advisor who suggested they enroll in ENGLISH 1107 which is equivalent to the LET. The Applicant did so and completed the course in the Spring 2019 session. The Applicant's enrollment in a course during Spring 2019 does not meet the requirement of full-time studies in Fall 2018.

[33] The Applicant submits they then believed that they had fulfilled the criteria for being a full-time student. Be that as it may, the requirement was that the Applicant complete full-time studies for each academic session of the program they submit as part of their PGWP application, but the Applicant did not do so.

[34] As noted by Justice Gascon in *Rehman v Canada (Citizenship and Immigration)*, 2015 FC 1021 at para 19, there are two mandatory requirements for a PGWP. These are “an applicant for a PGWP must have studied full time in Canada AND must have completed a program of study that lasted at least eight months.” (emphasis in original)

[35] It is reasonable for an Officer to strictly apply the criteria set out in the program delivery instructions: *Ofori v Canada (Citizenship and Immigration)*, 2019 FC 212 at para 14.

[36] The Applicant also alleges that the Officer failed to take into account, or overlooked, the two letters they sent.

[37] The December 25, 2019 letter seeking restoration of their status to remain as a visitor was sent in relation to a separate matter that was not before the Officer. The Officer cannot be faulted for not referring to it.

[38] The December 28, 2019 letter is noted in the GCMS notes and is in the CTR. The Officer is presumed to have weighed and considered all the evidence before them and is not required to make an explicit finding on each constituent element, however subordinate, leading to the final

conclusion: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.

[39] The Applicant is asking this Court to reweigh the evidence and come to a different conclusion than the Officer. Absent exceptional circumstances, a reviewing court will not interfere with a tribunal's factual findings provided the decision is justified in light of the facts: *Vavilov* at paras 125 - 126.

[40] There are no exceptional circumstances here.

[41] The facts are simple and clear in this matter - the Applicant did not meet the program requirements and the Officer was not obliged to seek further information. The Applicant was aware that they did not study full-time at Langara in the Fall 2018 term. The Officer is not required to inquire into matters of which the Applicant is already aware nor those that arise from the provisions of the legislation.

[42] The Officer's reasons for denying the Applicant a PGWP are justified, transparent and intelligible. The Decision is logical and coherent, without any fatal flaws.

[43] For all the foregoing reasons, the Applicant has not met their onus to show the Decision is unreasonable.

VII. **Conclusion**

[44] The application is dismissed.

[45] No question was posed for certification and none exists on these facts.

JUDGMENT in IMM-4714-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question for certification.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4714-20

STYLE OF CAUSE: AMRITPAL SINGH KAURA v THE MINISTER OF
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