Federal Court Cour fédérale

Date: 20220225

Docket: IMM-2246-21

Citation: 2022 FC 275

Ottawa, Ontario, February 25, 2022

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

ROLAND WEYINMI IGBEDION

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of the decision of a Citizenship and Immigration Canada Officer dated March 6, 2021, wherein the Officer concluded that the Applicant had failed to meet the criteria for the issuance of a work permit pursuant to the "Public policy exempting certain visitors in Canada from immigration requirements: COVID-19 program delivery".

[2] For the reasons that follow, the application for judicial review shall be dismissed.

II. Background

[3] The Applicant is a British citizen. On March 1, 2018, the Applicant's application for a work permit under the United Kingdom International Experience Canada Program [ICE Program] was approved. A work permit was issued to the Applicant on March 15, 2018 when he arrived in Canada, which was valid until March 14, 2020.

[4] On February 12, 2020, the Applicant applied from within Canada to extend his work permit under the ICE Program. By letter dated February 28, 2020, the Applicant was advised by the Case Processing Centre in Edmonton that the maximum allowable employment under the ICE Program is 24 months for the category that he was in and that as the Applicant had exhausted this period of time, he was no longer eligible for a work permit extension under this program category from within Canada. He was further advised that his status in Canada was valid only until March 14, 2020.

[5] No steps were taken by the Applicant between the receipt of the February 28, 2020 letter and March 14, 2020 to change his status in Canada to that of a visitor.

[6] One month after his work permit expired, on April 14, 2020, the Applicant applied for a work permit with his same employer. The application was supported by a submission from the Applicant's counsel advising that as the Applicant could not travel back to the United Kingdom

due to the COVID-19 pandemic, the Applicant did not want to be deemed to have overstayed in Canada and was therefore seeking an extension of his resident/work permit in Canada until November 30, 2020.

[7] The evidence of the Respondent is that a decision letter dated July 3, 2020 was sent to the email address for counsel for the Applicant advising that the April 14, 2020 application was refused. The letter stated:

> Immigration legislation requires that foreign nationals wishing to remain longer in Canada submit an application for extension of their temporary resident status on or before the expiry of the authorized period. Your temporary resident status in Canada expired on **March 14, 2020** and your application was made on **April 14, 2020**.

[8] The Applicant asserts that he did not receive this letter. Rather, the Applicant states that the Respondent has failed and refused to make a decision on his April 14, 2020 application.

[9] On August 24, 2020, the Government of Canada announced its "Public policy exempting certain visitors in Canada from immigration requirements: COVID-19 program delivery" [Public Policy]. The announcement provided:

> Visitors who are currently in Canada and have a valid job offer will be able to apply for an employer-specific work permit and, if approved, receive the permit without having to leave the country, thanks to a new public policy announced today by the Honourable Marco E.L. Mendicino, Minister of Immigration, Refugees and Citizenship.
>
> This temporary policy change takes effect immediately and will benefit employers in Canada who continue to face difficulties

> finding the workers they need, as well as temporary residents who would like to contribute their labour and skills to Canada's recovery from the COVID-19 pandemic.
>
> During the pandemic, temporary residents who remained in Canada were encouraged to maintain valid legal status. With air travel limited around the world, some visitors to Canada have been unable to leave, while some foreign workers had to change their status to visitor because their work permit was expiring and they didn't have a job offer to be able to apply for a new work permit. Some employers in Canada have also faced ongoing labour and skills shortages throughout this period, including those who provide important goods and services that Canadians rely on.
>
> To be eligible, an applicant looking to benefit from this temporary public policy must
>
> • have valid status in Canada as a visitor on the day they apply
>
> • have been in Canada on August 24, 2020 and remained in Canada
>
> • have a job offer
>
> • submit an application for an employer-specific work permit that is supported by a Labour Market Impact Assessment (LMIA) or an LMIA-exempt offer of employment, no later than March 31, 2021
>
> • meet all other standard admissibility criteria
>
> This temporary public policy also provides the opportunity for applicants who meet these criteria and who had a valid work permit in the past 12 months to begin working for their new employer before their work permit application has been fully approved. To do so, they need to follow the instructions for the process described here:
>
> https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/temporary/after-apply-next-steps.html#visitors

[10] On December 31, 2020, the Applicant submitted a further work permit application under the Public Policy. The Applicant did not include a positive LMIA, as he asserts that his intended

employment position as a truck driver is LMIA-exempt. It is this work permit application that is at issue on this application for judicial review.

[11] By letter dated March 6, 2021, the Officer refused the Applicant's application. The decision letter provides, in part, as follows:

> Based on your application and accompanying documentation that you have provided, I have carefully considered all information and I am not satisfied that you meet the requirements of the Immigration and Refugee Protection Act and Regulations. Your application as requested is therefore refused.
>
> Immigration legislation requires that foreign nationals wishing to remain longer in Canada submit an application for extension of their temporary resident status on or before the expiry of the authorized period. Your temporary resident status in Canada expired on 14 March 2020 and your application was made on 31 Dec 2020.
>
> You are a person in Canada without legal status and as such are required to leave Canada immediately. If you do not leave Canada voluntarily, enforcement action may be taken against you.

[12] The Global Case Management System notes [GCMS Notes] form part of the reasons for decision and shed light on the analysis conducted by the visa officer and on the grounds for refusing the application [see *Mohammadzadeh v Canada (Citizenship and Immigration)*, 2022 FC 75 at para 5]. The GCMS Notes provide:

> Client is requesting a LMIA based WP. Client was previously holding a WHP which expired on 14MAR2020. Current application was received on 31Dec2020. Client has not requested for restoration, nor provided restoration fees. Client did not provide a valid LMIA with application. Application refused as per R181, as client applied after their status expired. Advised to leave Canada.

III. Issue and Standard of Review

[13] The following issues arise on this application:

A. Whether the Officer breached the Applicant's procedural fairness rights; and

B. Whether the Officer's decision was reasonable.

[14] In relation to the first issue, the Court's review of procedural fairness issues involves no deference to the decision-maker. The question is whether the procedure was fair having regard to all of the circumstances, focusing on the nature of the substantive rights involved and the consequences for the individual affected [see *Canadian Pacific Railway Company v Canada (Transportation Agency)*, 2021 FCA 69, at paras 46-47].

[15] In relation to the second issue, the parties submit, and I agree, that the presumptive standard of review is reasonableness. No exceptions to that presumption have been raised nor apply [see *Vavilov*, *supra* at paras 23, 25]. Reasonableness is concerned with the outcome of the decision and the reasoning process that led to that outcome [see *Vavilov*, *supra* at para 87]. A reasonable decision is transparent, intelligible, justified in relation to the facts and law, based on an internally coherent and rational chain of analysis, and responsive to the submissions of the parties [see *Vavilov*, *supra* at paras 15, 85, 95, 127-128].

IV. Analysis

A. *Did the Officer breach the Applicant's procedural fairness rights?*

[16] The Applicant makes two procedural fairness arguments. First, the Applicant asserts that, if the Officer had any concerns with the Applicant's application materials (such as the absence of a positive LMIA or the need to obtain restoration of his status), the Officer was enjoined by law, as a public officer, vested with discretionary powers, from making a determination on the application before alerting the Applicant to the concerns and providing the Applicant with an opportunity to address those concerns. However, the Applicant cites no authority in support of this assertion, which is not surprising given that this Court has recognized that foreign nationals are entitled to the minimum degree of procedural fairness. There is no obligation on a visa officer to advise an applicant of concerns about, or deficiencies in, their application or to offer an applicant an interview. The onus does not shift to a visa officer to take any additional steps to address or satisfy outstanding concerns [see *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at paras 9-10; *Qin v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 815 at para 5].

[17] Second, the Applicant asserts that the Respondent failed and refused to make a decision or reply to the Applicant regarding his April 14, 2020 application and that the Officer failed to take into consideration the outstanding April 14, 2020 application in making their determination on the December 31, 2020 application. I reject this argument. I am satisfied that the evidence demonstrates that a decision was in fact made in relation to the April 14, 2020 application and a refusal letter was sent to counsel for the Applicant on July 3, 2020.

[18] While the Applicant argued at the hearing that the burden was on the Respondent to provide a copy of the email transmitting the July 3, 2020 decision letter to his counsel, the burden, in fact, rests on the Applicant to demonstrate the assertions made in his application – namely, that no decision was ever rendered on the April 14, 2020 application and that his counsel did not receive the July 3, 2020 decision letter. It was open to the Applicant to place before the Court an affidavit from his solicitor denying receipt of the July 3, 2020 decision letter and/or to cross-examine the Respondent's affiant who gave sworn evidence that the July 3, 2020 decision letter was sent by email to counsel for the Applicant, neither of which the Applicant did. Moreover, counsel for the Applicant's attempt to give evidence on this issue at the hearing was improper and I have therefore not taken it into account.

[19] Accordingly, I am not satisfied that the Applicant has demonstrated that his procedural fairness rights were in any way breached in the determination of his December 31, 2020 application.

B. *Was the Officer's decision reasonable?*

[20] The Applicant asserts that: (a) The Officer failed to consider the purpose of the Public Policy, which is to issue work permits to people like the Applicant who could not depart Canada due to the COVID-19 pandemic; (b) Based on the general eligibility requirements, the Applicant satisfied all the conditions necessary to be issued the requested work permit and that the Officer erred in law and fact by determining that the Applicant did not meet the requirements for the temporary resident visa under the *Immigration and Refugee Protection Regulations*, SOR/2002-227, as the application was supported by relevant documents, processing fees and detailed

explanations; (c) The Public Policy did not require the Applicant to request restoration nor pay restoration fees and as such, the Officer's refusal of the work permit on that basis was unreasonable; (d) The Officer did not take the Public Policy into consideration when making his decision; and (e) When the Applicant submitted his application he had a valid job offer and as such, he did not require an LMIA to be considered for the extension.

[21] In order to be eligible to apply for a work permit under the Public Policy, the Applicant was required to demonstrate, among other things, that: (a) he had a positive LMIA or an LMIA-exempt offer of employment; and (b) he had valid status in Canada as a visitor on the day that he applied (December 31, 2020). I am satisfied that the Officer reasonably concluded that the Applicant did not meet either of the aforementioned requirements.

[22] The Applicant's December 31, 2020 application was not accompanied by a positive LMIA. While the Applicant asserts that his position as a truck driver is LMIA-exempt and all that was required was an offer of employment, I am not satisfied that the Applicant has demonstrated that to be the case. The Applicant has cited no authority for his assertion, nor identified any LMIA exemption code that would be applicable to his proposed position. On this basis alone, it was reasonable for the Officer to have rejected the Applicant's application.

[23] Moreover, the Applicant's status in Canada expired on March 14, 2020. While the Public Policy does not require the Applicant to request restoration or pay restoration fees as the Applicant asserts, the Public Policy does require the Applicant to have status in Canada at the time the Applicant submitted an application under the Public Policy. The Applicant asserts that he still had

deemed status in Canada at the time that he applied under the Public Policy as his April 14, 2020 was still outstanding. I reject that assertion. As noted above, a decision was made on July 3, 2020 rejecting the Applicant's April 14, 2020 application. As such, the Applicant did not have status in Canada on December 31, 2020 and therefore it was reasonable for the Officer to conclude that the application under the Public Policy should be rejected on this additional ground.

[24] In light of my findings above, the application for judicial review shall be dismissed.

[25] No question for certification was proposed by the parties and I agree that none arises.

JUDGMENT in IMM-2246-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The parties proposed no question for certification and none arises.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2246-21
STYLE OF CAUSE:	ROLAND WEYINMI IGBEDION V. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HEARD BY VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 23, 2022
JUDGMENT AND REASONS:	AYLEN J.
DATED:	FEBRUARY 25, 2022

APPEARANCES:

Abdul-Rahman Kadiri	FOR THE APPLICANT
John Loncar	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kingsley Jesuorobo & Associates Barristers and Solicitors North York, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT