

Federal Court



Cour fédérale

Date: 20220601

Docket: IMM-2918-20

Citation: 2022 FC 797

Ottawa, Ontario, June 2, 2022

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

FELIX SALOTRA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Felix Salotra, seeks judicial review of the refusal of a Temporary Residence Permit (TRP), which he sought to gain time to regularize his status in Canada.

[2] For reasons discussed below, the application for judicial review is dismissed because it is moot.

I Background

[3] The Applicant is a citizen of India who came to Canada on a study permit in December 2014. Following graduation from his program, he obtained a post-graduate work permit, which was valid until July 7, 2019. On July 5, 2019, he applied for another work permit, but this application was refused on October 25, 2019 because he had not provided a valid Labour Market Impact Assessment (LMIA). The refusal letter advised the Applicant that he could apply for restoration of his status within 90 days.

[4] On November 20, 2019, the Applicant attempted to enter Canada; he said he thought that the border agent could issue him a work permit. He presented an offer of employment together with a LMIA document to the Officer. Under questioning by the Officer, the Applicant denied he had been working since the refusal of his work permit. The Officer contacted the employer who had made the job offer, whose representative said that the Applicant was on vacation but was expected back to work the following Monday. Based on this, the Officer determined that the Applicant had been working without authorization, deemed him inadmissible under paragraph 41(a) of the *Immigration and Refugee Protection Act*, SC 201, c 27 [IRPA], and made him subject to an exclusion order for one year (a period that expired on November 19, 2020).

[5] On January 3, 2020, the Applicant applied for a TRP and a work permit, claiming that he had not intentionally breached the law, that he had misunderstood the requirements and procedures to obtain a work permit, and that he had a valid job offer. On June 25, 2020, an Officer refused his application for a TRP. In the intervening period, the Applicant was removed from Canada and returned to India.

[6] The Applicant seeks judicial review of the refusal of his TRP application. He asks that the decision be quashed, and also requests an order of mandamus, “compelling a newly-constituted tribunal to consider the issuance of a Temporary Residence Permit to the Applicant.”

[7] Shortly prior to the hearing, the Respondent submitted that the matter should not proceed because it was moot. There was not time to deal with this before the hearing, so I directed counsel to address it in the course of their oral submissions.

[8] The Respondent submits that the matter should be dismissed as moot. The exclusion order barring the Applicant’s entry to Canada has expired, and thus he no longer needs a TRP to enter Canada. The Respondent contends that, therefore, there is no longer any live controversy regarding the refusal of the TRP: there is no bar preventing the Applicant from entering Canada. If the Applicant wants to return to Canada to work, he must follow the same process as other foreign nationals by applying for a work permit. Because he no longer needs a TRP to enter the country, it would be of no practical utility to send the matter back for reconsideration if he is successful in this application.

[9] The Applicant argues that the matter is not moot. Although he is no longer inadmissible, his judicial review application also seeks to remedy a situation that he found himself in through little fault of his own. The Applicant also contends that the Officer’s decision was unreasonable and that quashing it should have the effect of putting him back in the position that he was in at the time it was made. He needs a visa to return to Canada so that he can take up the job that was offered to him, and in doing so, relies on the LMIA that was valid as of the time the presently challenged decision denying him entry was made. He was then still within the period to restore

his status. The Applicant argues that, therefore, there is still a live controversy between the parties relating to the validity of the Officer's decision. He submits that quashing that decision would have a practical benefit to him because he could then rely on the LMIA to return to Canada to work; he would not need a visa nor would he have to wait for a new LMIA to be issued. In sum, the Applicant contends that the effect of the denial of the TRP still lingers, and in these unique circumstances, it would be unfair to dismiss his application as moot.

[10] The mootness analysis proceeds in two stages, asking first whether the proceeding is moot – that is, whether a live controversy remains that affects or may affect the rights of the parties. If the matter is found to be moot, the second stage of the inquiry asks whether the court should nonetheless exercise its discretion to hear and decide it (*Democracy Watch v Canada (Attorney General)*, 2018 FCA 195 at para 10, citing *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342, [1989] WWR 97 at 353-363; and see *Harvan v Canada (Citizenship and Immigration)*, 2015 FC 1026 at para 7 [*Harvan*]).

[11] In this case, the issue of mootness arises because the application for judicial review challenges the refusal of the TRP application, which the Applicant only needed because of the exclusion order, but that order had expired by the time of the hearing. According to the Respondent, even if the Applicant is successful, a judgment in his favour would have no practical effect because it would serve no purpose to quash the decision and to remit the matter back for reconsideration. The Applicant does not need a TRP to return to Canada, and thus ordering reconsideration of his prior TRP application would not assist him from a practical perspective.

[12] The Respondent contends that this case is similar to *Kwong v Canada (Citizenship and Immigration)*, 2016 FC 179 [*Kwong*] and *Brown v Canada (Citizenship and Immigration)*, 2003 FCT 446 (TD) [*Brown*].

[13] In *Kwong* the challenge related to a negative TRP decision made in March 2015; however, a separate TRP was approved for the applicant in January 2016. Justice Zinn concluded that the matter was moot, because the relief sought by the applicant in that case was to quash the earlier TRP decision. As Justice Zinn summarized the matter at paragraph 12: “Basically, the applicant is seeking an opportunity to persuade the officer to issue him a TRP. That has happened.” Although the applicant in that case argued that he may be refused a TRP in the future on the same basis as the decision he was seeking to have quashed, Justice Zinn found that to be speculative, particularly given that the applicant’s more recent TRP application had been granted. The application was, therefore, dismissed as moot.

[14] The applicant in *Brown* challenged an exclusion order issued against him. Justice MacKay found that the matter was moot because the exclusion order had expired prior to the hearing of the matter:

[7] It is clear that the issue is moot, as the exclusion order expired more than a month before the hearing of this review. A decision on the merits of this case would, at the moment, make no difference to either party. The only remaining issue is whether the expired exclusion order in the applicant's file will hinder any further application he may make for permanent residency in Canada. In my opinion, the Court should not speculate on the significance, if any, of an expired exclusion order in considering any future issue or application about the applicant's immigration status. Clearly, the expired order itself has no direct effect on the applicant's status.

[15] The Respondent contends that the situation in this case is the same as in *Kwong* and *Brown*: there is no remaining live controversy between the parties, and quashing the decision to refuse the TRP would have no practical impact on the Applicant's ability to come back to Canada.

[16] The Applicant argues that there is still a live controversy, because quashing the TRP decision would have the effect of re-winding the clock for him, with the result that he would be allowed to return to Canada without needing any further approvals. He argues that the jurisprudence cited by the Respondent does not apply here, because of the unique circumstances of this case.

[17] The Applicant points to two critical factors that he says makes his situation unique: he was within the 90-day restoration period at the time of the challenged decision, and he had a valid LMIA and so met the requirements for a work permit. This is unlike *Kwong*, where a separate TRP had been approved; it is also different from the situation in *Harvan*, where the applicant did not participate in the hearing of his application.

[18] In light of the particular circumstances of his case, and the fact that he seeks to rectify a situation that he found himself in through no fault of his own, the Applicant contends that the matter should not be dismissed as moot.

[19] I am not persuaded. This application for judicial review is moot. The Applicant's argument rests on his claim that he should be able to "unwind the clock" and to go back to the

situation he was in at the time of the decision under review was made. However, this is not practical or realistic for three reasons.

[20] First, the Applicant's effort to go back in time thus would involve ignoring the subsequent legal developments. As the Applicant acknowledged at the hearing, he submitted a new work permit application from New Delhi, which was refused in February 2021. The Applicant's application for leave and judicial review of that decision was also refused, and so that decision stands as final.

[21] Second, even if the Applicant succeeds in this application, it would serve no purpose to remit the matter back to another officer for redetermination, because the Applicant no longer needs a TRP to be eligible to come to Canada. If he wants to come here to work he must follow the same process as other foreign nationals, and that means he will need a work visa supported by a fresh LMIA. Even if the decision were quashed and ordered to be re-determined, an officer tasked with reconsidering a TRP decision that was only needed because of a now-expired exclusion order would have no power to ignore those statutory requirements.

[22] I agree with the Applicant that the *Kwong* and *Harvan* decisions are distinguishable on their facts; however, I find that the facts in this case are quite similar to the situation in *Brown*. Like Justice MacKay in that case, I find that "[a] decision on the merits of this case would, at the moment, make no difference to either party" (at para 7). The fact that the Applicant was within the restoration period and had a valid LMIA at the time of the decision under review is not a basis to overlook the core underlying fact that the Applicant no longer needs a TRP to come to Canada.

[23] Finally, there is no evidence that the challenged decision continues to have any lingering effect on the Applicant's status, and it is not appropriate to speculate whether or how the expired order will have any potential impact on any future applications for immigration status. As Justice MacKay stated in *Brown*, "...the Court should not speculate on the significance, if any, of an expired exclusion order in considering any future issue or application about the applicant's immigration status. Clearly, the expired order itself has no direct effect on the applicant's status" (para 7). Similarly, in *Kwong* Justice Zinn rejected the applicant's argument that there was still a live controversy because a future TRP might be refused on the same basis as the one being challenged, because he found the argument to be speculative (see para 13). The same is true here. The Applicant has acknowledged that the exclusion order has expired and he therefore does not need a TRP to be eligible to come back to Canada. Consideration of any impact of the challenged decision on future applications would be inappropriately speculative.

[24] For all of these reasons, the application for judicial review is dismissed because it is now moot.

JUDGMENT in IMM-2918-20

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

“William F. Pentney”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2918-20
STYLE OF CAUSE: FELIX SALOTRA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING: BY VIDEOCONFERENCE
DATE OF HEARING: FEBRUARY 14, 2022
**JUDGMENT AND
REASONS:** PENTNEY J.
DATED: JUNE 2, 2022

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