Federal Court Cour fédérale

Date: 20220602

Docket: IMM-6102-21

Citation: 2022 FC 811

Ottawa, Ontario, June 2, 2022

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

ABIMBOLA MERCY AJE
BOLARINWA ADEWALE AJE
OLOLADE ADEKUNLE AJE
OLANREWAJU ADEGORIOLA AJE

Applicants

and

THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are unsuccessful refugee claimants who applied for permanent residence under a temporary public policy designed to grant status to refugees who worked in Canada's health care sector during the COVID-19 pandemic. They are challenging the decision of an immigration officer who concluded that the Principal Applicant was ineligible under the policy.

[2] As explained in greater detail below, this application is dismissed, because the officer's decision was neither procedurally unfair nor unreasonable.

II. **Background**

[3] The Principal Applicant, Abimbola Mercy Aje, applied for permanent residence for her and her family members (the other Applicants) under a temporary public policy creating a pathway to grant status to refugee claimants who had worked a minimum number of hours in the health care sector during the COVID-19 pandemic [the Pathway Program]. Prior to her application, the Applicants had applied for refugee status in Canada, but their claim was refused, as was the subsequent appeal.

[4] With her application, the Principal Applicant submitted a letter from Home Instead Senior Care [Home Instead], an in-home care provider for seniors, confirming that she completed 140 hours of training and practical work as a professional care-giver between June 1 and July 10, 2020. This training was unpaid and, when it was complete, the Principal Applicant received a Certificate of Completion from Home Instead. The letter also confirmed that from August 2020, after completing her training, the Principal Applicant continued on as an on-call employee at Home Instead and had completed an additional 101 hours of paid work there.

[5] In addition to her work at Home Instead, the Principal Applicant held a part-time position as a direct support worker with Community Living, where she worked a total of 667 hours during the period between December 2020 and May 2021. At both jobs, she provided direct

personal care to patients, including daily grooming/bathing, toileting support, medication administration and reminders, meal preparation and companionship.

III. Decision Under Review

[6] In a letter dated August 25, 2021, a senior immigration officer [the Officer] refused the Applicants' application for permanent residence. The letter stated that the Principal Applicant was not eligible for permanent residence under the new public policy and identified the following reasons for ineligibility:

> you did not work in Canada in one or more designated occupations providing direct patient care in a hospital, public or private long-term care home or assisted living facility, or for an organization/agency providing home or residential health care services to seniors and persons with disabilities in private homes :
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> - for a minimum of 120 hours (equivalent to 4 weeks full-time) between March 13, 2020 and August 14, 2020; and
> - for a minimum of 6 months full-time (30 hours per week) or 750 hours (if working part-time) total experience (obtained no later than August 31, 2021)

[7] On August 26, 2021, the Principal Applicant submitted a request for reconsideration. In a letter dated August 27, 2021, the Officer again refused the application. Attached Reasons for Decision referred to the Principal Applicant's work experience and supporting documents and stated:

> To qualify under this public policy, periods of work in a designated occupation must be paid unless the applicant was completing an internship that is considered an essential part of a post-secondary study program or vocational training program in one of the designated occupations or an internship performed as part of a

> professional order requirement in one of the designated occupations. I am not satisfied that the PA's training from 2020/06/01 to 2020/07/10 meets the criteria for the public policy and I find insufficient evidence that the PA worked in a designated profession for 120 hours between 2020/03/13 and 2020/08/14.

[8] Under a heading entitled "Addendum 27/08/2021: Reconsideration Request:" the Reasons further stated:

> On 16/08/2021, the applicant requested reconsideration of the refusal decision. The applicant states that their internship consisted of "…vocational training hours which led to her employment with Home Instead Care upon completion of her training." The applicant did not provide further submissions. In the submissions initially received with the application, the letter from 'Home Instead Care' dated 2020/06/06 indicates that the applicant completed training and practical work as a Professional Care-Giver from 2020/06/01 to 2020/07/10 and was "…employed <u>after</u> completion of the training as a CAREGiver dated August 2020" (emphasis added). I find that the evidence provided indicates that the applicant completed unpaid training and work for an employer and I find insufficient evidence that the applicant completed an internship as part of an accredited vocational training program. I am not satisfied that the evidence provided demonstrates that the applicant completed an unpaid internship as part of a vocational training program or as part of a post-secondary study program or a professional order requirement. This application is refused.

[9] On August 30, 2021, the Principal Applicant submitted a second request for reconsideration. In a letter dated September 3, 2021 the Officer again refused the request, reiterating facts recited in the previous letters and stating the following:

> … I find that the evidence demonstrates that you completed an unpaid internship for an employer and not as part of an accredited vocational training program. I am not satisfied that your internship was part of a post-secondary study program or vocational training program in one of the designated occupations or an internship

> performed as part of a professional order requirement in one of the designated occupation.

[10] Based on this reasoning, the Officer concluded that a second reconsideration was not warranted. This second reconsideration is the decision being challenged in this application for judicial review.

IV. **Issues and Standard of Review**

[11] The Applicants articulate the following issues for consideration by the Court:

A. Whether the Officer failed to observe the principles of natural justice and procedural fairness or otherwise acted beyond or refused to exercise its discretion;

B. Whether the Officer failed to consider the totality of the evidence before it; and

C. Whether the Officer's decision was based on erroneous findings of fact made in a perverse and capricious manner without regard to the materials before it.

[12] The first issue regarding procedural fairness is assessed on a standard of correctness. For the second and third issues, the applicable standard of review is reasonableness.

V. **Analysis**

A. *Temporary Public Policy*

[13] The Pathway Program resulted from a Temporary Public Policy [TPP] that Immigration, Refugees and Citizenship Canada [IRCC] put in place to facilitate the granting of permanent residence for certain refugee claimants working in Canada's health care sector, providing direct patient care, during the COVID-19 pandemic.

[14] The document in the record before the Court that appears to best document the TPP underlying the Pathway Program is a Government of Canada document entitled "Temporary public policy to facilitate the granting of permanent residence for certain refugee claimants working in the health care sector during the COVID-19 pandemic" [the Policy Document]. This document includes what appears to be a ministerial statement establishing that, pursuant to authority under s 25.2 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], there are sufficient public policy considerations that justify the granting of permanent resident status or an exemption from certain requirements of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 to foreign nationals who meet the conditions (eligibility requirements) listed in the Policy Document.

[15] For purposes of addressing the issues raised in this application for judicial review, it is not necessary to set out the entirety of the conditions listed in the Policy Document. It is uncontested that, to be eligible under the Pathway Program, an applicant must have worked in one or more designated occupations for a minimum period of time. The condition at issue in this application for judicial review surrounds the circumstances in which an applicant can be eligible based on unpaid work. This condition reads as follows:

> 4. c. for greater certainty, periods of work in a designated occupation must be paid unless the applicant was doing an internship that is considered an essential part of a postsecondary study program or vocational training program in one of the designated occupations, or an internship performed as part of a professional order requirement in one of the designated occupations.

B. *Procedural Fairness of the Officer's Decision*

[16] In asserting that the Decision suffers from a lack of procedural fairness, the Applicants first argue that the Officer failed to give adequate reasons for refusing her application. However, as the Respondent correctly submits, the Supreme Court of Canada confirmed in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] that the adequacy of reasons is not a stand-alone ground for initial review (at para 304). Rather, consideration of a decision-maker's reasons represents part of the Court's role in assessing the reasonableness of a decision under judicial review (see *Vavilov* at paras 99-101). I will turn to the Officer's reasons when considering the Applicants' reasonableness arguments later in this decision.

[17] The Applicants also assert that the Principal Applicant was deprived of procedural fairness, because the Officer did not inform her of the relevant concerns and afford her a meaningful opportunity to provide a response to those concerns.

[18] I find no merit to this argument. It is clear from the August 27, 2021 Addendum in the Reasons for Decision, and the subsequent letter dated the September 3, 2021, that the Officer's rejection of the first and second reconsideration requests turned on the Officer's conclusion that the Principal Applicant had completed unpaid training and work for an employer, not an

internship as part of an accredited vocational training program, and was therefore ineligible for the Pathway Program. As this reasoning was provided in connection with the Officer's rejection of the first reconsideration request, the Applicants cannot credibly argue that she was unaware of, and therefore did not have an opportunity to address, the Officer's concerns when presenting the second reconsideration request. As previously noted, the rejection of the second reconsideration request is the subject of this application for judicial review.

[19] Moreover, the Officer's reasoning turned on interpretation of the requirements of the TPP, not any concerns about the credibility or genuineness of the Principal Applicant's submissions. Therefore, there is no basis for the Court to find a breach of procedural fairness: (see, e.g., *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24).

[20] The Applicants also raise the possibility that the Officer may have doubted the genuineness of the documents submitted by the Principal Applicant or the truthfulness of her evidence. While a concern about genuineness or truthfulness could give rise to a procedural fairness requirement, I find no indication in the record that the Officer had such a concern. Rather, as noted above, the rejection of the application turned on the Officer's conclusion that the Principal Applicant completed unpaid training for an employer, not an internship as part of an accredited vocational training program, and therefore did not qualify for the Pathway Program.

C. *Reasonableness of the Officer's Decision*

[21] The remainder of the Applicants' arguments represent challenges to the reasonableness of the Officer's decision. These arguments include an assertion that the Officer ignored or disregarded the evidence presented by the Principal Applicant and that the Officer failed to provide reasons allowing the Applicants to understand why the application failed. Again, I find no merit to this submission. It is clear that the Officer considered the evidence and concluded that the Principal Applicant was ineligible because she had completed unpaid training for an employer and not a vocational training as part of an accredited program, which the Officer considered to be a condition for eligibility under the TPP.

[22] The remaining issue for the Court's consideration is whether it was reasonable for the Officer to interpret the TPP as requiring that unpaid work performed in the course of vocational training be part of an accredited program in order to qualify under the Pathway Program. I note that the application of the standard of reasonableness to an officer's interpretation of the requirements of a TPP is supported by Justice LeBlanc's decision in *Abraham v Canada (Citizenship and Immigration)*, 2016 FC 449 [*Abraham*] at para 17.

[23] In support of its position that the Officer's interpretation of the TPP was reasonable, the Respondent relies substantially on the Affidavit of Céline Beauparlant, described as an assistant director in the Social and Discretionary Program and Policy Division in the Immigration Branch. In 2020 and 2021, Ms. Beauparlant was a senior policy analyst in the same Division and Branch and worked on the development of the TPP for the Pathway Program. In my view, the

paragraphs of Ms. Beauparlant's affidavit most relevant to the Respondent's submissions read as follows:

> 10. The vocational training program criteria for unpaid work was intended by IRCC to be formal training, and not simply unpaid work as a caregiver for an institution without accreditation to provide such training. When considering whether to include internship or not as part of the public policy many elements were on the table. First, it was decided not to include unpaid or volunteer work for a number of reasons: 1) Accepting volunteer experience as work experience could have unintended negative consequences for future immigration policy and the labour market. For example, some Canadians and permanent residents may be disadvantaged by others who are able and eager to volunteer, displacing what would otherwise be paid employment and potentially having a depressive effect on wages; 2) Unpaid work, in the context of those with precarious immigration status, can create a situation of vulnerability to worker exploitation, where the worker is not only not compensated for work done, but may also be held in that situation for fear of not meeting later immigration requirements. 3) Attempting to validate volunteer experience could create an additional burden on the volunteer sector, for example, requests from applicants to organizations to validate their volunteer work (period of time, types of tasks, etc.).
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> 11. The possible addition of internship, paid and unpaid, was another element for consideration. Paid internship was not a concern, but it was important to ensure unpaid internship would not lead to issues raised above for volunteer work. In consultation with colleagues from the Student team within IRCC, a requirement was added in the public policy (4.c) to accept unpaid internship but to frame it in a certain way, i.e., it was important to circumscribe what types of unpaid internship would be accepted to avoid these issues mentioned above and also ensure the integrity of the special measure. This public policy was developed and implemented in a time of crisis where elderly people were especially affected and passing away in hospitals, long term care homes and other facilities and when there were a lot of uncertainties for people working in the healthcare system through Canada. In this context, it was important to have criteria that required these applicants, who were working with a vulnerable population, to have recognized training and not volunteer work. It was also important, from an operational perspective, to have proof of this training that was efficiently verifiable so that officers could efficiently recognize the work credentials of these applicants.

> ….
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> 16. Where an individual received unpaid training not coming from a school or educational institution, IRCC cannot efficiently assess the quality of the training, as such training that are not an essential part of programs managed by a school or educational institution could be in a variety of un-controlled environments which could have an impact on the credibility of the measure and could have an unintended consequences on the health of an already vulnerable population.

[24] The Applicants have not taken issue with the wisdom of the policy considerations identified in Ms. Beauparlant's evidence. However, I have difficulty with the Respondent's efforts to rely on this evidence in the absence of any indication in the record that these policy considerations were documented or otherwise communicated in a manner that brought them to the Officer's attention. The issue for the Court's consideration is whether the Officer reasonably interpreted the TPP. In my view, the Court's analysis must be based on the information that was available to the Officer when arriving at the relevant interpretation. I accept the possibility that such information could include more than just the Policy Document identified earlier in these Reasons. However, I find no basis to conclude that such information includes the detailed policy considerations identified in Ms. Beauparlant's affidavit.

[25] That said, Ms. Beauparlant does note that the form (IMM 1018) published by IRCC for use by applicants under the Pathway Program includes a specific section on internship (Section E) that requires applicants to identify the "School/educational institution where the program was delivered" and the "Name of the health care program". Ms. Beauparlant describes this portion of the form as intended to help to efficiently verify an applicant's internship. The Respondent submits that IRCC's construction of the form to include this content can be characterized as

communication of the requirement that unpaid work be part of a formal educational or training program and that the Officer's interpretation of the TPP is supported thereby. The Respondent notes that, when completing this portion of her application form, the Principal Applicant referred to "on-the-job training and short certificates" in the field for "School/educational institution where the program was delivered" and left blank the field for "Name of the health care program".

[26] I accept that this argument assists the Respondent in supporting the reasonableness of the Officer's interpretation and resulting decision that the nature of the Principal Applicant's training did not support her eligibility.

[27] I have also considered the Respondent's argument that the Officer's interpretation of the language of the Policy Document upon which the Principal Applicant's Pathway Program application relies (i.e., "… an internship that is considered an essential part of a … vocational training program in one of the designated occupations…"), as contemplating a formally accredited program, is consistent with the other categories of internships recognized in the Policy Document. Those other categories are "… an internship that is considered an essential part of a postsecondary study program …" and "… an internship performed as part of a professional order requirement in one of the designated occupations …". The Respondent's point is that the references to a postsecondary study program and a professional order requirement clearly contemplate formally recognize programs and that it was therefore reasonable for the Officer to interpret similarly the reference to a vocational training program.

[28] I consider this argument compelling. In so concluding, I recognize that the Court must be cautious about performing a reasonableness review based on an analysis that is not expressly reflected in the reasons underlying the decision. *Vavilov* teaches that reasonableness review concerns the justification provided by a decision-maker, not justification that could have been provided (see *Vavilov* at para 86). However, *Vavilov* also recognizes (in the context of statutory interpretation) that administrative decision-makers are not required to engage in a formalistic interpretation exercise in every case (at para 119), and I would regard this principle as applying to the interpretation of the TPP underlying the decision in the case at hand.

[29] I return to the point, as confirmed in *Abraham*, that the standard of reasonableness applies to the Officer's interpretation of the TPP, meaning that some deference and latitude is to be afforded to the Officer. As stated in *Abraham*, if the wording of a ministerial policy leaves an officer implementing that policy no latitude in its interpretation, a decision that is contrary to that wording will be unreasonable (at para 17). However, I do not regard the wording relevant to the case at hand it to deprive the Officer of the latitude to interpret that wording in the manner reflected in the decision under review. Indeed, as explained in my analysis above, there are aspects of that wording, and the record before the Officer, which support that interpretation.

[30] As such, I conclude that the Officer's decision is reasonable and that this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-6102-21

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

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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