Federal Court  Cour fédérale

Date: 20230425

Docket: IMM-983-22

Citation: 2023 FC 597

Ottawa, Ontario, April 25, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

CLAUDIA LUCIA HORN ZELMANOVITZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant has applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*") for judicial review of the January 25, 2022, decision of a visa officer with Immigration, Refugees and Citizenship Canada ("IRCC") confirming an earlier decision refusing an application for a post-graduate work permit. I stated at the conclusion of the hearing that I would be allowing the application for judicial review for reasons to follow. These are those reasons.

[2] The applicant is a citizen of Brazil. In March 2020 she was completing the final semester of her degree in Library Information Technology at MacEwan University in Edmonton, Alberta. As a result of a family emergency, the applicant had to take a brief leave from her studies and return to Brazil. The applicant departed Edmonton on March 10, 2020. She booked her return flight to depart Brazil on March 21, 2020. However, as a result of measures adopted while she was away in response to the emerging COVID-19 pandemic, the applicant was unable to return to Canada as planned.

[3] Also as a result of the pandemic, the applicant's classes at MacEwan University were suspended and final exams were changed to on-line format. Consequently, despite now being stuck in Brazil, the applicant was able to complete her degree on time.

[4] In May 2020, the applicant submitted an application for a post-graduate work permit using IRCC's on-line portal. The applicant was in Brazil at the time. She believed, however, that she was still legally a resident in Canada because she still had the apartment she was renting in Edmonton, her study permit was valid until July 31, 2020, and her return to Canada had simply been delayed temporarily by circumstances beyond her control. As a result, the applicant completed and submitted IRCC form IMM 5710 - *Application to Change Conditions, Extend My Stay or Remain in Canada as a Worker*. In a covering letter accompanying her application, the applicant explained why, as a result of the COVID-19 pandemic, she was submitting her application from Brazil.

[5] Some 18 months later, on November 17, 2021, a visa officer with IRCC refused the application. The sole reason for the refusal is the following: "As you are no longer in Canada you are not a person described in Immigration Legislation who can apply to change conditions or to extend your stay from within Canada."

[6] The applicant immediately retained counsel. On December 9, 2021, her counsel submitted a detailed and comprehensive request for reconsideration of the negative decision.

[7] In a nutshell, counsel submitted that: (1) the applicant had used the wrong application form in error; (2) the correct form (IMM-1295 – *Application for Work Permit Made Outside of Canada*) had now been completed and provided; (3) the applicant met all the requirements to be eligible for a post-graduate work permit; and (4) reconsideration was being requested because, due to the length of time it had taken IRCC to render the first decision, the applicant was now outside the timeframe within which, under IRCC policy, an application for a post-graduate work permit must be submitted. (Under that policy, an applicant must apply for a post-graduate work permit within 180 days of obtaining written confirmation from the designated learning institution that they have met the requirements for completing their course of study. The applicant received this confirmation from MacEwan University on May 1, 2020.)

[8] Notably, the applicant's eligibility for a post-graduate work permit under section 200 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, and IRCC policy had nothing to do with whether she was in or outside Canada at the time she submitted her application.

[9] The applicant's counsel expressly requested that, if the visa officer considering the reconsideration request is unable to deal with an out-of-Canada application, the application be forwarded to the appropriate decision maker at IRCC.

[10] On January 25, 2022, the IRCC officer who dealt with the matter previously confirmed the original decision refusing the application. As reflected in the officer's Global Case Management System ("GCMS") notes, the officer was satisfied that the original decision was correct because the new information confirmed that the applicant was, in fact, outside Canada when she submitted the original application. As for the applicant's request that the application be treated as an out-of-Canada application, the officer noted the following in GCMS: "The client is requesting as part of the reconsideration request that we change the application from an in-Canada WP extension to a WP application to be processed outside Canada. This application as submitted cannot be considered as an out of Canada application and client must submit a new application using the proper procedure designated for out of Canada applications."

[11] The parties agree, as do I, that the officer's decision should be reviewed on a reasonableness standard.

[12] 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" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). To set aside a decision on the basis that it is unreasonable, 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" (*Vavilov* at para 100).

[13] I am satisfied that the officer's decision is unreasonable. The determinative issue is the officer's refusal to facilitate the processing of the work permit application as an out-of-Canada application. As part of her request for reconsideration, the applicant had corrected her earlier error and submitted the proper form for someone applying for a work permit from outside Canada. She also provided a detailed explanation (supported by a statutory declaration) for how she had come to make her earlier error and why she was now submitting the correct application form within the context of a request for reconsideration. On review, the respondent was unable to point to any legislation, regulation or policy to support the officer's statement that the application "as submitted cannot be considered as an out of Canada application." Importantly, and contrary to what the officer appears to have thought, it was impossible for the applicant to correct her earlier error by submitting a new application. Given that she was now outside the timeframe to apply for a post-graduate work permit because of how long IRCC had taken to deal with the application as originally submitted, any such application would be doomed to fail for that reason alone.

[14] The officer's decision must, therefore, be set aside and the matter remitted for redetermination.

[15] In the particular circumstances of this case, I am also satisfied that this redetermination should be in accordance with certain directions from the Court. First, to avoid any further

confusion, IRCC shall consider the application as an application for a post-graduate work permit made outside of Canada. Second, to ensure that the applicant is not further prejudiced by IRCC's lengthy delay in rendering the first decision, the lock-in date for this application shall be the lock-in date for the application originally submitted in May 2020. Third, IRCC shall request any additional information it requires from the applicant within 30 days of the date of this Judgment and shall give the applicant a reasonable opportunity to provide that information. Fourth, the applicant shall provide any other updated information she wishes to submit to IRCC within 30 days of the date of this Judgment. Finally, the applicant requests that the Court direct that IRCC make a decision on the redetermination within 60 days of receiving her updated materials. I am not satisfied that it is appropriate to place this constraint on IRCC, particularly in view of the ongoing labour disruption. Nevertheless, this matter has been long-delayed. While some of that delay is understandable given the challenges of dealing with the COVID-19 pandemic when the applicant first submitted her application, it should not have been necessary for the applicant to bring this application for judicial review (with all the additional delay that has entailed). I will therefore direct that a decision be made on the redetermination as expeditiously as circumstances permit. To be clear, I expect IRCC to give priority to this redetermination.

[16] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-983-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision of the visa officer dated January 25, 2022, is set aside and the matter is remitted for redetermination.
3. Pursuant to paragraph 18.1(3)(b) of the *Federal Courts Act*, RSC 1985, c F-7, this redetermination shall be in accordance with the following directions:
    a. IRCC shall consider the application as an application for a post-graduate work permit made outside of Canada.
    b. The lock-in date for this application shall be the lock-in date for the application originally submitted in May 2020.
    c. IRCC shall request any additional information it requires from the applicant within 30 days of the date of this Judgment and shall give the applicant a reasonable opportunity to provide that information.
    d. The applicant shall provide any other updated information she wishes to submit to IRCC within 30 days of the date of this Judgment.
    e. A decision on the redetermination shall be made as expeditiously as circumstances permit.
4. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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