

Federal Court



Cour fédérale

**Date: 20230929**

**Docket: IMM-7899-22**

**Citation: 2023 FC 1315**

**Ottawa, Ontario, September 29, 2023**

**PRESENT: The Honourable Madam Justice Turley**

**BETWEEN:**

**AVTAR SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS FOR JUDGMENT**

[1] The Applicant seeks judicial review of a visa officer's [Officer] decision to refuse the restoration of his study permit [Decision]. I am dismissing the application because the Officer did not breach procedural fairness in failing to give the Applicant notice and an opportunity to respond to concerns about a lack of sufficient financial resources. The onus was on the Applicant to establish that he met all the legislative requirements, including the financial requirements in the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[2] Furthermore, the Officer reasonably concluded that the Applicant had failed to actively pursue his studies based on a one-year gap in his schooling, and that he had insufficient, available financial resources to fund his intended studies.

I. Background

[3] The Applicant is a citizen of India who came to Canada on a study permit that was valid from January 8, 2018, until November 30, 2019. He received another study permit that was valid from January 11, 2020, until September 30, 2020. The Applicant completed his studies at Mohawk College in May 2020.

[4] Nine months after completing his studies, the Applicant applied for a post-graduation work permit [PGWP Application]. His PGWP Application was denied because he had not applied within 180 days after completing his program of study at Mohawk College. In April 2021, the Applicant sought to restore his study permit so that he could attend Evergreen College from May 2021 until October 2022.

[5] The Applicant's restoration application was refused for two reasons. First, the Officer concluded that, based on the one-year gap in his studies between May 2020 and May 2021, the Applicant had failed to actively pursue his studies, as required by section 220.1 of the *IRPR*. Second, the Applicant had insufficient available financial resources to pay for his schooling and maintain himself, in accordance with subsection 220(a) of the *IRPR*.

II. Issues and Standard of Review

[6] As a preliminary issue, the Respondent challenges the admissibility of the Applicant's affidavit sworn October 26, 2022, because it provides evidence that was not before the Officer.

[7] The Applicant raises the following issues:

- (1) Whether the Officer breached procedural fairness in failing to provide the Applicant notice that he did not meet the financial requirements in subsection 220(a) of the *IRPR*.
- (2) Whether the Officer's Decision is unreasonable in finding that the Applicant:
  - (i) failed to comply with the conditions of his study permit based on a gap in his studies; and
  - (ii) had insufficient available funds to pay for school and support himself.

[8] Allegations of breaches of procedural fairness are reviewable on a standard akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]. The reviewing court must assess whether the procedure followed by the decision-maker was fair and just in the circumstances: *Canadian Pacific* at para 54; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35.

[9] As enunciated by the Supreme Court in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], 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": *Vavilov* at para 85. To withstand scrutiny, a decision

must exhibit “the hallmarks of reasonableness – justification, transparency and intelligibility”:  
*Vavilov* at para 99.

III. Analysis

A. *Affidavit is not admissible*

[10] The jurisprudence is clear that new evidence may only be admitted on a judicial review application where: (i) it provides general background that might assist in understanding the relevant issues; (ii) it highlights the complete lack of evidence before the decision-maker on a particular finding; or (iii) it addresses procedural defects that cannot be found in the evidentiary record of the decision-maker: *Sharma v Canada (Attorney General)*, 2018 FCA 48 at para 8; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20(b).

[11] While the Applicant is challenging the Decision on procedural fairness grounds, the new evidence does not point out any procedural defects in the record. According to Applicant’s counsel, the purpose of the affidavit is to demonstrate what evidence could have been adduced to satisfy the Officer’s concerns about the adequacy of the Applicant’s financial resources.

[12] The evidence is, however, irrelevant to the Court’s determination as to whether the Officer breached procedural fairness in failing to provide the Applicant an opportunity to address concerns about the sufficiency of financial resources: *Asagba v Canada (Citizenship and Immigration)*, 2022 FC 1528 at para 15; *Abdulai v Canada (Citizenship and Immigration)*, 2022 FC 173 at para 18. If the Court finds that the Officer did err in failing to give proper notice, then

the appropriate remedy is to send the matter back for determination by another officer. The Applicant would have the opportunity to adduce evidence at that time. The Applicant's affidavit is, therefore, inadmissible for the purposes of this application and struck from the record.

B. *No breach of procedural fairness*

[13] There is simply no merit to the Applicant's procedural fairness argument. The Officer was not required to give the Applicant notice and an opportunity to respond to concerns about the sufficiency of the Applicant's financial resources.

[14] The onus is on an applicant to ensure they meet all requirements arising directly from regulations and legislation. A visa officer is not required to inform an applicant of concerns regarding the sufficiency of their supporting materials and give them an opportunity to respond: *Ali Aridi* at para 20; *Kaur v Canada (Citizenship and Immigration)*, 2011 FC 219 at paras 24-25; *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24.

[15] Sufficient and available financial resources is a mandatory requirement for the issuance of a study permit, as set out in section 220 of the *IRPR*. An applicant must establish that they have sufficient and available funds, without working in Canada to: (i) pay their tuition fees; (ii) maintain themselves and any family members during the proposed period of study; and (ii) pay their transportation costs to and from Canada.

[16] It was incumbent on the Applicant to ensure he submitted all relevant documentation to satisfy these financial requirements. The Officer did not err in failing to inform the Applicant of

his concerns about insufficient available financial resources before making a decision about his eligibility.

C. *The Decision is reasonable*

(1) The Applicant failed to comply with his study permit conditions

[17] Pursuant to paragraph 220.1(1)(b) of the *IRPR*, a study permit holder “shall actively pursue” their studies while in Canada. As determined by my colleague Justice Ahmed, a visa officer’s assessment of whether an applicant was actively pursuing their studies is factual and discretionary: *Kaur v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1581 at para 23.

[18] Here, the Officer reasonably concluded that the Applicant had failed to comply with the conditions of his study permit based on the one-year gap in his studies. There is no dispute that the Applicant did not attend school, even on a part-time basis, between May 2020 when he completed his program at Mohawk College and his new program start date of May 2021 at Evergreen College.

[19] A gap (or a break) in studies is a legitimate and relevant consideration in refusing to restore an applicant’s study permit. While an inconsequential gap or break in studies may not justify refusing an application, a one-year gap belies the active pursuit of one’s studies.

[20] Notwithstanding this determination was sufficient to dispose of the Applicant’s study permit application, the Officer proceeded to consider the sufficiency of his financial resources.

(2) The Applicant failed to establish he had sufficient financial resources

[21] Pursuant to section 220 of the *IRPR*, an officer has no discretion to issue a study permit if an applicant fails to demonstrate they have sufficient and available funds to pay their tuition fees, maintain themselves during the proposed period of study, and pay their transportation costs to and from Canada: *Animasaun v Canada (Citizenship and Immigration)*, 2023 FC 923 at para 25; *Adekoya v Canada (Citizenship and Immigration)*, 2016 FC 1234 at para 9.

[22] In this case, the Applicant did not even have enough funds to pay his tuition fees for one year, let alone cover his other expenses. Tuition for the first year of studies amounted to \$12,950.00, but the Applicant only had \$7,417.30, according to his bank statement.

[23] I do not accept the Applicant's argument that Immigration, Refugees and Citizenship Canada's Guidelines entitled "Study permits: Assessing the application" [Guidelines] provide officers with any discretion to waive mandatory compliance with the financial requirements set out in section 220 of the *IRPR*. Rather, the *Guidelines* provide officers with the discretion to determine the nature of the financial documentation required of an applicant to prove adequate financial resources are available. Officers may determine, for example, whether banking documentation or more extensive financial background information is necessary to establish sufficient available financial resources in the circumstances of each case.

[24] Based on the evidence, the Officer reasonably determined that the Applicant had failed to demonstrate he had sufficient available financial resources to fund his studies and maintain himself.

IV. Conclusion

[25] For these reasons, I find no reviewable error in the Officer's refusal of the Applicant's restoration application and this application for judicial review is dismissed.

[26] The parties did not raise a question for certification and none arises in this case.



**JUDGMENT in IMM-7899-22**

**THIS COURT'S JUDGMENT is that:**

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

“Anne M. Turley”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-7899-22

**STYLE OF CAUSE:** AVTAR SINGH v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** AUGUST 29, 2023

**JUDGMENT AND REASONS  
FOR JUDGMENT:** TURLEY J.

**DATED:** SEPTEMBER 29, 2023

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