

Federal Court



Cour fédérale

Date: 20240318

Docket: IMM-13406-22

Citation: 2024 FC 435

Ottawa, Ontario, March 18, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

CARLOS ANDRES VARGAS AVILA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Carlos Andres Vargas Avila, seeks judicial review of a decision of a visa officer (the “Officer”) of Immigration, Refugees and Citizenship Canada (“IRCC”) dated December 9, 2022, refusing the Applicant’s Post-Graduation Work Permit (“PGWP”) application as he submitted his PGWP application outside the requisite 180-day window.

[2] The Applicant submits that the Officer rendered an unreasonable decision by miscalculating the application window for a PGWP.

[3] While I recognize the unique and perhaps unfortunate facts of this matter, for the following reasons I find that the Officer's decision is reasonable. This application for judicial review is dismissed.

II. Analysis

A. *Background*

[4] The Applicant is a 45-year-old citizen of Colombia who entered Canada in 2020 on a study permit. On July 25, 2022, his PGWP application was received by the IRCC.

[5] In a letter dated December 9, 2022, the Officer refused this application. The Officer's decision is largely contained in the GCMS notes, which form part of the reasons for the decision:

... Client graduated from Centennial College in April 20, 2021. Application for PGWP was received on July 25, 2022 which is outside the client's 180 day period from their completion of studies to apply. Client submitted letter from Centennial College that indicates they were originally enrolled in a 3-year Architectural Technology program, but unfortunately, was having difficulty in their last two semesters which resulted in the client transferring to their 2-year Architectural Technician program. Letter confirms that based off the client completing the required courses for the 2 year stream, the client completed their studies on April 20, 2021. As per R205(c)(ii) clients must apply for a PGWP within 180 days from their completion of studies. Application refused; client advised status expired must leave Canada. [emphasis added].

[6] The decision letter states that the 180-day calculation for when an applicant must apply for a PGWP begins “the day the student’s final marks are issued or the day formal written notification of program completion is received, whichever comes first.” As the Applicant’s application was not received within the 180 days following April 20, 2021, the Officer deemed that he was not eligible for a PGWP.

B. *Issue and Standard of Review*

[7] The sole issue in this application is whether the decision is reasonable.

[8] I agree with the parties that the appropriate standard of review is reasonableness, in accordance with the Supreme Court of Canada’s decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (“*Vavilov*”) at paragraphs 16-17.

[9] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[10] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100).

[11] The PGWP is established pursuant to paragraph 205(c)(ii) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (*Kaur v Canada (Citizenship and Immigration)*, 2020 FC 513 (“*Kaur*”) at para 8):

Canadian interests

205 A work permit may be issued under section 200 to a foreign national who intends to perform work that

[...]

(c) is designated by the Minister as being work that can be performed by a foreign national on the basis of the following criteria, namely,

[...]

(ii) limited access to the Canadian labour market is necessary for reasons of public policy relating to the competitiveness of Canada’s academic institutions or economy;

Intérêts canadiens

205 Un permis de travail peut être délivré à l’étranger en vertu de l’article 200 si le travail pour lequel le permis est demandé satisfait à l’une ou l’autre des conditions suivantes:

[...]

c) il est désigné par le ministre comme travail pouvant être exercé par des étrangers, sur la base des critères suivants:

[...]

(ii) un accès limité au marché du travail au Canada est justifiable pour des raisons d’intérêt public en rapport avec la compétitivité des établissements universitaires ou de l’économie du Canada;

[12] The eligibility criteria to apply for a PGWP permit are outlined on IRCC's website (the "Program Delivery Instructions"). The Program Delivery Instructions stipulate that an applicant has up to 180 days after they graduate to apply for a PGWP and set out mandatory preconditions to be eligible for a PGWP (*Kim v Canada (Citizenship and Immigration)*, 2019 FC 526 at para 11; see also *Ofori v Canada (Citizenship and Immigration)*, 2019 FC 212 at para 20 and *Kaur* at para 9).

C. *The decision is reasonable*

[13] The Applicant submits that the Officer applied the wrong legal test in concluding that section 205(c)(ii) of the *IRPR* demands an applicant apply for the PGWP within 180 days of completing their studies, as nothing in that provision provides for this requirement. The Applicant further contends that the July 7, 2022, letter from Centennial College is the written notification of completing his program, rather than the April 20, 2021, graduation date. The Applicant also maintains that he received his final marks on May 17, 2022.

[14] The Respondent maintains that the eligibility window begins on the earlier of the date that the Applicant received formal notification of completion and the date that the Applicant's final marks were issued. The Respondent states that these final marks were issued on April 20, 2021, thus being outside the 180-day window for applying for the PGWP.

[15] I agree with the Respondent. The relevant date for this application is the date the Applicant's final marks were issued for the diploma conferred, this being earlier than when the Applicant received formal notification of completion of his program on July 7, 2022. The

transcript provided was “issued” on May 17, 2022, but I do not find this *transcript* issuance the same as *final marks* issuance. The Program Delivery Instructions are clear in stating that an applicant has up to 180 days after receiving written confirmation that they have met the requirements for completing their program to apply for a PGWP, the calculation beginning on the earlier between when final marks were issued or when formal written notification of completion is received. In this case, the Applicant’s final marks for his graduation occurring on April 20, 2021, were issued on or prior to this date, notwithstanding the Applicant’s continued enrollment in the three-year program thereafter. The Officer’s decision that April 20, 2021 was outside the 180-day window for applying for the PGWP is therefore justified, transparent, and intelligible (*Vavilov* at para 15).

III. **Conclusion**

[16] This application for judicial review is dismissed. The Officer’s decision is reasonable. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-13406-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13406-22

STYLE OF CAUSE: CARLOS ANDRES VARGAS AVILA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 17, 2024

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