

Federal Court



Cour fédérale

**Date: 20240430**

**Docket: IMM-467-23**

**Citation: 2024 FC 659**

**Ottawa, Ontario, April 30, 2024**

**PRESENT: Madam Justice Azmudeh**

**BETWEEN:**

**KENNY EDO ALOHAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Kenny Edo Alohan [the “Applicant”] is seeking a Judicial Review under section 72(1) of the *Immigration and Refugee Protection Act* [IRPA] concerning the rejection of his permanent resident application under the Permit Holder Class on December 28, 2022. The Judicial Review is dismissed for the following reasons.

[2] The parties do not dispute the facts of this case. The decision under review is the refusal of the Applicant’s permanent resident because an officer (the “Officer”) found that he had not

resided in Canada continuously for five years as prescribed by section 65(b)(ii) of the *Immigration and Refugee Protection Regulations* [IRPR] with a valid Temporary Resident Permit (TRP).

[3] The Applicant obtained his first TRP for inadmissibility under section 41(a) of IRPA on January 5, 2016. His last TRP was issued on December 30, 2019 and was set to expire on August 30, 2020. He sent his application to renew it on August 28, 2020 and it was received the day after it expired, on August 31, 2020.

[4] A TRP holder of the Applicant's circumstance becomes eligible to apply for permanent residence (PR) after 5 years pursuant to s. 65(b)(ii) of IPRR; i.e., after January 5, 2021. The Applicant applied for PR on February 10, 2021. He based his application on the fact that he had maintained his temporary resident status, without break in continuity, for a five-year period.

[5] On November 10, 2022, the Applicant's TRP was refused. While the Applicant initially filed an Application for Leave and for Judicial Review with this Court to challenge the TRP decision, he did not pursue it and never filed his record. As a result, the Court dismissed this application.

[6] On December 28, 2022, the Applicant's PR application was also refused, namely because the Applicant had failed to maintain his status for five continuous years. The impugned decision reads as follows:

The original TRP was issued on 2016/01/05, therefore they must reside in Canada as a permit holder until 2021/01/05. The client's previous TRP **expired on 2020/08/30 and a subsequent application was submitted on 2020/08/31**, however that application was refused on 2022/11/10. **Therefore the Applicant**

**is not eligible under this program as they have not continuously resided in Canada as a permit holder for the required 5 years and do not hold a valid TRP.**

(Our emphasis)

## II. Legislative Overview

[7] The following sections of the IRPA and IRPR are relevant:

### *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*

#### **Temporary resident permit**

**24 (1)** A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.

#### **Permis de séjour temporaire**

**24 (1)** Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps.

### *Immigration and Refugee Protection Regulations, SOR/2002-227 [IRPR]*

#### **Member of class**

**65** A foreign national is a permit holder and a member of the permit holder class if

**(a)** they have been issued a temporary resident permit under subsection 24(1) of the Act;

**(b)** they have continuously resided in Canada as a permit holder for a period of

**(i)** at least three years, if they

**(A)** are inadmissible on health grounds under subsection 38(1) of the Act,

**(B)** are inadmissible under paragraph 42(1)(a) of the Act on grounds of an accompanying family member who is inadmissible under subsection 38(1) of the Act, or

**(C)** are inadmissible under paragraph 42(1)(b) of the Act on grounds of being an accompanying family member of a foreign national who is inadmissible

**(I)** under subsection 38(1) of the Act, or

**(II)** under paragraph 42(1)(a) of the Act on grounds of an accompanying family member

#### **Qualité**

**65** Est un titulaire de permis et appartient à la catégorie des titulaires de permis l'étranger qui satisfait aux exigences suivantes :

**a)** il s'est vu délivrer un permis de séjour temporaire au titre du paragraphe 24(1) de la Loi;

**b)** il a résidé sans interruption au Canada au titre de ce permis, pendant une période minimale :

**(i)** de trois ans, dans le cas de l'étranger qui, selon le cas :

**(A)** est interdit de territoire pour motifs sanitaires aux termes du paragraphe 38(1) de la Loi,

**(B)** est interdit de territoire aux termes de l'alinéa 42(1)a) de la Loi pour le motif qu'un membre de sa famille qui l'accompagne est interdit de territoire aux termes du paragraphe 38(1) de la Loi,

**(C)** est interdit de territoire aux termes de l'alinéa 42(1)b) de la Loi pour le motif qu'il est

who is inadmissible under subsection 38(1) of the Act,

(ii) at least five years, if they are inadmissible on any other grounds under the Act, except sections 34 to 35.1 and subsections 36(1) and 37(1) of the Act;

(c) they have not become inadmissible on any ground since the permit was issued; and

(d) in the case of a foreign national who intends to reside in the Province of Quebec and is not a member of the family class or a person whom the Board has determined to be a Convention refugee, the competent authority of that Province is of the opinion that the foreign national meets the selection criteria of the Province.

### General conditions

**183 (1)** Subject to section 185, the following conditions are imposed on all temporary residents:

(a) to leave Canada by the end of the period authorized for their stay;

(b) to not work, unless authorized by this Part or Part 11;

(b.1) if authorized to work by this Part or Part 11, to not enter into an employment agreement, or extend the term of an employment agreement, with an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages;

(b.2) if authorized to work by this Part or Part 11, to not enter into an employment agreement, or extend the term of an employment agreement, with an employer who is referred to in subparagraph 200(3)(h)(ii) or (iii);

(c) to not study, unless authorized by the Act, this Part or Part 12; and

un membre de la famille qui accompagne un étranger interdit de territoire :

(I) soit aux termes du paragraphe 38(1) de la Loi,

(II) soit aux termes de l'alinéa 42(1)a) de la Loi pour le motif qu'un membre de sa famille qui l'accompagne est interdit de territoire aux termes du paragraphe 38(1) de la Loi,

(ii) de cinq ans, dans le cas de l'étranger qui est interdit de territoire pour tout autre motif aux termes de la Loi, sauf ceux prévus aux articles 34 à 35.1 et aux paragraphes 36(1) et 37(1) de la Loi;

c) il n'est pas devenu interdit de territoire aux termes de la Loi depuis la délivrance du permis;

d) dans le cas où il cherche à s'établir dans la province de Québec, n'appartient pas à la catégorie du regroupement familial et ne s'est pas vu reconnaître, par la Commission, la qualité de réfugié au sens de la Convention, les autorités compétentes de la province sont d'avis qu'il répond aux critères de sélection de celle-ci.

### Conditions d'application générale

**183 (1)** Sous réserve de l'article 185, les conditions ci-après sont imposées à tout résident temporaire :

a) il doit quitter le Canada à la fin de la période de séjour autorisée;

b) il ne doit pas travailler, sauf en conformité avec la présente partie ou la partie 11;

b.1) même s'il peut travailler en conformité avec la présente partie ou la partie 11, il ne peut conclure de contrat d'emploi — ni prolonger la durée d'un tel contrat — avec un employeur qui offre, sur une base régulière, des activités de danse nue ou érotique, des services d'escorte ou des massages érotiques;

b.2) même s'il peut travailler en conformité avec la présente partie ou la partie 11, il ne peut conclure de contrat d'emploi — ni prolonger la durée d'un tel contrat — avec un employeur visé aux sous-alinéas 200(3)(h)(ii) ou (iii);

(d) to comply with all requirements imposed on them by an order or regulation made under the Emergencies Act or the Quarantine Act.

#### **Authorized period of stay**

(2) Subject to subsections (3) to (5), the period authorized for the stay of a temporary resident is six months or any other period that is fixed by an officer on the basis of

(a) the temporary resident's means of support in Canada;

(b) the period for which the temporary resident applies to stay; and

(c) the expiry of the temporary resident's passport or other travel document.

#### **Authorized period begins**

(3) The period authorized for the stay of a temporary resident begins on

(a) if they are authorized to enter and remain in Canada on a temporary basis, the day on which they first enter Canada after they are so authorized;

(a.1) if they have become a temporary resident in accordance with subsection 46(1.1) of the Act, the day on which their application to renounce their permanent resident status is approved; and

(b) in any other case, the day on which they enter Canada.

#### **Authorized period ends**

(4) The period authorized for a temporary resident's stay ends on the earliest of

(a) the day on which the temporary resident leaves Canada without obtaining prior authorization to re-enter Canada;

(b) the day on which their permit becomes invalid, in the case of a temporary resident who has been issued either a work permit or a study permit;

(b.1) the day on which the second of their permits becomes invalid, in the case of a temporary resident who has been issued a work permit and a study permit;

(c) the day on which any temporary resident permit issued to the temporary resident is no longer valid under section 63;

c) il ne doit pas étudier sans y être autorisé par la Loi, la présente partie ou la partie 12;

d) il doit se conformer à toute exigence qui lui est imposée par un règlement, un décret ou un arrêté pris en vertu de la Loi sur les mesures d'urgence ou de la Loi sur la mise en quarantaine.

#### **Période de séjour autorisée**

(2) Sous réserve des paragraphes (3) à (5), la période de séjour autorisée du résident temporaire est de six mois ou de toute autre durée que l'agent fixe en se fondant sur les critères suivants :

a) les moyens de subsistance du résident temporaire au Canada;

b) la période de séjour que l'étranger demande;

c) la durée de validité de son passeport ou autre titre de voyage.

#### **Période de séjour : début**

(3) La période de séjour du résident temporaire commence :

a) dans le cas de celui qui est autorisé à entrer et à séjourner à titre temporaire, à la date à laquelle il entre au Canada pour la première fois par suite de cette autorisation;

a.1) dans le cas de celui qui est devenu résident temporaire conformément au paragraphe 46(1.1) de la Loi, à la date d'acceptation de sa demande de renonciation au statut de résident permanent;

b) dans tout autre cas, à la date à laquelle il entre au Canada.

#### **Période de séjour : fin**

(4) La période de séjour autorisée du résident temporaire prend fin au premier en date des événements suivants :

a) le résident temporaire quitte le Canada sans avoir obtenu au préalable l'autorisation d'y rentrer;

b) dans le cas du titulaire d'un permis de travail ou d'études, son permis cesse d'être valide;

b.1) dans le cas du titulaire à la fois d'un permis de travail et d'un permis d'études, celui ayant la date d'expiration la plus tardive cesse d'être valide.

**(c.1)** in the case of a person who is required by section 10.01 of the Act to provide their biometric information, the day on which the period of 10 years following the latest day on which the person provided their biometric information under section 10.01 of the Act ends; or

**(d)** the day on which the period authorized under subsection (2) ends, if paragraphs (a) to (c) do not apply.

**Extension of period authorized for stay**

**(5)** Subject to subsection (5.1), if a temporary resident has applied for an extension of the period authorized for their stay and a decision is not made on the application by the end of the period authorized for their stay, the period is extended until

**(a)** the day on which a decision is made, if the application is refused; or

**(b)** the end of the new period authorized for their stay, if the application is allowed.

**Non-application**

**(5.1)** Subsection (5) does not apply in respect of a foreign national who is the subject of a declaration made under subsection 22.1(1) of the Act.

**Continuation of status and conditions**

**(6)** If the period authorized for the stay of a temporary resident is extended by operation of paragraph (5)(a) or extended under paragraph (5)(b), the temporary resident retains their status, subject to any other conditions imposed, during the extended period.

**c)** dans le cas du titulaire d'un permis de séjour temporaire, son permis cesse d'être valide aux termes de l'article 63;

**c.1)** dans le cas d'une personne qui, aux termes de l'article 10.01 de la Loi, doit fournir ses renseignements biométriques, la période de dix ans — suivant la dernière en date des dates auxquelles la personne a fourni ses renseignements biométriques au titre de l'article 10.01 de la Loi — expire;

**d)** dans tout autre cas, la période de séjour autorisée aux termes du paragraphe (2) prend fin.

**Prolongation de la période de séjour**

**(5)** Sous réserve du paragraphe (5.1), si le résident temporaire demande la prolongation de sa période de séjour et qu'il n'est pas statué sur la demande avant l'expiration de la période, celle-ci est prolongée :

**a)** jusqu'au moment de la décision, dans le cas où il est décidé de ne pas la prolonger;

**b)** jusqu'à l'expiration de la période de prolongation accordée.

**Non-application**

**(5.1)** Le paragraphe (5) ne s'applique pas à l'égard d'un étranger qui fait l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi.

**Préservation du statut et conditions**

**(6)** Si la période de séjour est prolongée par l'effet de l'alinéa (5)a) ou par application de l'alinéa (5)b), le résident temporaire conserve son statut, sous réserve des autres conditions qui lui sont imposées, pendant toute la prolongation.

III. Standard of Review

[8] The parties submit, and I agree, that the standard of review in this case is reasonableness.

[9] Reasonableness review is a deferential and disciplined evaluation of whether an

administrative decision is transparent, intelligible and justified: *Canada (Minister of Citizenship*

*and Immigration) v Vavilov*, 2019 SCC 65, at paras 12-13 and 15 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras 8 and 63 [*Mason*].

IV. Analysis

A. *Was the Officer's decision to refuse the PR application reasonable?*

[10] At the judicial review hearing, there was some contest between the parties on the determinative issue before me. The Applicant argued that the decision-maker erroneously deemed him to be out of status only because the underlying TRP application was received one day late.

[11] The Applicant argued that the TRP application was deemed to be in time because of the following policy:

*Temporary residents: Maintained status during processing (previously called implied status)*

Date and time of receipt of application

The date and time of receipt are important for determining if status is maintained under subsection R183(5). For electronic applications, the department uses Coordinated Universal Time (UTC) around the world to ensure that time is equal for all. Therefore, receipt dates and times do not depend on time zones; all applications must be submitted before midnight UTC on the date the applicant's status expires. If the application was received after midnight UTC on the date of expiry, the applicant does not maintain their status under subsection R183(5).

The date received for paper applications is the date physically received and stamped at the Case Processing Centre. However, if the date physically received is after the expiry date of the applicant's status, the officer will backdate the received date by 7 days to account for any mail delivery delays. (Emphasis added)

If a temporary resident also applies for renewal of their work or study permit before the expiry of their existing permit and their

permit expires before a decision is made, paragraph R186(u) or section R189 authorizes them to work or study without a permit under the same conditions pending a determination of their application for renewal and **only as long as the person remains in Canada.** (Emphasis in original)

[12] The Respondent argued that the reasons for the rejection of the PR application is not necessarily due to the timing of the underlying TRP application. Rather, it was because by the time an officer assessed the PR application, the Applicant had fallen short of the five-year residency requirement as a permit holder, and that the reasons reflect this.

[13] As stated, the Applicant's TRP application was rejected on November 10, 2022. His most recent TRP was only valid until August 30, 2020. Therefore, by the time an officer reviewed the PR application on December 28, 2022, the unequivocal fact before them was that the Applicant had a valid TRP only from January 5, 2016 until August 30, 2020. This amounted to 4 years and 7 months. Rejecting the PR application under the circumstances, and with the evidence before them, was reasonable.

[14] While the reasons briefly state the history of the TRP file, the officer noted that it was rejected on November 10<sup>th</sup>, 2022 and that this made him fall short of his five-year residency requirement. I would therefore disagree with the Applicant's characterization that the officer unreasonably rejected the PR application only because the underlying TRP was one day late and that the officer did not comply with the policy to deem it being in time. Once the TRP was rejected for any reason, it was reasonable for the officer not to deem the applicant to have been a permit holder after his last TRP had expired. The reasons reflect this.

[15] I therefore reject the judicial review application.



V. Conclusion

[16] The Officer's decision is reasonable. The application for judicial review is therefore dismissed.

[17] Neither party proposed a question for certification and I agree that none arises in this matter.

**JUDGMENT IN IMM-467-23**

**THIS COURT'S JUDGMENT is that**

1. The Judicial Review is dismissed.
2. There is no certified question.

"Negar Azmudeh"

---

Judge

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

**DOCKET:** IMM-467-23

**STYLE OF CAUSE:** KENNY EDO ALOHAN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** APRIL 16, 2024

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

**DATED:** APRIL 30, 2024

**APPEARANCES:**

Gruszczynski, Mark J. FOR THE APPLICANT

Richard, Zoé FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Gruszczynski, Mark J. FOR THE APPLICANT  
Montréal, QC

Department of Justice Canada FOR THE RESPONDENT  
Montréal, QC