

Federal Court



Cour fédérale

Date: 20240619

Docket: IMM-4523-23

Citation: 2024 FC 944

Ottawa, Ontario, June 19, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

JINGYANG SUN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of China who arrived in Canada on a study permit in April 2018. He applies under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of an Immigration Officer's [Officer] March 24, 2023 decision refusing his Temporary Resident Permit [TRP] application.

[2] For the reasons that follow, the Application is dismissed.

II. Background

[3] The Applicant completed his studies in or around January 2021 and his study permit expired 90 days following the completion of his studies. The Applicant reports he was unaware that his status as a student had expired when he applied for a postgraduate work permit [PGWP] in July 2021.

[4] In September 2021, the PGWP application was refused because the Applicant did not have valid status at the time of the application. A request for reconsideration was denied, as was a request for the restoration of his status and a further request to reconsider the negative restoration decision. The Applicant did not seek to judicial review any of these decisions, but after consulting counsel did apply for a TRP.

[5] In refusing the TRP, the Officer first reviewed the Applicant's immigration history and the circumstances resulting in the PGWP refusal decision. The Officer acknowledged that the Applicant lost his status due to confusion regarding the period of validity of his study permit.

The Officer's GCMS notes set out the following:

[...] [The Applicant] then sought council [*sic*] to restore his status and was advised by their rep to apply for a TRP. Rep letter states that client has a compelling need for a TRP due to his level of establishment in Canada; having spent over four years in Canada, he has built a network of personal and professional relationships that rep claims would be lost if client were asked to leave the country. Letter also claims that client would not have the opportunity to use his mechanical engineering diploma should they return to China and would need to gain hands-on experience in

Canada to successfully transfer their career there. Further rep states that issuing the client a TRP would not give serious [sic] to Canadian society. As per Program Delivery Instructions, officers should consider available alternatives before issuing a TRP. I acknowledge that client lost his status due to confusion regarding the validity of his last SP, however, it remains the client's responsibility to be informed of his immigration situation and IRPA expectations. Claiming ignorance of the expectations of IRPA does not exempt the client from being expected to meet the requirement. Should client be asked to leave Canada they could return by applying for the applicable temporary resident documents without significant impact [sic] the aforementioned personal and professional relationships client has established. Additionally, current travel restrictions due [sic] COVID 19 should not prevent client from returning to China to regularize their status at the time they made their TRP application on 14JUL2022. The client's current inadmissibility is [sic] status and that [sic] there is a mechanism in place for the client to rectify this inadmissibility by departing Canada, and obtaining the documents he requires in order to regularize his status, and has failed to demonstrate that he requires a TRP in order to pursue work in Canada. Client has not provided sufficient evidence that they would endure difficulty should they be expected to return to their home country to regularize their status. They can use the regular mechanisms in place to apply for a visa, and other documents from abroad in order to regularize their status. As per A24 (a), a TRP may be issued to individuals who have not complied with the act (IRPA) and yet may have compelling reasons to be issued a TRP. It is the client's responsibility of satisfying an officer that it is justified in the circumstance with compelling reasons to overcome the inadmissibility. I have considered the application for a temporary resident permit, and all submissions in their entirety, and I am not satisfied that a TRP is justified in this circumstance.

III. Issues and standard of review

[6] The Application raises a single issue—whether the Officer's decision to refuse the TRP was unreasonable.

[7] It is not disputed that the Officer’s TRP decision is discretionary and is to be reviewed on the standard of reasonableness, a deferential but robust form of review (*Nagra v Canada (Citizenship and Immigration)*, 2023 FC 1098 at paras 14 and 19 [*Nagra*], citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). In conducting a reasonableness review, a reviewing court is to determine whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility (*Vavilov* at paras 12-13, 75, 85 and 99).

IV. Analysis

[8] TRP decisions are highly discretionary, are to be afforded deference and are intended to target short-term, pressing concerns that require an exceptional measure to permit an individual to obtain temporary residence in Canada despite their inadmissibility or other failure to comply with Canadian immigration laws (*Kaur v Canada (Citizenship and Immigration)*, 2024 FC 337 at para 13). A TRP provides a means of mitigating “harsh consequences that may arise from a strict application of the *IRPA*” where compelling reasons to do so exist (*Nagra* at para 2; *Emmanuel v Canada (Citizenship and Immigration)*, 2023 FC 1694 at para 18; *Bhamra v Canada (Citizenship and Immigration)*, 2020 FC 482 at para 22; *El Rahy v Canada (Citizenship and Immigration)*, 2018 FC 1058 at para 9; *Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275 at para 22; *Shabdeen v Canada (Citizenship and Immigration)*, 2014 FC 303 at para 23).

[9] The Applicant submits the Officer’s reasons fail to engage with the circumstances leading to non-compliance—an innocent mistake leading to a loss of status and passport renewal delays due to COVID-19—but instead focused on the fact of non-compliance with the *IRPA*.

[10] The Applicant argues the Officer did not consider and weigh his non-existent risk to Canadian society against those compelling factors and circumstances militating in favour of a positive decision. This included his establishment in Canada, his established network of personal and professional relationships that would allow him to obtain the practical work experience in Canada, and his submission that he required work experience in Canada in order to be employed in his chosen profession upon return to China. He argues that, in finding he would not endure difficulty in returning to China, the Officer conflated the test for a TRP with the test for humanitarian and compassionate relief under subsection 25(1) of the IRPA. In finding that alternative options to regularize the Applicant's status from abroad were available, the Officer failed to identify specific options and did not address how an application from aboard would be more efficient than a positive TRP decision in the circumstances.

[11] I disagree. The Applicant had the onus of convincing the Officer that the circumstances justified the granting of a TRP. The Officer did not misapprehend or ignore those circumstances. Instead, the Officer set out and addressed the circumstances the Applicant identified and relied upon within the context of the submissions made.

[12] The Officer did not improperly focus on the Applicant's immigration history or non-compliance as alleged. The reasons instead reflect the submissions before the Officer. Those submissions extensively detail the Applicant's history and the circumstances leading to non-compliance. It may not have been necessary for the Officer to summarize these circumstances, but the Officer cannot be faulted for having done so.

[13] The Officer notes in the decision that “[a]s per Program Delivery Instructions, officers should consider available alternatives before issuing a TRP.” The accuracy of the Officer’s reference to the Program Delivery Instructions is not disputed. The Applicant should not have been surprised that the Officer would consider “alternatives,” yet alternatives are not addressed in the TRP submissions made to the Officer. In the absence of meaningful submissions on the issue, the Officer was under no obligation to independently undertake a detailed assessment of those options. To hold otherwise would effectively impose the Applicant’s burden on the decision maker.

[14] Nor was it unreasonable for the Officer to conclude that the Applicant had failed to provide “sufficient evidence that they would endure difficulty should they be expected to return to [China] to regularize their status.” The details in support of the identified compelling circumstances contained in the submissions are limited to a little more than a page and provide sparse justification in support of the “compelling” nature of the identified circumstances.

[15] Further, the Officer’s reference to difficulties arising from a requirement to apply to return to Canada from China do not suggest the Officer misapprehended the applicable test. It is clear from the Officer’s reasons that the Officer understood and applied the compelling reasons standard in considering the application for a TRP.

[16] Unlike the situation in *Osmani v Canada (Citizenship and Immigration)*, 2019 FC 872, [Osmani], where the decision maker failed to review and engage with the Applicant’s submissions (paras 20 and 21), the Officer did engage with and address the submissions made by

the Applicant. Similarly, in *Palmero v Canada (Citizenship and Immigration)*, 2016 FC 1128 [*Palmero*], where Justice Harrington notes TRP cases largely turn on their own facts (para 11), the issue was the Officer's consideration of the submissions made. Neither *Osmani* nor *Palmero* are of assistance to the Applicant.

V. Conclusion

[17] The Application is dismissed. The Parties have not identified a question of general importance for certification, and none arises.

JUDGMENT IN IMM-4523-23

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.
2. No question is certified.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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