Federal Court Cour fédérale

Date: 20240723

Docket: IMM-14074-23

Citation: 2024 FC 1157

Ottawa, Ontario, July 23, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

OLASUBOMI OLADOTUN BADIRU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Olasubomi Oladotun Badiru, seeks judicial review of the decision of an Immigration Officer (the “Officer”) to refuse his application to renew his study permit. He says that he was denied procedural fairness and the decision is unreasonable.

[2] I am not persuaded. There was no denial of procedural fairness, and the Officer simply applied the law to the facts of the Applicant’s case.

[3] The Applicant is a citizen of Nigeria. He came to Canada on a visitor’s visa, and in August 2019, he obtained a study permit to pursue undergraduate studies at the University of Alberta. He did not attend that University for the academic year September 2019 - April 2020. In September 2020, he began a computer science program at MacEwan University, in Edmonton.

[4] The Applicant’s study permit was valid from August 2019 to March 2023. On February 28, 2023, he applied to extend his study permit. In April 2023, the Respondent sent the Applicant a letter requesting that he provide a copy of all of his educational transcripts for his time in Canada. The notes in the Global Case Management System (“GSMS”) indicate a concern about whether the Applicant had complied with the terms of his study permit, because his transcripts from MacEwan University indicated that he started there in the fall of 2020, and there was no proof that he had pursued studies in Canada prior to that.

[5] On November 1, 2023, the Applicant’s application to renew his study permit was refused, based on his non-attendance for the 2019-2020 academic year. He seeks judicial review of that decision.

[6] The Applicant submits that he was denied procedural fairness because he was not given an opportunity to explain his non-attendance at the University of Alberta and the reasons he could not depart from Canada. He also submits that the decision is unreasonable. The Respondent argues that the Applicant’s new evidence filed on judicial review should not be admitted. The Applicant submits that the new evidence falls into the procedural fairness exception to the rule, and asks that the Court consider it.

[7] The Applicant's procedural fairness argument rests on the assertion that once the Respondent decided to investigate his compliance with the terms of his original study permit, they were obliged to give him the opportunity to explain his non-attendance at the University of Alberta. The Applicant refers to the following passage in the GCMS Notes:

> Transcripts shows (sic) client was not enrolled for Fall 2019 and Winter 2020 terms. With the transcripts provided, there is potential that client was not studying for 150+ days, which would indicate that they have not complied with the conditions imposed upon them as a student within Canada, as well as bonafide concerns. Referred to IRCC Edmonton for further investigation and review to ensure client is complying with the conditions of their Study Permit.

[8] According to the Applicant, the Officer's statement that "further investigation and review" was required put an onus on the Respondent to conduct such further steps in a fair way. A fair process would have involved asking the Applicant for any explanations he might have for his non-attendance, and then considering his response to that inquiry. This was not done, and the Applicant submits that this denied him procedural fairness.

[9] Related to this argument, the Applicant contends that the new information he provided shows the explanation he could have provided had he been given the opportunity to do so. He says that this is similar to the situation in *Nchelem v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1162 [*Nchelem*], where the Court applied the procedural fairness exception and admitted new evidence. In that case the Court found that the new evidence "illustrate[s] the evidence which Mr. Nchelem could have provided to the CIC had he been afforded the opportunity to respond" (at para 14). The Applicant contends that the same reasoning should apply here.

[10] The Respondent objects, arguing that the new evidence does not fall within the procedural fairness exception. The Respondent submits that the new evidence is simply information that the Applicant could have put before the Officer prior to the decision being made. The onus was on the Applicant to demonstrate that he had complied with the terms of his original study permit, and he decided not to submit this evidence. Because the new evidence is not relevant to the fairness of the decision finding that he had not attended the University of Alberta for the 2019-2020 academic year, the Respondent submits that it is not admissible under the procedural fairness exception.

[11] As is evident from this discussion, the Applicant's arguments on the new evidence are intertwined with his submissions on the procedural fairness question and so I will discuss these together.

[12] Procedural fairness is to be reviewed on a standard that is akin to "correctness", although technically no standard of review is applied at all: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, [2019] 1 FCR 121 [*Canadian Pacific*] at para 55; see also *Heiltsuk Horizon Maritime Services Ltd v Atlantic Towing Limited*, 2021 FCA 26 at para 107. Under this approach, a reviewing Court is required to assess whether the decision-making process was fair in all of the circumstances, "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual…" (*Canadian Pacific* at para 54). The ultimate question is "whether the applicant knew the case to meet and had a full and fair chance to respond" (*Canadian Pacific* at para 56).

[13] In this case, the fairness of the process must be understood in light of the legal framework that governs study permits. Section 220.1(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*], sets two conditions on study permit holders: that they enroll in a designated learning institution and remain enrolled until they complete their studies, and that they "actively pursue their course or program of study". A permit holder must provide evidence of their compliance if an Officer requests it. Under section 217(1), a study permit can be renewed if the applicant demonstrates they have complied with the conditions imposed on their original study permit.

[14] The Applicant must be presumed to have known of these rules when he applied for the renewal of his study permit. He also knew that he had not complied with the terms of his original study permit. In addition, the Applicant was or should have been aware of the flexibility that was available under the Respondent's policies. For example, the Operational Guidelines - which are available to the public - provide that a student may take a leave from their studies for up to 150 days. In addition, a student may seek to defer their studies upon receiving formal approval from the designated learning institution.

[15] The onus was on the Applicant to ensure that he met all of the requirements of his study permit arising from legislation and the regulations. There was no obligation on the Officer to advise him of concerns arising directly from these requirements: *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1315 [*Singh*] at para 14.

[16] At the time he made his application to renew his study permit, the Applicant knew that he had not complied with his original study permit. He did not submit the explanations he has now provided in the new evidence submitted on judicial review. That evidence is not admissible, because it is not relevant to assessing the fairness of the examination of his study permit renewal application. The *Nchelem* case dealt with a very different factual scenario, where the applicant had no way of knowing that the officer would find him in breach of the conditions.

[17] In my view, the facts of the case before me are closer to those in another case cited by the Applicant: *Jayarathna v Canada (Citizenship and Immigration)*, 2022 FC 919 at paras 26-27, where Justice Richard Southcott noted the *Nchelem* finding but concluded that the applicant's arguments went to the merits of the decision rather than the fairness of the process.

[18] I am not persuaded that the new evidence is admissible, because it is not relevant to assessing the fairness of the process that was followed. The Applicant's new evidence consists of his explanation for why he did not attend the University of Alberta and why he was unable to depart Canada during the initial phase of the COVID-19 pandemic. This could have been submitted with his renewal application, but he chose not to do that.

[19] There was no denial of procedural fairness, because the Applicant was (or should have been) aware of the rules and procedure in assessing his renewal application. The record show that he had opportunities to provide information to meet his onus under the law and Guidelines. The GCMS Notes indicate that the Applicant provided supplementary information to the Officer before the decision was made. The Applicant knew the case he had to meet (to demonstrate

compliance with his original study permit conditions) and he had a full and fair opportunity to meet it.

[20] For all of the reasons set out above, the new evidence submitted by the Applicant in his judicial review record is not admissible and I have not considered it in assessing the merits of the case. I also find there was no denial of procedural fairness.

[21] Turning to the second issue, I am not persuaded that the decision is unreasonable. The Officer's GCMS Notes reflect an assessment of the Applicant's evidence against the strict legal requirements set out in section 217 of the *IRPR*.

[22] The Officer's decision is to be assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*] and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 2.

[23] In summary, under the *Vavilov* framework, a reviewing Court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900 at para 2). The reviewing Court must look for any "fatal flaws" in the reasons' overarching logic (*Vavilov* at para 102).

[24] The Officer refused the study permit renewal application because the Applicant failed to provide evidence of attendance at a designated learning institution in Alberta during the 2019-2020 academic year. Based on that, the Officer concluded that the Applicant had not complied with the terms of his study permit. On the facts, that was a reasonable finding.

[25] The Officer's conclusion also conforms to the strict terms of the legal framework. A one-year gap in studies is a relevant consideration because it shows that the Applicant failed to "remain enrolled in a designated learning institution" and he did not "actively pursue [his] course of study" as required by paragraphs 220.1(1)(a) and (b) of the *IRPR*: *Singh* at paras 17-19. Because of this, the Applicant failed to demonstrate that he had "complied with all conditions imposed" under his original study permit, as required by paragraph 217(1)(b) of the *IRPR*.

[26] The Officer's reasons are reasonable, in light of the legal and factual context of the Applicant's case. The reasoning process is clear, and the decision applied the legal rules to the facts based on the record that was before the Officer. I repeat once again that the Applicant's explanations for his decision not to enrol in the University of Alberta and for not departing Canada when he decided not to enroll in the University of Alberta, were not placed before the Officer.

[27] The outcome may seem harsh to the Applicant, especially in light of the further evidence he has produced. However, for the reasons set out above, I am unable to find any legal basis to overturn the Officer's decision.

[28] Based on the analysis set out above, the application for judicial review will be dismissed.

[29] There is no question of general importance for certification.

JUDGMENT in IMM-14074-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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