Federal Court  Cour fédérale

Date: 20250506

Docket: IMM-10572-24

Citation: 2025 FC 825

Ottawa, Ontario, May 6, 2025

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

MUNASHE SUNGAI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Munashe Sungai [Applicant], is a citizen of the Republic of Zimbabwe who lives in Canada on a temporary resident visa. On November 25, 2023, he applied for an open work permit to accompany his spouse who lives in Canada on a study permit. A Visa Officer rejected his application in a decision dated June 4, 2024, because they were not satisfied that the Applicant's spouse was enrolled in and actively pursuing full-time studies.

[2] The Officer wrote in his Global Case Management System [GCMS] notes that he had consulted the student compliance portal, an internal tool indicating whether a foreign national is actively engaged in their program of study (Certified Tribunal Record at 1 [CTR]). On April 29, 2024, the portal showed that the Applicant's spouse was no longer registered.

[3] What the portal did not show was that she had been granted a leave of absence from her studies in February 2024, due to her pregnancy (Applicant's Record at 72). She took this leave with the knowledge that she could maintain full-time status if she resumed her studies within 150 days from the date the institution granted the leave and that she would still be considered to be actively pursuing her studies during that period (Applicant's Record at 68). At the time of the decision under review, the Applicant's spouse did not understand her medical leave to affect her visa status in any way. This understanding grounds the Applicant's challenge on judicial review.

[4] The Applicant maintains that the decision under review is both procedurally unfair and unreasonable. He argues that the Officer should have requested additional information from him to ensure his eligibility under the work permit category, and to explain his spouse's leave of absence from her studies. On substance, he contends that the basis for the Officer's refusal—the spouse not being a full-time student—is simply false as she remained a full-time student, albeit on medical leave.

[5] The evidence related to the Applicant's spouse's pregnancy and leave of absence is new on judicial review. The Respondent does not oppose its admissibility insofar as it concerns "an issue of natural justice, procedural fairness, improper purpose or fraud that could not have been

placed before the administrative decision-maker and that does not interfere with the role of the administrative decision-maker as merits-decider" (*Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at para 25; Applicant's Memorandum at paras 38–40; Respondent's Memorandum at para 9). In this case, the evidence is adduced in support of the Applicant's procedural fairness argument and may be accepted as such.

[6] For the reasons below, I find that there was a breach of procedural fairness. This finding is dispositive of the case, and it is therefore unnecessary to address the merits of the decision under review. The application for judicial review is granted.

[7] Procedural review is a form of analysis that "focuses on the nature of the rights involved and the consequences for affected parties" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 55 [*Canadian Pacific Railway*]). When dealing with matters of procedural fairness, the role of a reviewing court is to determine whether "the applicant knew the case to meet and had a full and fair chance to respond" (*Canadian Pacific Railway* at para 56). The Court thus conducts a "reviewing exercise… 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied" (*Canadian Pacific Railway* at para 54). Concretely, this requires the Court to "assess the procedures and safeguards" in place to protect the rights of a party appearing before the administrative decision maker, and determine whether they have been followed in the Applicant's case. If they have not been followed, it is then incumbent on the Court to intervene. Such intervention is an essential part of safeguarding the fairness of the administrative process and holding administrative decision makers to account (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 13 [*Vavilov*]).

[8] The Respondent relies on the Immigration, Refugees and Citizenship Canada's Operational Instructions and Guideline, entitled "Spouses or common-law partners of study permit holders – [R205(c)(ii) – C42] – Canadian interest – International Mobility Program" [Operational Instructions and Guideline] which provides that Officers should consult the student compliance portal in the GCMS to ensure that the principal foreign national is actively engaged in their program of study (Respondent's Record at 65 [RR]). The Respondent also submits that it is up to the Applicant to provide all relevant evidence and documents to satisfy the requirements of their work permit, and to put their best foot forward in their application (*Ahktar v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 595 at para 17; see also *Badial v Canada (Citizenship and Immigration)*, 2020 FC 108 at para 36 [*Badial*]).

[9] It is true that the requirements of procedural fairness in visa applications are minimal (*Singh v Canada (Citizenship and Immigration)*, 2021 FC 790 at para 9; *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at para 16). Officers are under no obligation to seek out explanations or more ample information to assuage their every concern with a visa application; the onus remains on applicants to provide all the necessary information to support their case (*Lv v Canada (Citizenship and Immigration)*, 2018 FC 935 at para 23; *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 37).

[10] However, the low end of the procedural fairness spectrum is not devoid of content. Officers should give notice and seek additional information where they are concerned about "the credibility, accuracy or genuine nature of information submitted by the applicant" (emphasis added) (*Hassani*

v Canada (Citizenship and Immigration), 2006 FC 1283 at para 24; see also *Kaur v Canada (Citizenship and Immigration)*, 2024 FC 943 at para 5 [*Kaur*]).

[11] Indeed, the Operational Instructions and Guideline state that an Officer "may wish to request additional information from the applicant to ensure that the eligibility requirements of the work permit category […] are met" (RR at 64).

[12] In this case, when the Applicant applied for an open work permit on November 25, 2023, his spouse was a full-time student living in Canada on a valid study permit and was actively pursuing her duties (CTR at 19–27). The date of November 25, 2023, is the operative date for the assessment of the application (*Badial* at para 37).

[13] However, when assessing the application, the Officer consulted the student compliance portal on April 29, 2024, and obtained information suggesting that the Applicant's spouse was no longer pursuing full-time studies (CTR at 1). Instead of considering the application as of the date of November 25, 2023, or sending a letter to the Applicant and request additional information to clarify the issue, as permitted by the Operational Instructions and Guideline, the Officer denied the permit.

[14] In my view, the Officer breached the Applicant's right to procedural fairness. The Applicant applied for an open work permit on November 25, 2023. At that time, the information submitted was accurate and met the requirements. By April 29, 2024, the circumstances had changed. The Officer noted that the Applicant's spouse was no longer pursuing full-time studies.

But they never inquired as to whether the information submitted remained accurate, before denying the permit. The Applicant was therefore never notified of "the case to meet" to obtain the permit and allowed to respond to the Officer's concerns, thereby breaching his right to procedural fairness (*Canadian Pacific Railway* at para 56). Had the Officer provided the Applicant with an opportunity to clarify the situation, perhaps the Officer would have been satisfied that the Applicant's spouse was continuing her full-time studies, despite being on medical leave for a short period.

[15] Consequently, if the Officer was concerned about the accuracy of the information submitted by the Applicant, they should have provided him with an opportunity to respond to that concern (*Kaur* at para 5). This was not a question of whether the information submitted by the Applicant was sufficient to establish the eligibility requirements of the work permit category, but whether the information itself was reflective of reality. In those kinds of situations, it is incumbent upon officers to request additional information from applicants. The Officer failed to do so in this case, and made a decision based on inaccurate information.

[16] For the reasons set out above, this application for judicial review is granted. There is no question to certify.

JUDGMENT in IMM-10572-24

THIS COURT'S JUDGMENT is that:

1. The application is granted.
2. The decision is set aside and the matter is remitted for redetermination before a different Officer.
3. There is no question for certification.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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