Federal Court Cour fédérale

Date: 20250516

Docket: IMM-10131-24

Citation: 2025 FC 905

Ottawa, Ontario, May 16, 2025

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

NAVI GOYAL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision dated January 30, 2024, by an officer of Immigration, Refugees and Citizenship Canada ("IRCC"), which denied his application for an extension of his work permit ("Decision").

[2] For the reasons that follow this application is dismissed.

II. Background

[3] The Applicant is a 28-year-old citizen of India.

[4] On November 4, 2023, the Applicant applied for an open work permit. At the time of his application, the Applicant did not set out the duration of the work permit nor did he indicate that he was applying under the temporary "public policy to issue open work permits to certain post-graduation work permit ["PGWP"] holders between April 6 – December 31, 2023" ("Policy").

[5] On January 30, 2024, the officer issued the Decision that denied the Applicant's application.

[6] On February 15, 2024, the Applicant requested reconsideration of the Decision. The reconsideration request was denied on February 28, 2024 ("Reconsideration").

[7] The Applicant filed this application for leave and judicial review on June 11, 2024.

III. Issues and Standard of Review

[8] The parties submitted, and I agree, that the applicable standard of review in this case is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 25, 86).

[9] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Vavilov* at paras 12–15, 95). The starting point for a reasonableness review is the reasons for decision. Pursuant to the *Vavilov* framework, a reasonable decision 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).

[10] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (*Vavilov* at para 100).

[11] The standard of review for procedural fairness issues is correctness, or akin to correctness (*Vavilov* at para 53; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56). The reviewing court must consider what level of procedural fairness is necessary in the circumstances and whether the "procedure followed by the administrative decision maker respect[s] the standards of fairness and natural justice" (*Chera v Canada (Citizenship and Immigration)*, 2023 FC 733 at para 13). In other words, a court must determine if the process followed by the decision maker achieved the level of fairness required in the circumstances (*Kyere v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 120 at para 23, citing with approval *Mission Institution v Khela*, 2014 SCC 24 at para 79).

[12] The issues to be determined in this Application are:

A. Can this Court consider both the Decision and the Reconsideration? In other words, what is the scope of the application?
B. Was the Decision reasonable?
C. Was there a breach of procedural fairness?

IV. Analysis

[13] The Applicant submitted that the officer did not reasonably review all the evidence or arbitrarily disregarded evidence that contradicts their findings.

[14] The Respondent argued that the Applicant's arguments relate to a decision that is not under review in this application, namely the Reconsideration. As well, the Respondent argued that pursuant to Rule 302 of the *Federal Courts Rules*, SOR/98-106 [*Rules*] an application is limited to a single order, in this case that is the Decision.

[15] Further, the Respondent argued that the Decision is reasonable as the Applicant failed to submit a proper application for an open work permit under the Policy and the Applicant failed to meet the eligibility criteria as set out in the Policy.

A. *Scope of the Application*

[16] Rule 302 provides that an application for judicial review shall be limited to a single decision. However, an applicant may challenge multiple decisions in a single application, where the decisions constitute a continuing act or course of conduct: (*David Suzuki Foundation v Canada (Health)*, 2018 FC 380 [*Suzuki*] at para 173; *Shotclose v Stoney Frist Nation*, 2011 FC 750 [*Shotclose*]; *Canadian Coalition for Firearm Rights v Canada (Attorney General)*, 2021 FC 447; *Prairie Chicken v Blood Tribe Band Council*, 2024 FC 1151; *Tallman v Whitefish Lake First Nation #459*, 2023 FC 1411; *Claxton v Tsawout First Nation*, 2024 FC 1546 [*Claxton*]; *Tootoosis v Poundmaker Cree Nation #345*, 2024 FC 1171; *Johnny v Dease River First Nation*, 2024 FC 1636 at paras 33–35).

[17] This Court has found that Rule 302 does not apply where there is a continuous course of conduct. A continuous course of conduct is one where "[t]he decisions in question are so closely linked as to be properly considered together" (*Shotclose* at para 64).

[18] As was recently noted by this Court in *Claxton* at paragraph 62:

> As held in *Suzuki*, referenced by both parties, the factors to be considered in determining whether there is a continuing act or course of conduct include, for the purposes of Rule 302, (a) whether the decisions are closely connected; (b) whether there are similarities or differences in the fact situations, including, the type of relief sought, the legal issues raised, the basis of the decision and decision-making bodies; (c) whether it is difficult to pinpoint a single decision; and (d) based on the similarities and differences, whether separate reviews would be a waste of time and effort (*Mahmood v Canada*, 1998 CanLII 8450 (FC); *Truehope Nutritional Support Ltd v Canada (Attorney General)*, 2004 FC 658 at para 6; *Potdar v Canada (Citizenship and Immigration)*, 2019 FC 842 at paras 18 – 20; *Canadian Coalition for Firearm Rights v Canada (Attorney General)*, 2021 FC 447 at paras 20 – 21).

[19] The Applicant's application for leave and judicial review quite clearly only seeks leave in respect of the Decision. The application no mention of the Reconsideration. This is noteworthy because, the Applicant was represented by counsel. The Applicant was aware that the request for reconsideration had been denied. In addition, the Applicant was late in filing his application for leave and judicial review, having filed on June 11, 2024. The Applicant requested and was granted leave to serve and file his application late.

[20] The principle functions of pleadings are to "define with clarity and precision the question in controversy between litigants" and to "give fair notice of the case which has to be met so that the opposing party may direct his evidence to the issues disclosed by them" (see *Premakumaran v Canada*, 2003 FCT 635 at paras 10–12). In view of the circumstances noted above, I am not persuaded that this Court should exercise its discretion to consider matters that were not properly set out in the application for leave and judicial review.

[21] In addition, I will note that the Applicant did not fully address the factors that this Court considers when determining if two or more decisions may be challenged in a single order,

pursuant to Rule 302. In oral argument, counsel for the Applicant argued that it would be in the interests of justice to consider both decisions, as both decisions concern the same application.

[22] The Respondent argued that while both decisions are related to the Applicant's application for an open work permit, the decisions are distinct; the first relating to the substance of the application for a permit, the second relating to a request to reconsider the denial of the application. Further, the Respondent noted that because the application only challenged the Decision and not the Reconsideration, the evidence before the Court in the Certified Tribunal Record only relates to the Decision.

[23] I am not persuaded by the Applicant that it is appropriate for this Court to consider the Reconsideration in the context of this application. A consideration of the *Suzuki* factors leads me to conclude that: while both decisions are related to the Applicant's application for an open work permit, the decisions are distinct and the issues raised in the context of the denial of the application and the request for reconsideration are distinct.

[24] Further, I am persuaded by the jurisprudence of this Court that a court may refuse an order under Rule 302, where to permit such an order would allow an application to overcome the 30-day time limitation set out in subsection 18.1(2) of the *Federal Courts Act*, RSC 1985, c F-7 (*James Richardson International Ltd v Canada*, 2004 FC 1577 at para 22). The Court has discretion to grant an extension of time. For a court to grant an extension of time, the Applicant must meet the test set out in *Canada (Attorney General) v Hennelly*, 1999 CanLII 8190 (FCA):

1. A continuing intention to pursue his or her application;
2. That the application has some merit;
3. That no prejudice to the respondent arises from the delay; and

4. That a reasonable explanation for the delay exists.

[25] The Applicant did not make submissions to address an extension of time that would permit this Court to exercise its discretion to consider the Reconsideration within the present application.

[26] Accordingly, I will limit my decision to a consideration of the January 30, 2024 Decision only.

B. *Reasonableness*

[27] The officer's reasons for Decision state:

> Client most recently held a Post Graduate Work Permit (PGWP) valid to December 24, 2023 and is now requesting an open work permit. Careful review of all submitted documents and integrated search results fail to demonstrate grounds for open permit issuance. No LMIA submitted nor permanent resident application on file. Client may be applying under 2023 temporary public policy to facilitate the issuance of an open work permit to former or current PGWP holders that came into force on April 06, 2023, however, as client did not request consideration under this public policy and did not indicate the duration of the work permit they are seeking in their application (maximum of 18 months), client does not meet eligibility criteria and is therefore refused. Client notified of decision. $100 Open Work Permit Holder fee refund initiated.

[28] The Applicant argued that the Decision does not bear the necessary hallmarks of reasonableness. Specifically, the Applicant argues that the Decision is not clear and is not consistent with the evidence.

[29] The Respondent argued that the Decision is reasonable. The Respondent argued that the Applicant's application failed to satisfy the Policy requirements, and it was reasonable for the officer to deny the application.

[30] Further, the Respondent argued that the Applicant's arguments that the Decision is inconsistent with the evidence are not properly before this Court, as the evidence referenced by the Applicant was not before the officer making the Decision. Rather, the evidence referenced by the Applicant was only submitted in his request for reconsideration.

[31] Subsections 30(1) and (1.1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, establish that a foreign national may only work or study in Canada with authorization. Subsection 203(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 set out factors an officer must consider when assessing an employment offer, this includes terms of a Labour Market Impact Assessment ("LMIA") from the Department of Employment and Social Development.

[32] The Policy was in effect and available from April 6 to December 31, 2023, and permitted post-graduation work permit holders whose permits had expired or were set to expire between September 20, 2021, and December 31, 2023, to apply for an open work permit.

[33] The Affidavit of Kandice Wong, sworn September 11, 2024, included two exhibits: exhibit B, information from a webpage titled "Current and former post-graduation work permit holders: How to apply under a public policy if you're in Canada," accessed online September 10, 2024, from: https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/post-graduation-work-permit-holders/apply-in-canada.html; and exhibit C, information from a the webpage titled "Public policy to issue an open work permit to certain post-graduation work permit (PGWP) holders – April 6 to December 31, 2023," accessed online on September 10, 2024, from: https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-

residents/foreign-workers/pgwp.html. These two exhibits are the publicly available Policy instructions to guide and assist applicants under the Policy.

[34] A review of the Policy instructions indicates that applicants "must include in [their] application the fact that [they were] applying for an open work permit under th[e] public policy." In addition, the information and instructions are clear that applications would only be eligible if they requested consideration under the Policy and clearly set out the duration of the work permit sought, up to a maximum of 18 months.

[35] The websites clearly highlight "special instructions for this public policy" to guide applicants on how they are to fill in their applications for consideration under the Policy. A review of the websites also illustrates that there were links to additional instructions and to pages where further information could be found.

[36] A review of the Applicant's application indicates that he did not indicate on his application form that he was applying for an open work permit pursuant to the Policy, the duration of his permit, nor does the applicant include the LMIA information.

[37] The officer's Decision to deny the Applicant's application, considering the deficiencies in the application is reasonable.

[38] The Applicant has pointed to evidence that he says was not considered by the officer. With respect, this evidence was not before the officer reviewing the Applicant's open work permit application. Rather, the evidence was provided in support of the Applicant's request for reconsideration, which is not properly before me in this application.

[39] The Applicant has asked that this Court re-weigh the evidence presented in his open work permit application.

[40] To be clear, this request is not proper on judicial review. On judicial review, reviewing courts are to be "restrained," and should respect the expertise of administrative decision makers (*Vavilov* at para 75). The onus is on an applicant to put forward their best case and all relevant evidence to ensure that the information set out in their application is complete, convincing, and unambiguous (*Kaur v Canada (Citizenship and Immigration)*, 2018 FC 657 at para 21, citing *Shahzad v Canada (Citizenship and Immigration)*, 2017 FC 999 at paras 19, 40; *Canada (Citizenship and Immigration) v Genter*, 2018 FC 32 at para 13; and *Alvaro v Canada (Citizenship and Immigration)*, 2024 FC 1627 at para 27).

[41] In my opinion, the officer's Decision is reasonable, and the reasons for decision are transparent, justified, and intelligible. It is clear on the face of the Decision why the Applicant's application was refused.

C. *Procedural fairness*

[42] In addition to the above, the Applicant argued that the Decision was not procedurally fair. It is not entirely clear, but the basis for this argument is the failure of the officer to consider additional evidence provided in support of the reconsideration request. Further, the Applicant asserted that the officer fettered his discretion.

[43] The Respondent argued that the Applicant has the onus to provide all necessary information in support of his application at the time of the application.

[44] Generally, an applicant has the onus to "put their best foot forward," in other words, they must provide all necessary information in support of their application. There is no obligation on the part of an officer to provide an applicant with an opportunity to clarify, provide additional supporting information, or explain elements of their application. Officers are not required to provide a procedural fairness letter or interview an applicant where an application falls short of the statutory requirements (*Aghvamiamoli v Canada (Citizenship and Immigration)*, 2023 FC 1613 at paras 19–20).

[45] I am not persuaded that there has been any breach of procedural fairness. Nor has the Applicant set out how the officer fettered their discretion.

V. Conclusion

[46] The Decision is reasonable and bears the necessary hallmarks of a reasonable decision. There has been no breach of procedural fairness.

[47] The Applicant argued that he "came [to Canada] as a student" and he "is not very well versed with the legalities and technicalities of the application process." I appreciate that the Applicant may not be an expert and I understand that navigating the application process can be a challenge.

[48] That said, he had successfully applied for a student visa and a post-graduate work permit in the past. He is a college graduate, can read and write in English, and had access to the publicly available information to guide applicants applying under the Policy. It was also open to the Applicant to seek assistance to ensure his application was complete and compliant with the Policy requirements. As noted above, ultimately, an applicant has a duty to provide complete

accurate information in their application, to ensure that they “put their best foot forward” so that a reviewing officer has all pertinent information before them in their assessment of the application. The Applicant failed to do this.

JUDGMENT in IMM-10131-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified.

"Julie Blackhawk"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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