

Federal Court



Cour fédérale

Date: 20260211

Docket: IMM-8267-24

Citation: 2026 FC 133

Ottawa, Ontario, February 11, 2026

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

JONATHAN GERARDO MESEN ZARATE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for judicial review of the decision of a Visa Officer [Officer], dated March 15, 2024 [Decision], denying Jonathan Gerardo Mesen Zarate's [Applicant] application for his open work permit.

[2] This application for judicial review could be dismissed on the basis that it has been moot for some time and that the discretion in a reviewing court to consider the matter despite its mootness should not be exercised (*Borowski v Canada (Attorney General)*, [1989] 1 SCR 342). Instead it can be dismissed on the basis that the Applicant has not satisfied his burden to satisfy on a balance of probabilities that the Decision is unreasonable.

I. Facts

[3] The Applicant is a 39-year-old citizen of Costa Rica. He is married to Karla Vanessa Hernandez Brizuela, also a national of Costa Rica, and they have a minor son, Gabriel Josue Mesen Hernandez.

[4] On October 14, 2023, the Applicant's spouse was accepted in the Human Resources Certificate co-op program at Bow Valley College in Calgary, a one-year program starting in September 2024. Her acceptance was conditional to her completing the one-term International English Language Learning Program by August 30, 2024.

[5] In November 2023, the Applicant's spouse applied for a study permit for both her and their minor child. At the same time, the Applicant submitted his first open work permit application.

[6] On November 29, 2023, the Applicant's work permit application was refused since the program his spouse was attending was not one that qualified under the category "Spouses and common-law partners of full-time students."

[7] On December 6, 2023, the Applicant's spouse and son's study permit application was initially approved.

[8] On December 17, 2023, the Applicant's spouse successfully completed a Duolingo English test. On January 22, 2024, the Applicant's spouse received an unconditional letter of acceptance to the Human Resources Certificate program to start on September 3, 2024. That same day, the Applicant applied again for an open work permit under the International Mobility Program, submitting his spouse's latest letter of acceptance with no conditions attached.

[9] A month later, on February 22, 2024, the Officer requested "An original letter of acceptance from the intended educational institution" of the Applicant's spouse.

[10] On March 15, 2024, the Officer determined that the Applicant's application did not meet the requirements of the IRPA and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. The reason given is that the Applicant's spouse was not actively engaged in full-time studies in a post-graduation work permit-eligible [PGWP] study program. The Applicant's open work permit application was denied. This is the Decision under review.

[11] On May 10, 2024, the Applicant filed an Application for Leave and for Judicial Review of the Officer's Decision. On August 5, 2024, the Applicant entered Canada as a visitor; his spouse and son entered Canada and were issued study permits. On September 3, 2024, the Applicant's spouse began her studies.

II. Decision Under Review

[12] The refusal letter states that the Officer determined that the Applicant's application did not meet the requirements of the IRPA and the IRPR. The Officer states in that letter that the application was refused on the following ground:

- Your spouse is not actively engaged in full-time studies in a post-graduation work permit-eligible study program.

[13] In the Global Case Management System [GCMS] notes, which forms part of the Decision (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at para 44 [*Baker*]), the Officer provided fuller reasons for their Decision:

LoA provided. Spouse is enrolled in language studies May 7, 2024- Aug 23, 2024; followed by Human Resources Certificate September 3, 2024. Acceptance into latter program is conditional to completion of the first program according to LoA. Noted that an additional letter of acceptance for letter program dated 2024-01-22 has been provided however no confirmation that first program has been completed and the start date is unchanged.

Spouse is not yet studying on a full-time basis in a PGWP eligible program. Applicant has applied too early and is not yet eligible for an open work permit as the spouse of a student.

Refused.

[Transcribed as in original.]

III. Issue

[14] The Applicant raises an issue of procedural fairness that is more akin to an issue of reasonableness. Therefore, the sole issue in this Application is whether the Officer's Decision was reasonable: *Canada (MCI) v. Vavilov*, 2019 SCC 65; [2019] 4 SCR 653 [*Vavilov*].

IV. Standard of Review

[15] As our Court has found on numerous occasions, the standard of review of a decision regarding a work permit is reasonableness (*Kaur v Canada (Citizenship and Immigration)*, 2022 FC 270 at para 21; *Bains v. Canada (Citizenship and Immigration)*, 2020 FC 57 at para 49; *Lin v. Canada (Citizenship and Immigration)*, 2019 FC 1284 at para 23; *Ocran v. Canada (Citizenship and Immigration)*, 2022 FC 175 at para 16).

[16] 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 paras 85, 102, 105–07). A decision should not be set aside unless it contains “sufficiently serious shortcomings ... such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

[17] Reasons are not held to a standard of perfection (*Vavilov* at para 91). In the context of decisions for work permits and similar applications, it is understood that the reasons are brief (*Patel v. Canada (Citizenship and Immigration)*, 2020 FC 77 at para 17); nonetheless, the reasons must permit the Court to understand why the application was refused and to determine that the conclusion falls within the range of reasonable outcomes.

V. Legislative Provisions and Applicable Guidelines

[18] Open work permits may be issued in the following circumstances (IRPR s. 205(c)(ii)):

Canadian interests

205 A work permit may be issued under section 200 to a foreign national who intends to perform work that

[...]

(c) is designated by the Minister as being work that can be performed by a foreign national on the basis of the following criteria, namely,

[...]

(ii) limited access to the Canadian labour market is necessary for reasons of public policy relating to the competitiveness of Canada's academic institutions or economy; or

Intérêts canadiens

205 Un permis de travail peut être délivré à l'étranger en vertu de l'article 200 si le travail pour lequel le permis est demandé satisfait à l'une ou l'autre des conditions suivantes

[...]

c) il est désigné par le ministre comme travail pouvant être exercé par des étrangers, sur la base des critères suivants :

[...]

(ii) un accès limité au marché du travail au Canada est justifiable pour des raisons d'intérêt public en rapport avec la compétitivité des établissements universitaires ou de l'économie du Canada;

VI. Parties' Submissions

A. *Applicant's Submissions*

[19] First, the Applicant submits that the Officer did not properly follow the federal guidelines outlined on the Immigration, Refugees and Citizenship Canada [IRCC] website regarding the eligibility for an open work permit for spouses of international students. He argues that his spouse fulfilled all requirements as she received an unconditional letter of acceptance from Bow

Valley College for a full-time program that qualifies for the PGWP. This documentation was submitted as part of the application.

[20] It is submitted that the applications were processed together and thus should have been assessed in the context of a family unit. The Applicant and his family submitted their temporary resident visa applications as members of the same family while outside of Canada (in Costa Rica where they resided).

[21] Second, the Officer failed to consider the updated documentation, including the unconditional letter of acceptance from Bow Valley College. This letter confirmed that the Applicant's spouse had been admitted into a program that is eligible for a PGWP. The Applicant argues that the Officer's refusal was based on an outdated assertion that the Applicant's spouse was not yet studying in a PGWP-eligible program. According to the Applicant, the Officer failed to consider the updated documentation.

[22] Third, it is alleged that the Officer breached procedural fairness by requesting documents that had already been submitted, stating that this unnecessary request not only caused a delay in the processing of the application, but may also have contributed to the improper refusal of the open work permit. The Applicant argues that by focusing on an already provided document, the Officer overlooked the completeness of the application and failed to take the necessary steps to make an informed decision. The failure to recognize that all required documents were already submitted suggests, according to the Applicant, a lack of diligence in the review process.

[23] The Applicant argues that he was unfairly penalized for submitting his application proactively. His second open work permit application was submitted in January 2024, several months ahead of his spouse's scheduled full-time studies at Bow Valley College, which were set to begin on September 3, 2024. The purpose of his early submission was to ensure his family could settle in Canada before the start of his wife's program. Thus it is argued that the Officer acted *ultra vires*, exceeding the authority granted and committed an error in the exercise of discretionary powers as the Officer failed to consider the logical timing of issuing the open work permit to begin on September 3, 2024, which would align with the spouse's studies.

[24] As of March 19, 2024, only the spouses of students enrolled in a master's or doctoral program are eligible to apply for a C42 work permit, which marks a change in the eligibility criteria for applicants seeking open work permits as spouses of international students. The Applicant argues that under these new rules he will be penalized.

[25] Fourth, the Officer violated his legitimate expectation that the evidence would be fairly reviewed, citing *Baker*. The Applicant states that the Officer did not properly account for the updated unconditional letter of acceptance into a PGWP-eligible program, nor the proactive actions taken by the Applicant to ensure his family's seamless transition to Canada. The Applicant argues that the Officer in this case did not adhere to the relevant guidelines or apply a reasonable approach in balancing the Applicant's situation, particularly given the timing of the application.

[26] The Applicant concludes by stating that the lack of a properly reasoned and justified decision is inconsistent with the standards of reasonableness, as articulated in *Baker*, and most recently in *Vavilov*.

B. *Respondent's Submissions*

[27] The Respondent submits that the Officer's reasons for refusing the application are reasonable in light of the evidence. The onus was on the Applicant to demonstrate that they meet the requirements of the IRPR. The Applicant failed to do so, and the Officer's Decision was responsive to the record that was before them.

[28] The Officer reasonably refused the Applicant's open work permit as the Applicant was ineligible for a work permit because he failed to submit evidence (a) that he is the spouse of a valid study permit holder, (b) that his spouse is attending a designated learning institution [DLI], (c) that his spouse is enrolled in full-time studies in a post-graduation work permit eligible study program and institution. It is noted that the Applicant's spouse was accepted in a program starting only on September 3, 2024, and therefore the Officer reasonably concluded that "spouse is not yet studying on a full-time basis in a PGWP eligible program." Therefore, as noted by the Officer the "Applicant has applied too early and is not yet eligible for an open work permit as the spouse of a student."

[29] While the Applicant claims he should not be penalised for submitting his application proactively, the Respondent submits that the Officer's conclusion was reasonable in light of the facts and legal constraints. The Respondent notes that the Applicant's eligibility for a work

permit is based on his wife being enrolled in the Human Resources Certificate program starting on September 3, 2024. When the Applicant applied for his work permit on January 22, 2024, his wife was not yet enrolled in the said program; she did not hold a study permit. The Respondent highlights that when the Applicant applied, the Applicant's spouse was still in Costa Rica and was not yet a student in Canada.

[30] The Officer's Decision is reasonable; the Applicant did not adduce sufficient evidence to establish that the Officer failed to consider relevant material or erred in their findings of fact. The Respondent notes that the unconditional letter of acceptance received by the spouse on January 22, 2024, recommended that she apply for her study permit on June 6, 2024, three months prior to the beginning of her program. Hence, when reviewed as a whole, the Officer's Decision is reasonable, considering that the Officer concluded that the Applicant "applied too early and is not yet eligible for an open work permit as the spouse of a student."

VII. Analysis

[31] The reason why the work permit was refused is quite straight forward: the Applicant's spouse was not actively engaged in full-time studies as of the date of the Decision. That was stated in the Decision letter of March 15, 2024. The Decision is supplemented by the GCMS notes where we find that "spouse not yet studying or in a full-time basis in a PGWP eligible program."

[32] The Applicant challenges the Decision principally on the basis that the decision maker did not follow the federal guidelines applicable to those who made an application for a work

permit prior to March 19, 2024. The Applicant did not discuss the legal effect of guidelines (*Agraira v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559, para 60). It has been said that the guidelines are not a rigid code, but rather that they provide assistance as to what may be relevant and reasonable.

[33] In effect, the Applicant was seeking to get under the wire as the conditions for the issuance of a work permit in his case were to change. The trouble was that the Applicant's wife was not yet engaged in full-time studies. The evidence offered by the Applicant was that there was a letter of acceptance. That's not being engaged in studies.

[34] Here, assuming for the sake of the discussion that the guidelines (Spouses and common-law partners of study permit holders - [R205 (c) (ii) – C42] - Canadian interest - Internal Mobility Program, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publication-manual>) are to be applied because they provide guidance to the officer to make the decision using relevant information, the guidelines require specific documentary evidence:

With the application for a spousal open work permit, officers should be satisfied that they have the following documentary evidence to make an assessment:

- evidence that the applicant is the genuine spouse
- evidence that the principal foreign national is attending a designated learning institution (DLI)
- evidence that the principal foreign national is actively engaged in full-time studies in a post-graduation work permit-eligible study program and institution, such as

[35] In the consolidated guidelines for various periods, the documentary evidence required for the officers to make their assessment in cases submitted prior to March 19, 2024 includes this:

With the application for an open work permit, officers should be satisfied that they have the following documentary evidence to make an assessment.

All applications must have the following documentation:

- proof that the applicant is the genuine spouse
- proof that the principal foreign national is enrolled in or attending a PGWP-eligible study program and DLI
- proof that other requirements of the Immigration and Refugee Protection Act (IRPA) and the IRPR are met, for example, sufficient funds (housing costs, daily living expenses, etc.) to support themselves that are separate from those of the principal foreign national

Additional documentation is required as per the specific dates below

Applications submitted before March 19, 2024

- proof that the principal foreign national is studying or is enrolled (if applying from outside Canada as a family group) in full-time studies in a PGWP-eligible study program **and** institution such as
 - a Canadian public post-secondary institution, such as a
 - college
 - trade or technical school
 - university
 - CEGEP in Quebec.

[36] The Applicant did not refer to these passages while the Respondent relied specifically on them as the source for the Officer to conclude that the “Applicant has applied too early.” There is

neither proof of studying on a full-time basis in an approved program, nor of enrollment in an institution. At best, there is a letter of acceptance, as indeed acknowledged in the GCMS notes.

[37] No one doubts that an applicant carries the onus to show that the decision is unreasonable. And the applicant is tasked with satisfying the reviewing court that the shortcomings are serious (*Vavilov*, para 100). There is no doubt either that the merits of the decision under review are assessed on a standard of reasonableness (*Vavilov*, para 7, 10, 23 and 25; *Malit v Canada (Minister of Citizenship and Immigration)*, 2018 FC 16, para 10). That standard has been accepted in numerous decisions in the post-*Vavilov* era (among many, *Ghodsi v Canada (Minister of Citizenship and Immigration)*, 2024 FC 620; *Shahbazian v Canada (Minister of Citizenship and Immigration)*, 2023 FC 1556; *Ardestani v Canada (Minister of Citizenship and Immigration)*, 2023 FC 874; *Wardak v Canada (Minister of Citizenship and Immigration)*, 2020 FC 582). Our Court has repeatedly stated that a high degree of deference is owed to the visa officer.

[38] In the case at hand, in view of the evidence which was before the decision maker, it has not been demonstrated that the Decision was unreasonable. The Decision specifies that the Applicant's spouse was not engaged in full-time studies because she was not; she was not even enrolled, let alone engaged. The reviewing court does not substitute its view of the merits, especially where a high degree of deference is owed to visa officers. It was for the Applicant to make the case for why the guidelines could not support the Decision made. The passages of the guidelines which tend to support the Decision rendered were not even addressed or why his spouse met the requirements. The manner in which the guidelines were applied does not make

the Decision unreasonable. It must be demonstrated that the application of the guidelines leads to unreasonableness in the case at bar. The reliance on an acceptance letter without proof of enrollment or engagement in full-time studies falls short. That can only lead to a failure to satisfy the Court that the Decision is unreasonable.

[39] The Applicant argued that the letter of acceptance was not considered, that is in spite of the fact that the GCMS notes acknowledge the reception of that letter. That letter, in and of itself, does not establish much, other than the Applicant's spouse had received a letter of acceptance. She had then to enroll if she was so minded. It has not been shown what else an acceptance letter implies. In fact, the letter itself specifies that the spouse should apply for a student visa by June 6, 2024. She should receive the approval to study in Canada and submit proof to Bow Valley College by July 22, 2024. The deadline to submit the study permit to Bow Valley College and pay the first term's tuition and fees is September 3, 2024. The letter of acceptance is not proof of enrollment according to the Officer. To put it differently, a letter of acceptance does not constitute enrollment a priori. It has not been shown that this was unreasonable in view of the record which was considered by the Officer.

[40] The Applicant appears to recognize that his application was early as he claims to be unfairly penalised by submitting his application proactively to ensure his family's stability in Canada. With respect the submission is without merit. If it is early, it is because there was no enrollment yet. The question is whether the Officer acted unreasonably. If the guidelines call for being engaged in studies in Canada, or at least being enrolled, how unreasonable can that be that

a mere letter of acceptance could not suffice to issue a work permit? Where is the evidence of study or enrollment?

[41] Finally, a breach of procedural fairness is argued. As I understand it, the Applicant faults the Officer for having requested an original of the acceptance letter, being evidently less than satisfied with the copy forwarded on January 22, 2024. It was, says the Applicant, unnecessary and redundant. It indicates a failure to properly review the application, a lack of diligence in the review process.

[42] The Applicant did not spell out what participatory rights may have been infringed, or other procedural improprieties may have occurred. That is what constitutes a violation of procedural fairness. What must be stressed is that what the notion implies is that the procedure followed was fair and appropriate (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, para 22). A decision that affects the rights, privileges and interests of individuals must be taken in accordance with procedural guarantees (which may vary with decisions) that they will be able to participate and that the decision maker will be impartial. In *Judicial Review of Administrative Action in Canada* (by Donald J.M. Brown and John M. Evans, and Adam J. Beatty, with the assistance of David Fairlie, Thomson Reuters), the notion is described thus:

§ 7:57

Given the broad application of the duty of fairness, the more significant question today is the content of the duty in any given decision-making situation. Due to the diversity of administrative action, these requirements can vary, running from the full panoply of procedures commonly associated with judicial proceedings, to the right simply to be notified and to express one's views in whatever mode may seem appropriate. Despite the diversity of

content, however, it is possible to identify a common core to the participatory rights that the duty of fairness requires. Its principle purpose is to provide a meaningful opportunity for those interested to bring evidence and arguments that are relevant to the decision to be made to the attention of the decision-maker¹, and correlatively, to ensure that the decision-maker fairly and impartially considers them.²

[43] The argument put forth by the Applicant is not one relative to procedural fairness. The fact that the decision maker requested an original of the acceptance letter (February 22, 2024) does not denote a violation of participatory rights or a consideration of the matter in a less than impartial fashion. The Applicant did not submit any authority for his broad proposition, and I do not know of any. The legitimate expectation doctrine also invoked by the Applicant “does not create substantial rights” (*Baker*, para 26). If the evidence is not treated properly by a decision maker, that will constitute an unreasonable decision and that will be sanctioned as such. But asking for an original copy of an acceptance letter does not constitute a violation of the duty to act fairly or a breach of the Applicant’s legitimate expectation. The legitimate expectation that a certain procedure will be followed is not what the Applicant raises.

VIII. Conclusion

[44] It follows that the judicial review application must be dismissed as the Applicant has failed to demonstrate that the Decision under review was not reasonable within the *Vavilov* framework.

[45] This case does not raise a serious question of general importance.

JUDGMENT IN IMM-8267-24

THIS COURT'S JUDGMENT is that:

1. The judicial review application is dismissed.
2. No serious question of general importance is stated.

"Yvan Roy"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8267-24

STYLE OF CAUSE: JONATHAN GERARDO MESEN ZARATE v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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DATED: FEBRUARY 11, 2026

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