

Federal Court



Cour fédérale

Date: 20160919

Docket: IMM-5645-15

Citation: 2016 FC 1057

Ottawa, Ontario, September 19, 2016

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

ZHENG ZHANG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Zheng Zhang, is a citizen of China who has been studying in Canada at the post-secondary level under a study permit issued by Citizenship and Immigration Canada [CIC]. Following completion of his studies, Mr. Zhang applied for a work permit under CIC's Post-Graduation Work Permit Program [PGWPP]. His application was refused by a CIC officer,

who was not satisfied that Mr. Zhang met the program requirement of having continuously studied full time in Canada.

[2] Mr. Zhang seeks judicial review of the officer's decision, arguing that: (a) the decision is unreasonable; and (b) he was denied procedural fairness because the officer failed to advise him, before making the decision, of his concerns regarding Mr. Zhang's satisfaction of the PGWPP requirements. The Respondent, the Minister of Citizenship and Immigration, argues that the decision is reasonable and that no breach of procedural fairness has occurred.

[3] For the reasons explained in more detail below, this application is dismissed. The officer's decision is reasonable, taking into account the deference owed to the officer in concluding whether a particular course of study qualifies as full time. The officer's concerns regarding Mr. Zhang's satisfaction of the PGWPP requirements also do not relate to the credibility, genuineness or accuracy of information submitted by Mr. Zhang, so as to invoke a duty to give Mr. Zhang an opportunity to address those concerns.

II. Background

[4] In the decision refusing the application, the officer refers to the transcripts that Mr. Zhang submitted from University of Windsor Centre for English Language Development and St. Lawrence College. Based on the transcripts, the officer makes the following findings:

- A. Mr. Zhang was registered at the University of Windsor from May to August 2011 and September to December 2011. His fall 2011 term was incomplete, he passed the intersession 2011 term, and he failed the winter

2011 term. His overall attendance was 40%, and he did not meet the requirements to move to the next level of the program;

- B. There was a gap in Mr. Zhang's studies from January 2012 to January 2013;
- C. Mr. Zhang began studying at St. Lawrence College in the winter 2013 semester in January 2013. He withdrew from all but one course during that semester and withdrew from all but one course during the subsequent fall 2013 semester. During the following three semesters, he failed three courses and passed the remaining courses with a degree GPA of 1.72.

[5] The officer then states that he is not satisfied that Mr. Zhang has continuously studied full time in Canada and that the PGWPP requirements are not met.

[6] Other than the conclusion that he had not been continuously studying full time, Mr. Zhang agrees that the officer's factual findings are accurate, with the exception that Mr. Zhang actually completed four, not three, semesters at St. Lawrence College following the fall 2013 semester.

III. Issues

[7] The issues submitted by Mr. Zhang for the Court's determination are;

- A. Whether the officer made an unreasonable determination that Mr. Zhang did not meet the eligibility requirements for a post-graduation work permit; and
- B. Whether there was a breach of procedural fairness based on the officer's failure to advise of concerns relating to the nature of study in Canada and the accuracy of the submitted documentation.

IV. Standard of Review

[8] The parties agree, and I concur, that the standard of reasonableness applies to the Court's review of the first issue and the standard of correctness applies to the second.

V. Legislation and Policy

[9] As identified in the Minister's written submissions, the principal statutory authority for the issuance of the type of work permit at issue in this application under the PGWPP is section 205(c)(ii) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations], made under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

Section 205(c)(ii) provides as follows:

Canadian interests

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

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 :

<p>...</p> <p>(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,</p> <p>...</p>	<p>...</p> <p>c) il est désigné par le ministre comme travail pouvant être exercé par des étrangers, sur la base des critères suivants :</p> <p>...</p>
<p>(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;</p> <p>...</p>	<p>(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;</p> <p>...</p>

[10] Other than this statutory foundation, Mr. Zhang correctly submits that the PGWPP is primarily a product of policy, as neither the Act nor the Regulations provide the eligibility requirements. Both parties refer to these requirements being found in what Mr. Zhang describes as CIC's Program Delivery Requirements, a document which provides as follows:

The Post-Graduation Work Permit Program (PGWPP) allows students who have graduated from a participating Canadian post-secondary institution to gain valuable Canadian work experience. Skilled Canadian work experience gained through the PGWPP helps graduates qualify for permanent residence in Canada through the Canadian experience class (CEC).

Employers seeking to employ open work permit holders are exempt from the requirement to first obtain a positive Labour Market Impact Assessment (LMIA) from Service Canada. The

open work permits issued to the graduates in line with the PGWPP requirements are coded with the LMIA exemption code C43.

A work permit under the PGWPP may be issued for the length of the study program, up to a maximum of three years. A post-graduation work permit cannot be valid for longer than the student's study program, which must be a minimum of eight months in length.

....

To obtain a work permit under the PGWPP, the applicant must meet the following requirements:

- have a valid study permit when applying for the work permit;
- have continuously studied **full time in Canada** (i.e., studies must have taken place at a Canadian educational institution) and have completed a program of study that is at least **eight months** in duration;
- have completed and passed the program of study and received a written notification from the educational institution indicating that they are eligible to obtain a degree, diploma or certificate. The educational institution must be one of the following:
 - o a public post-secondary institution, such as a college, trade/technical school, university or CEGEP (in Quebec),
 - o a private post-secondary institution that operates under the same rules and regulations as public institutions,
 - o a private secondary or post-secondary institution (in Quebec) offering qualifying programs of 900 hours or longer leading to a *diplôme d'études professionnelles* (DEP) or an *attestation de spécialisation professionnelle* (ASP), or
 - o a Canadian private institution authorized by provincial statute to confer degrees but only if the student is enrolled in one of the programs of study leading to a degree as authorized by the province and not in all programs of study offered by the private institution.

Applicants must apply for a work permit **within 90 days of receiving written confirmation** (for example, a transcript or an official letter) from the educational institution indicating that they have met the requirements for completing their program of study. Calculation of the 90 days begins the day when the student's final marks are issued or when formal written notification of program completion is received, whichever comes first.

VI. Analysis

A. *Whether the officer made an unreasonable determination that Mr. Zhang did not meet the eligibility requirements for a post-graduation work permit*

[11] Mr. Zhang argues that the officer's recitation of the facts surrounding his attendance at the University of Windsor, and the gap in his studies from January 2012 to January 2013, is accurate but irrelevant to his application for a work permit, which was based on his program of study at St. Lawrence College. With respect to St. Lawrence College, Mr. Zhang notes that the officer referred to his withdrawal from all but one class in each of the first two semesters of the program, as well as his subsequent failure of three courses, and argues that one can withdraw from and fail classes and still be a full-time student.

[12] While the officer's decision recites Mr. Zhang's full educational history in Canada, I read the decision as turning on the officer's analysis of the course of study at St. Lawrence College which, as Mr. Zhang submits, forms the basis for his application. In oral argument, both Mr. Zhang and the Minister referred to the officer's focus on Mr. Zhang's withdrawal from five of six courses in each of the first two semesters at St. Lawrence College. Similarly, my conclusion on the issue of the reasonableness of the decision turns on whether the officer reasonably found,

based on Mr. Zhang's withdrawal from those courses, that he had not been continuously studying full-time.

[13] Given the applicable standard, I must dismiss this ground of review. While Mr. Zhang correctly points out that neither the Act, Regulations nor policy documentation define the meaning of studying full-time, I consider the interpretation of this aspect of the program requirements to be within the scope of the determinations the officer must make, which attract deference and should not be disturbed if they fall within a range of acceptable and possible outcomes. Another officer, or the Court, might conclude that a student remains full-time notwithstanding that he has withdrawn from most of the courses in which he has enrolled. Indeed, it appears from the letter written by St. Lawrence College that the institution characterized Mr. Zhang as a full-time student. However, notwithstanding that characterization by the college, I do not regard the officer's conclusion, that on these facts Mr. Zhang was not studying full-time, to be outside the range of acceptable outcomes and therefore unreasonable.

[14] Mr. Zhang also submits that he was clearly enrolled on a full-time basis for four semesters (winter 2014, summer 2014, fall 2014 and winter 2015), which is equivalent to two years of college and the official length of the program from which he graduated. He argues that he therefore met the requirement of studying on a continuous and full-time basis for at least eight months, being the minimum study period required under the PGWPP.

[15] I find this argument comparable to that which was advanced before Justice Gascon in *Rehman v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1021. In that case, an

applicant for a study permit, who had been studying part-time for a portion of his program, argued that he was required to have engaged in a period of continuous full-time study only for the minimum of eight months referred to in the PGWPP. Justice Gascon rejected this argument, holding at paragraph 19 that the full-time status and the duration of the program are two distinct requirements under the PGWPP. An applicant must have studied full time in Canada and must have completed a program of study that lasted at least eight months. Similarly, in the case at hand, I cannot conclude the officer's decision to be unreasonable for failing to grant Mr. Zhang's application based on full-time status for two of the three years of his program.

[16] Finally, I note Mr. Zhang's argument that the officer made a factual error in referring to his enrollment during three semesters following 2013, when in fact he attended during four semesters. However, I agree with the Minister's position on this issue, that that this error is not determinative, as the identification of the additional semester would not have changed the officer's conclusion as to the effect of Mr. Zhang's withdrawal from the majority of his courses in 2013.

B. *Whether there was a breach of procedural fairness based on the officer's failure to advise of concerns relating to the nature of study in Canada and the accuracy of the submitted documentation.*

[17] In support of his procedural fairness argument, Mr. Zhang relies upon the decision in *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283. At paragraph 24, Justice Mosley explained that, where a visa officer's concerns with an application arise directly

from the requirements of the legislation or related regulations, the officer will not be under a duty to provide an opportunity for the applicant to address these concerns. However, where the issue is not one that arises in this context, such as where the credibility, accuracy or genuine nature of information submitted by the applicant is the basis of the officer's concern, then such a duty may arise. Mr. Zhang argues that the officer failed to advise him of concerns regarding the accuracy of documents submitted in support of his application and refers in particular to the letter and transcript from St. Lawrence College referring to his status as full-time.

[18] The Minister does not take issue with these principles but argues that the officer's concerns in the present case are unrelated to the credibility, accuracy or genuine nature of information submitted by Mr. Zhang. I agree with the Minister's position on this issue. While the requirements at issue in the present case are those derived from CIC policy rather than the Act or Regulations, the officer's concerns that resulted in rejection of this application arose from Mr. Zhang's failure to satisfy the officer that he had met the requirement of continuously studying full-time in Canada. Nothing in the officer's decision suggests that it turned on concerns about the credibility, accuracy or genuine nature of information submitted by Mr. Zhang.

[19] In particular, there is no basis to conclude that the officer had concerns about the credibility, accuracy or genuine nature of the letter from St. Lawrence College referring to Mr. Zhang's attendance as full time. Rather, the officer reached his own conclusion as to whether Mr. Zhang had been studying full-time, based on the information available from the transcript, rather than relying on the college's characterization of his status.

[20] The present case is therefore distinguishable from the decision of Justice O’Keefe in *Kaur v Canada (Minister of Citizenship and Immigration)*, 2011 FC 219, upon which Mr. Zhang relies. In that decision, the officer was not convinced that the applicant was a genuine student and had concerns about the credibility of documents received from the applicant’s college. Justice O’Keefe held at paragraph 28 that, having formed the view that such documentation was not credible or was fraudulent, the officer ought to have arranged an interview with the applicant to provide an opportunity to respond to those concerns. In the present case, there are no such concerns evident from the officer’s decision that would give rise to such an obligation.

[21] Having found no error on the part of the officer under either of the grounds of review raised by Mr. Zhang, this application for judicial review must be dismissed. Neither party proposed any question of general importance for certification for appeal, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

“Richard F. Southcott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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