

Federal Court



Cour fédérale

Date: 20190503

Docket: IMM-4166-18

Citation: 2019 FC 572

Ottawa, Ontario, May 3, 2019

PRESENT: Mr. Justice Simon Fothergill

BETWEEN:

PAWANDEEP KAUR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Pawandeep Kaur seeks judicial review of a decision by an officer [Officer] with Immigration, Refugees and Citizenship Canada [IRCC] to refuse her application for a Post Graduate Work Permit [PGWP]. The Officer held that Ms. Kaur was not eligible for a PGWP,

because the course of study she completed at William and Catherine Booth University College [BUC] led to a certificate, rather than a degree.

[2] The Officer's decision was consistent with the IRCC's policy regarding PGWP eligibility [PGWP Policy], which clearly distinguishes between degrees (*i.e.*, bachelor's degree, master's degree, doctorate) and certificates or diplomas. The Officer's decision was therefore reasonable. The application for judicial review is dismissed.

II. Background

[3] Ms. Kaur is a citizen of India. She was accepted into an eight-month course of study leading to a Certificate in Liberal Arts at BUC, a private, post-secondary educational institution in Winnipeg, Manitoba. Ms. Kaur attended BUC pursuant to a study permit that expired on July 31, 2018.

[4] Ms. Kaur completed the course on April 29, 2018 and applied for a PGWP. The Officer rejected her application on July 20, 2018. Ms. Kaur re-applied for a PGWP at the Canadian point of entry at Sprague, Manitoba, but was found to be ineligible. She asked the Officer to reconsider the decision on August 20, 2018, but the Officer maintained the refusal.

III. Decision under Review

[5] The Officer held that the course of study Ms. Kaur had completed at BUC did not qualify for a PGWP. The Officer included an excerpt from the PGWP Policy in the decision, noting that applicants must:

[...] 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:

- a public post-secondary institution, such as a college, trade or technical school, university or CEGEP (in Quebec)
- a private post-secondary institution that operates under the same rules and regulations as public institutions
- a private secondary or post-secondary institution (in Quebec) offering qualifying programs of 900 hours or longer leading to a diploma of vocational studies (DVS) or an attestation of vocational specialization (AVS)
- a Canadian private institution authorized by provincial statute to confer degrees (i.e., bachelor's degree, master's degree, doctorate), **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 just any program of study offered by the private institution.

[Emphasis original.]

[6] According to the Officer's notes in the Global Case Management System [GCMS], "[Ms. Kaur] completed a certificate, not a degree [and is therefore] not entitled to PGWP Issuance".

The Officer's reconsideration of the refusal is not before the Court, but neither party objected to

the inclusion of the Officer's GCMS notes of that decision in the certified tribunal record. The notes of the Officer's reconsideration include the following:

Information readily available on Canada.ca reads: a Canadian private institution authorized by provincial statute to confer degrees (i.e., bachelor's degree, master's degree, doctorate), 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 just any program of study offered by the private institution. Client's representative states that client's certificate is considered a degree and that this is a case of semantics; however, written in the same passage, there is clear delineation between degrees, diplomas and certificates. Certificate and degree are not synonymous, interchangeable, and as the client is the recipient of a certificate from a private school, regardless [of] the school's ability to confer degrees, client is not entitled to PGWP issuance. The excerpt provided names possible understandings of degrees as an undergraduate (bachelor), master's or doctorate.

IV. Issue

[7] The sole issue raised by this application for judicial review is whether the Officer's refusal of Ms. Kaur's application for a PGWP was reasonable.

V. Analysis

[8] The Officer's decision to refuse Ms. Kaur's application for a PGWP is subject to review by this Court against the standard of reasonableness (*Komljenovic v Canada (Citizenship and Immigration)*, 2018 FC 460 at para 17). Reasonableness is a deferential standard, and is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. The Court will intervene only if the decision falls outside a range of

possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[9] Ms. Kaur says that a Certificate of Liberal Arts issued by BUC is a degree. She notes that BUC is listed on the IRCC website as an institution that offers degree programmes that are eligible for a PGWP.

[10] BUC was established by *The Salvation Army William and Catherine Booth University College Incorporation Act*, RSM 1990, c 178 [*BUC Act*]. Pursuant to s 10 of the *BUC Act*:

The university college in its corporate name may grant degrees including honorary degrees, diplomas, and certificates of standing in the subjects and courses offered by the university college.

[11] This provision is potentially ambiguous. Ms. Kaur interprets s 10 of the *BUC Act* as conferring upon BUC the power to grant degrees, which encompass degrees, honorary degrees, diplomas and certificates of standing. The Minister disagrees, and interprets the provision as conferring upon BUC the power to grant degrees, including honorary degrees, in addition to diplomas and certificates of standing.

[12] The Minister notes that two Manitoba statutes governing the issuance of degrees from post-secondary institutions define “degree” in a manner that excludes certificates (*The Degree Granting Act*, CCSM c D25, s 2; *The Colleges Act*, CCSM c C150.1, ss 5(1), 17(c)). The Supreme Court of Canada has ruled that interpretations favouring harmony between various statutes enacted by the same government should prevail. This presumption is even stronger when

the statutes relate to the same subject matter (*Therrien (Re)*, [2001] 2 SCR 3 at para 121).

Ms. Kaur replies that these provisions do not apply to BUC, which is governed by its own statute.

[13] The PGWP Policy was issued pursuant to s 205 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The Officer was bound by the PGWP Policy, and had no discretion over its application (*Nookala v Canada (Citizenship and Immigration)*, 2016 FC 1019 at paras 11-12).

[14] The PGWP Policy clearly distinguishes between a “degree” and a “certificate”. The provision that addresses programmes that are offered by private institutions authorized by provincial statute to confer degrees limits the eligible qualification to a “bachelor’s degree, master’s degree [or] doctorate”. An applicant may be eligible for a PGWP after obtaining a certificate or diploma, but only if it is issued by a public post-secondary institution, such as a college, trade or technical school, university or CEGEP (in Quebec), or a private post-secondary institution that operates under the same rules and regulations as public institutions. An additional provision that is limited to educational institutions in Quebec is not relevant here.

[15] I therefore conclude that the Officer’s refusal of Ms. Kaur’s application for a PGWP was consistent with the PGWP Policy, and was reasonable.

[16] Ms. Kaur swore an affidavit in which she deposed that other students who completed a course of study at BUC leading to a Certificate of Liberal Arts subsequently obtained PGWPs.

This hearsay evidence was not before the Officer, and is not admissible in this proceeding (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20). However, counsel for the Minister relied in oral submissions on a letter from BUC that was provided to the Officer in connection with the reconsideration request. The letter is dated August 20, 2018, and includes the following statements:

Booth UC is a designed learning institution (DLI# 019147992362).

The Certificate of Liberal Arts is a one year program consisting of 30 credit hours. It can be completed in one academic year (eight months). Students take a wide range of courses providing a well-rounded liberal education. It has qualified students for the Manitoba Provincial Nominee Program (MPNP) as well as the Post-Graduation Work Permit.

[17] The Minister notes that BUC does not assert in this correspondence that its Certificate of Liberal Arts is a degree. Nevertheless, there appears to be some confusion, on the part of both BUC and IRCC, as to whether a student who completes a course of study leading to a Certificate of Liberal Arts is eligible for a PGWP.

[18] Counsel for Ms. Kaur observed that his client had done everything expected of her, but was nevertheless denied a PGWP. A PGWP may have given her a path to permanent residence and ultimately citizenship.

[19] While I have concluded that the Officer's decision was consistent with the PGWP Policy and was reasonable, BUC and IRCC should endeavour to resolve the confusion surrounding the

eligibility of the Certificate of Liberal Arts programme for a PGWP. Otherwise, these unfortunate circumstances may be repeated in the future.

VI. Conclusion

[20] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT

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

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4166-18

STYLE OF CAUSE: PAWANDEEP KAUR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: APRIL 16, 2019

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: MAY 3, 2019

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