

Federal Court



Cour fédérale

**Date: 20191003**

**Docket: IMM-2176-19**

**Citation: 2019 FC 1260**

**Vancouver, British Columbia, October 3, 2019**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**KAUR GURSIMRAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
& IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant seeks judicial review of a March 28, 2019 exclusion order issued against her for not complying with the terms of her study permit. She entered Canada in August 2016 to attend the business program at Simon Fraser University (“SFU”). She was unsuccessful at SFU and enrolled in programs at two other institutions where she was also unsuccessful. Her attendance at these institutions was also marked by lengthy absences.

[2] This judicial review is dismissed as the decision of the Officer that Ms. Kaur was not actively engaging in her studies as required by s 220.1(1) of the *Immigration and Refugee Protection Regulations* (“IRPR”) is reasonable.

I. Background

[3] Gursimran Kaur is a citizen of India who arrived in Canada on August 22, 2016 on a study permit. She was enrolled at SFU but failed the courses during both semesters she attended. Ms. Kaur then enrolled in courses at Kwantlen Polytechnic University in May 2017 and again failed her courses.

[4] In May 2018 she enrolled at Canadian College and had some success by passing 10 of her 13 courses. However, she missed a number of classes in early 2019 following a car accident; as a result, she did not attend the minimum number of classes and withdrew from the semester.

[5] On March 20 2019, Ms. Kaur entered the United States. When she re-entered Canada the same day, she was interviewed by an Immigration Officer. On March 24, 2019 she was interviewed by another officer and was given the opportunity to provide documents by March 28, 2019.

[6] Ms. Kaur was questioned again on March 28, 2019; later that day, the Officer issued an exclusion order on the basis that Ms. Kaur was not complying with the terms of her study permit. Specifically, the Officer stated she had failed to actively pursue her studies as mandated by the *Immigration and Refugee Protection Act* (the “Act” or “IRPA”).

II. Decision Under review

[7] The decision under review is the Exclusion Order of the Ministers Delegate dated March 28, 2019. This Order was supported by a section 44(1) report prepared by an Officer who interviewed Ms. Kaur.

[8] In the Exclusion Order, the Officer notes that Ms. Kaur “failed to actively pursue her studies as mandated by the Act”. The Officer noted that she “changed educational institutions and programs repeatedly without having completed her studies.” The Officer concludes that this pattern does “not support the expectation that the student is making reasonable progress toward the completion of a Canadian credential.”

[9] The Officer also noted that Ms. Kaur said that she withdrew from her most recent semester of study due to a car accident, and that when he asked her to provide a police report she was unable to do so. The Officer also noted she was not able to produce an ICBC report of the accident or any witness statements.

[10] The Officer found Ms. Kaur to be inadmissible under s. 41(a) of IRPA. This was due to her non-compliance with subsection 29(2) of the Act and subsection 220.1(1) of the IRPR.

III. Issue and Standard of Review

[11] The single issue is if the Officer’s decision to exclude Ms. Kaur was reasonable.

[12] The parties agree that the standard of review is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 54). I also note that exclusion orders are “entitled to considerable deference in view of the decision-maker's expertise and experience on the matter” (*Peng v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 537 at para 15).

#### IV. Analysis

[13] The Applicant argues that although she has struggled with her studies she is nonetheless a *bona fide* student. She relies upon *Gill v Canada (Citizenship and Immigration)* 2008 FC 365 at para 23 [*Gill*], for the proposition that the Officer should have engaged a more holistic assessment of her status of a student. In *Gill*, the Court considered a non-exhaustive list of five factors to determine if a person is a *bona fide* student. They were: (1) actual attendance, (2) grades achieved, (3) the student being able to discuss the subjects they study (at least in a rudimentary fashion), (4) the student progressing in a satisfactory manner, and (5) that the student is making a “*genuine and meaningful effort to assimilate the knowledge in the courses being studied.*” [My Emphasis]

[14] However the factual circumstances and therefore the applicable test applied in *Gill* is different. In *Gill* the applicant was entering Canada as a dependent on her father's permanent resident application. The issue therefore was if she met the definition of “dependent” within the IRPR (which required she be enrolled in continuous study). The issue was not whether she was complying with a study permit (which requires active pursuit of studies while attending a designated institution until her studies are complete).

[15] Here the evidence is that Ms. Kaur has a very poor achievement and attendance record. She has failed multiple courses and has transferred to two other institutions. Even applying the holistic test from *Gill*, it is unlikely that she would be able to discuss what she is studying in a rudimentary fashion. Similarly, it is difficult to see how she could be making an effort to assimilate knowledge, given that she repeated what she describes as the “same courses” at a different school and then failed those courses again.

[16] Ms. Kaur argues that the Officer failed to consider that she had medical issues. The Officer did note that she was involved in a car accident, however no evidence on her medical condition was provided to the Officer. Accordingly, as she failed to provide this information to the Officer at that time, this court on judicial review cannot consider the information contained in the Applicant’s Supplementary Affidavit dated August 10, 2019.

[17] The Officer’s conclusion that Ms. Kaur did not meet the conditions outlined in s. 220.1(1) is reasonable. She changed schools and programs, moving from business programs into a general arts and science program in spite of her permit specifying that she is to study business or commerce. Additionally, she took off two semesters in three years, and failed more courses than she has passed.

[18] This case is similar to *El Kamel v Canada (Public Safety and Emergency Preparedness)* 2018 FC 730 [*El Kamel*], where the student failed to begin his courses at the designed university due to health problems and subsequently enrolled at a technical college. The Court held that the Officer’s decision to exclude the student for failing to comply with s. 220.1(1) of the IRPR was

not only reasonable, but it was also an “unavoidable conclusion because the applicant no longer has legal status in Canada” (*El Kamel* at para 14).

[19] Similarly, in *Kone v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 845 at para 59 [*Kone*], the Court held that a student’s failure to attend class for two semesters was sufficient to justify excluding him under s. 220.1(1) of the IRPR despite the student having resumed his studies in between.

[20] Based upon *Kone*, Ms. Kaur’s absences alone are sufficient to demonstrate that she did not comply with the s. 220.1(1)(b) requirement that she actively pursue her studies and supports the conclusion that she is not working towards completing a Canadian credential.

[21] Overall, the Officer’s decision is reasonable and this judicial review is dismissed.

**JUDGMENT in IMM-2176-19**

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

There is no question for certification.

"Ann Marie McDonald"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2176-19

**STYLE OF CAUSE:** KAUR GURSIMRAN v THE MINISTER OF  
CITIZENSHIP & IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** OCTOBER 2, 2019

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