

Federal Court



Cour fédérale

Date: 20220608

Docket: IMM-2713-21

Citation: 2022 FC 861

Toronto, Ontario, June 8, 2022

PRESENT: Madam Justice Go

BETWEEN:

IRENA TCERKOVNAIA

Applicant

and

**MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Irena Tcerkovnaia, is a citizen of Russia. She arrived in Canada in 2012 on a student permit. After completing high school, she attended Ryerson University (as it was then known).

[2] At the beginning of her second year of university, during the 2017 Winter semester, the Applicant was going through a stressful time due to illness of a family member. Her mental state affected her otherwise stellar academic performance, leading to unexpectedly poor results in her midterm exams. While enrolled full time, the Applicant decided to drop two courses.

[3] After graduating with a four-year Bachelor of Commerce degree, she applied for a Post-Graduation Work Permit [PGWP]. Her first application was refused in December 2020. In January 2021, she submitted a new application with the assistance of an immigration consultant. In a letter to the Officer, the Applicant explained the circumstances during the Winter 2017 semester, and submitted a letter from a Ryerson International Student Support Advisor in support.

[4] On March 5, 2021, an officer refused the application and gave the following reasons:

Foreign students in Canada are eligible for a work permit for post-graduation employment only if they have maintained full time student status in Canada during each academic session of the program or programs and have completed a program of study that is at least eight months in duration at a:

- University, community college, CEGEP,
- publicly funded trade/technical school or
- private institution authorized by provincial statute to confer degrees

As you do not meet this requirement, it has been determined that you are not eligible for a work permit in this category.

[5] On March 12, 2021, the Applicant requested reconsideration and attached new evidence, namely, a letter dated March 11, 2021 from Ryerson University attesting that she was enrolled as a full time student in Winter 2017 and was enrolled in four courses for the majority of the

semester. The letter stated that due to circumstances beyond her control, the Applicant withdrew from two courses in good academic standing within the university's established deadlines. It stated that the withdrawn courses were not visible on the transcript and no refunds were issued.

[6] On April 14, 2021, the Officer refused the reconsideration request and indicated that the reasons were the same as for the previous refusal in March [Decision].

[7] The Applicant argues that the Officer ignored the letter from her university stating that it considered her a full time student in the Winter 2017 semester. The Respondent argues that the Officer reasonably rejected her application on the ground that her studies were not continuous.

[8] I grant the application as I find the Officer ignored evidence and that the Officer failed to exercise their best judgment and take into account all relevant factors.

II. Issues and Standard of Review

[9] The Applicant raises a single issue: did the Officer err in law and fact by concluding that she was not a full time student in the Winter 2017 semester?

[10] Both parties agree that the standard of review is reasonableness. While both parties cite older case law, a recent case has applied the reasonableness standard to the merits of a PGWP reconsideration decision: *Idowu v Canada (Citizenship and Immigration)*, 2022 FC 46 [*Idowu*] at para 5.

[11] 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”:

Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 [Vavilov] at para 85.

The onus is on the Applicant to demonstrate that the decision is unreasonable (*Vavilov*, at para 100). To set aside a decision on this basis, “the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov*, at para 100).

III. Analysis

A. *Requirements for Obtaining a PGWP*

[12] According to Immigration Refugees and Citizenship Canada’s manual for the PWGP program [the Manual], to obtain a post-graduation work permit, an applicant must have graduated from an eligible designated learning institution [DLI] and must also submit clear evidence that they meet all of the following criteria:

- They have completed an academic, vocational or professional training program at an eligible institution **in Canada** that is at least **8 months in duration** leading to a degree, diploma or certificate.
- They have maintained **full-time student status in Canada** during each academic session of the program or programs of study they have completed and submitted as part of their post-graduation work permit application. Exceptions can be made only for the following:
 - leave from studies
 - final academic session
- They have received a transcript and an official letter from the eligible DLI confirming that they have met the requirements to complete their program of study.

Within 180 days of the date of applying for the post-graduation work permit, applicants must also meet **one** of the following criteria:

- They hold a valid study permit.
- They held a study permit.
- They were authorized to study in Canada without the requirement to obtain a study permit under paragraphs 188(1)(a) and (b) of the Immigration and Refugee Protection Regulations.

[Emphasis in original]

[13] Under the heading “Leaves from Studies”, the Manual states:

If the applicant remained in Canada while a student and took leave from their studies during their program, the officer must determine if the applicant was compliant with the conditions of their study permit, as outlined in Assessing study permit conditions. If the applicant took a period of leave that was authorized by their DLI at any time during their studies, they must include documentation proving the leave was authorized by the DLI with their application. Officers may request additional documents to complete their assessment. Per paragraph R220.1(1)(b), students must

- be enrolled at a DLI
- remain enrolled
- be actively pursuing their course or program of study

If the officer determines that the student actively pursued studies during their leave, the student may still be eligible for the Post-Graduation Work Permit Program (PGWPP).

[14] Finally, under “Assessing Study Permit Conditions”, the Manual declares:

Officers should exercise their best judgment and take into account all relevant factors when assessing a student’s compliance with their study permit conditions.

B. *Was the Decision Unreasonable?*

[15] The Applicant argues that the Officer erred in failing to consider the letter from Ryerson University. The Applicant submits that the university was fully aware of the fact that she

dropped two courses late in the semester, but still considered her a full time student. In the Applicant's view, the Officer had no authority to disregard the university's position that the Applicant was a full time student in Winter 2017.

[16] I agree with the Applicant that the Officer failed to consider the March 11, 2021 letter from the university.

[17] According to the Global Case Management System [GCMS] notes, the reasons for the March 5, 2021 refusal of the application were as follows:

Client is requesting an open work permit under C43 consideration, having completed the Bachelor of Commerce (Business Management, Economics and Management Science) at Ryerson University.

Transcripts provided show that during Winter 2017 the client was enrolled in 2 classes. Ryerson University defines full time students as those who are enrolled in 3 or more courses per semester. Since the client did not maintain full-time student status in Canada during each academic session and engaged in part-time studies during Winter 2017 which is beyond the allowable part-time exclusion of final semester, ultimately the client fails to meet parameters of R205(c)(ii).

[18] After having received the Applicant's reconsideration request, which came with the letter from the university, the Officer's reasons in the GCMS notes were as follows:

Client is requesting a reconsideration and I have reviewed the application. Client submitted a letter re-stating their case along with transcripts from Ryerson University. Client was registered in 2 classes in Winter 2017 semester after withdrawing from 2 classes. During this semester the client earned 2 credits. The Ryerson University defines full-time students as those who are enrolled in 4 credits (4 classes) per semester. To qualify for a post-graduate work permit, the client must have maintained full-time student status in Canada during each academic session of the program or programs

of study they have completed and submitted as part of their post-graduation work permit application with the exception of leave from studies or final academic semester.

In conclusion, the client did not maintain their full-time student status during each academic session of their program and exceeded the allowable part-time exclusion of the final semester of study. Based on all the information before me including: transcripts, completion of studies letter and the additional information provided, I am not satisfied that the client meets the parameters of R205(c)(ii). Decision upheld and letter sent.

[19] While the above GCMS notes referred to the Applicant's letter and transcripts, these reasons made no mention of the March 11, 2021 letter from the university. Instead, like the reasons for the March 5, 2021 refusal, the Officer continued to defend their conclusion by stating that Ryerson University "defines full-time students as those who are enrolled in 4 credits (4 classes) per semester" (although the March 5 refusal stated that the university defined full-time as 3 or more courses per semester). This conclusion contradicts the assertion to the contrary made by Ryerson University confirming the Applicant's full time status during the 2017 Winter semester, despite the fact that she dropped two courses during the semester. The Officer's failure to consider new evidence that contradicted their reasons rendered the Decision unreasonable.

[20] The Respondent submits the Officer reasonably found that the Applicant was required to *maintain* full-time student status in Canada during each academic session. According to the Respondent, the fact that the Applicant had *enrolled* in full time studies is not material. The Respondent argues that the Manual clearly states that an applicant must have *continuously* studied full time in Canada.

[21] I reject the Respondent's arguments for the following reasons.

[22] As the Respondent submits, in *Brown v Canada (Citizenship and Immigration)*, 2018 FC 452 [*Brown*] at para 20, Justice Manson found that the Minister has the authority to establish eligibility criteria in the Manual.

[23] In *Brown*, Justice Manson referred to *Nookala v Canada (Citizenship and Immigration)*, 2016 FC 1019 and noted that:

[23] The eligibility criteria established by the PGWP Policy are mandatory and must be satisfied in order for a candidate to qualify for a PGWP. Nothing in the policy confers any discretion on immigration officers to modify or waive the eligibility requirements (*Nookala* at para 12).

[24] In *Munyanyi v Canada (Citizenship and Immigration)*, 2021 FC 802 [*Munyanyi*] at para 25, Justice Manson addressed PGWP eligibility again, adding that “[w]hile the jurisprudence is of the effect that nothing in the PGWP-PDI confers any discretion on immigration officers to modify or waive the eligibility requirements”, the Manual “does state that ‘Officers should exercise their best judgment and take into account all relevant factors when assessing a student’s compliance with their study permit conditions.’” Justice Manson went on to allow the judicial review of a PWGP application by an applicant who had a gap in studies due to currency issues in Zimbabwe.

[25] The Respondent also cites *Idowu* at para 7, stating that a PGWP applicant must, among other things, have “maintained full time status in Canada during each academic session of the program.” *Idowu* can be distinguished on facts. In that case, Ms. Idowu did not dispute she was a part time student in one semester due to financial hardship, nor that she had failed to enroll in any classes for three semesters. In dismissing the judicial review application, Justice Pallotta

noted Ms. Idowu's PGWP application "did not explain why her parents were unable to provide financial assistance, or provide evidence to establish that she or her parents lacked the financial means to pay for full time studies for those semesters": *Idowu* at para 14. As well, the letter from the university merely certified that Ms. Idowu completed the requirements for a Bachelor of Commerce degree: *Idowu* at para 15.

[26] Here, the Applicant has provided reasons why she had to drop two courses during the 2017 Winter semester, and evidence that those reasons had been accepted by Ryerson University in considering her to be enrolled as a full time student. By failing to acknowledge the university's letter, I am unable to conclude that the Officer in this case has exercised their best judgment and taken into account all relevant factors when assessing the Applicant's eligibility for a PGWP, as required by the Manual: *Munyanyi* at para 25.

[27] Further, while the Respondent argues that mere enrollment in full time studies is not material, and the Applicant must have *continuously* studied full time in Canada, the Decision made no such distinction. The Respondent's argument cannot bolster the reasons after the fact.

[28] Instead, the Decision referenced Ryerson University's definition of full-time students as those who are *enrolled* in four courses in the semester. If the Officer saw fit to rely on one definition of the university regarding full time students based on the number of courses "enrolled" in the semester, then it was illogical for the Officer not to accept the university's March 11, 2021 letter as proof that the Applicant was "enrolled" as a full time student.

[29] Finally, I do not find any language in the Manual drawing any distinction between “full time enrollment” and “full time studies.”

IV. Conclusion

[30] The application for judicial review is granted.

[31] There is no question for certification.

JUDGMENT in IMM-2713-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. There is no question for certification.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2713-21

STYLE OF CAUSE: IRENA TCERKOVNAIA v MINISTER OF
IMMIGRATION, REFUGEES AND CITIZENSHIP2

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: MAY 26, 2022

**REASONS FOR JUDGMENT
AND JUDGMENT:** GO J.

DATED: JUNE 8, 2022

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