

Federal Court



Cour fédérale

Date: 20221019

Docket: IMM-7135-21

Citation: 2022 FC 1428

Ottawa, Ontario, October 19, 2022

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

MARY EBIERIN IRIAFE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Mary Ebierin Iriafe's refugee claim in Canada was pending when she applied for permanent residence under the *Temporary public policy to facilitate the granting of permanent residence for certain refugee claimants working in the health care sector during the COVID-19 pandemic* [Pathway Program]. Her Application under the Pathway Program was denied by an IRCC Officer on the basis that her unpaid internship at Snowdon Residence in Montreal did not

meet the requirements of the program because it was not offered by an “accredited private career college.”

[2] The Pathway Program required working in direct patient care for minimum stipulated periods:

Worked in Canada in one or more designated occupations (see Annex A) providing direct patient care in a hospital, public or private long-term care home or assisted living facility, or for an organization/agency providing home or residential health care services to seniors and persons with disabilities in private homes:

- for a minimum of 120 hours (equivalent to 4 weeks full-time) between March 13, 2020 and August 14, 2020; and,
- for a minimum of 6 months full-time (30 hours per week) or 750 hours (if working part-time) total experience (obtained no later than August 31, 2021), and
- for greater certainty, periods of work in a designated occupation must be paid unless the applicant was doing an internship that is considered an essential part of a post-secondary study program or vocational training program in one of the designated occupations or internship performed as part of a professional order requirement in one of the designated occupations.

[3] Between July and August 2020, the Applicant completed a Personal Support Worker certification from Académie Horizon in Montreal. A “reference letter” issued in August 2020 provides the following details about the program:

This training includes theory, practice and clinical internship (120 hours), as well as the training of CPR/AED-First Aid of the Red Cross.

- The duration of the training is: 750 hours. The student meets the requirements of the training. He (she) is able to work in compliance with safety rules and to provide quality services.

[4] As part of the program, the Applicant completed an unpaid internship. An “internship letter” dated June 2021 offers additional details:

MARY EBIERIN IRIAFE has completed her unpaid internship in order to obtain the Personal Support worker certification in Snowdon Residence located in Montreal. The internship has a minimum duration of 120 hours. During this period, the student is required to;

[description of duties purposefully omitted by Court]

- Start of internship: July 6th 2020
- End of internship: July 31th 2020

[5] Her internship duties are described in more detail in the same letter and are consistent with the requirements for NOC 4412 (a designated occupation as outlined in Annex A of the Pathway Program).

[6] Upon completion of her program in August, the Applicant received a certificate certifying that she had “completed with success the Personal Support Worker Program (Course, theory, practice) 750 hours”.

[7] From reading the Officer’s reasons, it is unclear what specific requirement of the Pathway Program was not met by the Applicant. The Officer refers to the fact that the unpaid internship program was not offered by an “accredited private career college”, without any indication as to where that requirement can be found in the text of the Pathway Program temporary public policy.

[8] In their written and oral submissions, the Respondent offered a potential answer to that question. However, without commenting on the proposed answer, it came too late.

[9] An immigration officer is not under a duty to provide an opportunity for the applicant to address any of the officer's concerns regarding the application that arise directly from the requirements of the legislation or regulations (*Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at paras 23-24). By contrast, if an officer intends to base his or her decision on extrinsic information of which an applicant is unaware, then an opportunity to respond should be made available to enable the applicant to disabuse the officer of any concerns arising from that evidence (*Hakimi v Canada (Citizenship and Immigration)*, 2015 FC 657 at para 22).

[10] If the Officer had any concerns about the quality or legitimacy of the vocational training program completed by the Applicant — that is not a specific requirement of the Pathway Program — the Applicant had the right to be informed of that concern and allowed to address it.

[11] In my view, by not giving the Applicant such an opportunity, the Officer breached the her right to procedural fairness.

[12] For that reason, the decision is set aside and the matter sent back for a new determination.

[13] Neither party proposed a question of general importance for certification and no such question arises from the facts of this case.

JUDGMENT in IMM-7135-21

THIS COURT’S JUDGMENT is that:

1. The Application for judicial review is granted, the decision of the Immigration Officer dated September 27, 2021 is set aside and the matter is remitted to a different Officer for a new determination;
2. No question of general importance is certified.

“Jocelyne Gagné”

Associate Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7135-21

STYLE OF CAUSE: MARY EBIERIN IRIAFE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 4, 2022

JUDGMENT AND REASONS: GAGNÉ A.C.J.

DATED: OCTOBER 19, 2022

APPEARANCES:

Idorenyin E. Amana FOR THE APPLICANT

Sean Doyle FOR THE RESPONDENT

SOLICITORS OF RECORD:

Amana Law Office FOR THE APPLICANT
Cornwall, Ontario

Attorney General of Canada FOR THE RESPONDENT
Montreal, Quebec