

Federal Court



Cour fédérale

**Date: 20230414**

**Docket: IMM-3357-22**

**Citation: 2023 FC 363**

**Ottawa, Ontario, April 14, 2023**

**PRESENT: The Honourable Madam Justice Aylen**

**BETWEEN:**

**PINQUI MORALES AZUCENA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of a decision of a Senior Immigration Officer of Immigration, Refugees and Citizenship Canada [Officer] dated March 29, 2022 refusing the Applicant's temporary resident permit [TRP] and work permit applications. Pursuant to subsection 24(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], the Officer was not satisfied that the Applicant established unique circumstances with compelling reasons to overcome

her inadmissibility. As the Applicant's requested TRP was refused, the Officer determined that she was not eligible for a work permit.

[2] By way of background, the Applicant is a 33-year-old citizen of the Philippines. She arrived in Canada in December 2019 after obtaining a multiple entry temporary resident visa, valid until April 30, 2022. The Applicant remained in Canada thereafter due to her belief that she maintained visitor status for the duration of her visa, which was not the case.

[3] On June 29, 2020, the Applicant submitted a permanent resident application under the Home Child Care Provider class.

[4] On December 31, 2021, the Applicant's employer received a positive labour market impact assessment, valid until September 3, 2022.

[5] On February 24, 2022, the Applicant submitted her TRP and LMIA-based work permit applications, which included submissions detailing a number of reasons in support of her request for a TRP.

[6] The sole issue for determination is whether the Officer's decision to reject the Applicant's request for a TRP was reasonable.

[7] The parties agree and I concur that the Decision is reviewable on a standard of reasonableness. When reviewing for reasonableness, the Court must determine whether the

decision under review, including both its rationale and outcome, is transparent, intelligible and justified. 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 [see *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adenijj-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

[8] Subsection 24(1) of the *Act* provides:

**Temporary resident permit**

24 (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.

**Permis de séjour temporaire**

24 (1) Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps.

[9] A TRP is a means by which an individual who is otherwise inadmissible can remain in or enter Canada if they are able to satisfy the officer that the need for their presence in Canada outweighs any risk to Canadians or Canadian society. The TRP operational instructions and guidelines provide officers with a list of non-exhaustive factors to consider in the assessment of a TRP application, including the reasons for the applicant's presence in Canada, the intention of the legislation, the type of application and family composition and the benefits to the person concerned

and to others [see *Stewart v Canada (Citizenship and Immigration)*, 2022 FC 858 at para 33]. As such, an officer's assessment of a TRP application requires a balancing of many factors and these discretionary decisions are entitled to a high degree of deference since they usually involve questions of fact and relate to an officer's recognized expertise [see *Ekpenyong v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1245 at paras 12-13].

[10] While an officer's duty to provide reasons when evaluating a TRP is minimal, a failure to meaningfully engage with or analyze the compelling reasons presented by an applicant will render a decision unreasonable [see *Mousa v Canada (Immigration, Refugees and Citizenship)*, 2016 FC 1358 at paras 12-14, 19; *Osmani v Canada (Citizenship and Immigration)*, 2019 FC 872 at paras 19-25, 32; *Stewart, supra* at para 30]. The officer must provide adequate reasons that indicate their thought process in an intelligible manner and establish the basis for understanding how they interpreted the evidence to justify their decision [see *Ekpenyong, supra* at para 23].

[11] In this case, the Officer's reasons are contained in the Global Case Management System [GCMS] notes. The GCMS notes state as follows:

Client submitted an application for a work permit and permanent residence under the Caregiver pilot program on 30 June 2020. None of the assessments has started.

Applications for initial TRP and WP received on 01 March 2022; client is inadmissible as per A41(a).

Client is seeking employment in Canada, has provided a positive LMIA decision and a job offer to work as a caregiver for Oliver Berg in York, Ontario.

Client was issued a visitor visa valid until 30 April 2022. Reps states that client believed that since her visa was valid until April 2022,

she could remain in Canada for the entire duration of the visa; however, it's client's responsibility to ensure they are taking the right action to maintain valid status while in Canada.

The client's current inadmissibility is status, and there is a mechanism in place for the client to rectify this inadmissibility by departing Canada, and obtaining the documents she requires in order to regularize her status. Client currently holds a valid visitor visa and could use it to regularize her status. Client has not demonstrated she would face hardship have she had to leave the country.

[She] has successfully obtained a Visitor visa in the past to come to Canada. Client has demonstrated a full understanding of how to utilize the means available to her in order to obtain a WP from overseas. Client also has an LMIA valid until September 2022 and after she regularizes her visitor status, she would be able to apply for a WP from within Canada as per the public policy currently in place.

As per A24 (a), a TRP may be issued to individuals who have not complied with the act (IRPA) and yet may have compelling reasons to be issued a TRP. It is the client's responsibility of satisfying an officer that it is justified in the circumstance with compelling reasons to overcome the inadmissibility.

I have considered the application for a temporary resident permit, and all submissions in their entirety, and I am not satisfied that the client has proven that she has unique circumstances with compelling reasons to overcome her inadmissibility with the issuance of a TRP.

[Emphasis added]

[12] I find that the GCMS notes fall far short of demonstrating that the Officer engaged in a meaningful analysis of the compelling reasons advanced by the Applicant in support of her TRP application. The Officer's reasons are merely conclusory and not indicative of the weighing exercise required under subsection 24(1), which renders it impossible for the Court to understand why the Officer refused the TRP. As such, I find that the decision lacks justification, transparency and intelligibility.

[13] Accordingly, the application for judicial review shall be granted, the decision of the Officer set aside and the matter remitted to a different officer for redetermination.

[14] Neither party proposed a question for certification and I agree that none arises.

**JUDGMENT in IMM-3357-22**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted.
2. The March 29, 2022 decision of the Officer refusing the Applicant's temporary resident permit and work permit is set aside and the matter is remitted to a different officer for redetermination.
3. There is no question for certification.

"Mandy Aylen"

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Judge

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

**DOCKET:** IMM-3357-22

**STYLE OF CAUSE:** PINQUI MORALES AZUCENA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** MARCH 16, 2023

**JUDGMENT AND REASONS:** AYLEN J.

**DATED:** APRIL 14, 2023

**APPEARANCES:**

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