Federal Court Cour fédérale

Date: 20230508

Docket: IMM-7738-21

Citation: 2023 FC 657

Ottawa, Ontario, May 8, 2023

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

NURTAI MUNZHUROV

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Nurtai Munzhurov is a 25-year-old citizen of Kyrgyzstan who is seeking judicial review of a decision [the Decision] dated October 20, 2021, of an Immigration Officer [the Officer] refusing his application for a Post-Graduate Work Permit [PGWP], for a Temporary Resident Permit [TRP] under subsection 24(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], and for restoration of status under section 182 of the *Immigration and Refugee Protection Regulations*, SOR/2022-227 [*IRPR*].

[2] Only the TRP application remains at issue. The restoration application, even if important for context, is no longer contested. During the hearing, the Applicant conceded that he could not qualify for the PGWP because he was not a full-time student when he applied. That is the reason why he subsequently applied for a TRP.

[3] As set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paragraph 99, a reasonable decision is one that exhibits the hallmarks of justification, transparency, and intelligibility, and is justified in the context of the applicable factual and legal constraints.

[4] For the reasons set out below, I allow this application for judicial review. The reasons provided to refuse the TRP are not sufficiently intelligible to allow the Court to determine whether all proper factors were adequately considered (*Vavilov* at para 100).

I. Background facts

[5] The Applicant first arrived to Canada in 2015 on a study permit to complete a 4-year Bachelor program at the University of New Brunswick. During his studies, the Applicant maintained a full-time student status throughout most of his program. The PGWP requirements enabled him to be registered as a part-time student for his final academic session. However, as shown on his transcript, the Applicant was enrolled as a part-time student for more semesters than his final one.

[6] The Applicant had several extensions to his study permit to allow him to complete his degree. His final extension was supposed to expire on September 30, 2020. On September 26, 2020, the Applicant submitted an application for a Post-Graduate Work Permit [PGWP]. Because the Applicant filed this application before the date his study permit was meant to expire, he benefitted from an "implied status" until the decision regarding his PGWP application was made.

[7] On December 15, 2020, the Applicant received a negative decision regarding his PGWP application on the basis that he was unable to meet the PGWP requirement of maintaining full-time student status in Canada. The Applicant had been a part-time student for more semesters than his final one, according to his university transcript. The Applicant's status therefore expired on that date.

[8] On December 21, 2020, the Applicant received a certificate of completion of his studies indicating that he would be conferred his degree in May 2021.

[9] Because the Applicant's status expired within the timeframe set by the COVID-19 public policy (between January 30, 2020, and May 31, 2021), he was eligible to apply to restore his status until August 31, 2021. In other words, because of a public policy adopted as a result of COVID-19, the Applicant was not constrained by the 90-day deadline to restore his status that originally applied pursuant to section 182 of the *IRPR* (and which would have forced him to apply before March 15, 2021).

[10] On March 25, 2021, the Applicant sought to regulate his status by submitting a new application for a PGWP, a TRP, and a restoration of student status.

[11] In his application, the Applicant specified that he was making a TRP application along with his PGWP to overcome his ineligibility for the said program, as he had failed to maintain a full-time student status.

[12] On October 20, 2021, his applications were refused within the same decision letter. The Officer concluded that the Applicant was not eligible for a PGWP as he had not maintained a full-time student status for each academic session with the exception of the final semester. The Officer also concluded that the Applicant was not eligible for a restoration of status under section 182 of the *IRPR*. Finally, the Officer refused the TRP under subsection 24(1) of the *IRPA* because it was not justified in the circumstances, without providing additional reasons as to what the Officer considered in the decision-making process.

II. Analysis

A. *Restoration of status*

[13] During the hearing, the parties conceded that the Officer erred in their consideration of the COVID-19 public policy allowing additional time for foreign nationals to restore their status.

[14] In this case, the Applicant's study permit expired on September 30, 2020. However, because he applied for a PGWP on September 26, 2020, he benefited from an "implied status."

This PGWP application was refused on December 15, 2020, and therefore the Applicant, in theory, had 90 days from that date to apply for restoration of status, up to March 15, 2021, pursuant to section 182 of the *IRPR*. The Applicant only applied for restoration on March 25, 2021, leading the Officer to rule that the Applicant was out of time to restore his status and apply for a PGWP.

[15] However, and the Respondent conceded that point, the Officer failed to correctly apply the COVID-19 public policy that was in force at that time. That policy gave foreign nationals until August 31, 2021, to apply for restoration if they had lost status between January 30, 2020, and May 31, 2021. Because the Applicant had lost status on December 15, 2020, he therefore had until August 31, 2021, to seek restoration of his status.

[16] This being said, the Officer's error does not have any substantive impact in this case. As conceded by the Applicant, even if he had been allowed to restore his status as a student, he was still not eligible for a PGWP because he did not maintain full-time student status (with the exception of his final academic session) as required by the applicable guideline (*Idowu v Canada (Citizenship and Immigration)*, 2022 FC 46 at paras 7, 13, 17). Therefore, the Applicant's argument on this issue must be dismissed.

B. *TRP application*

[17] In my view, the main issue in this case relates to the Officer's reasons for denying the Applicant's TRP application. Under section 24 of the *IRPA*, a TRP is available when a foreign national does not meet the requirements of the *IRPA*, but is justified in the circumstances. The

objective of section 24 is to "soften the sometimes harsh consequences of the strict application of the *IRPA* which surfaces in cases where there may be 'compelling reasons' to allow a foreign national to enter or remain in Canada despite inadmissibility or non-compliance with *IRPA*" (*Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275, at para 22; *Shabdeen v Canada (Citizenship and Immigration)*, 2014 FC 303, at para 23). Section 24 provides that:

Temporary resident permit	**Permis de séjour temporaire**
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.	**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.

[18] In this case, the Applicant explained that there were justifications for the issuance of a TRP because he met all of the requirements of the PGWP program, except for having maintained full-time status. The Applicant also provided an explanation as to why he was not able to maintain that status. The Immigration, Refugees and Citizenship Canada policy dealing with TRPs also describes the exercise that an officer will engage in determining whether or not an applicant should be issued a TRP. The TRP manual then indicates what factors an officer must consider when making that determination. Those factors include the history of the applicant, the reasons for the person's presence in Canada, the benefits of the person and to others, etc.

[19] In this case, the Officer's reasons do not indicate that the Officer followed this exercise. There is nothing in the reasons demonstrating that the Officer properly considered whether the Applicant presented a "compelling need" to be in Canada and whether those needs outweighed any risk to Canada (*Mousa v Canada (Immigration, Refugees and Citizenship)*, 2016 FC 1358, at para 9).

[20] The Respondent submits that the Applicant's situation is not exceptional and is the same as anyone in Canada under a study permit. The case law has clearly recognized that applying the "exceptional and compelling circumstances" test is consistent with the objectives of section 24 of the *IRPA* and does not constitute a reviewable error (*El Rahy v Canada (Citizenship and Immigration)*, 2018 FC 1058 at paras 9-12 citing *César Nguesso v Canada (Citizenship and Immigration)*, 2015 FC 880 at paras 95-100). In the Respondent's view, the Officer therefore did not fail to consider relevant facts as there were clearly no compelling circumstances.

[21] While it was open for the Officer to determine whether the Applicant's needs and circumstances justified the issuance of a TRP, the Officer had to conduct a proper assessment of the Applicant's submissions and evidence, which the Court cannot see in this case. Unfortunately, the Officer only offered boilerplate reasons that are not intelligible and that do not allow the Court to assess whether the proper criteria were applied (*Abou Loh v Canada (Citizenship and Immigration)*, 2019 FC 1084 [*Abou Loh*] at para 40). The reasons, as well as the record, do not allow the Court to connect the dots, nor satisfy the Court that the reasoning "adds up," as they provide no insight into the Officer's reasoning process (*Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431; *Seyedsalehi v Canada (Citizenship and*

Immigration), 2022 FC 1250 [*Seyedsalehi*] at para 11; *Donnellan v Canada (Citizenship and Immigration)*, 2020 FC 227 [*Donnellan*] at paras 8-10).

[22] An officer cannot simply state "objective determinations" as this does not allow a reviewing Court to understand how they "interpreted the evidence to arrive at [the] decision" (*Ekpenyong v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1245 at paras 21-24, 31-34). In this case, on the issue of section 24 of the *IRPA* and the issuance of the TRP, the Officer only stated that he had "considered the application [and was] not of the opinion that a TRP [was] justified in this circumstance." Those reasons do not allow the Court to assess whether the Officer reviewed the Applicant's submissions and if he conducted a true analysis or if he simply "used boilerplate language" without providing clear reasons (*Abou Loh* at para 40). The Officer fails to explain how the Applicant's representations, balanced with the objective of section 24 of the *IRPA*, support his conclusion to deny the TRP.

[23] While reasons can be brief, they must be clear, precise, and intelligible, and refer to the applicants' submissions and supporting documentation (*Canada (Citizenship and Immigration) v Jeizan*, 2010 FC 323 at para 17). As noted recently by my colleague Justice McHaffie, "[e]ven where the obligation to give reasons is minimal, the Court cannot be left to speculate as to the reasons for a decision, or attempt to fill in those reasons on behalf of a decision-maker where they are not clear from the decision read in light of the record" (*Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596 at para 17; *Seyedsalehi* at para 13).

[24] The Decision therefore “lacks the requisite justification, intelligibility and transparency to avoid judicial interference” and “is an example of an administrative decision lacking a rational chain of analysis that otherwise could permit the Court to connect the dots or satisfy itself that the reasoning ‘adds up’” (*Seyedsalehi* at paras 6, 11; see also *Donnellan* at paras 2, 3, 7, 8).

III. Conclusion

[25] For the foregoing reasons, the Decision refusing the Applicant’s application for a TRP is unreasonable. The judicial review is granted. The Decision is set aside, with the matter remitted to a different decision maker for reconsideration.

[26] Neither party proposed a serious question of general importance for certification, and the Court agrees that none arises in the circumstances.

JUDGMENT in IMM-7738-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted.

2. The decision is set aside, with the matter remitted to a different decision maker for reconsideration.

3. No question of general importance is certified.

"Guy Régimbald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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