

Federal Court



Cour fédérale

Date: 20240307

Docket: IMM-1549-23

Citation: 2024 FC 383

Ottawa, Ontario, March 7, 2024

PRESENT: Madam Justice St-Louis

BETWEEN:

E K MITU KHANDAKAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. E K Mitu Khandakar seeks judicial review of the January 19, 2023 decision [Decision] of an Immigration Officer rejecting her inside-Canada application for a Temporary Resident Permit [TRP] under subsection 24(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Immigration Act] and for a study permit.

[2] For the reasons that follow, I will dismiss the application for judicial review.

Ms. Khandakar has not convinced me that the Immigration Officer decided without regard to the

evidence, nor that the Decision is unreasonable. I find on the contrary that it “is justified in relation to the facts and law that constrained the decision maker” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]).

II. Context

[3] Ms. Khandakar is a citizen of Bangladesh. On August 15, 2017, she received a multiple entry Canadian temporary resident visa as a student, valid until November 1, 2019. Her temporary resident visa was affixed in her Bangladesh passport, which was valid from July 6, 2017, to July 5, 2022.

[4] On September 6, 2017, Ms. Khandakar arrived in Canada and received her study permit at the port of entry, valid until November 1, 2019.

[5] In September 2019, and although her then current passport was still valid for almost another three years (until July 2022), Ms. Khandakar asserts she sent said passport to the High Commission of Bangladesh for renewal. It contained her Canadian temporary resident visa and her study permit.

[6] That same month, Ms. Khandakar became in need of urgent medical care, which she sought and received. As a consequence, she withdrew from her studies at the university to take care of her health. She did not apply for a new study permit before her initial study permit expired on November 1, 2019.

[7] On September 28, 2020, hence almost one year after her study permit had expired, Ms. Khandakar applied within Canada for a restoration of her temporary status and for a new study permit. On October 27, 2020, Immigration Refugee and Citizenship Canada [IRCC] refused her application, finding her ineligible for restoration as her status had elapsed more than the regulatory period of 90 days provided for in section 182 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. IRCC confirmed to Ms. Khandakar she had no legal status and had to leave Canada. Ms. Khandakar did not leave Canada as instructed.

[8] On March 9, 2021, Ms. Khandakar reported the passport she had sent to the High Commission of Bangladesh, some 18 months before (valid from 2017 to 2022), as lost. She obtained a report from the Winnipeg police to that effect.

[9] On April 8, 2021, the Bangladesh authorities issued a new passport to Ms. Khandakar, valid until April 7, 2026.

[10] On October 13, 2021, Ms. Khandakar applied within Canada for a TRP and a study permit. In support of her application for a TRP, then counsel for Ms. Khandakar submitted a number of documents and argued essentially that:

- Ms. Khandakar's grave mistake regarding the expiry date of her study permit in November 2019, her misunderstanding of the law when she applied for a study permit in 2020 and her delay in dealing with her immigration situation from the refusal until now all stemmed from her medical conditions, symptoms and associated cognitive limitations;

- Her international Student Health Plan required her to maintain enrolment at the University of Manitoba;
- Ms. Khandakar's health and future depended on the discretion of the Immigration Officer to issue a TRP as she has a serious and compelling need to remain in Canada based on the following : (1) Dr Lach opined her condition would worsen in Bangladesh; (2) she would have to start all over her studies again there; (3) her siblings live in Canada and only her mother, who suffers from a medical condition, remains in Bangladesh; and (4) she poses no risks, holds medical coverage and there is no reason to deny her a TRP.

[11] Ms. Khandakar's unsworn statement dated May 19, 2021, was among the documents filed by her counsel. She outlines, *inter alia*, that amidst all her personal events, she had made a mistake, having been unaware of the status of her work permit and having been under the impression that the expiry date was November 2020.

[12] Ms. Khandakar withdrew from the Fall 2019 semester due to her mental health struggles and, according to the evidence, she completed the Winter 2020, Summer 2020, Fall 2020, Winter 2021 and Summer 2021 semesters although she had no valid status in Canada.

[13] On January 19, 2023, the Immigration Officer denied Ms. Khandakar's application for a TRP and found her ineligible for a study permit, finding ultimately that a TRP or study permit is not justified in this circumstance.

[14] Before the Court, Ms. Khandakar essentially submits that the Immigration Officer's Decision was made without regard for the evidence and was unreasonable overall.

III. Analysis

[15] The Court must determine if the Immigration Officer decided without regard to the evidence as Ms. Khandakar asserts, and if the Immigration Officer's decision has been shown to be unreasonable per the applicable standard of review (*Vavilov*).

[16] 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" (*Vavilov* at para 85). Under this standard, it is not the role of the Court to reweigh the evidence.

[17] Ms. Khandakar submits particularly that the Immigration Officer reached three unreasonable findings. She points to the findings about (1) apply for status upon return to school; (2) the visitor status she could have sought when she stopped her studies; and (3) the reasons for seeking to remain in Canada.

[18] She asserts that the Immigration Officer (1) failed to engage with the evidence that she did not apply for a new study permit because her passport was lost in the mail, thinking the permit only expired in 2020, and she thought she was taking the appropriate step to rectify her status once she discovered her permit had expired; (2) considered the fact that Ms. Khandakar

did not avail herself of a visitor record as a negative factor but failed to address her submissions, and (3) ignored the full matrix of factors that are relevant to her mental health and evidence.

[19] Ms. Khandakar adds that the Decision misses the essence of what is required in a TRP analysis as she presents no risk to Canadian society; has her own private health insurance which pays for her healthcare; she is well supported by her family in Canada; she had been working hard in school and obtaining excellent grades and only wishes to continue doing so.

Ms. Khandakar states that it is only due to her mental health issues and an unfortunate loss of her study permit document in the mail that she wound up in a situation where she was without study authorization in Canada.

[20] The Minister of Citizenship and Immigration essentially responds that Ms. Khandakar has not identified any reviewable error, that the Immigration Officer did not disregard evidence or submissions and that the decision is reasonable.

[21] I note that the purpose of the TRP, as provided for in subsection 24(1) of the Immigration Act, “is to provide some flexibility in cases where the strict application of the IRPA would lead to a person’s exclusion from Canada” (*Abdelrahma v Canada (Citizenship and Immigration)*, 2018 FC 1085 at para 5) and to “soften the sometimes harsh consequences of the strict application of 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).

[22] The jurisprudence confirms that TRPs are an exceptional regime and that the decision to grant one is highly discretionary (*Vaguedano Alvarez v Canada (Citizenship and Immigration)*, 2011 FC 667 at para 18; *Ju v Canada (Minister of Citizenship and Immigration)*, 2021 FC 669 at para 18).

[23] Furthermore, based on the clear language of subsection 24(1) of the Immigration Act, the Immigration Officer need only determine whether the issuance of a TRP is “justified in the circumstances” (*Rodgers v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1093 at paras 7, 10 [*Rodgers*]) and that the Applicant bears the burden of providing sufficient evidence to justify the granting of a TRP (*Bhamra v Canada (Citizenship and Immigration)*, 2020 FC 482 at para 27);

[24] There is no obligation on the Immigration Officer to note and address each of Ms. Khandakar’s submissions (*Rodgers* at paras 10-11). In any event, after careful review of the record, I am satisfied the Immigration Officer did not ignore Ms. Khandakar’s submissions or evidence. First, I note that in the submissions presented to the IRCC in support of Ms. Khandakar’s TRP application, counsel asserted that Ms. Khandakar’s problems, including the November 2019 occurrence of her study permit expiring, all stemmed from her medical condition:

... in November 2019, her misunderstanding of the law when she applied for a new study permit without status in the summer of 2020, and her delay in dealing with her immigration situation from the refusal of her application in October 2020 until now all stem from her medical conditions, symptoms and associated cognitive limitations.

[Emphasis added.]

[25] It was therefore not unreasonable for the Immigration Officer to have considered primarily her medical condition and to have expected her to be able to rectify her immigration status once she was well enough to return to school and resume her studies. The Immigration Officer correctly outlined that it is the applicant's responsibility to satisfy an Immigration Officer. It is reasonable to opine, as we can infer from the Decision, that one's unawareness of one's status does not amount to justified circumstances for the recourse to an exceptional regime such as the TRP. The Court's jurisprudence confirms that "good faith and ignorance of the law do not in themselves excuse a failure to comply with legislative requirements" (*Cornejo Arteaga v Canada (Citizenship and Immigration)*, 2010 FC 868 at paras 17-18 citing *Canada (Attorney General) v Larouche*, [1994] FCJ No 1720 (QL) at para 6; *Alvarez Vasquez v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1083 at para 69). Ms. Khandakar remained responsible of understanding the expectations of the Immigration Act and to modify her status according to her situation.

[26] The Immigration Officer's reasons, although short, demonstrate that Ms. Khandakar's medical situation and her doctor's opinion were carefully considered. The Immigration Officer noted her doctor's opinion that her condition could worsen if she returned to Bangladesh.

[27] There is no indication that the Immigration Officer ignored the facts; he rather found they did not present compelling reasons and that the issuance of a TRP was therefore not justified in the circumstances, which is what the statute dictates.

[28] The Immigration Officer correctly noted that the onus was on Ms. Khandakar to know when she did or did not have status in Canada, and to leave Canada by the end of the period of her authorized stay. The Court understands why the Immigration Officer made his Decision (*Mousa v Canada (Immigration, Refugees and Citizenship)*, 2016 FC 1358 at para 20).

[29] Ms. Khandakar is essentially expressing disagreement with the Immigration Officer's conclusions and asking the Court to reweigh the evidence, which is not the Court's role on judicial review. Ms. Khandakar's disagreement with the Immigration Officer's Decision and exercise of his discretion is not a basis for this Court to interfere.

IV. Conclusion

[30] Ms. Khandakar has not raised any reviewable error that would justify the Court's intervention.

[31] The application for judicial review will therefore be dismissed.

JUDGMENT in IMM-1549-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No costs are awarded.
3. No question is certified.

"Martine St-Louis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1549-23

STYLE OF CAUSE: E K MITU KHANDAKAR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: FEBRUARY 20, 2024

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: MARCH 7, 2024

APPEARANCES:

Nalini Reddy FOR THE APPLICANT

Jana Vandale FOR THE RESPONDENT

SOLICITORS OF RECORD:

Gindin Segal Law FOR THE APPLICANT
Barristers and Solicitors
Winnipeg, Manitoba

Attorney General of Canada FOR THE RESPONDENT
Winnipeg, Manitoba