

Federal Court



Cour fédérale

**Date: 20240530**

**Docket: IMM-2208-23**

**Citation: 2024 FC 826**

**Ottawa, Ontario, May 30, 2024**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**LOVEPREET SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of a decision by an Immigration Officer [Officer] at Immigration, Refugees and Citizenship Canada [IRCC], denying the Applicant's application for a study permit and temporary resident permit [TRP]. In their decision dated February 10, 2023 [the Decision], the Officer denied the Applicant's application on the grounds

the Officer was not satisfied that the Applicant had compelling reasons to warrant the issuance of a TRP and was not satisfied that the Applicant intended to leave Canada at the end of his stay.

[2] As explained in greater detail below, this application is dismissed, because the Applicant's arguments do not demonstrate that the Decision is unreasonable.

## II. Background

[3] The Applicant is a citizen of India. He first entered Canada in September 2017 on a study permit. He intended to pursue studies at Lambton College, but upon his arrival in Canada he learned that the immigration agent in India who applied for a study permit on his behalf did so using a fraudulent acceptance letter.

[4] In January 2018, the Applicant was arrested by the Canada Border Services Agency on the basis that he was inadmissible for misrepresentation under section 40(1) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]* for obtaining his study permit using false documentation. At his subsequent admissibility hearing before the Immigration Division [ID], the Applicant testified to being innocent of the misrepresentation, as he had been defrauded by the immigration agent. In August 2018, the ID issued the Applicant an exclusion order.

[5] In July 2019, the Minister of Citizenship and Immigration [Minister] intervened and exercised his discretion to grant the Applicant a study permit and a TRP on the basis of the Applicant's compelling situation, as it had been determined in his ID hearing that he was in fact a victim of fraud. The TRP and study permit were issued on July 31, 2019, and were valid until January 31, 2021.

[6] The Applicant began studying Global Supply Chain Management at Matrix College in November 2019 and planned to graduate in September 2021. In November 2020, given that his study permit and TRP were set to expire in January 2021, the Applicant submitted a request to renew his permits to afford him enough time to complete his studies. The Applicant also submitted an application for a TRP and work permit in January 2022, because he had by then graduated from school and no longer required a study permit.

[7] The Officer refused the Applicant's study permit and TRP application on February 10, 2023. It is this Decision that the Applicant challenges in the present application for judicial review.

### III. Decision under Review

[8] The Officer's reasons for the Decision noted the intended purpose of a TRP, which is to confer temporary resident status when justified in the circumstances, and stated that the Applicant bears the onus of establishing compelling reasons or circumstances that warrant temporary residence in Canada and the issuance of a TRP. The Officer cited section 24(1) of the *IRPA*, which 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] The Officer also stated that the Applicant must satisfy the decision-maker that the intended stay is temporary and, therefore, will depart at the end of the authorized period of stay, in accordance with section 183 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] and subsection 29(2) of the IRPA. The Officer cited subsection 29(2) of the IRPA as follows:

**Right of temporary residents**

**29**

[...]

**Obligation — temporary resident**

(2) A temporary resident must comply with any conditions imposed under the regulations and with any requirements under this Act, must leave Canada by the end of the period authorized for their stay and may re-enter Canada only if their authorization provides for re-entry.

**Droit du résident temporaire**

**29**

[...]

**Obligation du résident temporaire**

(2) Le résident temporaire est assujéti aux conditions imposées par les règlements et doit se conformer à la présente loi et avoir quitté le pays à la fin de la période de séjour autorisée. Il ne peut y rentrer que si l'autorisation le prévoit.

[10] The Officer then considered the Applicant's submissions and supporting documentation, which the Officer stated were being cumulatively assessed and weighed against the Applicant's inadmissibility to determine whether the issuance of a TRP was justified in the circumstances.

[11] Under the heading "Factors for Consideration," the Officer considered the Applicant's counsel's submissions that the Applicant had not left Canada since his initial TRP in 2019 and that the Applicant had satisfied the requirement to continue his studies as he was on track to graduate in 2021. As these submission were being considered in February 2023, the Officer concluded the issuance of a TRP would not be required, because the Applicant's need to remain in Canada had been fulfilled as he had already completed his studies.

[12] The Officer also considered the Applicant's submissions concerning his negative experience and the financial repercussions of being defrauded by his agent as a rationale as to why he should be provided with a subsequent TRP. However, the Officer concluded that being defrauded by a representative was not itself a unique, compelling or extenuating circumstance that warranted the issuance of a TRP. The Officer also noted that the Applicant's ties to the community in Canada and his immigration overstay did not demonstrate an intent to reside temporarily in Canada and depart at the end of the authorized period of stay. Rather, the Officer found these factors were more indicative of an intent to permanently establish new ties within Canada, which was inconsistent with being a temporary resident.

[13] The Officer was therefore not satisfied that compelling reasons or extenuating circumstances existed to warrant the issuance of a TRP and was not satisfied that the Applicant intended to depart Canada at the end of his authorized period of stay. Finally, the Officer found they could not justify the issuance of a TRP to facilitate the acquisition of an open work permit. The application was therefore refused pursuant to sections 40 and 29(2) of the *IRPA*.

#### IV. Issues

[14] The Applicant articulates the following issues for the Court's determination:

- A. Whether the Officer fettered their discretion by imposing a requirement that the Applicant show compelling reasons, when such a requirement does not exist in the legislation;

- B. Whether the Officer employed the wrong legal test by requiring that the Applicant satisfy the Officer that he would depart at the end of his authorized stay, when such an onus does not exist in the legislation; and
- C. Whether the Officer's determination with respect to the non-issuance of the work permit was unreasonable.

[15] The reasonableness standard of review applies to these issues (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25).

V. Analysis

- A. *Whether the Officer fettered their discretion by imposing a requirement that the Applicant show compelling reasons, when such a requirement does not exist in the legislation*

[16] The Applicant argues that, in requiring him to demonstrate compelling reasons for the issuance of a TRP, the Officer erred by imposing a requirement that is derived from applicable IRCC guidelines but does not appear in ss 24(1) of *IRPA*, which provides that an officer may issue a TRP if the officer is of the opinion that it is justified in the circumstances.

[17] The Applicant acknowledges that authorities of this Court have held that it is not an error for an IRCC officer to identify compelling circumstances as the legal test to determine whether or not to grant a TRP. However, the Applicant refers the Court to case law that he submits supports the contrary proposition, that it is an error when an officer elevates the standard to a binding requirement (see *Palermo v Canada (Citizenship and Immigration)*, 2016 FC 1128

[*Palermo*] at para 21; *Krasniqi v Canada (Citizenship and Immigration)*, 2018 FC 743 [*Krasniqi*] at para 19).

[18] In the context of what the Applicant argues are conflicting lines of jurisprudence, he submits that the Court should adopt the approach taken in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, in the context of requests for humanitarian and compassionate relief under section 25 of *IRPA*, in which the Supreme Court of Canada held that it constituted a fettering of discretion to treat guidelines as mandatory requirements which prevented an officer from examining all of the considerations in a particular case.

[19] I agree with the Respondent's position that the prevailing jurisprudence supports the conclusion that the Officer did not err when approaching the Applicant's TRP application by assessing whether there were compelling reasons to grant the TRP. Recent decisions of the Court, in *Khandakar v Canada (Citizenship and Immigration)*, 2024 FC 38 at para 21; *Patel v Canada (Citizenship and Immigration)*, 2024 FC 16 at para 17; and *Kaur v Canada (Citizenship and Immigration)*, 2024 FC 337 at para 11, all endorse this approach. Moreover, in *Abdelrahma v Canada (Citizenship and Immigration)*, 2018 FC 1085 [*Abdelrahma*], the Court expressly considered the conflict in the jurisprudence (including *Palermo* and *Krasniqi* upon which the Applicant relies) and endorsed the compelling reasons test (at paras 5-9).

[20] The Applicant notes that the Court in *Abdelrahma* allowed the application for judicial review on the basis that the officer did not consider certain circumstances advanced by the applicant in that case. The Applicant submits that the Court therefore declined to rule on the

other issues raised, including the argument that the officer had fettered their discretion by applying the compelling reasons test. However, as noted above, the Court considered the conflicting lines of authorities and endorsed those employing the compelling reasons test, and it invoked that test in concluding that the officer had erred in considering the applicant's submissions (see paras 17-18).

[21] I therefore find no error in the Officer's reliance on the compelling reasons test in the case at hand.

[22] I note that the Applicant argues, in the alternative, that the Decision is not intelligible and transparent, because it fails to explain why the Applicant's circumstances were not sufficiently compelling to warrant issuance of a TRP, when the Minister had arrived at the opposite conclusion in issuing the original TRP in 2019. I find little merit to this submission. The difference in the Applicant's circumstances lies in the fact that, as of 2019, he had arrived in Canada with the intention of studying here and was being deprived of that opportunity as a result of the fraud perpetrated by his immigration agent. In contrast, when the Officer considered his TRP application in 2023, the Applicant had been able to complete his studies as a result of the TRP and study permit that were issued in 2019. The Decision clearly references these circumstances, and I find no lack of intelligibility in the Officer's reasoning.



- B. *Whether the Officer employed the wrong legal test by requiring that the Applicant satisfy the Officer that he would depart at the end of his authorized stay, when such an onus does not exist in the legislation*

[23] The Applicant notes the Officer's statement in the Decision that, in addition to establishing compelling reasons in order to receive a TRP, he must satisfy the decision-maker that his intended stay is temporary and that he will depart at the end of the authorized period. The Officer references ss 183(1) of the *Immigration Refugee Protection Regulations*, SOR/2002-227 [IRPR] and ss 29(2) of *IRPA* for this requirement.

[24] The Applicant submits that this portion of the Officer's analysis represents a reviewable error in that, while the referenced legislative provisions do require that a temporary resident leave Canada by the end of their authorized stay, there is no legislative requirement that an applicant for a TRP satisfy an officer of this intention as a precondition to the issuance of the TRP. The Applicant notes that such a precondition exists in relation to other immigration applications (for instance, for a temporary resident visa (see ss 179(b) of *IRPR*)) but argues that there is no comparable legislative precondition for TRP applications.

[25] The Respondent's submissions appear to accept the Applicant's proposition that there is no legislative precondition of this nature, although the Respondent also argues that assessing whether the Applicant would leave at the end of his authorized stay was a relevant and reasonable consideration for the Officer to take into account. The Respondent refers the Court to *Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275 [Farhat] at para 33-34, as authority for this principle.

[26] At the hearing of this application, it was identified that the referenced paragraphs of *Farhat* appear to support not only the Respondent's position that a TRP applicant's intention to leave Canada at the end of the authorized stay is a relevant consideration, but also that an officer considering a TRP application must be satisfied of this intention. In expressing this requirement, *Farhat* relies on ss 20(1)(b) of *IRPA*, which states that foreign nationals who seek to enter or remain in Canada must establish, in order to become a temporary resident, that they will leave Canada at the end of the period authorized for their stay. *Farhat* also references supporting authorities including *Stanislavsky v Canada (Minister of Citizenship and Immigration)*, 2003 FC 835 (see para 14). Other than noting that the Officer did not reference ss 20(1)(b) of *IRPA* in the Decision, the Applicant did not address in his reply the principles expressed in *Farhat*.

[27] In light of the above, the Applicant has not convinced me that the Officer erred in their approach to the Applicant's intention to leave Canada at the end of any period of stay that would be authorized by issuance of a TRP.

C. *Whether the Officer's determination with respect to the non-issuance of the work permit was unreasonable*

[28] The Applicant notes that, at the conclusion of the Decision, after finding that the Applicant had not established compelling reasons to warrant issuance of a TRP or an intention to depart Canada at the end of his authorized stay, the Officer also stated that they could not justify the issuance of a TRP to facilitate the acquisition of an open work permit. The Applicant notes that he had separately applied for a TRP and work permit and that this additional application was noted in the Decision. The Applicant submits that this component of the Decision is therefore

unintelligible, as it is unclear: (a) whether, in making the above statement related to an open work permit, the Officer was addressing the work permit application; and (b) if so, why it was not being granted.

[29] I agree with the Respondent's characterization of this component of the Decision. In the Decision's recitation of the Applicant's immigration history, the Officer notes the TRP and study permit application, as well as the subsequent application for a TRP and work permit. However, both the letter conveying the Decision and the accompanying reasons describe the Decision as related to the Applicant's request for a TRP and study permit. The Officer's reference to not granting a TRP to facilitate the acquisition of an open work permit reads as an explanation that the Officer was not prepared to grant the requested TRP for the purpose of affording the Applicant status until the subsequent application for a TRP and work permit was considered. I find nothing unreasonable in this aspect of the Decision.

[30] For the sake of good order, I note the Respondent's written position that the Officer was not, in the Decision currently under review, making a decision regarding the Applicant's outstanding TRP and work permit application. Rather, that application remains to be assessed.

[31] Neither party proposed any question for appeal, and none is stated.

**JUDGMENT IN IMM-2208-23**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

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Judge

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

**DOCKET:** IMM-2208-23

**STYLE OF CAUSE:** LOVEPREET SINGH v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 29, 2024

**JUDGMENT AND REASONS:** SOUTHCOTT J.

**DATED:** MAY 30, 2024

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