

Federal Court



Cour fédérale

Date: 20240718

Docket: IMM-335-23

Citation: 2024 FC 1125

Toronto, Ontario, July 18, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

KUSHALDEEP SHARMA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant applied for permanent residence in Canada under a temporary public policy. This policy required the Applicant to have completed a diploma with a duration of at least 1,800 hours. On review of the Applicant's application, an Officer noted that the Applicant's completed program had a duration of 1,485 hours. As a result, the application was refused.

[2] For the reasons that follow, this application for judicial review is dismissed.

II. BACKGROUND

A. *Facts*

[3] The Applicant, Kushaldeep Sharma, is a citizen of India. He came to Canada in September 2018, on a post-graduation work permit. Between May 2021 and November 2021, Canada introduced a Temporary Public Policy: Temporary Resident to Permanent Resident Pathway [“the Public Policy” or “the TR to PR Pathway”]. The Applicant applied for the TR to PR Pathway.

[4] The TR to PR Pathway stipulated a number of requirements. Relevant to this case, the Public Policy required that an applicant must 1) have completed a program of study at a “Designated Learning Institution”; 2) have been granted one of the prescribed eligible credentials, including a diploma of vocational services [DVS] and/or an attestation of vocational services [AVS], so long as each program of study was at least 900 hours in duration and the combined program was at least 1,800 hours.

[5] The Applicant was enrolled as a student in the Legal Officer Specialist Vocational Program at the Collège Supérieur de Montréal [the College], which is composed of a Secretarial Studies (DEP) program and a Legal Secretary (ASP) program, which had to be completed sequentially. The Applicant completed the DEP program, but alleges that he did not complete the second program (the ASP program) because of a dispute that arose between the College and its recruitment partner, Rising Phoenix International. The dispute resulted in students who had been

recruited through Rising Phoenix being temporarily suspended from their programs. When the dispute was resolved, students in the DEP programs were readmitted to their classes; however, the Applicant had already completed his DEP program and had been pursuing his ASP program when he was suspended. The Applicant was not readmitted to his ASP program, but was instead issued a refund. This information was not before the Officer, either in the initial application or in the request for reconsideration.

[6] In support of his TR to PR Pathway application, the Applicant submitted a completed diploma (in relation to the DEP program) with a duration of 1,485 hours, rather than the requisite 1,800. The Officer refused the application, in a letter dated September 7, 2022, as the Applicant did not meet the relevant requirements (i.e. the 1,800 hours).

[7] The Applicant submitted a request for reconsideration on September 14, 2022, and included additional documents: a letter from the College attesting to the completion of the DEP program, and an enrollment letter confirming he had been admitted to the ASP program. The documents showed that the program duration for completion of both the DEP and ASP portions would have been 1,935 hours. However, the College's completion letter and transcript showed that Mr. Sharma had only completed the DEP in Secretarial Studies, with a duration of 1,485 hours.

[8] The Officer rejected the Applicant's request for reconsideration in a letter dated December 20, 2022, and affirmed the original refusal. Taken together, the September 7, 2022, refusal letter and the December 20, 2022, reconsideration request refusal letter constitute the decision under review.

B. *Decision*

[9] As noted above, the Applicant's application was rejected in a letter dated September 7, 2022, and his request for reconsideration was rejected in a letter dated December 20, 2022. The Officer concluded that the Applicant had not satisfied the requirements of the Public Policy, because Mr. Sharma had only completed a DVS with a program duration of 1,485 hours and thus did not meet the required 1,800 program hours. In notes entered in the Global Case Management System [GCMS], which form part of the reasons for decision, the Officer stated that the request for reconsideration was denied, as upon review of the documentation, the refusal decision was correct. The Officer noted that the additional documents in the reconsideration letter showed the Applicant was originally admitted to two programs, the DEP in Secretarial Studies and the Legal Secretary ASP, with an expected program duration of 1,935 hours; however, as shown in the school's completion letter and transcript, the Applicant only completed the DEP for a duration of 1,485 hours.

III. ISSUES

[10] The Applicant essentially raises two issues on judicial review, namely:

- 1) The reasonableness of the Officer's decision.
- 2) Whether the Officer breached the rules of procedural fairness by not providing the Applicant with an opportunity to know and address the Officer's concerns.

IV. RELEVANT PROVISIONS

[11] The Public Policy was promulgated under subsection 25.2(1) of the *Immigration and Refugee Protection Act*, which provides as follows:

Public policy consideration

25.2 (1) The Minister may, in examining the circumstances concerning a foreign national who is inadmissible or who does not meet the requirements of this Act, grant that person permanent resident status or an exemption from any applicable criteria or obligations of this Act if the foreign national complies with any conditions imposed by the Minister and the Minister is of the opinion that it is justified by public policy considerations.

Séjour dans l'intérêt public

25.2 (1) Le ministre peut étudier le cas de l'étranger qui est interdit de territoire ou qui ne se conforme pas à la présente loi et lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, si l'étranger remplit toute condition fixée par le ministre et que celui-ci estime que l'intérêt public le justifie.

[12] Further to this statutory authority, the Minister provided instructions setting out how discretion under the Public Policy was to be exercised. The most relevant elements of these instructions provide that applicants to the Program must:

- Have completed a program of study a “Designated Learning Institution” [DLI];
- Have been granted one of several forms of credentials, such as a degree or diploma from one of the DLI's;
- For the DVS and AVS programs pursued by the Applicant, each program of study had to be at least 900 hours in duration and the combined program of study had to be at least 1,800 hours in duration.

[13] It is not at issue that the Applicant's educational programs met the eligibility criteria, as a Diploma of Vocational Services (DVS) and as an Attestation of Vocational Specialization (AVS). The sole issue before the Officer was the number of hours completed by the Applicant.

V. STANDARD OF REVIEW

[14] The substance of the Officer's decision is reviewed on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. A reasonable decision displays justification, transparency and intelligibility, with a focus on both the decision made and the reasons for it: *Vavilov* at para 15. To do so, a decision must be based on an "internally coherent and rational chain of analysis and that is justified in relation to that facts and law that constrain a decision-maker" (*Vavilov* at para 85).

[15] The fairness of the process that led to the Officer's decision is reviewed on a standard similar to the correctness standard. That is, reviewing courts must be satisfied that decision-makers have not violated principles of fairness in the decision-making process: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69.

VI. ANALYSIS

A. *The Officer's Decision was Reasonable*

[16] Little needs to be said about the reasonableness of the Officer's decision. The Officer exercised their discretion in a manner that was consistent with the Public Policy. The decision and reasons are firmly aligned with the constraints imposed by the applicable legal and factual context. The simple fact of the matter is that to be eligible for permanent residence under the

Public Policy, the Applicant must have completed 1,800 hours of instruction in the combined program in which he had enrolled. The Applicant had not completed the minimum number of hours. The Officer's reasons explained the outcome in clear and concise language; the Officer justified the outcome with reference to the Public Policy; and there was a rational chain of analysis that connected the Officer's reasons to the outcome. As such, the Officer's decision was reasonable.

B. *The Officer's Decision was Fair*

[17] The Applicant argues that the Officer was under an obligation to reach out to him to give him an opportunity to explain his situation. I disagree. Applicants are required to submit applications that are full and complete: *Trivedi v. Canada (Citizenship and Immigration)*, 2010 FC 422 at paras 32, 41-42; *Wang v. Canada (Citizenship and Immigration)*, 2024 FC 985 at para 37. If there were extenuating circumstances that the Applicant thought were relevant to the determination of his application, he was under an obligation to share this information with Immigration, Refugees, and Citizenship Canada [IRCC].

[18] Similarly, if the Applicant wanted an exemption from some of the criteria listed in the Public Policy – for example, the minimum hours requirement – he was obliged to make this request to the Officer. Absent such a request, the Officer was under no obligation to inform the Applicant of the very clear deficiencies in his application. Further, in this circumstance, even if there was a positive obligation on the Officer to contact the Applicant (which there was not), the outcome of the matter would have remained the same. Therefore, judicial intervention is not

warranted: *Mobil Oil Canada Ltd. v Canada-Newfoundland Offshore Petroleum Board*, 1994
CanLII 114 (SCC), [1994] 1 SCR 202.

VII. CONCLUSION

[19] I have concluded that the decision refusing the Applicant's application under the Public Policy was reasonable, and that no principles of fairness were infringed. As such, I dismiss this application for judicial review. No question of general importance was proposed and I agree that none arise in this case.

JUDGMENT in IMM-335-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified for appeal.

"Angus G. Grant"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-335-23

STYLE OF CAUSE: KUSHALDEEP SHARMA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JULY 3, 2024

**REASONS FOR JUDGMENT
AND JUDGMENT:** GRANT J.

DATED: JULY 18, 2024

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