Federal Court  Cour fédérale

Date: 20240918

Docket: IMM-8446-23

Citation: 2024 FC 1472

Toronto, Ontario, September 18, 2024

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

ENOMA OZINDA OSAKUE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Osakue, seeks to set aside a decision dated June 15, 2023, by an officer (Officer) with Immigration, Refugees and Citizenship Canada (IRCC) refusing the Applicant's application for the restoration and extension of his study permit (Decision).

[2] The Applicant asks this Court to set the Decision aside and send the matter back for redetermination by a different officer.

[3] For the reasons that follow, this application is dismissed.

II. Background

[4] The Applicant is a 25-year-old citizen of Nigeria.

[5] The Applicant first came to Canada in 2016 to study computer science at the Lassonde School of Engineering at York University (Lassonde). The Applicant had a valid study permit for this purpose that expired on November 19, 2019. The conditions attached to study permits require the applicants to remain engaged in study at the institution set out in the study permit and that they leave Canada at the expiration of the permit.

[6] The Applicant renewed his Nigerian passport, which was set to expire on November 20, 2019. On April 24, 2020, the Applicant's temporary resident status was restored, and his work-study permit was extended to December 31, 2022, with the conditions that he must leave Canada by December 31, 2022, and continue with his studies at the designated learning institution—Lassonde—as well as conditions for employment.

[7] In 2021, the Applicant was debarred from continuing his studies at Lassonde for two years due to poor academic performance. The Applicant would become eligible for readmission to York University for the summer 2023 session.

[8] On June 27, 2022, the Applicant was accepted into the Humber College Institute of Technology and Advanced Learning for the Introduction to Commercial/Jazz Music – Keyboard 1-year program (Program).

[9] On October 26, 2022, the Applicant applied for an extension of his study permit pursuant to subsection 182(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[10] On January 17, 2023, a reviewing visa officer determined that the Applicant did not have sufficient and available resources to pay the tuition fees of his intended studies, and the requested extension was not granted. The Applicant did not challenge this decision, and the study permit expired on December 31, 2022.

[11] On February 22, 2023, the Applicant submitted another application to the IRCC requesting the restoration and extension of his now-expired study permit.

[12] On April 27, 2023, the Applicant was notified through the electronic portal that additional information was required to support his application.

[13] On May 2, 2023, the Applicant's lawyer provided additional documentation to the IRCC in support of the Applicant's application. The May 2, 2023 letter stated that the Applicant had completed his program and that the purpose of the request for the extension of the study permit was to make the Applicant eligible to apply for a post-graduate work permit (PGWP).

III. The Decision under review

[14] The Applicant's application was refused on June 15, 2023, because the Officer was not satisfied their application met the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 and the IRPR. This conclusion was based on the Officer's finding that the Applicant had not submitted written documentation from the intended educational institution of study. The Officer also noted that since the Applicant failed to comply with imposed conditions: that he i) continue with his approved studies at a designated institution and ii) leave Canada upon the expiration of the approved period of stay, his temporary resident status was lost.

[15] The Applicant commenced his application for leave of the Decision on July 4, 2023. This Court granted leave for the Application on June 19, 2024.

IV. Issues and Standard of Review

[16] This application raises the following two issues:

A. Was the Officer's Decision to refuse the restoration of the Applicant's study permit reasonable?

B. Was the Officer's Decision to refuse the Applicant's restoration application procedurally fair?

[17] Study permit application decisions and the substance of them are reviewable on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 23).

[18] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Vavilov* at paras 12–15, 95). The starting point for a reasonableness review is the reasons for decision. Pursuant to the *Vavilov* framework, 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" (*Vavilov* at para 85).

[19] To intervene, the Court on an application for judicial review must find an error in the decision that is central or significant to render the decision unreasonable (*Vavilov* at para 100).

[20] The standard of review for procedural fairness issues is correctness, or akin to correctness (*Vavilov* at para 53; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018

FCA 69 [*CPR*] at paras 54–56). The Court must consider what level of procedural fairness is necessary in the circumstances and whether the "procedure followed by the decision maker respects the standards of fairness and natural justice" (*Chera v Canada (Citizenship and Immigration)*, 2023 FC 733 at para 13.

V. Analysis

A. *Was the Officer's Decision to refuse the Applicant's restoration application reasonable?*

[21] Sections 182 and 220.1(1) of the IRPR is applicable to this matter:

Restoration	**Rétablissement**
182 (1) On application made by a visitor, worker or student within 90 days after losing temporary resident status as a result of failing to comply with a condition imposed under paragraph 185(a), any of subparagraphs 185(b)(i) to (iii) or paragraph 185(c), an officer shall restore that status if, following an examination, it is established that the visitor, worker or student meets the initial requirements for their stay, has not failed to comply with any other conditions imposed and is not the subject of a declaration made under subsection 22.1(1) of the Act.	**182 (1)** Sur demande faite par le visiteur, le travailleur ou l'étudiant dans les quatre-vingt-dix jours suivant la perte de son statut de résident temporaire parce qu'il ne s'est pas conformé à l'une des conditions prévues à l'alinéa 185a), aux sous-alinéas 185b)(i) à (iii) ou à l'alinéa 185c), l'agent rétablit ce statut si, à l'issue d'un contrôle, il est établi que l'intéressé satisfait aux exigences initiales de sa période de séjour, qu'il s'est conformé à toute autre condition imposée à cette occasion et qu'il ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi.
Exception	**Exception**
(2) Despite subsection (1), an officer shall not restore the status of a student who is not in compliance with a	**(2)** Malgré le paragraphe (1), l'agent ne rétablit pas le statut d'un étudiant qui ne se conforme pas à l'une ou

condition set out in subsection 220.1(1).	l'autre des conditions prévues au paragraphe 220.1(1).
…	[…]
Conditions — study permit holder	**Conditions — titulaire du permis d'études**
220.1 (1) The holder of a study permit in Canada is subject to the following conditions:	**220.1 (1)** Le titulaire d'un permis d'études au Canada est assujetti aux conditions suivantes :
(a) they shall enroll at a designated learning institution and remain enrolled at a designated learning institution until they complete their studies; and	**a)** il est inscrit dans un établissement d'enseignement désigné et demeure inscrit dans un tel établissement jusqu'à ce qu'il termine ses études;
(b) they shall actively pursue their course or program of study.	**b)** il suit activement un cours ou son programme d'études.

[22] Publicly available information setting out the conditions for study permits indicate that any leave from a program of studies should not exceed 150 days from the date leave was commenced. If a student does not resume their studies within 150 days, they must either change their immigration status or leave Canada. If they do neither of these, they are considered non-compliant with their study permit conditions (See Immigration, Refugees and Citizenship Canada, "Study Permits: Assessing study permit conditions" (last modified 25 September 2023), online: <canada.ca>).

[23] The Respondent argued that the Applicant clearly failed to respect the conditions of his study permits. Further, the Respondent argued that the Officer's reasons are clear and that the Applicant did not provide a letter of acceptance and plan of study to renew his study permit. Accordingly, on balance, the Decision is reasonable.

[24] The Applicant argued that the Decision is not reasonable. In addition, the Applicant argued that the Respondent supplemented the Officer's reasons for Decision at paragraph 1 of their memorandum of argument.

[25] With respect, I do not agree that the Respondent supplemented the Officer's reasons in their memorandum of argument. The Global Case Management System notes, which form part of the reasons, state:

> The applicant applied for restoration of their SP-EXT and submitted an application on February 22, 2022. The applicant was refused on their most recent submitted SP-EXT (S305401641) associated with R220.1(1) concerns on January 17, 2023 and was sent a voluntary departure form. Given it is now June 15, 2023 and the program ended on April 30, 2023 the applicant's requested length of stay has elapsed. The applicant has not provided an updated LOA from a DLI stating they have been accepted to study there pursuant to R219. On balance and immigration history I am not satisfied the applicant is eligible to restore their SP-EXT status because of the following; - The applicant demonstrated they will not depart Canada at the end of their authorized period of stay pursuant to R216(b) as they did not abide by the voluntary departure order – The applicant failed to submit an updated LOA from DLI R219 The [applicant] has not complied with the conditions imposed on their entry into Canada pursuant to R182. Application refused.
>
> [Emphasis added.]

[26] The summary set out at paragraph 1 of the Respondent's memorandum of argument is consistent with the Officer's reasons. The Officer referenced the Applicant's history, and specifically noted that the Applicant has not complied with the conditions set out in previous study permits, pursuant to section 182 of the *IRPR*.

[27] I am of the view that the Officer's reasons are clear, intelligible, and reasonable.

[28] In *Ntamag v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 40 [*Ntamag*] this Court held that "[s]ubection 220.1(1), which is referenced in [s]ubsection 182(2), makes it clear that an Officer must not restore the status of [a] temporary resident's Study Permit if they are not currently enrolled at a designated learning institution or actively pursuing their course or program" (*Ntamag* at para 20).

[29] The facts and history of this case are clear. In spring 2021, the Applicant was debarred from his studies at York University for a two-year period. The Applicant did not begin his studies at Humber College until September 2022. The Applicant was not enrolled at a designated learning institution or actively pursuing his course or program of study for over one year.

[30] While it is true that the Applicant commenced a new plan of study at Humber College in September 2022, he did not get proper prior authorization, nor did he take steps to renew or update his study permit, until it was reaching its expiration.

[31] Accordingly, the Officer's Decision that the Applicant did not comply with the conditions of his study permit, that he be actively engaged in a course of study, is reasonable.

[32] As stated in the May 2, 2023, letter from his lawyer, the Applicant's sole purpose for his application was to have his study permit restored to enable an application for a PGWP. Where an applicant is seeking to have a study permit restored solely for the purpose of satisfying the requirements for a PGWP, it is reasonable for an officer to conclude that the applicant has not satisfied the requirements to have their status restored (*Ofori v Canada (Citizenship and Immigration)*, 2019 FC 212 [*Ofori*] at paras 17–20).

[33] Like in *Ofori*, the Applicant has failed to comply with the conditions for his stay and he is therefore ineligible to have his status restored, despite applying within the 90-day restoration period following the expiration of his study permit. The record clearly demonstrates that the Applicant was engaged in a persistent pattern of disregard of the conditions for his study permit.

[34] The Officer considered the Applicant's history with the immigration system and his stated intention to seek a PGWP when reviewing his request for an extension of his study permit. However, the Officer found that the Applicant had not complied with the conditions set out in section 182 of the *IRPR*. In my opinion, the Officer's Decision is reasonable.

[35] In addition, the Officer noted that the Applicant had not provided an updated Letter of Acceptance to support the request for a study permit extension. I note that the letter from the Applicant's counsel dated May 2, 2023, clearly indicates that he had completed his program, and a copy of the Applicant's transcript was provided.

[36] Accordingly, it was reasonable at that juncture for the Officer to determine an updated Letter of Acceptance from a recognised learning institution was required to support the requested extension of the study permit. It is clear from the May 2, 2023 letter that the Applicant was no longer pursuing studies as he had completed his program. The extension request was solely for the purpose of PGWP eligibility. There were no plans for future studies to support the requested extension of the study permit.

[37] I agree with the Respondent that this issue is determinative of this application for judicial review.

B. *Was the Officer's Decision to refuse the Applicant's restoration application procedurally fair?*

[38] The Applicant raised a number of procedural fairness arguments related to the process for the renewal of his application. I will address these arguments after a brief review of procedural fairness jurisprudence.

[39] Breaches of procedural fairness are reviewable on a correctness standard; in other words a "reviewing exercise … 'best reflected in the correctness standard' even though strictly speaking no standard of review is being applied" (*CPR* at para 54, citing *Eagle's Nest Youth Ranch Inc v Corman Park (Rural Municipality #344)*, 2016 SKCA 20 at para 20; see also *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). Generally, when reviewing an allegation of breach of procedural fairness, a reviewing court is concerned with the fairness of the process, having regard to all the circumstances (*CPR* at paras 54–55).

[40] This Court has held that procedural fairness is relaxed in the context of study permit applications. This is because the review process is not judicial or quasi-judicial in nature; applicants may apply to judicially review a decision or they may submit a new application. There is no statutory right to a particular process, and immigration officers are recognized as having considerable expertise (*Li v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 791 at paras 45–50).

[41] An applicant has the onus of providing sufficient evidence in support of their application that demonstrates that they meet the statutory requirements for their study permit. Officers do not have a duty to provide an applicant with an opportunity to address concerns that arise from an applicant's failure to provide sufficient evidence in support of their application to satisfy the

applicable legislative requirements (*Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 at para 24; *Huang v Canada (Citizenship and Immigration)*, 2012 FC 145 at para 7).

[42] The Applicant submitted that the "inordinate delay" in processing their application was a breach of procedural fairness.

[43] I do not agree. The Applicant pointed to materials on the IRCC website that set out general information on processing times for applications. However, these processing times are not prescriptive as the website also clearly states that "[the] processing times set out how long it took [IRCC] to process most applications in the past for each application type… The numbers shown may not reflect how long it will take [IRCC] to process any application you submit today." While IRCC aims to process applications in a timely manner, it is important that they have all necessary information to process the application. I note that Officers are under enormous pressure to process many applications. They do their best with the available resources. A failure to process an application within the period set out on the IRCC website that sets out the average number of days to process an application, a number that is not prescriptive, is not in and of itself a breach of procedural fairness.

[44] Further, the evidence illustrates that following the Applicant's February 22, 2023 application, the IRCC requested further information from the Applicant through the on-line portal on April 27, 2023. The Applicant claimed he did not know what information was needed; however, his counsel provided additional information in support of his application on May 2, 2023. In oral argument, Applicant's counsel conceded that the Applicant did not take further steps to ensure that IRCC had all the necessary information required to process his application.

[45] IRCC made its Decision on June 15, 2023. While it took some time to process the application, the Applicant has failed to show that the delay was inordinate, a breach of procedural fairness, or prejudicial to the Applicant.

[46] As noted above, the Officer properly and reasonably denied the Applicant's application for restoration and extension of his study permit because of his failure to comply with the conditions for his original study permit as set out at subsections 182 and 220 of the IRPR.

VI. Conclusion

[47] In light of the foregoing, this application for judicial review is dismissed.

[48] The parties did not pose any questions for certification, and I agree that there are none.

JUDGMENT in IMM-8446-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified.

"Julie Blackhawk"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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