

Federal Court



Cour fédérale

**Date: 20241022**

**Docket: IMM-5390-23**

**Citation: 2024 FC 1655**

**Toronto, Ontario, October 22, 2024**

**PRESENT: The Honourable Madam Justice Aylen**

**BETWEEN:**

**VISHNU KHULLAR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant seeks judicial review of a decision by an officer [Officer] with Immigration, Refugees and Citizenship Canada [IRCC] refusing his application for a Post Graduate Work Permit [PGWP] on July 12, 2022. The Officer held that the Applicant was not eligible for a PGWP on the basis that he did not maintain full-time status in the Winter 2020 semester. The Applicant asserts that the decision was both unreasonable and procedurally unfair.

[2] The PGWP Program was adopted by the Minister pursuant to the authority granted by section 205 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], which empowers the Minister to create programs allowing foreign nationals to receive work permits where the Minister deems it necessary for reasons of public policy relating to the competitiveness of Canada's academic institutions or economy [see *Kaur v Canada (Citizenship and Immigration)*, 2020 FC 513 at para 8; *Osahor v Canada (Citizenship and Immigration)*, 2017 FC 666 at paras 13-14, 17].

[3] Eligibility requirements for a PGWP are set out in the PGWP Program Delivery Instructions [PGWP-PDI]. This Court has repeatedly held that IRCC is to apply the PGWP-PDI strictly and has no discretion to disregard its mandatory requirements [see *Nookala v. Canada (Citizenship and Immigration)*, 2016 FC 1019 at paras 11-12; *Abubacker v Canada (Citizenship and Immigration)*, 2016 FC 1112 at para 16; *Ofori v Canada (Citizenship and Immigration)*, 2019 FC 212 at paras 14, 20; *Kim v Canada (Citizenship and Immigration)*, 2019 FC 526 at para 11].

[4] Although there are numerous eligibility requirements that must be met by an applicant for a PGWP, the relevant eligibility requirement for the purpose of this proceeding is the requirement that an applicant have maintained full-time student status in Canada during each academic session of the program or programs completed, with exceptions made only for the following: leave from studies, final academic session or special measures between March 1, 2020, and August 31, 2024. The PGWP-PDI notes that "full-time" studies is defined individually by each designated learning institution, but generally means three to five classes per semester.

[5] In January 2016, the Applicant began pursuing an Advanced Diploma in Business Administration – Marketing at George Brown College. The Applicant was initially enrolled in a four year program that included co-op, but ultimately dropped the co-op, resulting in his program being a three year program comprising of six semesters. The Applicant’s transcript and a letter from George Brown College confirm that the Applicant completed the requirements for his program on December 9, 2020.

[6] In the Winter 2020 semester (which commenced in January 2020 and prior to the COVID-19 pandemic), the Applicant was not enrolled in any courses at George Brown College. Rather, the evidence is that George Brown College gave him an exemption in Business Law (denoted as EX on the transcript) as he completed the course at another designated learning institution. In the Spring 2020 semester, the Applicant was enrolled in two courses (Film Studies and Health and Wellness), one of which he failed. In the Fall 2020 semester, the Applicant was enrolled in and completed one final course (World Religions).

[7] The Officer’s reasons for refusing the Applicant’s PGWP application as recorded in the Global Case Management System [GCMS] notes are as follows:

Client is applying for a post-graduate work permit having completed an Advanced Diploma in Business Administration at George Brown College as of 2020/12/09. Client was previously refused a PGWP on 2021/11/02 for not having maintained full-time status throughout their program of study. Client has not provided an adequate explanation for not maintaining full-time status during the Winter 2020 term, during which the client was not enrolled in any courses for which credit was offered. In order to be eligible for a post-graduate work permit, clients must maintain full-time student status in all terms of their academic program. Exceptions are only possible for the final term of their program, during scheduled breaks, and in the case of Winter 2020, where it is established that it was not

possible to maintain full-time student status due to changes in course delivery at the DLI caused by the COVID-19 pandemic. As no documentation has been provided which demonstrates the Winter 2020 term was a scheduled break or that it was not possible for the client to maintain full-time status due to COVID-related course delivery changes at their DLI, and as it was not the final term of their program, the client is not eligible for a post-graduate work permit as per R205(c)(ii).

[8] I will begin by considering the Applicant's assertion that the decision was unreasonable. The parties agree and I concur that the applicable standard of review is reasonableness. When reviewing for reasonableness, the Court must take a "reasons first" approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8]. 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 [see *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

[9] The Applicant stated in his affidavit and asserted in his written representations that the decision is unreasonable as, contrary to the finding of the Officer, he met all the requirements for a PGWP. He argues that his part-time status during the Winter 2020 was permitted pursuant to the PGWP policy exception for part-time studies in the final semester of their studies and that Business Law was the final class he required to complete his program. He further asserts that the Officer misunderstood the circumstances of the Applicant's exemption, as he was in fact enrolled in one

course during the Winter 2020 semester. As the PGWP-PDI permits students to be enrolled part-time during their final semester and as the Winter 2020 was his final semester, the Applicant asserts that he was improperly found ineligible for a PGWP.

[10] Contrary to the Applicant's assertion, the evidence shows that Winter 2020 was not his final semester. Both the George Brown College transcript and the correspondence from George Brown College dated February 9, 2020, confirm that the Applicant had two courses left to complete following the Winter 2020 semester and that it was only upon completion of his World Religions course in the Fall 2020 semester that the Applicant was able to graduate from the program. The PGWP-PDI only permits part-time studies in the Applicant's final semester which the Winter 2020 semester was not. Moreover, none of the other exceptions to full-time studies apply to the Applicant. While the Officer's reasons demonstrate some confusion regarding how to properly consider the exemption for Business Law during the Winter 2020 semester, I find that the Officer's conclusion that the Applicant had not maintained full-time status during the Winter 2020 semester was not only reasonable, but accurate.

[11] At the hearing of the application, the Applicant changed his position and admitted that the Winter 2020 semester was not his final semester. Instead, the Applicant now argues that, at the relevant time, he was misled by George Brown College into believing that the Winter 2020 semester would be his final semester. He asserts that at the time, in an email exchange with George Brown College regarding his Business Law exemption, the institution failed to disabuse him of his misunderstanding that he only had one course left to complete.

[12] The Applicant's last-minute change in position is not only entirely inappropriate, it is also not supported by the evidence that was before the Officer nor by the evidence now before the Court. Nowhere in his letter in support of his PGWP or in his affidavit filed in support of this application does the Applicant assert that he mistakenly believed he only had one course left to take in the Winter 2020 semester and that he read the email from George Brown College as confirming his misunderstanding, at the relevant time. I find that there is simply no merit to this new position.

[13] Accordingly, I find that the Officer's determination that the Applicant was ineligible for a PGWP was reasonable.

[14] The Applicant has also raised a number of procedural fairness arguments. Issues of procedural fairness in administrative contexts have been considered reviewable on a correctness standard or subject to a "reviewing exercise [...] 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied" [see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54]. The duty of procedural fairness is "eminently variable," inherently flexible and context-specific. It must be determined with reference to all the circumstances, including the *Baker* factors [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 77]. A court assessing a procedural fairness question is required to ask whether the procedure was fair, having regard to all of the circumstances [see *Canadian Pacific Railway Company v Canada (Attorney General)*, *supra* at para 54].

[15] The Applicant asserts that the Officer should have requested additional documents or evidence from the Applicant if the Officer was not satisfied that the Applicant was eligible for a PGWP based on the material provided. There is no merit to this assertion. While a duty of fairness to applicants exists in PGWP cases, that duty does not require an officer to notify an applicant of a concern that arises directly from the legislation or related requirements, or to provide the applicant with an opportunity to make submissions regarding the concern [see *Masam v Canada (Citizenship and Immigration)*, 2018 FC 751 at para 11; *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283; *Penez v Canada (Minister of Citizenship and Immigration)*, 2017 FC 1001 at para 37]. The onus was on the Applicant to submit all information relevant to eligibility with the submission of his application. There was no obligation on the part of the Officer to provide him with an opportunity to attempt to “fix” any deficiencies.

[16] The Applicant further asserts that the Officer’s conduct during the hearing showed bias. This assertion is not only unintelligible (as there was no hearing), but also lacking any particulars or evidentiary support. The Applicant’s final assertion is that the Officer “passed stereotypes orders without any reasoning.” While this assertion also lacks any particulars, it is evident on the record that reasons were in fact provided such that this argument has no merit.

[17] As the Applicant has failed to demonstrate that the decision was unreasonable or that he was denied procedural fairness, the application for judicial review shall be dismissed.

[18] Neither party proposed a question for certification and I agree that none arises.

**JUDGMENT in IMM-5390-23**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. There is no question for certification.

“Mandy Aylen”  
\_\_\_\_\_  
Judge

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

**DOCKET:** IMM-5390-23

**STYLE OF CAUSE:** VISHNU KHULLAR v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 21, 2024

**JUDGMENT AND REASONS:** AYLEN J.

**DATED:** OCTOBER 22, 2024

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