Federal Court Cour fédérale

Date: 20090611

Docket: IMM-4655-08

Citation: 2009 FC 602

Ottawa, Ontario, June 11, 2009

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

DARSHAN K. PATEL

Applicant

and

THE MINISTER OF CITIZENSHIP
& IMMIGRATION CANADA

Respondent

<u>REASONS FOR JUDGMENT AND JUDGMENT</u>

<u>O'KEEFE J.</u>

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), for judicial review of the decision of an immigration officer (the officer) at CPC-Vegreville, September 30, 2008, in which the officer denied the applicant's application for a study permit and restoration of his temporary resident status.

Background

[2] Darshan K. Patel (the applicant) is a citizen of India who applied for a study permit and restoration of his temporary resident status to pursue a fourth diploma in information technology, this time from an accredited and statutorily recognized institution. His application was refused on the basis that the officer was not satisfied of the *bona fides* of the applicant as a genuine student and doubted whether he would leave Canada at the end of his authorized stay.

[3] The applicant sought restoration of his temporary resident status and a new study permit in order to pursue a diploma in the Computer Systems Technician – Networking program at Centennial College in Toronto.

[4] Mr. Patel arrived in Canada in August 2003 on a student visa to pursue studies in a biotechnology program and had authorization to remain in Canada until July 2007. In 2005 he applied for and received permission to change the conditions of his study permit so that he could pursue computer studies. The new study permit was valid from January 2005 to September 2006, and was subsequently extended to be valid through May 2008.

[5] In his five years since coming to Canada, the applicant has been awarded three post-secondary diplomas, each from Canadian Career College (C.C.C.): one in Information Technology

in 2005, a diploma in Networking and Internet Engineering in 2006, and a diploma in Multimedia and Digital Design Program awarded in February 2008.

[6] In April 2008 the applicant applied for a post-graduate work permit on the strength of his certificate from the C.C.C. and arranged employment with Unitech Electric Inc. This permit was refused because the C.C.C. was not a recognized degree-conferring institution.

[7] Following this refusal, the applicant applied for a new study permit in June 2008, and also a restoration of his temporary resident visa, which had by that time expired. It is the refusal of this application which forms the basis for this judicial review.

[8] The applicant lost his temporary resident status by staying in Canada after the expiry of his authorized period of stay (subsection 185(a)). He applied for restoration of his temporary resident status pursuant to section 182 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations):

> 182. 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 and has not failed to comply with any other conditions imposed.

[9] Much of Part 12 of the Regulations relating to students is relevant in the present case. Of particular importance is section 212, which states that a foreign national may not study in Canada

unless authorized to do so by a study permit or the Regulations. Also integral are subsections 215(1) and 216(1):

> 215. (1) A foreign national may apply for a study permit after entering Canada if they
>
> (a) hold a study permit;
>
> (b) apply within the period beginning 90 days before the expiry of their authorization to engage in studies in Canada under subsection 30(2) of the Act, or paragraph 188(1)(a) of these Regulations, and ending 90 days after that expiry;
>
> (c) hold a work permit;
>
> (d) are subject to an unenforceable removal order;
>
> (e) hold a temporary resident permit issued under subsection 24(1) of the Act that is valid for at least six months;
>
> (f) applied for a study permit before entering Canada and the application was approved in writing but the permit has not been issued; or
>
> (g) are in a situation described in section 207.
>
> […]
>
> 216. (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national
>
> (a) applied for it in accordance with this Part;
>
> (b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;
>
> (c) meets the requirements of this Part; and
>
> (d) meets the requirements of section 30;

Officer's Decision

[10] The officer refused the application on the basis that he doubted the applicant's *bona fides* as a genuine student, and doubted that he would leave Canada. The CAIPS notes for the reasons in this case are very brief, and as such, I set them out in their entirety:

> HPM Processed for consideration of restoration of status and study permit. Applicant has a Bachelor of Science from Gujarat University and a post grad diploma in medical technology from home country.Granted a study permit in August 2003 valid to Jul 2007 to ESL and 3 YR biotech program at Candor College. In January 2005 switched to Canadian Career College; received subsequent study permits for Canadian Carrer (*sic*) College to May 2008. Submits photocopies of diplomas from Canadian Career College listing completion of diplomas in information technology (August 2005); diploma in networking and internet engineering (2006) and multimedia and digital design program (2008). The first two diplomas have the name Patel Darshan Kanubhai and the third diploma has the name Patel Darshan. All are signed by unknown person (no title listed). Refused as skilled worker by Buffalo Post in August 2007. Refusal notes for SW1 application indicate applicant admitted to not being truthful in original study permit application regarding employment to New Delhi visa post. Applicant is now requesting to study one year computer systems technician – networking program at Centennial College to 24 Apr 2009. Condition of admission is successful completion of English 131. States has 8908.72 in funds. Tuition payment of 7259 has been received for fall term according to Centennial College letter. Based on all information reviewed and submitted, I am not satisfied that this applicant is a genuine temporary resident and student. I am not satisfied that he would leave Canada at end of authorized stay. **Progression of studies in the same field seems redundant in light of previous studies completed.** Application for restoration of status and study permit refused. Advised to leave Canada immediately.
>
> [Emphasis added]

Part of the refusal appears to be based on the refusal of a prior application in 2006 for status under the skilled worker class. This application was refused in October 2007 due to lack of sufficient work experience, and the refusal decision also questioned the *bona fides* of the applicant's offer of arranged employment. I note that the arranged employment in 2006 was with the same company as was his 2008 offer.

Issues

[11] The applicant identifies the following issues:

1. What are the principles governing applications for leave and what is the applicable standard of review?

2. Was the officer's conclusion that the applicant's study plan was redundant either speculative or based on extrinsic information and, as such, did the officer breach the principles of procedural fairness by not giving the applicant an opportunity to address the officer's concerns?

[12] I would rephrase the issues as follows:

1. What is the standard of review?

2. Did the officer err in refusing the applicant's application?

3. Did the officer breach procedural fairness by making negative credibility findings without interviewing Mr. Patel?

Applicant's Written Submissions

[13] The applicant submits that the standard of review to be applied is reasonableness (see *Wang v. Canada (Minister of Citizenship and Immigration*), [2001] F.C.J. No. 1940; *Lin v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 106; *Guo v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1851). The officer's decision was not reasonable as defined in *Dunsmuir v. New Brunswick*, 2008 SCC 9 as having "the existence of justification, transparency, and intelligibility in the decision-making process". Procedural fairness questions, such as the one submitted by the applicant are not subject to any deference (see *Dunsmuir* above).

[14] The applicant begins his analysis by putting side by side the officer's wording in the decision with a statutory analysis of the relevant sections of IRPA. The applicant also quotes the CIC Policy Manual, OP12 (the Guidelines), which provides officers with guidelines with respect to assessing the *bona fides* of a student applicant. The pertinent portion of the guidelines is provided:

> **5.15. Bona fides**
>
> *Bona fides* of all students must be assessed on an individual basis; refusals of non-*bona fide* students may only withstand legal challenge when the refusal is based on the information related to the specific case before the officer. Therefore, while cultural context or historical migration patterns of a client group may be a contributing factor to the decision-making process, they alone are not valid, legally tenable grounds for refusal on *bona fides*. If officers wish to take into account outside information, particularly where that information leads to concerns/doubts about the applicant's *bona fides*, the applicant must be made aware of the information taken into account and given an opportunity to address those concerns. This interaction should be fully documented in the Computer-Assisted Immigration Processing System (CAIPS) / Field Operations Support System (FOSS) notes. The onus, as always, remains on the applicant

> to establish that they are a *bona fide* temporary resident who will leave Canada following the completion of their studies pursuant to section R216(1)(b). Section A22(2) (Dual intent) states that an intention by a foreign national to become a permanent resident does not preclude them from becoming a temporary resident if the officer is satisfied that they will leave Canada by the end of the period authorized for their stay. In assessing an application, an officer should consider:
>
> • the length of time that they will be spending in Canada;
>
> • the means of support;
>
> • obligations and ties in home country;
>
> • the likelihood of leaving Canada should an application for permanent residence be refused;
>
> • compliance with requirements of the Act and Regulations.

[15] The applicant submits that the conclusions by the officer were unreasonable in respect to the guidelines and IRPA. First, the applicant submits that there was no basis to conclude that the applicant would not leave Canada at the end of the authorized stay and the officer provided no reasons for this conclusion. None of the above factors are outlined in the officer's decision. The fact is, the applicant satisfies the concerns that these factors above address: he has complied with all of the conditions of his stay in Canada, including changing his study permit when he transferred to a new school and reapplying for a post-graduate study permit; he has done everything possible to ensure that he did not remain in Canada beyond his authorized stay; he has always been in compliance with IRPA and the corresponding Regulations; the evidence shows that he has the means to support himself in Canada including paying tuition fees; and he has stated familial ties in India.

[16] Second, the conclusion that the applicant's reasons for applying to the Computer Systems Technician program are suspect is wrong. There are legitimate and compelling reasons as to why this program will benefit the applicant: he can upgrade his skills at a reputable Canadian college and update his knowledge from his 2005 to 2006 studies. He acknowledges that this program is similar to his intended program of study but it is by a different institution with different course content. The officer would have had to investigate and find that the courses were the same and that there were no technological advances in this area for his conclusion that the courses were redundant to be reasonable.

[17] Third, the Guidelines suggest that an officer interview an applicant when there are questions or doubts surrounding the application:

> **7.11. Need for an interview**
>
> In certain circumstances, it may be necessary to interview the applicant. Applicants should not be scheduled for interviews for the sole purpose of obtaining straightforward information. Issues that may warrant the need for an interview would include:
>
> a) questions or doubts concerning applicant's reasons for wishing to come to Canada, the arrangements made for their care and support, and their ability or willingness to leave Canada; or
>
> b) circumstances when the officer needs more information or clarification before finalizing an application.
>
> This is not an exhaustive list. Other exceptional circumstances may warrant an interview.

[18] The applicant gleans from *Muliadi v. Canada (Minister of Citizenship and Immigration)*, {1986) 18 Admin. L.R. 243 (Fed. C.A.), the proposition that procedural fairness requires that an

applicant be informed of any doubts or concerns a visa officer may have with respect to the credibility of the applicant's submitted evidence, and be afforded an opportunity to disabuse the visa officer of his or her doubts and concerns. Specifically in *Yue v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 1299, Mr. Justice Kelen stated:

> While the duty of fairness does not necessarily require an oral hearing, there is a requirement that the visa officer provide the applicant with an opportunity to address a major concern, in other words, respond.

[19] The officer's implication that the applicant was not credible was not in accordance with the Guidelines, IRPA and jurisprudence as outlined above. It is evident in the FOSS notes that the officer's opinion of the applicant was "coloured" by the assessment made in his skilled worker application. The failure to allow the applicant to respond "warrants the Court's intervention".

Respondent's Written Submissions

[20] The respondent also begins by reviewing the relevant legislation and particularly subsection 216(1) of IRPA which states that an applicant is required to establish that they will leave Canada by the end of the period of authorized stay.

[21] The standard of review is reasonableness. There is "a range of possible and acceptable outcomes that are defensible in respect of the facts and the law" (see *Dunsmuir* above) and this decision is within that range. "Considerable deference must still be maintained by the reviewing court."

[22] The respondent disagrees that the officer did not assess the application appropriately. The officer had no duty to give the applicant an opportunity to respond because the final decision was made notwithstanding the officer's comment on credibility and was negative as a result of having not been convinced that the applicant would leave at the end of the period of his stay. The onus is on the applicant to provide evidence to the officer proving that the requirements in IRPA have been met (see *Heer v. Canada (Minister of Citizenship and Immigration)*, 2001 F.C.T. 1357) and this legal test was not met.

[23] The question of whether an applicant will leave at the end of their stay has been held to be an important one by the Federal Court and as such, the applicant's long term objective in obtaining a study permit should be considered and examined. In *Boni v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 43, Mr. Justice Teitelbaum upheld a decision as reasonable when an applicant spent three years in Canada "without making significant progress in his studies". Further, in *Kim v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 42, Mr. Justice Mosley found that the length of time an applicant takes in pursuing a program of study is a relevant consideration in whether the applicant is a *bona fide* student. Given these cases, it is not unreasonable that the officer concluded that the new course of study was redundant and not in keeping with the requirements and objectives of IRPA and the Regulations.

Applicant's Reply

[24] In reply, the applicant submits that the duty to allow an applicant to respond to concerns of the officer is not limited to credibility concerns. The applicant submits that three guidelines were not followed and that directed towards an interview being warranted (see Guidelines above). In any case, the applicant disagrees that credibility was not an issue. The officer made mention of it even though his negative credibility finding was extraneous to the present study permit application.

[25] It is telling that the respondent chose not to speak to the issue of the refusal on the grounds that the school from which the applicant graduated was not recognized as a qualifying institution under the Regulations. It is "grossly unfair" that now he is at a qualifying institution but he is refused nonetheless.

[26] The case law submitted by the respondent is distinguishable. *Boni* above, involved an applicant with a "dismal academic record". That is not the case here: the applicant excelled in his studies.

[27] In *Kim* above, the officer conducted an interview to assess the *bona fides* of the applicant's application and even spoke with a representative at the college. This did not happen in this case. There were no inquiries to the school, and there was no interview with the applicant. As such, the officer made "an uninformed and unreasonable decision with respect to the *bona fides*" of the application. *Kim* above, also involved an applicant taking a part time course load with gaps in his

study. In this case, the applicant has received many diplomas in short order evidencing his determination in his studies.

Analysis and Decision

[28] **Issue 1**

What is the standard of review?

Both the applicant and the respondent submit that the officer's decision is reviewable on a standard of reasonableness. I agree. A decision falling within a range of reasonable outcomes is how reasonableness is described in *Dunsmuir* above.

[29] The second issue relates to procedural fairness which does not require a standard of review analysis (see *Morneau-Bérubé v. Nouveau Brunswick (Judicial Council)*, [2002] S.C.J. No. 9 at paragraph 74).

[30] **Issue 2**

Did the officer err in refusing Mr. Patel's application?

In my view, this application should be allowed. There is no rational basis or sufficient explanation offered by the officer for why he doubted the applicant's *bona fides* as a student, and the officer failed to address the applicant's specific evidence on this point. Furthermore, there was no sufficient explanation as to why the officer doubted that the applicant would leave at the end of his authorized stay.

[31] The officer offers a very thin explanation for the decision to refuse to extend the applicant's student visa, stating only that he is not satisfied the applicant would leave Canada following completion of his studies, and that Mr. Patel's pursuit of an additional degree "seems redundant" in light of previously completed studies.

[32] This redundancy conclusion is contrary to the very plausible explanation offered by the applicant in his submissions before the officer, which stated the following:

> On April 11, 2008, our office submitted an application for a post-graduate work permit on behalf of Mr. Patel. He had been offered a position as a computer and network support technician by Unitech Electric Inc. in Toronto. Unfortunately, this application was refused on the grounds that the Canadian Career College from which Mr. Patel had recently graduated was not a qualifying institution for the purposes of the C43 exemption. As the attached refusal letter states, this school was not a private institution authorized by provincial statute to confer degrees.
>
> We received the refusal letter on the work permit application on May 21, 2008…. This was six days after the expiry of Mr. Patel's study permit. As such, we are still well within the 90 day period for restoration, as set out in section 215(b) of the IRPR.
>
> Upon receiving this refusal, Mr. Patel decided that he would like to upgrade his studies in the field of computer technology and networking. He immediately enrolled in the computer technician and networking course at Centennial College. Consequently, we are requesting that his temporary resident status be restored.

[33] In light of this explanation, it was unreasonable of the officer to conclude that Mr. Patel's further studies are redundant. They were, in fact, vital to Mr. Patel's ability to find work in Canada. Foreign students in Canada are eligible for a work permit for post-graduation employment only if they have engaged in full-time studies for at least eight months at an accredited school, including a

private institution authorized by provincial statute to confer degrees. Centennial College meets this criterion, whereas C.C.C. does not. This basis alone is, in my view, sufficient to allow the application since it is clear the decision was made without regard to the evidence.

[34] Furthermore, there is no explanation as to why the officer concluded that the applicant would not leave Canada at the end of his authorized study period. It is not clear from the reasons why the officer came to this conclusion. There is also no rational basis or sufficient explanation offered by the officer for why he doubted the applicant's *bona fides* as a student, and the officer failed to address the applicant's specific evidence on this point.

[35] For these reasons, I would allow the judicial review and remit the matter back to a different officer for redetermination.

[36] Because of my findings on this issue, I need not deal with the remaining issue.

[37] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

[38] **IT IS ORDERED that** the application for judicial review is allowed and the matter is remitted back to a different officer for redetermination.

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Provisions

The *Immigration and Refugee Protection Regulations*, SOR/2002-227:

210. The student class is prescribed as a class of persons who may become temporary residents.	210. La catégorie des étudiants est une catégorie réglementaire de personnes qui peuvent devenir résidents temporaires.
211. A foreign national is a student and a member of the student class if the foreign national has been authorized to enter and remain in Canada as a student.	211. Est un étudiant et appartient à la catégorie des étudiants l'étranger autorisé à entrer au Canada et à y séjourner à ce titre.
212. A foreign national may not study in Canada unless authorized to do so by a study permit or these Regulations.	212. L'étranger ne peut étudier au Canada sans y être autorisé par un permis d'études ou par le présent règlement.
213. Subject to sections 214 and 215, in order to study in Canada, a foreign national shall apply for a study permit before entering Canada.	213. Sous réserve des articles 214 et 215, l'étranger qui cherche à étudier au Canada doit, préalablement à son entrée au Canada, faire une demande de permis d'études.
214. A foreign national may apply for a study permit when entering Canada if they are	214. L'étranger peut faire une demande de permis d'études au moment de son entrée au Canada dans les cas suivants :
(a) a national or a permanent resident of the United States;	a) il est un national ou résident permanent des États-Unis;
(b) a person who has been lawfully admitted to the United States for permanent residence;	b) il a été légalement admis aux États-Unis à titre de résident permanent;
(c) a resident of Greenland;	c) il est résident du Groenland;

(d) a resident of St. Pierre and Miquelon; or	d) il est résident de Saint-Pierre-et-Miquelon;
(e) a foreign national who applied for a study permit before entering Canada, if the application was approved in writing but the permit has not been issued.	e) sa demande de permis d'études a été approuvée par écrit par un agent à l'extérieur du Canada, mais le permis ne lui a pas encore été délivré.
215.(1) A foreign national may apply for a study permit after entering Canada if they	215.(1) L'étranger peut faire une demande de permis d'études après son entrée au Canada dans les cas suivants :
(a) hold a study permit;	a) il est titulaire d'un permis d'études;
(b) apply within the period beginning 90 days before the expiry of their authorization to engage in studies in Canada under subsection 30(2) of the Act, or paragraph 188(1)(a) of these Regulations, and ending 90 days after that expiry;	b) il a été autorisé à étudier au Canada en vertu du paragraphe 30(2) de la Loi ou de l'alinéa 188(1)a) du présent règlement et la demande est faite dans la période commençant quatre-vingt-dix jours avant la date d'expiration de l'autorisation et se terminant quatre-vingt-dix jours après cette date;
(c) hold a work permit;	c) il est titulaire d'un permis de travail;
(d) are subject to an unenforceable removal order;	d) il fait l'objet d'une mesure de renvoi qui ne peut être exécutée;
(e) hold a temporary resident permit issued under subsection 24(1) of the Act that is valid for at least six months;	e) il est titulaire, aux termes du paragraphe 24(1) de la Loi, d'un permis de séjour temporaire qui est valide pour au moins six mois;
(f) applied for a study permit before entering Canada and the	f) sa demande de permis d'études a été approuvée par

application was approved in writing but the permit has not been issued; or

écrit à l'extérieur du Canada, mais le permis ne lui a pas encore été délivré;

(g) are in a situation described in section 207.

g) il se trouve dans l'une des situations visées à l'article 207.

(2) A family member of a foreign national may apply for a study permit after entering Canada if the foreign national resides in Canada and the foreign national

(2) Le membre de la famille de l'étranger peut demander un permis d'études après son entrée au Canada si l'étranger réside au Canada et, selon le cas :

(a) holds a study permit;

a) est titulaire d'un permis d'études;

(b) holds a work permit;

b) est titulaire d'un permis de travail;

(c) holds a temporary resident permit issued under subsection 24(1) of the Act that is valid for at least six months;

c) est titulaire, aux termes du paragraphe 24(1) de la Loi, d'un permis de séjour temporaire qui est valide pour au moins six mois;

(d) is subject to an unenforceable removal order;

d) fait l'objet d'une mesure de renvoi qui ne peut être exécutée;

(e) is a member of the armed forces of a country that is a designated state described in paragraph 186(d);

e) est un membre des forces armées d'un État désigné visé à l'alinéa 186d);

(f) is an officer of a foreign government described in paragraph 186(e);

f) agit comme représentant d'un gouvernement étranger aux termes de l'alinéa 186e);

(g) is a participant in sports activities or events, as described in paragraph 186(h);

g) participe à des activités ou manifestations sportives visées à l'alinéa 186h);

(h) is an employee of a foreign

h) est employé d'une agence de

news company as described in paragraph 186(i); or	presse étrangère aux termes de l'alinéa 186i);
(i) is a person who is responsible for assisting a congregation or group, as described in paragraph 186(l).	i) est chargé d'aider une communauté ou un groupe aux termes de l'alinéa 186l).
216.(1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national	216.(1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
(a) applied for it in accordance with this Part;	a) l'étranger a demandé un permis d'études conformément à la présente partie;
(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;
(c) meets the requirements of this Part; and	c) il remplit les exigences prévues à la présente partie;
(d) meets the requirements of section 30;	d) il satisfait aux exigences prévues à l'article 30.
(e) [Repealed, SOR/2004-167, s. 59]	e) [Abrogé, DORS/2004-167, art. 59]
(2) Paragraph (1)(b) does not apply to persons described in section 206 and paragraphs 207(c) and (d).	(2) L'alinéa (1)b) ne s'applique pas aux personnes visées à l'article 206 et aux alinéas 207c) et d).
(3) An officer shall not issue a study permit to a foreign national who intends to study in the Province of Quebec — other than under a federal assistance program for	(3) Le permis d'études ne peut être délivré à l'étranger qui cherche à étudier dans la province de Québec — autrement que dans le cadre d'un programme fédéral d'aide

developing countries — and does not hold a Certificat d'acceptation du Québec, if the laws of that Province require that the foreign national hold a Certificat d'acceptation du Québec.	aux pays en voie de développement — et qui ne détient pas le certificat d'acceptation exigé par la législation de cette province.
217.(1) A foreign national may apply for the renewal of their study permit if	217.(1) L'étranger peut demander le renouvellement de son permis d'études s'il satisfait aux exigences suivantes :
(a) the application is made before the expiry of their study permit;	a) il en fait la demande avant l'expiration de son permis d'études;
(b) they have complied with all conditions imposed on their entry into Canada; and	b) il s'est conformé aux conditions qui lui ont été imposées à son entrée au Canada;
(c) they are in good standing at the educational institution at which they have been studying.	c) il est en règle avec l'établissement d'enseignement où il a étudié.
(2) An officer shall renew the foreign national's study permit if, following an examination, it is established that the foreign national continues to meet the requirements of section 216.	(2) L'agent renouvelle le permis d'études de l'étranger si, à l'issue d'un contrôle, il est établi que l'étranger satisfait toujours aux exigences prévues à l'article 216.
218. A foreign national referred to in paragraph 215(1)(d) and their family members do not, by reason only of being issued a study permit, become temporary residents.	218. L'étranger visé au sous-alinéa 215(1)d) et les membres de sa famille qui se voient délivrer un permis d'études ne deviennent pas, de ce seul fait, résidents temporaires.
219.(1) Subject to subsection (2), a study permit shall not be issued to a foreign national unless they have written	219.(1) Le permis d'études ne peut être délivré à l'étranger que si celui-ci produit une attestation écrite de son

documentation from the educational institution at which they intend to study that states that they have been accepted to study there.

acceptation émanant de l'établissement d'enseignement où il a l'intention d'étudier.

(2) Subsection (1) does not apply to

(2) Le paragraphe (1) ne s'applique pas :

(a) a family member of a foreign national whose application for a work permit or a study permit is approved in writing before the foreign national enters Canada; or

a) au membre de la famille de l'étranger dont la demande de permis d'études ou de travail est approuvée par écrit avant son entrée au Canada;

(b) a foreign national who is applying to renew their study permit and has received notification in writing from the college or university at which they have been studying of successful completion of the requirements for a degree or diploma.

b) à l'étranger qui demande le renouvellement de son permis d'études et qui a reçu de l'université ou du collège où il a étudié un avis écrit selon lequel il a terminé avec succès son diplôme ou son certificat de compétence.

(3) An officer who issues a study permit to a foreign national described in paragraph (2)(b) shall not authorize a period of study that exceeds 90 days following the date of the notification in writing.

(3) L'agent qui délivre un permis d'études à l'étranger visé à l'alinéa (2)b) peut autoriser une période d'études d'au plus quatre-vingt-dix jours commençant à la date de l'avis écrit.

220. An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to

220. À l'exception des personnes visées aux sous-alinéas 215(1)d) ou e), l'agent ne délivre pas de permis d'études à l'étranger à moins que celui-ci ne dispose, sans qu'il lui soit nécessaire d'exercer un emploi au Canada, de ressources financières suffisantes pour :

(a) pay the tuition fees for the course or program of studies that they intend to pursue;

a) acquitter les frais de scolarité des cours qu'il a l'intention de suivre;

(b) maintain themself and any family members who are accompanying them during their proposed period of study; and

b) subvenir à ses propres besoins et à ceux des membres de sa famille qui l'accompagnent durant ses études;

(c) pay the costs of transporting themself and the family members referred to in paragraph (b) to and from Canada.

c) acquitter les frais de transport pour lui-même et les membres de sa famille visés à l'alinéa b) pour venir au Canada et en repartir.

221. Despite Division 2, a study permit shall not be issued to a foreign national who has engaged in unauthorized work or study in Canada or who has failed to comply with a condition of a permit unless

221. Malgré la section 2, il n'est délivré de permis d'études à l'étranger qui a déjà étudié ou travaillé au Canada sans autorisation ou permis ou qui n'a pas respecté une condition imposée par un permis que dans les cas suivants :

(a) a period of six months has elapsed since the cessation of the unauthorized work or study or failure to comply with a condition;

a) un délai de six mois s'est écoulé depuis la cessation des études ou du travail sans autorisation ou permis ou du non-respect de la condition;

(b) the work or study was unauthorized by reason only that the foreign national did not comply with conditions imposed under paragraph 185(a), any of subparagraphs 185(b)(i) to (iii) or paragraph 185(c); or

b) ses études ou son travail n'ont pas été autorisés pour la seule raison que les conditions visées aux sous-alinéas 185b)(i) à (iii) ou aux alinéas 185a) ou c) n'ont pas été respectées;

(c) the foreign national was subsequently issued a temporary resident permit under subsection 24(1) of the Act.

c) il s'est subséquemment vu délivrer un permis de séjour temporaire au titre du paragraphe 24(1) de la Loi.

222. A study permit becomes invalid when it expires or when a removal order made against the permit holder becomes enforceable.

222. Le permis d'études devient invalide lorsqu'il expire ou lorsqu'une mesure de renvoi prise à l'encontre du titulaire du permis devient exécutoire.

223. There are three types of removal orders, namely, departure orders, exclusion orders and deportation orders.

223. Les mesures de renvoi sont de trois types : interdiction de séjour, exclusion, expulsion.

224.(1) An enforced departure order is prescribed as a circumstance that relieves a foreign national from having to obtain authorization under subsection 52(1) of the Act in order to return to Canada.

224.(1) L'exécution d'une mesure d'interdiction de séjour à l'égard d'un étranger est un cas prévu par règlement qui exonère celui-ci de l'obligation d'obtenir l'autorisation prévue au paragraphe 52(1) de la Loi pour revenir au Canada.

(2) A foreign national who is issued a departure order must meet the requirements set out in paragraphs 240(1)(a) to (c) within 30 days after the order becomes enforceable, failing which the departure order becomes a deportation order.

(2) L'étranger visé par une mesure d'interdiction de séjour doit satisfaire aux exigences prévues aux alinéas 240(1)a) à c) au plus tard trente jours après que la mesure devient exécutoire, à défaut de quoi la mesure devient une mesure d'expulsion.

(3) If the foreign national is detained within the 30-day period or the removal order against them is stayed, the 30-day period is suspended until the foreign national's release or the removal order becomes enforceable.

(3) Si l'étranger est détenu au cours de la période de trente jours ou s'il est sursis à la mesure de renvoi prise à son égard, la période de trente jours est suspendue jusqu'à sa mise en liberté ou jusqu'au moment où la mesure redevient exécutoire.

225.(1) For the purposes of subsection 52(1) of the Act, and subject to subsections (3) and (4), an exclusion order obliges

225.(1) Pour l'application du paragraphe 52(1) de la Loi, mais sous réserve des paragraphes (3) et (4), la

the foreign national to obtain a written authorization in order to return to Canada during the one-year period after the exclusion order was enforced.

mesure d'exclusion oblige l'étranger à obtenir une autorisation écrite pour revenir au Canada dans l'année suivant l'exécution de la mesure.

(2) For the purposes of subsection 52(1) of the Act, the expiry of a one-year period following the enforcement of an exclusion order, or a two-year period if subsection (3) applies, is prescribed as a circumstance that does not oblige the foreign national to obtain an authorization in order to return to Canada.

(2) Pour l'application du paragraphe 52(1) de la Loi, l'expiration d'une période de un an — ou de deux ans dans le cas visé au paragraphe (3) du présent article — suivant l'exécution d'une mesure d'exclusion est un cas prévu par règlement qui dispense l'étranger qui y est visé de l'obligation d'obtenir une autorisation pour revenir au Canada.

(3) A foreign national who is issued an exclusion order as a result of the application of paragraph 40(2)(a) of the Act must obtain a written authorization in order to return to Canada within the two-year period after the exclusion order was enforced.

(3) L'étranger visé par une mesure d'exclusion prise en application de l'alinéa 40(2)a) de la Loi doit obtenir une autorisation écrite pour revenir au Canada au cours des deux ans suivant l'exécution de la mesure d'exclusion.

(4) For the purposes of subsection 52(1) of the Act, the making of an exclusion order against a foreign national on the basis of inadmissibility under paragraph 42(b) of the Act is prescribed as a circumstance that relieves the foreign national from having to obtain an authorization in order to return to Canada.

(4) Pour l'application du paragraphe 52(1) de la Loi, le cas de l'étranger visé par une mesure d'exclusion prise en raison de son interdiction de territoire au titre de l'alinéa 42b) de la Loi est un cas prévu par règlement qui dispense celui-ci de l'obligation d'obtenir une autorisation pour revenir au Canada.

226.(1) For the purposes of subsection 52(1) of the Act, and

226.(1) Pour l'application du paragraphe 52(1) de la Loi,

subject to subsection (2), a deportation order obliges the foreign national to obtain a written authorization in order to return to Canada at any time after the deportation order was enforced.

mais sous réserve du paragraphe (2), la mesure d’expulsion oblige l’étranger à obtenir une autorisation écrite pour revenir au Canada à quelque moment que ce soit après l’exécution de la mesure.

(2) For the purposes of subsection 52(1) of the Act, the making of a deportation order against a foreign national on the basis of inadmissibility under paragraph 42(b) of the Act is prescribed as a circumstance that relieves the foreign national from having to obtain an authorization in order to return to Canada.

(2) Pour l’application du paragraphe 52(1) de la Loi, le cas de l’étranger visé par une mesure d’expulsion prise du fait de son interdiction de territoire au titre de l’alinéa 42b) de la Loi est un cas prévu par règlement qui dispense celui-ci de l’obligation d’obtenir une autorisation pour revenir au Canada.

(3) For the purposes of subsection 52(1) of the Act, a removal order referred to in paragraph 81(b) of the Act obliges the foreign national to obtain a written authorization in order to return to Canada at any time after the removal order was enforced.

(3) Pour l’application du paragraphe 52(1) de la Loi, la mesure de renvoi visée à l’article 81 de la Loi oblige l’étranger à obtenir une autorisation écrite pour revenir au Canada à quelque moment que ce soit après l’exécution de la mesure.

227.(1) For the purposes of section 42 of the Act, a report prepared under subsection 44(1) of the Act against a foreign national is also a report against the foreign national's family members in Canada.

227.(1) Le rapport établi à l’égard de l’étranger aux termes du paragraphe 44(1) de la Loi vaut également pour les membres de sa famille au Canada pour l’application de l’article 42 de la Loi.

(2) A removal order made by the Immigration Division against a foreign national is also a removal order against their family members in Canada to whom subsection (1) applies if

(2) Toute mesure de renvoi prise par la Section de l’immigration à l’égard de l’étranger frappe également les membres de sa famille au Canada auxquels le paragraphe

(1) s’applique si :

(a) an officer informed the family member of the report, that they are the subject of an admissibility hearing and of their right to make submissions and be represented, at their own expense, at the admissibility hearing; and

a) d’une part, l’agent a avisé les membres de la famille que le rapport les concerne, qu’ils font l’objet d’une enquête et qu’ils peuvent soumettre leurs observations et être représentés, à leurs frais, à l’enquête;

(b) the family member is subject to a decision of the Immigration Division that they are inadmissible under section 42 of the Act on grounds of the inadmissibility of the foreign national.

b) d’autre part, la décision de la Section de l’immigration, si elle conclut à l’interdiction de territoire de l’étranger, conclut également à l’interdiction de territoire de chacun des membres de la famille aux termes de l’article 42 de la Loi.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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