

Federal Court



Cour fédérale

**Date: 20120404**

**Docket: IMM-5720-11**

**Citation: 2012 FC 393**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Montréal, Quebec, April 4, 2012**

**PRESENT: The Honourable Madam Justice Tremblay-Lamer**

**BETWEEN:**

**MARIE STÉPHANIE AVI ADROH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 (Act), of a decision dated July 19, 2011, by an immigration officer at the Case Processing Centre in Vegreville, Alberta (officer) refusing the applicant's post-graduation work application.

[2] The applicant is a citizen of Côte d'Ivoire. On December 27, 2007, she arrived in Canada to obtain, with a study permit, a bachelor's degree in accounting at the Université du Québec à

Montréal. Her permit, which initially expired in October 2010 was extended until December 31, 2010. As of that date, the applicant no longer had temporary resident status in Canada. It was not until May 5, 2011, that the applicant applied for a post-graduation work permit: she asked for the restoration of her status and for her stay in Canada to be extended in order to gain experience working in accounting. This was the only information before the officer when he made his negative decision on July 19, 2011.

[3] In his decision dated July 19, 2011, the officer indicated the following:

[TRANSLATION]

Your application, as presented, was refused.

An application for restoration must be made within 90 days after losing temporary resident status. Your temporary resident status cannot be restored because your application was submitted after the regulated 90-day period. Since you no longer hold temporary resident status in Canada, your work permit application cannot be approved.

[4] It is accepted that the applicant had to obtain the restoration of her temporary resident status and hold a valid study permit for the post-graduation work permit application to be granted. If an applicant does not have temporary resident status in Canada, the officer has no discretion: the officer must refuse the work permit application.

[5] The law on the restoration of temporary resident status is clear. In accordance with paragraph 47(a) of the Act, a foreign national loses temporary resident status at the end of the period for which they are authorized to remain:

47. A foreign national loses temporary resident status:

(a) at the end of the period for which they are authorized to remain in Canada.

[6] Section 182 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227

(Regulations), specifies the following:

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. [Emphasis added.]

[7] Justice Gauthier emphasized the following in *Sui v Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1314, [2006] FCJ No 1659 at paragraphs 33-34 (*Sui*):

In order to apply for restoration, a visitor worker or student must not have lost his temporary resident status for longer than ninety days . . . . The officer reviewing such an application has no discretion. He must restore the status of the applicant if following an examination, he is satisfied that the applicant meets the initial requirements for [her] stay . . . .

[8] The applicant failed to submit an application for the restoration of her temporary resident status within the specified period. I also note that, despite the fact that the applicant states that she was unable to obtain her passport in a timely fashion, having received it in March, she nevertheless could have submitted her application within the period set out in the Act.

[9] The language in section 182 of the Regulations is not discretionary: if the application for restoration is brought outside of the 90-day period imposed by law, the officer must refuse the application (*Novak v Canada (Minister of Citizenship and Immigration)*, 2004 FC 243 at paragraph 30).

[10] Even though one of the objectives of the Act is “to facilitate the entry of visitors, students and temporary workers for purposes such as trade, commerce, tourism . . . and cultural, educational and scientific activities” (paragraph 3(1)(g) of the Act), Justice Gauthier explained the following in *Sui*, above: “[t]his objective must obviously be balanced with the need to maintain the integrity of CIC’s programs and to promote due compliance with the various obligations set out in [Act]” (at paragraph 51).

[11] In summary, the applicant breached the requirements that Canadian legislation imposed on her in view of keeping her legal status in the country; the officer had no choice but to refuse the applicant’s post-graduation work permit application because she no longer held temporary resident status.

[12] Consequently, the application for judicial review is dismissed.

[13] The applicant proposed the following question for certification:

[TRANSLATION]

Does temporary resident status rely on changing circumstances (civil war) in the applicant’s country of origin? In other words, the application for restoration deadline remains the same even in situations where there is a crisis in the country of origin.

[14] I find that this is not an issue raised in the circumstances of this case. Consequently, no question will be certified.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review be dismissed. No question is certified.

“Danièle Tremblay-Lamer”

---

Judge

Certified true translation,  
Janine Anderson, Translator

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

**DOCKET:** IMM-5720-11

**STYLE OF CAUSE:** MARIE STÉPHANIE AVI ADROH and MCI

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** April 3, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** TREMBLAY-LAMER J.

**DATED:** April 4, 2012

**APPEARANCES:**

Salif Sangaré FOR THE APPLICANT

Daniel Latulippe FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Salif Sangaré FOR THE APPLICANT  
Montréal, Quebec

Myles J. Kirvan FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Montréal, Quebec