

Federal Court



Cour fédérale

**Date: 20140722**

**Docket: IMM-3347-13**

**Citation: 2014 FC 725**

**Toronto, Ontario, July 22, 2014**

**PRESENT: The Honourable Mr. Justice Brown**

**BETWEEN:**

**MINGJUE NI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. OVERVIEW**

[1] This is an application for judicial review brought by Ms Mingjue Ni (the Applicant) under ss. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), seeking to set aside a decision made by Officer MB/QRC (the Officer) of Citizenship and Immigration Canada (CIC) at the Case Processing Centre in Vegreville, Alberta. In that decision, dated April 24, 2013, the Officer refused the Applicant's application for restoration of temporary resident

status, a work permit, and a study permit. The Officer also refused the Applicant's Post-Graduation Work Permit (PGWP).

[2] In my opinion, this application for judicial review should be allowed for the reasons set out below.

## II. FACTS

[3] The Applicant is a female Chinese national who was born on October 20, 1988. In August 2008, she was granted a study permit to attend the University of Western Ontario's Management and Organizational Studies Program. She was also granted pre-admission to the Ivey School of Business at the University of Western Ontario.

[4] The Applicant's study permit was initially set to expire on May 29, 2010, but was extended to July 30, 2012.

[5] On June 19, 2012, the Applicant received her Bachelor of Arts Degree Diploma (Honors of Business Administration) from the Ivey School of Business at the University of Western Ontario. In her studies she twice made the Dean's Honor List.

[6] Between June 2012 and August 2012, the Applicant encountered numerous problems and difficulties in making an online application for a PGWP on CIC's internet site. Eventually the Applicant required a new login ID, which she was provided by CIC. With the new login ID, the Applicant was able to and did complete an online application setting out her request for a PGWP.

The Applicant's online application for a PGWP was filed by August 1st, 2012. There is no dispute that she made this online application within the 90 days allowed after receiving her diploma on June 19, 2012.

[7] However, a fee was required. The Applicant encountered numerous difficulties and problems in paying the fee for her PGWP application but eventually payment was made and was made within time.

[8] More specifically, after numerous unsuccessful attempts at paying online at CIC's website, the Applicant called CIC's call centre several times more. Originally she was told that "it was a technical difficulty the CIC website was having." Later that difficulty may have been resolved but the Applicant continued to have difficulties. She called and was advised by CIC's call centre of another way to pay the fees for the PGWP application. That alternative route consisted in her paying at a financial institution and mailing an original receipt of payment ("fee receipt") to CIC.

[9] She was told by CIC's call centre to get the fee receipt form, make payment at a financial institution, and then "simply send the fee receipt to CIC". This is what she did.

[10] Specifically, the Applicant requested and later received the fee receipt form from CIC by mail on August 23, 2012. She followed CIC's advice exactly, and used the fee receipt form to pay for the PGWP fees at a financial institution. Also as CIC had instructed her, the Applicant sent the fee receipt to CIC (by express post). She did so the very same day, August 23, 2012. As

with the online application, this step was also taken within the 90 days allowed from receiving her diploma on June 19, 2012.

[11] Notwithstanding all of the above, CIC rejected her application for a PGWP taking the position that while CIC recognizes several modalities of online and mail-in filings, CIC does not recognize an online filing followed by mailing an original fee receipt to CIC.

[12] There is no evidence that CIC's call centre at any time pointed out to the Applicant that mailing in a fee receipt without a paper copy of the online application was not allowed and would be rejected.

[13] In late September 2012, the Applicant received a letter from CIC, dated September 18, 2012, returning her correspondence because no paper copy of her application, filed online on or about August 1, 2012, had been received with the fee receipt proof of payment.

[14] The Applicant, once again acting on advice of CIC's call centre, applied to restore her temporary resident status, a work permit, and a study permit, and for a PGWP by application dated October 8, 2012. She was at the time unrepresented by counsel.

[15] In her application, the Applicant described her problems and difficulties with the CIC website online processes:

I couldn't log in with my login information I recorded in my note book. I've tried for months to log it and it only allowed me to try a few times every day. I didn't have access to my account until finally reached a CIC agent by phone and reset the login information. It was already in August, and it passed my study

permit expiration date. In August, I was trying to pay it online while requesting for a fee receipt. However, the online-payment method still didn't work for me even with high enough limit and address copied from my online banking website. I even changed my address format a few times. The agent told me it was a technical difficulty the CIC website was having. So after I received the fee receipt, I paid the Application fee at the bank and sent out the fee receipt within around 60 days of my graduation according to the CIC agent. (I still kept all the receipt from the bank and post office which are available upon request). However, the fee receipt was sent back to me after a month saying they didn't find out the corresponding application. It has been already 3 months after my graduation, while I thought my application was in process. Then I called CIC again and another agent told me that I should upload online, instead of sending it out by mail. This is how I didn't get my work permit soon enough. Sorry for the inconvenience.

Further, the Applicant stated:

I'm trying to apply for Post-graduate Work Permit. But I failed to get the work permit before the Study Permit expired. I have incurred several difficulties through out the process, i.e., couldn't log in, couldn't pay online (with high enough limit and correct address information), fee receipt was sent back to me. In August, I was trying to pay it online while requesting for a fee receipt. However, the online-payment method still didn't work for me even with high enough limit and address copied from my online banking website. I even changed my address format a few times. The agent told me it was a technical difficulty the CIC website was having. So after I received the fee receipt, I paid the application fee at the bank and sent out the fee receipt within around 60 days of my graduation according to the CIC agent. (I still kept all the receipts from the bank and post office which are available upon request). However, the fee receipt was sent back to me after a month saying they didn't find out the corresponding application. It has been already 3 months after my graduation, while I thought my application was in process. Then I called CIC again, and another agent told me that I should upload online, instead of sending by mail. I didn't intentionally make the application process longer than the 3 months. And I understand CIC is very busy with all the applications. Sorry for the inconvenience.

[16] These statements were not contradicted by the Respondent, nor was any evidence filed in answer thereto.

[17] In addition, the Applicant's affidavit on judicial review, which was not cross-examined upon, outlines in considerably more detail the many and various efforts the Applicant made in her attempts to pay the government fees for her application, including: multiple and repeated inability to login (after 3 attempts per day CIC locked her out of its system), CIC's website inability to process payment on her credit card even though it had sufficient funds, and repeated checks of her credit card.

[18] The Applicant's uncontradicted affidavit evidence also deposed that she spoke to the call centre several times, which said it was having technical difficulties "on their end". CIC's call centre told her to keep trying but still there was no success in paying the required fee. She called CIC's call centre again and was told of the procedure to pay and mail in a fee receipt. She requested material for the fee receipt and indeed she filed same the day she received it, which was as we know, within the 90 days allowed.

[19] On May 3, 2013, the Applicant received the CIC Officer's refusal of her application for restoration of temporary resident status, a work permit, and a study permit. Her PGWP was also refused.

### III. **DECISION UNDER REVIEW**

[20] In a letter dated April 24, 2013, the Officer refused the Applicant's application for restoration of temporary resident status, a work permit, and a study permit, because the Applicant had failed to apply within 90 days of issuance of notification that she had met the requirements for her course of study program, i.e., because she was late filing her request for a PGWP.

[21] In his reasons, the Officer also concluded that the Applicant is not restorable. Because the Applicant was deemed to no longer hold temporary resident status in Canada, the Officer also refused her application for a PGWP. Further, the Applicant was ordered to leave Canada immediately.

[22] Leave to apply for judicial review was granted by this Court.

#### IV. **ISSUES**

[23] In my opinion, there are two issues namely the effect of the Minister's position respecting the PGWP filings, and secondly, the reasonableness of the refusal of the Applicant's restoration application.

#### V. **STANDARD OF REVIEW**

[24] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 62 [*Dunsmuir*], the Supreme Court of Canada held that a standard of review analysis is unnecessary where "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard

to a particular category of question”. The Officer’s application of a legal test to a set of facts in assessing the restoration application and the PGWP application are mixed questions of fact and law to which the reasonableness standard apply. In *Dunsmuir* at para 47, the Supreme Court of Canada explained:

A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

## VI. ANALYSIS

[25] In this case, the Applicant applied for a PGWP. She did so by using CIC’s online processes on the internet. The evidence before the Court is that CIC encourages people to use its online services. It makes the point that lawyers and consultants are not necessary. CIC also encourages applicants to use the services of a call centre for whose actions CIC is responsible.

[26] There is no doubt, and the parties agree, that the Applicant’s online filing was made well within 90 days after she received confirmation of her diploma, as required. It is also agreed that the Applicant paid the required fee associated with the PGWP (indeed she overpaid out of an abundance of caution). It is further agreed that the Applicant paid the required fee within the 90 days allowed after obtaining confirmation of her diploma.

[27] However, CIC says that the Applicant’s filing for a PGWP was out of time because she should have either made an electronic payment with her online application, or sent in a paper



application with the paper fee receipt. As I understand it, CIC's position is that an online application coupled with the mailing of a paper fee receipt is a nullity in the circumstances of this case, such that the Applicant in this case may neither obtain a PGWP, nor any necessary extension of temporary student status. Further, the officer's letter in this case required the Applicant to leave Canada "immediately" (in this case, presumably, her immediate return to China).

[28] With respect, I do not agree. In my view, in the unique and special circumstances of this case, based on the uncontradicted evidence both in the Applicant's application to CIC as set out above, based on the Applicant's affidavit filed on judicial review, and based on the relevant law respecting natural justice and procedural fairness, the filing of the applicant's PGWP application was tantamount to and therefore a legal filing and ought to have been accepted by CIC in the circumstances of this case – circumstances which were known and reported to CIC even though not alluded to in any fashion in its decision. Given this, CIC had no basis on which to refuse the Applicant's request for restoration of her temporary student residence permit which is mandatory under s. 182 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The decision was therefore unreasonable as outside the range of permissible outcomes.

[29] While CIC knew that the Applicant had completed an online application, it never told her that she had to mail a paper copy of the application that she had already filed online, with the mailed in fee receipt. Nor would that be a reasonable expectation given CIC already had the online application in its possession, filed previously and within time. In fact, the evidence before

me is that CIC's call centre actually told the Applicant exactly what it now says is legally ineffective, namely, to "simply send the fee receipt to CIC." (Application Record, Page 17).

[30] Knowing the Applicant had filed an online application, CIC should not have told the Applicant to simply mail in a fee receipt without telling her to add in a printed copy of the online application previously filed. Had that occurred, there is no doubt that CIC would have issued the PGWP, and with that in hand there was no material bar (of which the Court is aware) to CIC granting a restoration of temporary student resident status.

[31] In this connection, *Courtney v Canada (Minister of Citizenship and Immigration)*, 2007 FC 252 is relevant. By analogy, the failure of justice in this case arises solely from the Applicant following CIC's instructions. Therefore, as between these two parties, responsibility must fall on the party who directed the erroneous course of conduct, which is in this case is CIC through its call centre. The Applicant cannot be required to suffer the loss of her PGWP, loss of temporary student resident status and her immediate removal from Canada, simply because she followed CIC's instructions even though those turned out to be incorrect.

[32] A final point. At the hearing of judicial review, counsel for the Applicant noted that his client had returned to China in the interim. The issue of mootness was raised, but mootness is not relevant because the claim for relief was not abandoned, and given the benefit of a PGWP.

[33] Neither party proposed a question for certification.

## VII. CONCLUSION

[34] The Officer's decision must be quashed because it does not fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." (*Dunsmuir*, *supra* at para 47). The application for judicial review should be allowed and the matter be referred to a different officer for re-determination. No question will be certified.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** judicial review is granted, the decisions above are quashed, and the applications are remitted to a different officer for re-determination in accordance with these reasons.

"Henry S. Brown"

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Judge

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

**DOCKET:** IMM-3347-13

**STYLE OF CAUSE:** MINGJUE NI v THE MINISTER OF CITIZENSHIP  
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**PLACE OF HEARING:** TORONTO, ONTARIO

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AND JUDGMENT:** BROWN J.

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