

Federal Court



Cour fédérale

Date: 20150827

Docket: IMM-6264-14

Citation: 2015 FC 1021

Ottawa, Ontario, August 27, 2015

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

MASOOD UR REHMAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant Mr. Rehman is a citizen of Pakistan. In August 2011, he entered Canada on a study permit and between September 2011 and June 2013, he attended the New Brunswick Community College [NBCC] in a two-year Business Administration Accounting program. He studied full-time until April 19, 2013 and part-time from April 22 to June 21, 2013.

[2] Mr. Rehman was not eligible to graduate in June 2013 as he had failed one Intermediate Accounting course. Between July 2013 and June 2014, he enrolled as a part-time student in three different sessions at institutions other than NBCC, in order to obtain this missing course necessary to obtain his degree. After two unsuccessful attempts, he finally passed an equivalent course; NBCC agreed to transfer the credits and granted Mr. Rehman's diploma in July 2014.

[1] Mr. Rehman's study permit expired on March 31, 2014 and as of that date, he no longer had temporary resident status in Canada.

[2] On July 1, 2014, Mr. Rehman applied for a post-graduate work permit [PGWP] as well as a restoration of his temporary resident status. Citizenship and Immigration Canada [CIC] refused his application for a PGWP on August 12, 2014 as the immigration officer [the Officer] concluded that Mr. Rehman did not hold a valid study permit at the time of his application and had not continuously studied full-time in Canada, as required by the PGWP program.

[3] Mr. Rehman argues that the Officer's decision refusing his application for a PGWP was unreasonable because it relied on an erroneous interpretation of the CIC administrative guidelines defining the eligibility requirements for a PGWP. He seeks judicial review of the Officer's decision and asks this Court to quash the decision and send it back for redetermination by a different officer.

[4] Having considered the evidence before the Officer and the applicable law, I can find no basis for overturning the Officer's decision. The decision was responsive to the evidence and the outcome was defensible based on the facts and the law. Therefore, I must dismiss Mr. Rehman's application for judicial review.

[5] The sole issue is whether the Officer's decision was unreasonable.

II. The Officer's Decision

[6] The Officer's decision is brief.

[7] The Officer determined that Mr. Rehman failed to meet the eligibility requirements of the PGWP to "have continuously studied full time in Canada" as Mr. Rehman enrolled in consecutive part-time sessions (including online courses) in order to complete his program of study in Canada and to meet the requirements of graduation. Therefore, Mr. Rehman was not eligible for the work permit he applied for.

[8] Furthermore, the Officer noted that, as Mr. Rehman no longer held a temporary resident status in Canada at the time of his application, his application for a PGWP also had to be refused.

III. Was the Officer's Decision Unreasonable?

[9] Mr. Rehman submits that the Officer unreasonably interpreted the CIC guidelines in rejecting his PGWP application. Mr. Rehman admits that he did enroll in part-time courses in

order to complete his degree program, but contends that the guidelines do not require full-time studies for the entire duration of the study permit. He argues that, as long as an applicant engages in at least one period of continuous full-time study of a minimum of eight months, the rest of the duration of the study permit may be completed on a part-time basis. Mr. Rehman contends that a person who completed all but one course of a program of studies, with a continuous intention to complete the program, and who ultimately received a certificate of completion, should not be refused participation in the PGWP. At the hearing before the Court, counsel for Mr. Rehman further pleaded that the Officer's decision was contrary to the objectives of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and led to an absurdity in unduly penalizing a student who fails one course at the end of his study program.

[10] I disagree.

[11] The Officer's decision is reviewable on the standard of reasonableness. In judicial review proceedings, the reasonableness standard requires that a decision be justifiable, intelligible and transparent, and fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para 47; *Ni v Canada (Minister of Citizenship and Immigration)*, 2014 FC 725 at para 24).

[12] The *Immigration and Refugee Protection Regulations*, SOR/2002-227 provide, at section 199, that a foreign national may apply for a work permit if he or she holds a work or study permit or otherwise qualifies. The more specific eligibility requirements for a PGWP are listed in the CIC guidelines reproduced on the CIC website; an initial version was published in November

2014 and it was subsequently completed in July 2015. These guidelines clearly state that, as part of the requirements to qualify for a PGWP, an applicant 1) must have continuously studied full time in Canada and have completed a program of study that lasted at least eight months, and 2) must have a valid study permit when he or she applies for the work permit.

[13] Mr. Rehman met neither of these requirements at the time of his application for a PGWP.

[14] First, Mr. Rehman did not have a valid study permit when he applied for a PGWP. His study permit had expired on March 31, 2014. He was also not in the possession of a valid study permit when he completed his missing accounting course in the summer of 2014. In addition, Mr. Rehman had not applied to obtain the restoration of his status as a student. He had to hold a valid study permit in order to be granted a PGWP (*Adroh v Canada (Minister of Citizenship and Immigration)*, 2012 FC 393 at para 4 [*Adroh*]).

[15] There is no doubt that, in the absence of such study permit and given the express requirements of the CIC guidelines, the Officer's decision to refuse his application on this ground was well within the range of acceptable, possible outcomes. Indeed, it was likely the only reasonable option for the Officer (*McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at para 38).

[16] Second, even if Mr. Rehman had a valid study permit at the time of his application, he was not eligible for a PGWP as he had enrolled in three consecutive periods of part-time studies in order to obtain his missing accounting course, following his two years of study at NBCC. This is in clear contradiction of the CIC guidelines.

[17] A plain reading of the CIC guidelines for PGWP indicates that the full-time status and the duration of the program are two distinct requirements: an applicant for a PGWP must have studied full time in Canada AND must have completed a program of study that lasted at least eight months. Furthermore, the section of the July 2015 CIC guidelines relating to the “Final Academic Session” states that “if a student meets all the eligibility requirements, with the exception of full time status during their final academic session, they are still considered to be eligible for this program”. If full-time study was not otherwise required, this section would be meaningless and there would be no need for CIC to specify that part-time status is acceptable in a student’s final session.

[18] It was thus perfectly reasonable for the Officer to conclude that the requirement of full-time studies applied to the whole duration of Mr. Rehman’s program, and that Mr. Rehman had failed to meet this requirement of the PGWP by enrolling in successive part-time sessions and online courses in order to obtain his degree. In fact, I am satisfied that the Officer’s decision was once again the only reasonable interpretation of this condition contained in the CIC guidelines.

[19] I do not agree with counsel for Mr. Rehman that the Officer's decision contradicts the objectives of the IRPA. The PGWP establishes conditions to be met to allow foreign nationals to gain Canadian work experience after a study program, one of which is a requirement of being enrolled in full-time studies. The PGWP is a program created for full-time students. As the Court stated in *Adroh*, at para 10, the objective of facilitating the entry of students and temporary workers in Canada must be "balanced with the need to maintain the integrity of CIC's programs". In this case, the Officer could not have ignored the specific requirements of the CIC guidelines on the PGWP program.

IV. Conclusion

[20] The Officer's refusal of Mr. Rehman's application for a PGWP represented a defensible outcome based on the law and the evidence before the CIC. On a standard of reasonableness, it suffices if the decision subject to judicial review falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. Therefore, I must dismiss this application for judicial review. Neither party has proposed a question of general importance for me to certify, and I agree there is none.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, without costs; and
2. No question of general importance is stated.

"Denis Gascon"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6264-14

STYLE OF CAUSE: MASOOD UR REHMAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: AUGUST 26, 2015

JUDGMENT AND REASONS: GASCON J.

DATED: AUGUST 27, 2015

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