

Federal Court



Cour fédérale

**Date: 20151207**

**Docket: IMM-1643-15**

**Citation: 2015 FC 1356**

**Toronto, Ontario, December 7, 2015**

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

**BETWEEN:**

**RAJENDRA PRASAD APPIDY**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**UPON** an application for judicial review of a decision of an Officer of Citizenship and Immigration Canada dated March 30, 2015, wherein the Officer did not grant a Post-Graduate Work Permit to the Applicant under the Post-Graduate Work Permit Program (PGWPP);

**AND UPON** being satisfied that the Applicant, who is self-represented and did not appear at the December 3, 2015 hearing of this application, was given notice of the hearing in accordance with the *Federal Courts Rules*;

**AND UPON** reading the material before the Court, including the parties' written submissions, and hearing the oral submissions of the Respondent;

**AND UPON** determining that this application is allowed for the following reasons:

[1] The Applicant is a citizen of India who was issued study permits authorizing him to study in Canada from May 5, 2013 to August 31, 2014. In that time, he completed a one year program of study at Fanshawe College in Information Security Management, as a result of which he was given advanced standing and completed a two year program in General Arts and Science at Niagara College over the course of one semester.

[2] The Officer denied the Applicant's application for a Post-Graduate Work Permit on the basis that 5 of the 6 classes he completed at Niagara College were online courses and the PGWPP provides that students who participate in and complete their program of study by distance learning are not eligible for the issuance of a work permit under the PGWPP. The Officer considered only the Applicant's final program of study to determine his eligibility. The PGWPP requires that applicants apply for a permit within 90 days of written confirmation from the educational institution of completion of the program of study. As a result, the Officer found that the Applicant's program at Fanshawe College did not qualify for consideration.

[3] The Applicant argues that he completed two years of full time studies in Canada and that only 25% of his courses were taken online, and even then at the suggestion of his professor, and 75% of his courses were taken in-class. Specifically, the Applicant obtained 42 in-class credits from Fanshawe College and 3 in-class credits from Niagara College. Only 15 credits were

obtained online. The Applicant also argues that he paid the full time student fee under the legitimate expectation that he would be granted a three year work permit.

[4] The Respondent argues that the Officer's decision was reasonable as it was based on the conclusion that the Applicant had completed the majority of his program of study via distance learning. A letter from Niagara College indicates that, of the 6 courses he took in his last semester to complete his two year program, 5 were completed online. As the Applicant's one year diploma from Fanshawe College was completed in December 2012, more than 90 days before the Applicant applied for the work permit, it could not be taken into account in the assessment of whether the Applicant's studies were eligible for the permit.

[5] I consider the applicable standard of review to be whether the Officer's decision is reasonable (see *Rehman v Canada (Citizenship and Immigration)*, 2015 FC 1021).

[6] My decision is that the Officer's decision was not reasonable because of the failure to take into account the in-class credits earned by the Applicant through his study at Fanshawe College. The Officer relies on the portion of the relevant Citizenship and Immigration Canada Manual (CIC Manual) related to the PGWPP, which reads as follows:

Applicants must apply for a work permit **within 90 days of receiving written confirmation** (for example, a transcript or an official letter) from the educational institution indicating that they have met the requirements for completing their program of study. Calculation of the 90 days begins the day when the student's final marks are issued or when formal written notification of program completion is received.

(Emphasis in original)

[7] The issue with the Officer's reliance on this portion of the CIC Manual, to exclude from consideration the courses completed by the Applicant at Fanshawe College, is the fact that the credits from those courses formed part of the requirements for the Applicant's program of study at Niagara College. The Applicant's explanation of his educational process, contained in the Certified Tribunal Record, describes the transfer of his credits from Fanshawe College to Niagara College, allowing him to take the remaining credits at Niagara College to complete a two year course. Indeed, the Officer's decision notes that the Applicant was given advanced standing and completed a two year program of study over the course of one semester at Niagara College.

[8] As such, it was not reasonable for the Officer to interpret the CIC Manual as precluding consideration of the credits from Fanshawe College, as those credits formed part of the requirements for completing the Applicant's program of study at Niagara College. The Officer did not take issue with the timeliness of the Applicant's application for a Post-Graduate Work Permit following receipt of the requisite confirmation from Niagara College. Therefore, the Officer acted unreasonably in relying on the CIC Manual to assess the application based only on the courses actually taken from Niagara College, rather than based on all credits that contributed to the Applicant meeting the requirements for the course of study the Applicant completed at Niagara College.

[9] No question of general importance has been raised for certification for appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is allowed and the matter is referred back to Citizenship and Immigration Canada for re-determination by a different officer. No question is certified for appeal.

"Richard F. Southcott"

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Judge

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

**DOCKET:** IMM-1643-15

**STYLE OF CAUSE:** RAJENDRA PRASAD APPIDY v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 3, 2015

**JUDGMENT AND REASONS:** SOUTHCOTT J.

**DATED:** DECEMBER 7, 2015

**APPEARANCES:**

No Appearance FOR THE APPLICANT (SELF-REPRESENTED)

Kevin Doyle FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of  
Canada