Federal Court Cour fédérale

Date: 20160908

Docket: IMM-326-16

Citation: 2016 FC 1019

Ottawa, Ontario, September 8, 2016

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

LAKSHMAN SANTOSH KUMAR NOOKALA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Post-Graduation Work Permit Program allows foreign students who have graduated from a participating Canadian post-secondary institution to gain Canadian work experience. Skilled Canadian work experience gained through the Program then helps graduates qualify for permanent residence in Canada.

[2] There are a number of criteria that must be satisfied for a student to qualify for a Post-Graduation Work Permit. Amongst other things, the individual must have completed a

program of study of at least eight months' duration, and have received written notification from their educational institution indicating that they are eligible to obtain a degree or diploma. Applicants must also have a study permit that is valid at the time that the application for a Post-Graduation Work Permit is made.

[3] Lakshman Santhosh Kumar Nookala is a citizen of India who arrived in Canada in August of 2013 to attend Concordia University. His study permit was valid from August 28, 2013 to August 31, 2015. On August 6, 2015, Mr. Nookala was advised that he had completed his studies, having earned a Master's degree in Industrial Engineering from Concordia.

[4] Nothing prevented Mr. Nookala from applying for a Post-Graduation Work Permit prior to the expiry of his study permit at the end of August, 2015, other than the fact that he chose to take a vacation after completing his university program.

[5] Although his application documentation was somewhat confused, it is common ground that Mr. Nookala applied for a Post-Graduation Work Permit on September 12, 2015, after his study period had expired. As a consequence, Mr. Nookala's application for a Post-Graduation Work Permit was accompanied by an application to restore his status, pursuant to section 182 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[6] An immigration officer held that because Ms. Nookala was not in possession of a valid study permit at the time of his application, he was not eligible for a Post-Graduation Work Permit. The officer also refused to restore Mr. Nookala's status.

[7] Mr. Nookala says that the immigration officer fettered his or her discretion by requiring that he have a valid study permit in order for him to be eligible to apply for a Post-Graduation Work Permit.

[8] According to Mr. Nookala, the only basis for the immigration officer's determination that a valid study permit is required in order to be eligible for a Post-Graduation Work Permit is what he calls the respondent's "Policy Guideline" for the Post-Graduation Work Permit Program. Mr. Nookala submits that it is well-established that administrative guidelines are not law, and that, therefore, the Post-Graduation Work Permit Program "Guidelines" cannot bind the Immigration Officer's decision.

[9] As will be explained below, I do not accept Mr. Nookala's arguments. As a result his application for judicial review will be dismissed.

I. Analysis

[10] The standard of review to be applied to the immigration officer's decision in this case is that of reasonableness*: Ur Rehman v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 1021 at para. 13, [2015] F.C.J. No. 1015.

[11] Fettering of discretion occurs when a decision-maker treats guidelines as mandatory: see, for example, *Canadian Reformed Church of Cloverdale B.C. v. Canada (Minister of Employment and Social Development)*, 2015 FC 1075, 2015 F.C.J. No. 1089. The operative portion of the document establishing the Post-Graduation Work Permit Program is not, however, a "guideline", as that term is used in the jurisprudence: see, for example, *Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61 at para. 32, 3 S.C.R. 909.

[12] The Program document at issue in this case establishes criteria that *must* be satisfied for a candidate to qualify for a Post-Graduation Work Permit. While the Program document also provides information and guidance as to how the program is to be administered, nothing in the document confers any discretion on immigration officers to modify or waive the Program's eligibility requirements. Consequently, no fettering of discretion occurred when the immigration officer determined that Mr. Nookala was required to hold a valid study permit in order for him to be eligible for a Post-Graduation Work Permit.

[13] Mr. Nookala agrees that it was open to the Minister to establish the Post-Graduation Work Permit Program under section 205 of the Regulations. This provision allows the Minister to create programs allowing foreign nationals to receive work permits where the Minister deems it necessary for, amongst other things, reasons of public policy relating to the competitiveness of Canada's academic institutions or economy.

[14] Mr. Nookala also accepts that it is open to the Minister to establish eligibility criteria for programs such as the Post-Graduation Work Permit Program, and indeed, he does not take issue with the majority of the eligibility criteria. However, as I understand Mr. Nookala's argument, he says that it was not open to the Minister to create an eligibility criterion that had the effect of rendering a provision of the Regulations meaningless.

[15] Mr. Nookala submits that section 182 of the Regulations expressly allows for a temporary resident who has been in Canada on a study permit to have his status restored after the expiry of his study permit, as long as he applies for restoration within 90 days of the expiry of the study permit. This is true as far as it goes.

[16] However, section 182 of the Regulations also expressly states that for an applicant to be entitled to a restoration of status, the applicant must also establish that he or she continues to meet the initial requirements for his or her stay. This makes perfect sense. Indeed, it is implicit in the notion of "restoration" that what is being sought is to have a past status restored.

[17] Perhaps because what he was seeking was a form of work permit, Mr. Nookala's application for restoration of status stated that he was seeking to restore his status as a "worker". This request is what was considered by the immigration officer. However, Mr. Nookala had never held a work permit in Canada, and the officer's decision to refuse his request for restoration was thus reasonable.

[18] Even if Mr. Nookala's application and covering letter could be interpreted as seeking restoration of his study permit, he also did not meet the requirements of section 182 of the Regulations for the restoration of that permit.

[19] To be entitled to a study permit, an applicant has to be accepted into a program of study at a designated Canadian learning institution: see subsection 216(1)(e) of the Regulations. Thus, in accordance with the express wording of section 182 of the Regulations, in order to be entitled to a restoration of his status, Mr. Nookala had to establish that he had been accepted into a program of study at a designated learning institution *at the time of his restoration application* in order for his study permit status to be restored. However, Mr. Nookala completed his studies in August of 2015, and was no longer enrolled in a Canadian educational program. Consequently, Mr. Nookala no longer met the initial requirements for his stay, with the result that he did not satisfy the requirements of section 182 of the Regulations.

[20] Mr. Nookala suggests that it was open to the immigration officer to "momentarily" restore his student status so that he would qualify for a Post-Graduation Work Permit. He has, however, provided no authority to support this argument, which flies in the face of the express wording of section 182 of the Regulations. The decision in *Ni v. Canada (Citizenship and Immigration)*, 2014 FC 725, [2014] F.C.J. No. 814, cited by the applicant did not consider this issue, and thus provides no assistance to the applicant.

[21] I also do not agree with Mr. Nookala that by requiring that an applicant have a valid study permit in order to be eligible for a Post-Graduation Work Permit, the Minister has created a criterion that makes section 182 of the Regulations meaningless.

[22] Mr. Nookala could have sought to have his status under a study permit restored in accordance with section 182 of the Regulations, if he met the requirements of that provision: that is, if he was still enrolled in a post-secondary program. Nothing in the Post-Graduation Work Permit Program changed that.

[23] However, because Mr. Nookala was no longer in school, he failed to satisfy the requirements of section 182 of the Regulations. Because Mr. Nookala did not hold a valid study permit at the time that he applied for a Post-Graduation Work Permit, he also did not meet the requirements of the Post-Graduation Work Permit Program. It was, therefore, entirely reasonable for the officer to deny Mr. Nookala's application for the Work Permit.

Addendum

[24] After these reasons had been completed, but before they were signed, the applicant provided the Court with a portion of a guideline published on a Departmental website. The

operative position of the guideline states that "the phrase 'initial requirements for their stay' should not be read too literally when it is being applied in the context of a restoration application". The guideline goes on to state that "the preferred interpretation in this context would be that the person seeking restoration must meet the requirements of the class under which they are currently applying to be restored as a temporary resident".

[25] According to Mr. Nookala, this means that an individual who has previously held a study permit can have their status "restored" to a work permit, including a Post-Graduation Work Permit.

[26] I do not need to decide in this case whether this interpretation suggested by the Departmental guideline is a reasonable one. The decision to refuse Mr. Nookala's restoration request was one that accorded with the express language of section 182 of the Regulations. It was, therefore, well within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. In other words, it was reasonable.

II. Conclusion

[27] For these reasons, the application for judicial review is dismissed. No question was proposed for certification by the parties and none will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Anne L. Mactavish"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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