

Federal Court



Cour fédérale

**Date: 20180426**

**Docket: IMM-4098-17**

**Citation: 2018 FC 452**

**Ottawa, Ontario, April 26, 2018**

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

**BETWEEN:**

**ELLIOT BROWN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], of a decision made by an immigration officer (the “Officer”) refusing to issue the Applicant a Post-Graduate Work Permit (“PGWP”).

## II. Background

[2] The Applicant is a citizen of Jamaica. In January 2015, he obtained a study permit and came to Canada to attend school in the hopes of eventually obtaining permanent residence.

[3] Upon receiving his study permit, the Applicant commenced studies at the Canadian Institute of Management and Technology (“CIMT”). CIMT is a private post-secondary institution and is a “designated learning institution” (“DLI”) as defined in section 211.1 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[4] The Applicant obtained a post-graduate diploma in network administration from CIMT and subsequently applied for a PGWP.

[5] On July 28, 2017, the Officer refused the PGWP application. The Officer explained that foreign students in Canada are eligible for a work permit for post-graduation employment only if they have engaged in full-time studies for at least eight months at one of the following:

- A public post-secondary institution, such as a college, trade or technical school, university or CEGEP (in Quebec);
- A private post-secondary institution that operates under the same rules and regulations as public institutions;
- A private secondary or post-secondary institution (in Quebec) offering qualifying programs of 900 hours or longer leading to a diploma of vocational studies (DVS) or an attestation of vocational specialization (AVS); or

- A Canadian private institution authorized by provincial statute to confer degrees (i.e., bachelor's degree, master's degree, doctorate), but only if the student is enrolled in one of the programs of study leading to a degree, as authorized by the province, and not in just any program of study offered by the private institution.

[6] These criteria are part of Immigration, Refugees and Citizenship Canada's PGWP Program Delivery Instructions (the "PGWP Policy").

[7] The Officer concluded that CIMT did not meet the criteria listed in the PGWP Policy and therefore the Applicant was not eligible for a work permit in this category.

[8] On September 27, 2018, the Applicant filed an application for judicial review of the Officer's decision.

### III. Issues

[9] The issues are:

- A. Is the PGWP Policy unconstitutionally vague?
- B. Does section 200 of the *IRPR* preclude the adoption of the mandatory criteria of the PGWP Policy?
- C. Was it reasonable for the Officer to conclude that the Applicant did not meet the eligibility criteria under the PGWP Policy?

IV. Standard of Review

[10] The standard of review is reasonableness (*Rehman v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1021 at para 13).

V. Analysis

A. *Is the PGWP Policy unconstitutionally vague?*

[11] The Applicant submits that the PGWP Policy is impermissibly vague under section 7 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, c 11 [*Charter*], because it fails to give those who might come within its ambit fair notice of the consequences of their conduct (citing *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 81). He argues that the PGWP Policy is vague as to what constitutes “a private post-secondary institution that operates under the same rules and regulations as public institutions” and fails to provide a list of those private institutions. Confusing matters even more is the fact that an institution may be a DLI, and a public list of DLIs is maintained, but a DLI listing does not necessarily mean that the students of that institution are eligible for a PGWP.

[12] However, an application for a work permit does not engage the right to life, liberty and security of the person under section 7 of the *Charter*. As this Court stated in *Tabingo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 377 at paragraph 99, with respect to the skilled worker class, “[t]he ability to immigrate, particularly as a member of an economic class,

is not among the fundamental choices relating to personal autonomy which would engage section 7” (aff’d 2014 FCA 191 at paras 95-99).

[13] Moreover, the Supreme Court of Canada has held that even deportation, in itself, does not implicate the liberty and security interests protected by section 7 of the *Charter*, because non-citizens do not have an unqualified right to enter or remain in Canada (*Chiarelli v Canada (Minister of Employment and Immigration)*, [1992] 1 SCR 711 at 733).

[14] Section 7 of the *Charter* is not engaged in this matter.

B. *Does section 200 of the IRPR preclude the adoption of the mandatory criteria of the PGWP Policy?*

[15] The Applicant submits that the PGWP Policy conflicts with and is precluded by section 200 of the *IRPR*, which provides that a work permit shall be issued to any foreign national that meets the conditions listed in that provision. In other words, where a foreign national would otherwise be able to obtain a work permit, the PGWP Policy adds more stringent requirements that conflict with the *IRPR*.

[16] However, when one reads the PGWP Policy and sections 200 and 205 of the *IRPR* together, it is clear that a PGWP applicant must meet the eligibility criteria in the PGWP Policy in order to satisfy the requirements of sections 200 and 205 of the *IRPR*.

[17] Subparagraph 200(1)(c)(ii) of the *IRPR* provides that subject to section 87.3 of the *IRPA*, a work permit shall be issued to a foreign national that intends to perform work described in section 204 or 205 of the *IRPR*.

[18] Subparagraph 205(c)(ii) of the *IRPR* describes that work as having been “designated by the Minister as ... necessary for reasons of public policy relating to the competitiveness of Canada’s academic institutions or economy”.

[19] It was open for the Minister to establish the PGWP Policy under subparagraph 205(c)(ii) of the *IRPR* (*Nookala v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1019 [*Nookala*] at para 13). As this Court stated in *Osahor v Canada (Minister of Citizenship and Immigration)*, 2017 FC 666 at paragraph 14:

In effect, section 205 of the *IRPR* extends to the Minister the authority to provide foreign nationals with limited access to the Canadian labour market where that access satisfies public policy objectives relating to the competitiveness of Canada’s economy or academic institutions. The *IRPR* do not prescribe criteria but rather authorize the Minister to both designate the work to be performed and define how, or on what basis, limited access is to be provided.

[20] There is no conflict between the PGWP Policy and the *IRPR*. The Minister has authority to establish criteria by which subparagraph 205(c)(ii) of the *IRPR* is satisfied and therefore a work permit should be issued under subparagraph 200(1)(c)(ii) of the *IRPR*.

C. *Was it reasonable for the Officer to conclude that the Applicant did not meet the eligibility criteria under the PGWP Policy?*

[21] The Applicant submits that the Officer's decision was unreasonable because he or she failed to explain why his diploma from CIMT did not make him eligible for a PGWP.

[22] However, the Officer cited the relevant portion of the PGWP Policy and reasonably found that CIMT does not fall under any of the categories of institutions whose graduates are eligible for a PGWP. The burden was on the Applicant to demonstrate that he met the requirements of the PGWP Policy but he has never submitted evidence in support of that position.

[23] The eligibility criteria established by the PGWP Policy are mandatory and must be satisfied in order for a candidate to qualify for a PGWP. Nothing in the policy confers any discretion on immigration officers to modify or waive the eligibility requirements (*Nookala* at para 12).

[24] The Officer referred to the PGWP Policy, in particular, the requirement that a foreign national must have been engaged in full-time studies for at least eight months at one of the following:

- A public post-secondary institution, such as a college, trade or technical school, university or CEGEP (in Quebec);
- A private post-secondary institution that operates under the same rules and regulations as public institutions;

- A private secondary or post-secondary institution (in Quebec) offering qualifying programs of 900 hours or longer leading to a diploma of vocational studies (DVS) or an attestation of vocational specialization (AVS); or
- A Canadian private institution authorized by provincial statute to confer degrees (i.e., bachelor's degree, master's degree, doctorate), but only if the student is enrolled in one of the programs of study leading to a degree, as authorized by the province, and not in just any program of study offered by the private institution.

[25] The Officer then stated that CIMT was not one of the above and therefore the Applicant was not eligible for a PGWP.

[26] The decision satisfies the requirements of justification, transparency and intelligibility, and falls within the range of possible, acceptable outcomes that are that are defensible in respect of the facts and the law.

[27] The eligibility requirements of the PGWP Policy cited by the Officer, specify that there are two categories of private institutions in Ontario whose graduates are eligible for a PGWP: private colleges that operate under the same rules and regulations as public institutions; and private colleges authorized by provincial statute to confer degrees (if the student is enrolled in a program that confers a degree).

[28] The Applicant obtained a diploma, not a degree. Moreover, the Applicant's submissions show that CIMT's enabling legislation is the *Private Career Colleges Act, 2005*, SO 2005, c 28,



Sched L, which is not the same rules and regulations that public institutions operate under. As well, those submissions indicate that a search of institutions on the IRCC website shows that CIMT does not offer any programs that lead to eligibility for a PGWP.

[29] The Officer reasonably found that CIMT did not meet the requirements of the PGWP Policy.

[30] The Applicant posed two questions for certification:

1. Do the Post-Graduate Work Permit - Program Delivery Instructions that read as follows conflict with paragraph 205(c)(ii) of the *Immigration and Refugee Protection Regulations*?

To obtain a work permit after your graduation, you must meet the following requirements:

You must have studied full time in Canada and you must have completed a program of study that lasted at least eight months.

In addition, you must have graduated from:

- a public post-secondary institution, such as a college, trade/technical school, university or CEGEP (in Quebec), or
- a private post-secondary institution that operates under the same rules and regulations as public institutions, or
- a private secondary or post-secondary institution (in Quebec) offering qualifying programs of 900 hours or longer leading to a diplôme d'études professionnelles (DEP) or an attestation de spécialisation professionnelle (ASP), or
- a Canadian private institution authorized by provincial statute to confer degrees but only if you are enrolled in one of the programs of study leading to a degree as authorized by the province and not in all programs of study offered by the private institution.

2. Is the Post-Graduate Work Permit - Program Delivery Instruction that requires an international student in Canada on a study permit to have graduated from "a private post-secondary

institution that operates under the same rules and regulations as public institutions" vague contrary to section 7 of the *Charter*?

[31] The Respondent argues that:

The Applicant's first proposed question is not one of general importance because it has been definitively settled by this Court. The well-established jurisprudence of this Court outlined in the Respondent's further memorandum of argument is a complete answer to the question. This Court has recently and repeatedly found that the Post-Graduate Work Permit criteria were lawfully established pursuant to the Minister's authority under subparagraph 205(c)(ii) of the *Regulations*.

Furthermore, there is no evidentiary record to support the Applicant's contention that the Minister's authority is restricted in the manner he suggests. There is no evidence before the Court that it was inherently contrary to "the competitiveness of Canada's academic institutions or economy" for the Minister to provide access to work permits to graduates of certain institutions but not others. The Applicant is essentially arguing that the *Regulations* require the Minister to provide access to Canada's labour market to all graduates of all post-secondary institutions. Such an argument cannot possibly be sustained, particularly in light of the broad discretion provided to the Minister in the *Regulations*. As noted in the Respondent's memorandum, these types of policy decisions attract the highest degree of deference.

[32] With respect to the first question, I agree with the Respondent. With respect to the second question, as set out in my reasons above, section 7 of the *Charter* is not engaged in this case.

**JUDGMENT in IMM-4098-17**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed;
2. There is no question for certification.

"Michael D. Manson"

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Judge

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

**DOCKET:** IMM-4098-17

**STYLE OF CAUSE:** ELLIOT BROWN v THE MINISTER OF CITIZENSHIP  
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**APPEARANCES:**

Mr. Jeremiah Eastman FOR THE APPLICANT

Mr. Daniel Engel FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Eastman Law Office FOR THE APPLICANT  
Brampton, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario