

Federal Court



Cour fédérale

Date: 20210624

Docket: IMM-6741-19

Citation: 2021 FC 663

Ottawa, Ontario, June 24, 2021

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

ALFONC PURASHAJ

Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Alfonc Purashaj, is a citizen of Albania. He studied in Canada between October 2016 and June 2019, having applied for and received a series of Temporary Resident Study Permits.

[2] In July 2019, Mr. Purashaj returned to Albania to renew his passport. Later that month, he applied, from Albania, for a new study permit to allow him to return to Canada and resume his studies.

[3] In a decision dated October 14, 2019, Mr. Purashaj's application was refused. The Visa Officer found, after issuing a procedural fairness letter [PFL], that Mr. Purashaj had engaged in a misrepresentation, that the misrepresentation rendered him inadmissible under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], and that he continues to be inadmissible for a period of five years in accordance with paragraph 40(2)(a) of the IRPA. The decision letter states in part:

You misrepresented or withheld the following material facts:

You have omitted to declare that you were not a student on a continuous basis at Humber and George Brown colleges from September 2016 to July 2019. You omitted to declare that you were also studying at [the International Language Academy of Canada (ILAC)] while you were not in possession of a valid Study Permit for studies at ILAC.

[4] Mr. Purashaj applies under section 72 of the IRPA for judicial review of the Visa Officer's decision, raising two issues:

- A. He submits the Officer's failure to provide a second procedural fairness letter identifying concerns relating to his International Language Academy of Canada [ILAC] studies was a breach of the duty of fairness; and

- B. The Officer's finding that Mr. Purashaj misrepresented his status as a continuous student is unreasonable.

II. Background

[5] Mr. Purashaj received his first study permit in September 2016. The permit authorized his study at any designated learning institution in Ontario. No field of study was identified in the first study permit. Mr. Purashaj undertook studies in an English for Academic Purposes program at George Brown College, a program that appears to be a prerequisite for other academic programs.

[6] A further study permit was issued to Mr. Purashaj in April 2017. This permit again authorized study at any designated learning institution in Ontario and, unlike the original study permit, identifies a field of study: business/commerce. Mr. Purashaj continued with his English studies, but attended a new school, the ILAC, to reportedly save money. ILAC is a designated learning institution in Ontario.

[7] Mr. Purashaj took the English admission test at George Brown College in January 2018 and was notified in March 2018 that he had not been successful. He then resumed English language courses at George Brown College. In July 2018, a third study permit issued in an identical form to the second. Mr. Purashaj attempted the English language test for a second time in October 2018, and again was unsuccessful.

[8] At some point after taking the October English language test, Mr. Purashaj decided he wanted to study hospitality and tourism at Humber College. On April 29, 2019, he was accepted into Humber's Hospitality and Tourism program on the condition that he successfully complete an English for Academic Purposes program. He continued to take English courses, this time at Humber College.

[9] Mr. Purashaj was issued a fourth study permit that was valid for the period of June 26, 2019 to July 13, 2019. The short validity period for the fourth study permit reflected the fact that his Albanian passport was about to expire and he was required to return to Albania to renew it. At this point, he was continuing with his English studies at Humber College. The fourth study permit differed from the second and third in two ways. First, it reflected the change in his field of study to hospitality and tourism, consistent with his acceptance into that program at Humber College on April 29, 2019. Second, and unlike all previous study permits, the fourth permit authorized his employment on or off campus.

[10] In a letter dated May 22, 2019 and included with his July 2019 application, Humber College reports Mr. Purashaj as a full time student in the English program.

III. Decision under Review

[11] After an initial review of the July 2019 application, a PFL issued outlining a number of concerns, including whether Mr. Purashaj:

A. was continuously enrolled in full-time studies;

B. had previously obtained a permit for a diploma program while still enrolled in ESL studies; and

C. was a *bona fide* student who would respect the conditions of his stay in Canada.

[12] Mr. Purashaj provided a detailed response to the PFL outlining his educational history in Canada. The response details his English language studies at George Brown College, ILAC, and Humber College and that he was pursuing an English language program to allow him to commence his studies, first in business administration at George Brown College and then hospitality and tourism at Humber College. Prior to his response to the PFL, Mr. Purashaj had not disclosed his attendance at ILAC.

[13] The GCMS notes indicate that in refusing the application, the Officer concluded Mr. Purashaj's failure to disclose his ILAC studies was a misrepresentation. The officer found Mr. Purashaj was not a student on a continuous basis at Humber and George Brown colleges because he attended ILAC. The GCMS notes also indicate the Officer was of the view that Mr. Purashaj's failure to disclose that he was pursuing prerequisite English language courses, instead of studying in the approved field, had resulted in him being improperly authorized to work off campus.

IV. Standard of Review

[14] In addressing issues of fairness, a reviewing court does not, strictly speaking, adopt a standard of review but is instead guided by the question of "whether the procedure was fair having regard to all of the circumstances" (*Canadian Pacific Railway Company v Canada*

(*Attorney General*), 2018 FCA 69 at para 54 [*CPR*]). Applying this general principle where it is alleged notice was not provided requires a consideration of whether the applicant knew the case to meet and had a full opportunity to respond (*CPR* at para 56). Although the consequences of a misrepresentation finding are potentially serious, the duty of fairness owed to a visa applicant is at the lower of the spectrum (*Lamsen v Canada (Minister of Citizenship and Immigration)*, 2016 FC 815 at para 17 [*Lamsen*]).

[15] The parties agree that the discretionary decisions of a visa officer are reviewable on a reasonableness standard. A reasonable decision is one that is “based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law” when it is read “in light of the history and context of the proceedings in which [it was] rendered.” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 85 and 94 [*Vavilov*]).

V. The Decision is Fair

[16] Mr. Purashaj submits that the Respondent was required to provide him with a second PFL identifying the concerns with his English language studies at ILAC. He submits that because this concern arose from his response to the first PFL, he was not notified of it and was therefore unaware of the case to be met.

[17] The Respondent argues, and I agree, that the Officer was not, in this circumstance, required to notify Mr. Purashaj of the concern with him having pursued studies at ILAC.

[18] Mr. Purashaj was given notice of the Officer's concerns as they related to his continuous enrollment in full time studies in the first procedural fairness letter. Mr. Purashaj was given the opportunity to respond to this concern, which he did. As detailed below, I find the Officer's conclusions relating to Mr. Purashaj's period of study at ILAC unreasonable. However, the Officer was under no obligation to provide a further PFL that would have again highlighted the previously identified concern of non-continuous studies.

[19] There were no outstanding factual issues to be clarified. I am satisfied the process was fair having regard to all of the circumstances.

VI. The Decision is Unreasonable

[20] In refusing the study permit and finding that Mr. Purashaj had engaged in a misrepresentation, the Officer finds a failure to disclose that studies were not pursued continuously at Humber and George Brown colleges and that studies undertaken at ILAC were pursued in the absence of a valid study permit.

[21] Having carefully reviewed the Officer's reasons, including the GCMS notes, the basis for the Officer's finding that continuous study was required at specific learning institutions is not evident. The study permits issued to Mr. Purashaj all include, under the heading "ADDITIONAL INFORMATION/INFORMATION SUPPLÉMENTAIRE" a space that allows a specific institution name to be entered. In each of the study permits issued to Mr. Purashaj, the entry states "DESIGNATED LEARNING INST-ON." The study permits authorize study at any Designated Learning Institution in Ontario.

[22] The *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] require that study permit holders “enroll at a designated learning institution and remain enrolled at a designated learning institution until they complete their studies” and that they “actively pursue their course or program of study” (s 220.1(1)). Neither the study permits themselves nor the IRPR required Mr. Purashaj to attend a specific learning institution. While this may be the practical consequence of pursuing an academic program when accepted for a specific program at a specific institution, neither the study permits nor the IRPR impose that result.

[23] In this instance, Mr. Purashaj had been accepted into academic programs, first at George Brown College and then at Humber College. Both admissions were conditional on achieving an established standard of skill in English.

[24] As previously noted, the record indicates ILAC is a designated learning institution, a designated learning institution number being indicated on its letterhead. The conclusion that Mr. Purashaj engaged in studies at ILAC in the absence of a valid study permit and failed to pursue continuous studies in accordance with the requirements of the study permits he was issued simply does not accord with the evidence.

[25] While Mr. Purashaj failed to proactively disclose his attendance at ILAC, the ILAC studies appear to have been undertaken in furtherance of his pursuit of approved academic programs at George Brown and then Humber colleges. His studies at ILAC were not inconsistent with his authorized studies nor prohibited by his study permits. While the omission of his

attendance at ILAC is undisputed, the Officer's decision fails to detail how this omission was in any way material to the administration of the IRPA.

[26] The only part of the Officer's GCMS notes that address materiality deal with Mr. Purashaj's field of study, not his institution of study. The GCMS notes read: "[Principal Applicant] has received a [study permit extension] for business/commerce and hospitality/tourism that permit off-campus employment; however, he has always been registered in pre-requisite ESL programs which should not permit employment." I am not convinced that it was open to the Officer to find that Mr. Purashaj misrepresented his field of study. I note that Mr. Purashaj's studies were summarized in a May 22, 2019 letter from Humber College. That letter reports Mr. Purashaj as a full-time student in the English program and projects a completion date for his language training. Mr. Purashaj included this letter with the July 2019 application. The facts do not show that Mr. Purashaj omitted to disclose his English language studies to the Visa Officer.

[27] Considering the decision in light of the evidence, I find it lacking in transparency, intelligibility, and justification. I therefore find it unreasonable. In light of my conclusion, I need not deal with Mr. Purashaj's submissions that the Officer erred by failing to consider the innocent mistake exception.

VII. Conclusion

[28] The Application is granted. The parties have not identified a serious question of general importance for certification and none arises.

JUDGMENT IN IMM-6741-19

THIS COURT'S JUDGMENT is that:

1. The Application is granted;
2. The matter is returned for redetermination by a different decision maker; and
3. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6741-19

STYLE OF CAUSE: ALFONC PURASHAJ v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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