

Federal Court



Cour fédérale

**Date: 20220117**

**Docket: IMM-5647-20**

**Citation: 2022 FC 46**

**Ottawa, Ontario, January 17, 2022**

**PRESENT: Madam Justice Pallotta**

**BETWEEN:**

**TEMITAYO PRISCA IDOWU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] Temitayo Prisca Idowu seeks judicial review of a reconsideration decision that refused her post-graduate work permit (PGWP) application. The immigration officer (Officer) found Ms. Idowu to be ineligible for a PGWP because (i) while enrolled as a foreign student in a Bachelor of Commerce program at MacEwan University, she had not maintained full time status

during each academic session, and (ii) she took leave from her studies that exceeded 150 days, and did not provide evidence that the leave was authorized by the education institute.

[2] Ms. Idowu submits the Officer's decision is unreasonable. She alleges that she falls under an exception to the requirement to maintain full time student status because she took leaves of absence from her studies due to financial hardship, and remained in compliance with the conditions of her study permit. Ms. Idowu argues that the Officer assessed her application without regard to the circumstances surrounding her leaves of absence.

[3] Furthermore, Ms. Idowu submits that the Officer breached procedural fairness, as the Officer made no request for additional information or documents in order to assess the reasons for Ms. Idowu's leaves of absence and her compliance with the conditions of her study permit.

[4] For the reasons below, Ms. Idowu has not established that the Officer's decision is unreasonable or that the Officer breached procedural fairness.

## II. **Standard of Review**

[5] The reasonableness of the Officer's decision is determined according to the guidance set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Reasonableness is a deferential but robust form of review: *Vavilov* at paras 12-13, 75 and 85. The reviewing court must determine whether the decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in

relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

[6] Questions of procedural fairness are reviewable on a standard that is akin to correctness: *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]. The duty of procedural fairness is “eminently variable”, inherently flexible, and context-specific: *Vavilov* at para 77. A court assessing a procedural fairness question is required to ask whether the procedure was fair, having regard to all of the circumstances: *Canadian Pacific Railway* at para 54.

### III. Analysis

#### A. *Is the Officer’s decision unreasonable?*

[7] The eligibility requirements for a PGWP include that a PGWP applicant must hold valid temporary status or have left Canada. They must have graduated from an eligible designated learning institution (DLI) and they must submit clear evidence that they have: (i) completed a program at an eligible institution in Canada that is at least 8 months in duration leading to a degree, diploma, or certificate; (ii) maintained full time student status in Canada during each academic session of the program, with exceptions for leave from studies or the final academic session of the program; (iii) received a transcript and an official letter from the eligible DLI confirming that they have met the requirements to complete their program of study, which must

be included in the PGWP application. Within 180 days of the date of applying for the PGWP, the applicant must also meet one of the following criteria: (i) they hold a valid study permit; (ii) they held a study permit; or (iii) they were authorized to study in Canada without a study permit under paragraphs 188(1)(a) and (b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[8] The Officer's reasons for refusing Ms. Idowu's PGWP application as recorded in the Global Case Management System (GCMS) notes are as follows:

Reconsideration reviewed, decision upheld. Client did not maintain full time status during each academic session of the program. Client also took leave from studies during Fall of 2017 and Winter of 2018,, which results in the client not complying with the study permit conditions. When a student is actively pursuing their studies, any leave taken from a program of studies in Canada should not exceed 150 days from the date the leave commenced and must be authorized by the education institute, as client took a leave of greater than 150 days. and did not provide any evidence of approval from education institute. Therefore, client is not eligible for C43 consideration. Letter sent to advise client that decision is upheld.

[9] Ms. Idowu submits that she met all the requirements for a PGWP except for maintaining full time student status. In this regard, Ms. Idowu submits that there is an exception for leaves of absence, and she took a leave of absence from her studies due to financial hardship. Ms. Idowu submits the Officer failed to consider the reason for the absences in order to determine whether her studies were continuous. Furthermore, Ms. Idowu states that her leaves of absence were approved by MacEwan University.

[10] Since Ms. Idowu remained in Canada while she took leave from her program, the Officer was also required to determine if she remained compliant with the conditions of her study permit. In this regard, Ms. Idowu states that she remained enrolled in her program and actively engaged in her studies throughout the period she was in Canada: subsection 220.1(1) of the *IRPR*.

[11] Finally, Ms. Idowu submits the Officer's reasons are brief and formulaic, and do not meet the requirement to provide intelligible reasons that justify the decision.

[12] I am not persuaded that the Officer's decision is unreasonable.

[13] As the respondent notes, Ms. Idowu does not dispute that she was a part time student in Winter 2017. To be eligible for a PGWP, students must maintain full time student status during each academic session of their program of study except the final academic session. On this basis alone, Ms. Idowu was ineligible for a PGWP because she did not maintain full time student status during the Winter 2017 session, which was not the final academic session of her program.

[14] In addition, Ms. Idowu did not enroll in classes for three semesters (the Fall 2017 and Winter 2018 semesters mentioned in the GCMS notes, as well as the Fall 2016 semester). Ms. Idowu's request for reconsideration stated that for three semesters, she was unable to continue her studies due to financial hardship faced by her parents who were funding her education. However, Ms. Idowu's PGWP application did not explain why her parents were unable to provide financial assistance, or provide evidence to establish that she or her parents lacked the financial means to pay for full time studies for those semesters. Ms. Idowu has not

pointed to jurisprudence to support her argument that the Officer was required to consider the circumstances surrounding her leaves of absence in order to determine whether she was engaged in continuous study, and in any event, Ms. Idowu's application did not explain those circumstances beyond asserting that the periods of absence were due to her parents' financial hardship.

[15] Furthermore, the GCMS notes indicate that a leave exceeding 150 days must be approved by the education institute. Ms. Idowu states in her affidavit that MacEwan University excused her leaves of absence and provided "proof of [her] eligibility in a letter to IRCC" that she submitted as part of her PGWP application. However, the document from MacEwan University makes no mention of Ms. Idowu's eligibility for a PGWP, and it is not a letter that is addressed to Immigration, Refugees and Citizenship Canada. Rather the document is titled "Credential Verification as of February 19, 2020" and merely certifies that Ms. Idowu completed the requirements for a Bachelor of Commerce degree.

[16] Finally, I agree with the respondent that a student who does not resume their studies within 150 days from when leave was commenced should change their status (to visitor status or worker status) or leave Canada, according to the guidance on assessing compliance with study permit conditions. Ms. Idowu submits she falls under an exemption to her study permit conditions because she was temporarily destitute through circumstances beyond her control and beyond the control of any person on whom she is dependent for the financial support to complete her term of study: ss 220.1(3), 300(2)(f), and 208(a) of the *IRPR*. However, there was no evidence before the Officer (nor this Court) to demonstrate that Ms. Idowu's leave of absence

from her studies was exempt because she or her parents had become temporarily destitute. The Officer reasonably concluded that Ms. Idowu failed to comply with the conditions of her study permit.

[17] This Court's jurisprudence is clear that officers cannot disregard the mandatory eligibility requirements for a PGWP, and the requirements must be strictly applied: *Nookala v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1019 at para 12; *Osahor v Canada (Minister of Citizenship and Immigration)*, 2017 FC 666 at paras 12-17; *Kaur v Canada (Minister of Citizenship and Immigration)*, 2019 FC 572 at para 13; *Kim v Canada (Minister of Citizenship and Immigration)*, 2019 FC 526 at para 11; *Ofori v Canada (Minister of Citizenship and Immigration)*, 2019 FC 212 at para 14; *Brown v Canada (Minister of Citizenship and Immigration)*, 2018 FC 452 at para 23; *Marsh v Canada (Minister of Citizenship and Immigration)*, 2017 FC 408 [*Marsh*]; *Saggu v Canada (Minister of Citizenship and Immigration)*, 2020 FC 31.

[18] In summary, Ms. Idowu has not established that the Officer's decision is unreasonable. The Officer's decision is supported by the record. The reasons, although brief, provide the basis for the Officer's refusal in a manner that is transparent, intelligible, and justified.

B. *Did the Officer breach procedural fairness?*

[19] Ms. Idowu submits that the Officer was obliged to give her an opportunity to respond to concerns about whether she complied with the conditions of her study permit. Subsection 220.1(1) of the *IRPR* permits officers to request additional documents required to complete their assessment, and the Officer did not do so in this case. Ms. Idowu relies on *Doron v Canada*

(*Minister of Citizenship and Immigration*), 2016 FC 429 [*Doron*] as “persuasive authority in support of her argument that she was denied procedural fairness”. She also relies on *Ching-Chu v Canada (Minister of Citizenship and Immigration)*, 2007 FC 855 at paragraph 24 for the proposition that it is a reviewable error for an officer to fetter their discretion.

[20] The Officer in this case did not fetter their discretion, and in my view *Doron* does not assist Ms. Idowu. In *Doron*, the officer had departed from a practice of sending a checklist that set out required documents, and the applicant had submitted a police check that was not the type of police check the officer required. The applicant was unaware that the police check he submitted would be inadequate. In contrast, Ms. Idowu’s PGWP application had previously been refused because she did not continuously study full time in Canada. She was aware of the reason for the previous refusal at the time she submitted her request for reconsideration, and she had an opportunity to file supporting documents that would explain why she was a part time student in Winter 2017, and why she did not take any courses in three semesters during her program.

[21] The Officer was not under a duty to request additional documents in order to assess the reasons why Ms. Idowu did not enroll in any classes for three semesters or to determine whether she breached the conditions of her study permit. An applicant bears the onus of submitting all relevant information with the initial application, and is not entitled to an opportunity to effectively enhance or re-submit a PGWP application by making additional submissions or by filing additional evidence: *Marsh* at para 37; *Saloni v Canada (Minister of Citizenship and*



*Immigration*), 2021 FC 474 at para 40, citing *Masam v Canada (Minister of Citizenship and Immigration)*, 2018 FC 751 at para 11.

IV. **Conclusion**

[22] Ms. Idowu has not established that the Officer's decision is unreasonable or that the Officer breached procedural fairness. Accordingly, this application for judicial review is dismissed.

[23] No question for certification arises in this case.

**JUDGMENT IN IMM-5647-20**

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

1. This application for judicial review is dismissed.
2. There is no question to certify.

**"Christine M. Pallotta"**

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Judge

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

**DOCKET:** IMM-5647-20

**STYLE OF CAUSE:** TEMITAYO PRISCA IDOWU v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** OCTOBER 27, 2021

**JUDGMENT AND REASONS:** PALLOTTA J.

**DATED:** JANUARY 17, 2022

**APPEARANCES:**

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