

Federal Court



Cour fédérale

**Date: 20220429**

**Docket: IMM-5571-19**

**Citation: 2022 FC 626**

**Ottawa, Ontario, April 29, 2022**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**AKASH KUMAR LATCHMAN**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The applicant, Akash Kumar Latchman, seeks judicial review of an Exclusion Order issued against him on August 31, 2019 after an officer found he was inadmissible for failing to comply with the requirements to become a temporary resident pursuant to paragraph 20(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA] and section 9 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

II. **Background facts**

[2] The applicant is a citizen of Trinidad and Tobago. He applied for a study permit to attend Confederation College in Thunder Bay, Ontario. He was accepted by the college on May 14, 2019.

[3] On August 16, 2019, the applicant received an official letter approving his study permit application (approval letter).

[4] The approval letter advised that a permit authorizing his studies would be issued to the applicant on his arrival in Canada after an examination by an Officer of Canada Border Services Agency (CBSA). The approval letter specifically stated it was subject to the applicant's compliance with the *IRPA* and the *IRPR*.

[5] The approval letter advised the applicant that the Officer would ask to see the letter and other documents such as his educational letter of acceptance and his passport.

[6] When the applicant arrived at the port of entry on August 31, 2019 he says he presented the approval letter but the Officer issued a subsection 44(1) Report in which the grounds for inadmissibility were that the applicant did not have a visa to become a temporary resident as required by paragraph 20(1)(b) of the *IRPA* and he had breached section 9 of the *IRPR* by trying to enter Canada to study without first obtaining a study permit.

[7] The Exclusion Order was issued on the grounds that the applicant was inadmissible because he had previously worked illegally in Canada, without proper status and he was not eligible to work or take his intended studies because 6 months had not elapsed since he worked without authorization.

### III. Analysis

[8] The Exclusion Order states that the Applicant did not meet the requirement that every foreign national, who seeks to enter or remain in Canada as a temporary resident, other than those referred to in section 19, must: (1) establish they hold a visa or other document required and (2) will leave Canada by the end of the period authorized for their stay pursuant to paragraph 29(1)(b).

[9] The GCMS notes for August 16, 2019 confirm that a study permit was approved for the applicant. A copy of the approval letter is in the underlying record.

[10] The underlying record also contains a copy of the application for the study permit in which the applicant states clearly that he was denied entry into Canada on May 10, 2019 as he did not have a study permit and he was told by the immigration officer that it was better to apply in Trinidad and then return to Canada.

[11] The subsection 44(1) Report states the Officer was satisfied, on a balance of probabilities, that the Applicant was a foreign national described under subsection 41(a) of the *IRPA* who, through an act or omission, contravened directly or indirectly, paragraph 20(1)(b) of the *IRPA*.

[12] The Exclusion Order was made pursuant to section 228 of the *IRPR*. It then refers to paragraph 20(1)(b) of the *IRPA* that a foreign national may not enter Canada to study without first obtaining a visa or other document required under the regulations and section 9 of the *IRPR* that a foreign national may not enter Canada without first obtaining a study permit.

[13] The report written under subsection 44 (1) of the *IRPA*, which provides the background details/reasons to inform the Exclusion Order, stated the Applicant admitted he had engaged in unauthorized work in Canada Between January 6, 2019 and April 2019.

[14] The subsection 44 (1) report indicates that the alleged violation was seeking to enter Canada without a valid visa or other document. The information upon which that conclusion was drawn is stated to be that the applicant had previously engage in unauthorized work, as a result of which he could not return to study until six months had elapsed as per subsection 221(a) of the *IRPR*.

[15] The Officer issued the Exclusion Order pursuant to section 228 of the *IRPR*. It outlines the circumstances in which a foreign national may be subject to a removal order without being referred to the Immigration Division.

[16] In *Paranych v Canada (Public Safety and Emergency Preparedness)* 2018 FC 158 (*Paranych*), Justice Zinn held that working without a permit is not a breach of the *IRPA* or *IRPR* for which an officer has authorization to issue an exclusion order. Rather, the Officer ought to have referred a report to the Immigration Division as set out in subsection 44(2) of the *IRPA*:

*Paranych* at paras 24-25, citing *Gupta v Canada (Minister of Public Safety and Emergency Preparedness)*, 2015 FC 1086 at paras 23-24.

[17] In *Fivaz v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 764, (*Fivaz*) Justice Shore upheld the conclusion in *Paranych*.

[18] Other than asserting that the Officer had the authority to issue the exclusion order, the Respondent did not provide any evidence or jurisprudence to demonstrate the foregoing line of cases should not be followed.

[19] The Respondent states, without elaboration, that the present case is distinguishable from *Paranych* and *Fivaz*. Having reviewed these cases and others, I fail to see how the facts of the present case are distinguishable. Though the Exclusion Order states that the applicant did not demonstrate they held a visa as required under the *IRPR*, it summarizes the basis on which the subsection 44(1) Report was made and it is clear that the alleged violation was the note that the Applicant had engaged in unauthorized work. As such, the Officer ought to have referred the matter to the Immigration Division.

[20] For the foregoing reasons, I find the issuance of the Exclusion Order was unreasonable because the Officer was not authorized to make it on the basis they did.

#### IV. **Conclusion**

[21] The application is granted and the Exclusion Order against the applicant is quashed.

[22] The is no serious question of general importance for certification.

**JUDGMENT in IMM-5571-19**

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

1. The application is granted and the Exclusion Order against the applicant is quashed.
2. There is no serious question of general importance for certification.

**"E. Susan Elliott"**

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Judge

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

**DOCKET:** IMM-5571-19

**STYLE OF CAUSE:** AKASH KUMAR LATCHMAN v THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 30, 2021

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** APRIL 29, 2022

**APPEARANCES:**

Niky Talebiani FOR THE APPLICANT

Margherita Braccio FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Signature Law Office P.C. FOR THE APPLICANT  
Barrister and Solicitor  
North York, ON

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario