

Federal Court



Cour fédérale

**Date: 20240918**

**Docket: IMM-6720-23**

**Citation: 2024 FC 1467**

**Ottawa, Ontario, September 18, 2024**

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

**BETWEEN:**

**CHUKWUEBUKA JOSEPH OGBONNA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr. Ogbonna, seeks judicial review of a May 9, 2023, decision in which an Immigration Officer refused his applications for a Temporary Resident Permit [TRP] and a work permit.

[2] The central issues raised by the Applicant are whether the Officer's decision to refuse the TRP and work permit applications was reasonable and procedurally fair. Because I find that the decision does not meet the test of reasonableness, I am allowing this application.

## II. Facts

[3] The Applicant is a 29-year-old Nigerian citizen who first entered Canada as an international student on June 13, 2013, with the goal of securing employment in Canada. He completed two Canadian educational credentials over about eight years: a) an Ontario College Diploma in Electrical Engineering Technical from Centennial College in April 2015; and b) an Advanced Diploma in Electrical Engineering Technology from Centennial College in April 2021.

[4] After his graduation in 2021, the Applicant was offered a full-time job as a sound engineer with the church he had been working for. His study permit expired on June 13, 2021. During the COVID-19 pandemic, he experienced delays in renewing his Nigerian passport and did not apply for a Post-Graduation Work Permit [PGWP] until September 1, 2021. During that time, he also failed to begin an application to restore his temporary resident status.

[5] On December 19, 2021, his PGWP application was refused due to his lack of valid temporary resident status. By then, he was outside both the 90-day window to apply for restoration of status and the 180-day window post-graduation to apply for a PGWP.

[6] On March 21, 2022, the Applicant applied for a TRP and a work permit to overcome his non-compliance and regain legal status in Canada.

III. Decision Below

[7] In May 2023, the Officer refused the Applicant's TRP and work permit applications. The Officer determined that the Applicant had not established "unique circumstances with compelling reasons" warranting the issuance of a TRP under subsection 24(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[8] The Officer's key findings included:

- The Applicant was at fault for neglecting to apply for restoration of status, given his long-term residence in Canada and access to information resources, including the Immigration, Refugee, and Citizenship Canada website and the Student Help Centre at his school;
- The Applicant could have departed Canada rather than remaining without status for over a year while his application was being processed;
- The Applicant had not demonstrated that his family would be unable to support him in Nigeria or that he could not apply for temporary residence from outside Canada;
- While the Applicant has many ties to Canada, including his community involvement and relationship with his brothers, there was insufficient evidence that these ties needed his continued presence in Canada;

- The Applicant has not been sharing any living expenses in Canada nor has he been sending money to his parents in Nigeria since his PGWP application was refused in December of 2021;
- Although Nigeria has a high unemployment rate of 33%, the country's economy rebounded from a 1.8% contraction in 2020 and grew by 3.6% in 2021, indicating that with the right knowledge, job search tools, and transferable Canadian education and professional experience, the Applicant could "land a rewarding job in Nigeria" in its current economic climate; and
- The Applicant did not provide sufficient evidence of unique circumstances with compelling reasons which would warrant issuing a TRP to overcome his period of non-compliance.

[9] Based on these findings, the Officer refused to issue a TRP and denied the PGWP application.

#### IV. Issues

[10] The Applicant raises two issues on this application for judicial review: whether there was a denial of procedural fairness, and whether the Officer's decision was reasonable.

#### V. Standard of Review

[11] For procedural fairness, the Applicant submits that the standard is correctness. While the standard does resemble correctness and some decisions have articulated it as such, I find the

Respondent's description of the approach more accurate. The key inquiry is whether applicants know the case they have to meet and have a full and fair opportunity to respond: *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at para 56; *Li v Canada (Citizenship and Immigration)*, 2020 FC 754 at para 22; *Kambasaya v Canada (Citizenship and Immigration)*, 2022 FC 31 at para 19.

[12] On assessing the merits of the Decision, I agree with the parties that the standard of review is reasonableness, as articulated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. None of the exceptions based in legislative intent or the rule of law, as articulated by the Supreme Court in *Vavilov* and *Society of Composers, Authors and Music Publishers of Canada v Entertainment Software Association*, 2022 SCC 30, apply to displace the presumption of reasonableness as the standard of review.

[13] Reasonableness is a deferential, yet robust, standard of review: *Vavilov* at paras 12-13. The court must give considerable deference to the decision-maker, recognizing that this entity is empowered by Parliament and equipped with specialized knowledge and understanding of the “purposes and practical realities of the relevant administrative regime” and “consequences and the operational impact of the decision” that the reviewing court may not be attentive towards: *Vavilov* at para 93. Absent exceptional circumstances, reviewing courts must not interfere with the decision maker's factual findings and cannot reweigh and reassess evidence considered by the decision-maker: *Vavilov* at para 125.

[14] TRP decisions should be afforded significant judicial deference. They are highly discretionary and are intended to address short-term, pressing issues that allow individuals to obtain temporary residence in Canada, despite their inadmissibility or other non-compliances with Canadian immigration laws: *Sun v. Canada (Citizenship and Immigration)*, 2024 FC 944 at para 8; *Kaur v Canada (Citizenship and Immigration)*, 2024 FC 337 at para 13; *Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275 [*Farhat*] at paras 15-16. The onus is on an applicant who seeks a TPR to satisfy a visa officer that the circumstances justify granting it under the *Act*.

## VI. Legal Framework

[15] Subsection 24(1) of the *Act* governs the issuance of TRP:

<b>Temporary resident permit</b>	<b>Permis de séjour temporaire</b>
<p><b>24 (1)</b> A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is <u>justified in the circumstances</u> and issues a temporary resident permit, which may be cancelled at any time.</p>	<p><b>24 (1)</b> Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que <u>les circonstances le justifient</u>, un permis de séjour temporaire — titre révocable en tout temps.</p>

[Emphasis added]

[16] Subsection 199(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, allows foreign nationals holding a TRP to apply for a work permit after entering Canada:

**Application after entry****Demande après l'entrée au Canada**

**199** A foreign national may apply for a work permit after entering Canada if they

**199** L'étranger peut faire une demande de permis de travail après son entrée au Canada dans les cas suivants :

[...]

[...]

**(d)** hold a temporary resident permit issued under subsection 24(1) of the Act that is valid for at least six months;

**d)** il détient, aux termes du paragraphe 24(1) de la Loi, un permis de séjour temporaire qui est valide pour au moins six mois;

[17] While subsection 24(1) of the *Act* requires that the issuance of a TRP be “justified in the circumstances,” there is divergence in this Court’s jurisprudence regarding the applicable evaluative standard for TRP applications. As Justice McHaffie noted in *Shabdeen v. Canada (Citizenship and Immigration)*, 2020 FC 492 [*Shabdeen*] at para 14, some decisions describe the applicant’s burden as adducing evidence of “something more than inconvenience.” *Singh v. Canada (Citizenship and Immigration)*, 2019 FC 915 at para 22; *Sellappah v. Canada (Citizenship and Immigration)*, 2018 FC 198 at para 9. Some decisions conclude that an applicant must show a “compelling reason” or “compelling need” to enter Canada: *Osmani v. Canada (Citizenship and Immigration)*, 2019 FC 872 at paras 15, 19; *Abdelrahma v. Canada (Citizenship and Immigration)*, 2018 FC 1085 at paras 8–9. Some decisions endorse the “unique or exceptional circumstances” and “compelling reasons” standard: *César Nguesso v. Canada (Citizenship and Immigration)*, 2015 FC 880 [*Nguesso*] at para 95; *El Rahy v. Canada (Citizenship and Immigration)*, 2018 FC 1058 [*Rahy #1*] at para 12; *El Rahy v. Canada*

(*Citizenship and Immigration*), 2020 FC 372 [*Rahy #2*] at para 65; *Thind v. Canada (Citizenship and Immigration)*, 2022 FC 1644 at paras 23-29.

## VII. Analysis

[18] Although the Applicant challenges the decision on both procedural fairness and reasonableness grounds, the issues concerning reasonableness alone justify this Court's intervention. This should not be taken as judicial support for the Officer's reliance on uncited documents that were undisclosed to the Applicant or the Court. That practice improperly shields them from independent examination.

### A. *The officer applied an unreasonably high evaluative standard*

[19] I find merit in the Applicant's submission that the Officer imposed an unreasonably high evaluative standard for relief under subsection 24(1) of the *Act* by requiring "unique circumstances with compelling reasons." In my opinion, when the *Act* offers relief of an exceptional nature, it does not automatically require applicants to demonstrate exceptional or unique circumstances to qualify for that relief: *Zhang v. Canada (Citizenship and Immigration)*, 2021 FC 1482.

[20] A careful reading of the *Act* and case law underlying this Court's jurisprudential divergence on the applicable evaluative standard suggests that the divide should be resolved by simply addressing whether the request is "justified in the circumstances" and eliminating the "unique or exceptional circumstances" element.



[21] The “compelling reasons” standard should guide the assessment, which must be holistic and consider all relevant circumstances put forth by the applicant: *Douglas v. Canada (Citizenship and Immigration)*, 2019 FC 1101 at para 28; *Kazembe v. Canada (Citizenship and Immigration)*, 2020 FC 856 at para 26.

[22] *Farhat* is the case cited by decisions on both sides of this divide. The division stems from the Court’s use of the term “exceptional circumstances” in paragraph 22, which some subsequent decisions have interpreted as setting down an evaluative standard that requires applicants to demonstrate unique or exceptional circumstances: *Vaguedano Alvarez v. Canada (Citizenship and Immigration)*, 2011 FC 667 at para 38; *Afridi v. Canada (Citizenship and Immigration)*, 2014 FC 193 [*Afridi*] at para 18; *Nguesso* at para 95; *Mousa v. Canada (Immigration, Refugees and Citizenship)*, 2016 FC 1358 at para 12; *Rahy #1* at para 12; *Rahy #2* at para 65. I find that these decisions conflate the exceptional nature of TRPs with the need to demonstrate unique or exceptional circumstances, effectively raising the evaluative standard beyond what the *Act* or the leading case law impose.

[23] The Court’s mention of “exceptional circumstances” in *Farhat* originates from the Overseas Processing Manual 20 [OP20] that it referred to, which uses the term in sections 2 and 6 to describe the context in which TRPs may be issued. However, as the Court noted in paragraphs 28 and 29 of *Farhat*, such guidelines are not legally binding but offer context and insight. Thus, while the Court considered OP20’s language to elucidate the purpose of TRPs, it did not adopt “exceptional circumstances” as a legal standard imposing additional requirements on applicants.

[24] A closer analysis of *Farhat* reveals that the Court in that case employed “exceptional circumstances” to describe the nature and purpose of TRPs, rather than establishing a new evaluative standard for their issuance. When discussing the objectives of section 24 of the *Act* at paragraph 22 of *Farhat*, the Court states:

The objective of section 24 of IRPA is to soften the sometimes harsh consequences of the strict application of IRPA which surfaces in cases where there may be “compelling reasons” to allow a foreign national to enter or remain in Canada despite inadmissibility or non-compliance with IRPA. Basically, the TRPs allow officers to respond to exceptional circumstances while meeting Canada’s social, humanitarian, and economic commitments.

[emphasis added and citations omitted]

[25] This language indicates that TRPs are exceptional tools within the immigration system, intended to provide flexibility in situations where the strict application of the *Act* would result in undue hardship. Read in context, the term “exceptional circumstances” describes the role and purpose of TRPs—to address cases warranting discretion due to compelling reasons—rather than setting a new standard of uniqueness or exceptionality that applicants must meet.

[26] Paragraph 24 of *Farhat* further reinforces this interpretation: “TRPs should thus be recommended and issued cautiously. Parliament was aware of the exceptional nature of TRPs and has retained a supervisory function in their regard...” [emphasis added]. It is clear here that what is exceptional is the nature of TRPs as a unique instrument within Canada’s immigration framework. This highlights the special role TRPs play in addressing a class of situations that standard immigration processes cannot adequately resolve but does not imply that individual cases must involve extraordinary circumstances to qualify for TRPs.

[27] Moreover, as noted at paragraph 22 of *Farhat*, section 24 of the *Act* serves remedial and humanitarian objectives, further indicating that the Court viewed it as providing relief in appropriate cases without imposing an additional requirement of “unique or exceptional circumstances.” In my view, adopting such a rigid standard of exceptionality would constrain the broad discretion intended by Parliament and could unjustly limit access to this remedial provision.

[28] Indeed, the Court in *Farhat* saw “compelling reasons” as the sole applicable standard. In the analysis section at paragraphs 38-40, the Court emphasized that the applicant needed to present “compelling reasons” that would justify granting a TRP. The word “exceptional” does not appear in the Court’s analysis. The Court never contemplated or adopted an evaluative standard necessitating applicants to demonstrate unique or exceptional circumstances beyond providing compelling reasons.

[29] Resolving the jurisprudential divergence is also supported by IRCC’s overhaul of the Temporary Resident Permits (TRPs) page in its online Operational Instructions and Guidelines on June 28, 2019, which contain policy, procedures and guidance used by IRCC staff. Previously, the guidance stated that “Officers should issue permits only in exceptional circumstances and when the need of the individual to enter or remain in Canada is compelling and sufficient to overcome any risks that they might pose” [emphasis added]. The revised version removed “exceptional circumstances,” now stating that a TRP may be issued if “issuance outweighs any risks that might exist and is compelling...” [emphasis added]. Although not legally binding, these manuals provide useful guidance to immigration officers: *Afridi*, at

para 18; *Shabdeen*, at paras 16-17. This Court should consider this shift in settling the jurisprudential divergence, recognizing that the current guidance focuses on balancing risks against compelling need rather than the presence of exceptional circumstances.

B. *The unreasonably high evaluative standard plagued the Officer's reasons*

[30] The Officer's addition of "unique circumstances" to "compelling reasons" was not merely stylistic. It imposed an unduly high standard that affected the analysis by preventing the Officer from grappling with circumstances that, although not necessarily unique, could still justify the issuance of a TRP when viewed holistically.

[31] This effect of this flawed standard is evident in the evaluation of the Applicant's ties to Canada. Although acknowledging his long-term community involvement and family relationships, the Officer focused on whether these connections could adjust to his departure independently, rather than assessing how they might constitute compelling reasons for granting a TRP. By not assessing the significance of these ties on the proper standard, the Officer failed to consider them adequately. Similarly, when examining potential hardship upon resettlement to Nigeria, the Officer concluded that obstacles would not be "too challenging" based solely on the Applicant's previous transition and adaptation to life in Canada, giving little thought to the specific difficulties he might face after a decade away.

[32] The Officer's unreasonable conclusions about the Applicant's employment prospects in Nigeria further demonstrate the impact of the flawed evaluative standard. First, the Officer relied on unsourced information about Nigeria's economic growth without explaining how this

growth correlates with improved employment opportunities. Second, the Officer ignored the Applicant's contradictory evidence from a Bloomberg article explaining that economic growth did not correlate with improved employment rates. By failing to address this evidence, the Officer did not provide a reasoned justification for dismissing one of the Applicant's most central concerns. The Officer's most substantive analysis on this matter is a general and speculative comment that the Applicant can obtain employment with the right tools and his international education and work experience. Given that the Applicant's employment prospects in Nigeria were central to the Officer's decision, the omission of source, lack of explanation, and failure to engage with contradictory evidence are significant gaps in the Officer's chain of analysis.

[33] The Officer's failure to grapple with the Applicant's description of how the COVID-19 pandemic affected his ability to renew his passport promptly is another manifestation of applying too high a standard. This omission is particularly significant given the widespread disruptions in public services and embassy operations caused by the pandemic, which directly relate to the Applicant's argument regarding his inadvertent non-compliance with the *Act*. Even under the improperly elevated "unique circumstances with compelling reasons" standard, the pandemic represents a truly exceptional global event that should have been considered. The Officer made no mention of it.

[34] Finally, the way the Officer weighed the Applicant's non-compliance further illustrates the flaw of applying an excessively high standard. While I do not agree with the Applicant's counsel that the Officer was blaming the Applicant, I find that the Officer completely ignored the

relevant evidence of the Applicant's strong record of previous compliance with the *Act*. Instead, a substantial portion of the reasons focused on the Applicant's failure to engage with resources like the IRCC website or his college's student help center. Minimal consideration was given to the legislative objective of the TRP, which is to "soften the sometimes harsh consequences of the strict application of IRPA:" *Farhat*, at para 22. By requiring uniqueness in the Applicant's circumstances, the Officer focused on the Applicant's mistakes. By emphasizing the Applicant's mistakes and requiring uniqueness in his circumstances, the Officer applied a standard that risks setting an almost impossible bar for TRP applicants, all of whom have committed some form of non-compliance that motivates them to seek this remedy. This undermines the intended remedial purpose of the provision.

#### VIII. Conclusion

[35] In summary, the Officer applied an unreasonably high evaluative standard by requiring the Applicant to show "unique circumstances with compelling reasons," which is not prescribed by subsection 24(1) of the *Act* or supported by leading jurisprudence. The flawed standard permeated the Officer's reasoning and led to a failure to consider all relevant circumstances, including the Applicant's ties to Canada, potential hardships upon return to Nigeria, and the impact of the COVID-19 pandemic on his compliance with immigration requirements. Consequently, the decision is marred by gaps in the chain of analysis, failures to grapple with central arguments raised, and imbalanced weighing of non-compliance. It lacks justification and falls outside the range of acceptable outcomes.

[36] Neither party proposed a question for certification: there is none on these facts.

**JUDGMENT in IMM-6720-23**

**THIS COURT'S JUDGMENT is that** this application is allowed and the Applicant's application for a Temporary Resident Permit and a work permit is remitted to a different Officer for determination in keeping with these reasons; and no question is certified.

"Russel W. Zinn"

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Judge

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

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**APPEARANCES:**

Amy Mayor

FOR THE APPLICANT

Margherita Braccio

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Mamann, Sandaluk & Kingwell  
LLP  
Barristers and Solicitors  
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT