Federal Court Cour fédérale

Date: 20250702

Docket: IMM-5485-24

Citation: 2025 FC 1173

Ottawa, Ontario, July 2, 2025

PRESENT: The Honourable Justice Darren R. Thorne

BETWEEN:

BHAVANA TADUVAYAI

Applicant

and

THE MINISTER OF IMMIGRATION REFUGEE AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Bhavana Taduvayai, seeks judicial review of a March 13, 2024 Immigration, Refugees and Citizenship Canada decision [the Decision] that denied her application for an open work permit, and for the restoration of her temporary resident status.

[2] For the reasons that follow, this application is dismissed. I find the Applicant has not established that the Decision is either unreasonable or procedurally unfair.

II. Background

[3] The Applicant is a citizen of India who entered Canada on a study permit. After completing her studies, she obtained a Post-Graduation Work Permit [PGWP] that was valid until October 1, 2023.

[4] On or about August 26, 2023, the Applicant submitted an application to renew her PGWP. However, Immigration, Refugees and Citizenship Canada [IRCC] denied this on November 27, 2023, on the basis that she had not submitted a requested biometrics fee receipt. The letter also outlined that the Applicant's status in Canada was valid until November 27, 2023.

[5] On December 5, 2023, the Applicant applied for a restoration of her temporary resident status and an open work permit. On March 13, 2024, an IRCC officer [Officer] issued the Decision denying her application. It is this Decision which is under review in this application for judicial review.

[6] The Decision stated that the Officer was not satisfied that the Applicant had met the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [*IRPA*] and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. It noted that a visitor, worker, or student who loses temporary resident status for failure to comply with the conditions pursuant to section 185 of the *IRPR* may be eligible for restoration of temporary resident status if they submit an application within 90 days after loss of status and if, following examination, it is established that the applicant meets the initial requirements for their stay and has complied with any other conditions imposed.

[7] Subsections 30(1) and 30(1.1) of the *IRPA* establish that a foreign national may only work or study in Canada with authorization. Subsection 203(1) of the *IRPR* sets out factors an officer must consider when assessing an employment offer, which includes terms of a Labour Market Impact Assessment [LMIA] from the Department of Employment and Social Development [ESDC].

[8] In the Decision, the Officer noted that the Applicant was not eligible for an open work permit because she had not submitted the required valid LMIA, nor a confirmation from ESDC. As a result, the Officer concluded that she was not eligible to have her temporary resident status restored, and that her application for a work permit could not be approved, per section 203 of the *IRPR*.

[9] The Applicant now brings this application for judicial review alleging that the Officer's Decision was unreasonable, and that it breached procedural fairness.

[10] In addition, on May 21, 2025, counsel for the Applicant purported to bring a motion to withdraw as solicitor of record for the Applicant.

III. Preliminary Issue

Counsel for the Applicant's motion to be removed as solicitor of record for the Applicant

[11] The hearing for this judicial review was scheduled for June 2, 2025. On May 21, 2025, counsel for the Appellant purported to send a Notice of Motion to the Registrar, seeking to be removed as counsel for the Applicant. The parties to this matter were subsequently informed by

the Court that this request would be dealt with as a preliminary issue at the outset of the judicial review hearing.

[12] In relation to this issue, in both his Notice of Motion and in his oral submissions at the hearing, counsel for the Applicant asserted that he was bringing his motion to be removed as solicitor of record for the Applicant pursuant to "Rules 121 and 122 of the Federal Courts Rules." He stated that since March 18, 2025, when leave had been granted for judicial review of this matter by the Court, the Applicant had not responded to any of his efforts to communicate with her. He noted that, in trying to contact his client, he had telephoned the Applicant twice, in addition to sending two emails and finally a registered letter (which was returned with a notice that the address used was 'incomplete') in March 2025. Counsel's March 27, 2025 letter to the Applicant stated that if the Applicant did not respond by April 6, 2025, then counsel would inform the Court that he no longer represented the Applicant, "due to a complete breakdown of communication." Accordingly, counsel requested at the hearing that he be removed as solicitor of record for the Applicant as "[t]he continued representation of the client has become unreasonably difficult and untenable."

[13] As I informed counsel at the hearing, his request to be removed as solicitor of record for the Applicant could not be entertained or granted. First, I note that a motion to be removed as solicitor of record is properly brought pursuant to Rule 125 of the *Federal Courts Rules*, SOR/98-106 [*Rules*], not Rules 121 or 122 (which concern the representation of parties under legal disability, and the rights and obligations of unrepresented parties in representing themselves, respectively). Second, I note that even had counsel brought his motion under the

correct provision, Rule 125, it is evident from the record that he also did not satisfy the service requirements therein. Rule 125(2)(a) mandates that in such motions, the Notice of Motion must be served to the client by personal service. In this matter, though counsel had emailed the Applicant, Rule 139(1)(e) makes clear that email is not considered personal service. Further, Rule 128(1)(e) establishes that personal service is also not effected by registered mail unless the individual being served signs a post office receipt for it. As a result, even were I to allow the motion to proceed despite that it was not brought under Rule 125 – which I do not – counsel has not provided the required notice of the motion to the Applicant. Finally, I also note that neither could I potentially allow the motion to proceed as a motion in writing under Rule 369, had counsel sought this. Rule 369(2) makes clear that the respondent to such motions (here, the client) must be provided 10 days after being served to file their response. In this case, since counsel's motion was served on May 21, 2025, the client would have had until the end of the day on June 2, 2025, the day of the hearing itself, to provide their response.

[14] In any event, it is clear that the purported motion to be removed as solicitor of record was not properly brought by counsel and, as such, it will not be entertained or granted by the Court. I also note that the materials filed by counsel make clear that as far back as March 27, 2025 counsel had sought to provide his client with a deadline of April 6, 2025, asserting that should he not receive communication before then, counsel would seek to be removed from the record. Given this, why counsel then waited approximately seven more weeks before seeking to be removed from the record, or otherwise advising the Court of these developments, is an open, and pertinent, question. As Prothonotary Lafrenière (as he then was) of this Court opined in the venerable decision *Balog v Canada (Minister of Citizenship and Immigration)*, at paras 5 and 6:

> In addition, Rule 2.09(1) of the *Rules of Professional Conduct of Ontario* provides that a lawyer shall not withdraw from representation of a client except for good cause. A review of the Court file reveals that the Applicants' Record, which includes a 29 page memorandum of argument, was filed back on April 11, 2001. There is simply no evidence that any further instructions are required by counsel from the clients. Further, the date of the hearing of the application for judicial review has been known since September 17, 2001. One is left to wonder why counsel waited until ten days before the hearing to bring this motion.
>
> The governing principle set out in a commentary to Rule 2.09 is that a lawyer should protect his client's interests to the best of his ability and should not desert the client at a critical stage of a matter or at a time when withdrawal would put the client in a position of disadvantage or peril. **The Court also has an interest in ensuring that last minute motions not interfere with the orderly hearing of scheduled matters.** The problem in securing a retainer is certainly unfortunate for counsel, however it should have been addressed earlier and cannot now serve as a justification for withdrawal. [Emphasis Added]

[15] Though this principle is currently found in Rule 3.7-1 of the *Rules of Professional Conduct of Ontario,* this responsibility of counsel remains unchanged.

[16] I will note that, to counsel for the Applicant's credit, after his purported motion failed, he did then present submissions on the merits of the Application, as the hearing proceeded.

IV. Issues and Standard of Review

[17] This matter raises the following issues:

1. Was the Decision reasonable?
2. Was the Decision procedurally fair?

A. *Standard of Review*

[18] The standard of review of the merits of a decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2018 SCC 65 at paras 10, 25 [*Vavilov*]. In undertaking reasonableness review, the Court must assess whether the decision bears the hallmarks of reasonableness, namely justification, transparency and intelligibility: *Vavilov* at para 99. Further, an applicant bears the onus of demonstrating that the decision was unreasonable: *Vavilov* at para 100.

[19] However, with respect to procedural fairness, it is a correctness-like standard that applies. The Court's focus in this assessment is on whether the procedure allowed an applicant to know the case to be met and to have a full and fair opportunity to respond: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56 [*CPR*]. In short, a reviewing court must determine whether, given the particular context and circumstances of the case, the process followed by the administrative decision-maker was fair, in that it gave the party the right to be heard, as well as a full and fair opportunity to be informed of the evidence to be rebutted: *CPR* at para 56.

V. Analysis

A. *The decision was reasonable*

[20] Though the Applicant concedes that she failed to provide a valid LMIA and that she is a person in Canada without legal status as her temporary residence visa had elapsed, the Applicant nonetheless argues that the Officer's Decision was unreasonable. In particular, the Applicant relies on a 2023 PGWP Temporary Public Policy [TPP] that was in effect at the time she sought to renew her temporary resident visa and obtain a further work permit. She states that she applied

for an open work permit pursuant to this policy, under which she states that she was eligible for the restoration of her status as well as an extension of her work permit for 18 months from the date her PGWP had expired on October 1, 2023. The Applicant asserts that she applied for the restoration of her status and an extension of her work permit on August 26, 2023, during the operation of this TPP. As such, she argues that the Officer made a reviewable error that went to the root of the Decision, because the Officer's determination to refuse her application was based on a misplaced assessment that did not consider the TPP, but instead reviewed her application under the different regulations that applied to standard applications for open work permits. She states that it was only under these other regulations that the missing LMIA and ESDC confirmation were required to be submitted on behalf of the Applicant.

[21] Conversely, the Respondent argues that the Applicant did not apply under the TPP, as she provided no evidence that she had done so in her application for an open work permit, and nor had she even indicated that she intended to apply under this policy. The Respondent also noted that the Applicant had not followed the instructions as to how to apply for a work permit under the TPP. Given this, the Respondent argued that the Officer had rightly reviewed the Applicant's application under the standard stream and had reasonably denied it, as there was no LMIA on file, nor any documentation that demonstrated the Applicant was eligible for an open work permit under any of the categories: *Nguyen v Canada (Citizenship and Immigration)*, 2025 FC 143 at para 15; *Igbedion v Canada (Citizenship and Immigration)*, 2022 FC 275 at para 21.

[22] I do not find that the Decision was unreasonable.

[23] The record indicates that the Minister of Citizenship and Immigration introduced a temporary public policy enabling eligible PGWP holders whose work permit had or would have

expired between September 20, 2021 and December 31, 2023 to benefit from the ability to maintain or restore their legal status in Canada. This TPP introduced a limited pathway to facilitate the ability of certain eligible PGWP holders to stay and work in Canada by obtaining a new open work permit or extending an existing open work permit. The TPP came into effect on April 6, 2023 and expired on December 31, 2023, and was indeed operational at the time the Applicant sought to renew her work permit.

[24] However, I find there is little evidence or indication that the Applicant had sought to apply for her open work permit through, or utilizing, the TPP. There is no letter or documentary evidence in the record in which the Applicant identifies that her open work permit application was being submitted pursuant to the TPP, and nor does her December 5, 2023 application form identify this at any point. Further, I note that the instructions on the IRCC website as to how to apply for a work permit under the TPP, at the time of the policy's operation, mandated the following:

> **Special instructions for this public policy**
>
> When you fill out the work permit application form
>
> - select "Open Work Permit" as the type of work permit you're applying for in the **Details of intended work in Canada** section
> - Do **not** select "Post Graduation Work Permit."
> - copy and paste "2023 PGWP PP open" as the **Job title**
> - copy and paste "Open Work Permit" in the **Brief description of duties field.**
>
> [Emphasis original]

[25] A review of the Applicant's application form reveals that "2023 PGWP PP open" was not entered into the Job title field, which was left blank. Similarly, the Brief description of duties field was also left blank.

[26] I note that in relation to an applicant's eligibility for the TPP, the website also included the following instructions:

> **Who can apply**
> To be eligible for this open work permit, you must meet the following requirements:
>
> - Your post graduation work permit (PGWP) expired or will expire between September 20, 2021, and December 31, 2023
> - **You must include in your application the fact that you're applying for an open work permit under this public policy. [Emphasis added]**
>
> […]

[27] Finally, I note that the website for the TPP specifically set out in the eligibility requirements for the program that:

> **Part 2 – Applicants in Canada with status or eligible for restoration**
> Based on public policy considerations, delegated officers may grant an exemption from the requirements of the Immigration and Refugee Protection Regulations identified below if:
> The foreign national:
> […]
> v. **has requested consideration under this public policy**; and
> […]

[28] When asked during the hearing what evidence indicated that the Applicant had, in fact, applied under the TPP, counsel for the Applicant conceded that there was no such evidence, beyond the Applicant having herself stated in her affidavit that she had applied under the policy, and the fact that that the application had been submitted during the time frame when the TPP was operational.

[29] I find that, beyond the bald assertion of the Applicant, there is no evidence whatsoever that her application for a work permit was undertaken pursuant to the TPP policy or that she had otherwise requested consideration under that policy. She did not indicate in her application that she was seeking to have the work permit extended under the TPP, in contravention of the requirements and instructions in the TPP mandating that applicants must specify that they were applying under the policy. I note that the instructions for applying under the TPP were clear and publicly available. In my view, the Applicant's failure to follow these instructions gave the Officer little recourse other than to assess her application as a standard application for an open work permit, and to appropriately refuse it, because there was no valid LMIA on file.

[30] In the somewhat similar case of *Degefu v Canada (Citizenship and Immigration)*, 2025 FC 738 [*Degefu*], the applicant also applied for an extension of their PGWP, but failed to indicate in her application that she was applying under the public policy. This Court found that the applicant had "the burden to put together an application that is not only complete but also relevant, convincing and unambiguous," and found that the officer's decision refusing the applicant's work permit was reasonable: *Degefu* at paras 17–26. Likewise, in *Goyal v Canada (Citizenship and Immigration)*, 2025 FC 905 [*Goyal*], the Court held that, in almost identical circumstances, the officer's decision to deny the applicant's application was reasonable, given

the applicant's failure to indicate that they were applying for an open work permit pursuant to the TPP, among other deficiencies: *Goyal* at paras 31–37.

[31] In sum, while the Applicant argues that the Officer should have considered the TPP in assessing her application, I find that the Applicant did not request that the Officer do so. More importantly, nor is there any evidence that the Applicant did, in fact, apply under the TPP. Accordingly, the Officer appropriately assessed her application for an open work permit in the standard way, and since the Applicant failed to provide an LMIA in her application materials, the Officer's Decision that she was not eligible for a work permit—and therefore was also not eligible to have her temporary resident status restored—was not unreasonable.

B. *The Decision was not procedurally unfair*

[32] The Applicant also briefly submitted that the Decision was procedurally unfair. Though the Applicant's submissions in relation to this issue were not entirely clear, they seemed to indicate that this was so because the initial refusal letter dated November 27, 2023 stated that an applicant must answer truthfully all questions put to them for the purpose of the examination. The Applicant submitted that this letter therefore challenged her credibility without giving her an opportunity to explain or respond, thereby violating procedural fairness. I note that this submission is curious, as that initial refusal decision rather turned the Applicant's failure to submit her biometrics fee receipt as part of her application, and that the passage in the letter about answering truthfully appeared to be stock language which, in any event, had no bearing on the reasons for the decision.

[33] In any event, the initial November 27, 2023 work permit refusal decision is not the Decision currently under judicial review, as it is rather the March 13, 2024 application for

restoration of the Applicant's temporary resident status and work permit that comprises the Decision being reviewed in this proceeding.

[34] I do not find that the Applicant has established that the Decision was procedurally unfair.

VI. Conclusions

[35] For the foregoing reasons, this application for judicial review is dismissed.

[36] The parties proposed no question for certification, and I agree that none arises.

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is certified.
3. No costs are awarded.

"Darren R. Thorne"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5485-24
STYLE OF CAUSE:	BHAVANA TADUVEYAI V. MCI
PLACE OF HEARING:	TORONTO, ONTARIO
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