

Federal Court



Cour fédérale

**Date: 20100201**

**Docket: IMM-4586-08**

**Citation: 2010 FC 107**

**Ottawa, Ontario, February 1, 2010**

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

**BETWEEN:**

**PATIENCE N. NZEGWU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] For the reasons that follow this application for judicial review of an immigration officer's decision rejecting the applicant's application for restoration of her temporary resident status is dismissed. The officer determined that the applicant had applied for restoration of her status after the 90 day time limit prescribed in the *Immigration and Refugee Protection Regulations*, SOR/2002-227. In my opinion, not only was the officer's decision reasonable, it was correct.

## **BACKGROUND**

[2] Patience N. Nzegwu is a Nigerian citizen. She came to Canada on December 12, 2002, on a student visa, and began studies at Trent University in Peterborough, Ontario, in January 2003. Ms. Nzegwu's visa was granted to August 31, 2007.

[3] On August 15, 2007, Ms. Nzegwu applied to renew her study permit. This application was rejected by an officer on September 13, 2007. The officer's letter informed Ms. Nzegwu that she had not demonstrated "adequate financial resources to pay tuition fees and support [her] stay in Canada." The applicant made no application for leave to review that decision.

[4] Ms. Nzegwu states that while her father could no longer support her, she had obtained financial support from her older sister and her uncle. Ms. Nzegwu states that she contacted the CIC Call Centre and was told to apply for restoration of her temporary resident status, and to include all relevant documentation relating to her financial resources.

[5] Ms. Nzegwu states that she applied for restoration of her temporary resident status on November 21, 2007. Ms. Nzegwu's application is not included in either the applicant's or respondent's materials. What is included is a cover letter, dated November 15, 2007, that Ms. Nzegwu claims was sent with the application. The cover letter references enclosed supporting financial documents from Ms. Nzegwu's sister and uncle, but these are also not in the record before the Court. The Respondent's Record at page 4, includes a negative decision on Ms. Nzegwu's application for restoration of her temporary resident status. This decision is dated December 24,

2007. The FOSS notes in the Certified Tribunal Record show that the officer who made the decision was not satisfied that Ms. Nzegwu was a bona fide student, due to the length of time it was taking her to complete her studies, and the lack of documentation provided as evidence that she was indeed studying. The applicant made no application for leave to review that decision.

[6] The Certified Tribunal Record contains an undated letter from Ms. Nzegwu addressed to whom it may concern, but which appears to have been sent to the respondent with the second application for restoration of her status on May 20, 2008, in which the applicant writes as follows:

I have made a couple of repeated applications for my Restoration of Status as a student of which they have been turned down repeatedly.

I received my last letter from you during the first week of March stating that my application was denied. I received the letter in March because I didn't get the initial letter that was sent to me, so another one was resent to me. I called and spoke with one of your reps (her name is Edwyge). She said you were not convinced I was a full time registered student with completed course requirements. When asked her what to do she said I could send another application including the above requirement. I have obtained two letters from my school stating that I am registered full time student.

I am in my final year and intend to graduate by June. I do hope that you grant me this application to restore my status as a student so that I can be able to complete my course this year.

[7] When counsel was asked whether the applicant had now completed her studies (which would thus render this application somewhat academic), she responded that the applicant had not as she was unable to register at the University without her temporary residence visa. The Court can only conclude that the applicant's assertion that she would graduate in June 2008 was optimistic.

[8] The decision which the applicant claims she did not receive until March 2008, was the December 24, 2007 decision.

[9] The decision under review is the officer's decision rejecting the May 20, 2008 application by Ms. Nzegwu for restoration of her temporary resident status. This decision was made on September 22, 2008. The decision made was that Ms. Nzegwu was not eligible to apply for restoration of her temporary resident status. The accompanying FOSS notes remark that a previous application was refused December 24, 2007.

#### **ISSUE**

[10] The issue as phrased by the applicant is: Did the officer err in law by refusing to renew the application for student authorization of the applicant? In fact, the refusal to renew was made by decision rendered September 13, 2007. That decision was not challenged in this Court by the applicant. The decision under review is a decision not to restore her status.

#### **ABALYSIS**

[11] In her memorandum the applicant argues that only one application for restoration of temporary resident status was ever made, and consequently that the officer erred in determining that the application was late. The Applicant asserts that she met the requirements of the Act and Regulations, and that the officer erred in assessing whether she met these requirements.

[12] This is not factually correct. It is clear from the Certified Tribunal Record that the applicant made two applications for the restoration of her temporary resident status. The applicant chose to put only one of those in her Application Record, thereby making it appear that she had made only one application when in fact she had made two. In my view, had the Application Record contained a complete history, as it should have, leave to judicially review the officer's decision would not likely have been granted.

[13] At the hearing the applicant submitted that the officer erred in determining that she was barred from making the second application, because it was made within 90 days after she received the December 24, 2007 decision in March 2008. She argues that her application was timely as it was made within 90 days of the receipt of that decision.

[14] Section 217 of the Regulations provides that a foreign national may apply for the renewal of a study permit before its expiry. The applicant complied with this provision when she applied on August 15, 2007, for the renewal of her permit. Section 189 of the Regulations provides that a foreign national who has made an application under section 217 is authorized to study without a study permit until a decision has been made on the application. Therefore the applicant was permitted to continue studying until the decision was made on September 13, 2007.

[15] Section 182 of the Regulations provides that a student who has lost temporary resident status as a result of the expiration of the period for which it was issued, may "within 90 days after losing temporary resident status" apply to restore their status. The respondent submits that the 90 day

period in the applicant's case thus began on September 13, 2007, when the decision was made not to renew her status. I am prepared to accept, without deciding, that the period commenced on September 13, 2007 and not on August 31, 2007 when the initial permit expired.

[16] The applicant therefore had to make an application for the restoration of status before December 13, 2007. She did that when she made her application for restoration on November 21, 2007. When the decision on that application was rendered on December 24, 2007, not to restore her status, the 90 day limitation period had already expired. She was thus barred from making any further application for restoration. Her application in 2008 was statute barred. It is irrelevant whether she received that decision in December 2007 or in March 2008; the time had expired.

[17] The applicant did not apply to judicially review the decision made on December 24, 2007, and the time for so doing is now long passed. The officer, in my view, was correct in the determination made and this application must be dismissed.

[18] The applicant proposed two questions for certification which were put to the Court as follows:

- a. "When is the person deemed to have lost temporary status; is it when the original status expires or is it the date a decision is made on status renewal or is it when the applicant receives the decision on that application?"

- b. “Is there a limit to the number of times an applicant is permitted to apply for restoration of their temporary resident permit?”

[19] The respondent opposes certification of either question; submitting that neither meets the test and, in fact, describes the second question as “absurd”.

[20] I am of the view that neither proposed question meets that standard as was recently confirmed by the Court of Appeal in *Kunkel v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 347.

[21] The first question is directed to the date when status is lost following a decision not to renew status. The facts of this case do not relate to renewal of status but to the restoration of status. Therefore the answer would not be dispositive of the applicant’s case, even if it were a question of general importance, which I doubt. The answer to the second question likewise would not assist the applicant. If, as the applicant submits, the proper answer is that any number of applications for restoration may be made that still does not overcome the limitation prescribed by the Regulations and as such the second question is not one that may be certified. Accordingly, no question is certified.

**JUDGMENT**

1. This application is dismissed; and
2. No question is certified.

“Russel W. Zinn”

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Judge



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

**DOCKET:** IMM-4586-08

**STYLE OF CAUSE:** PATIENCE N. NZEGWU v.  
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** January 28, 2010

**REASONS FOR JUDGMENT  
AND JUDGMENT:** ZINN J.

**DATED:** February 1, 2010

**APPEARANCES:**

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