Federal Court  Cour fédérale

Date: 20161017

Docket: IMM-5774-15

Citation: 2016 FC 1149

Ottawa, Ontario, October 17, 2016

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

MUHAMMAD UMER ARIF

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of the decision of an immigration officer in the Case Processing Centre in Vegreville [Visa Officer], dated December 8, 2015 [Decision], which denied the Applicant's application for a temporary resident permit and a study permit.

II. BACKGROUND

[2] The Applicant is a 21-year-old citizen of Pakistan who was issued a study permit authorizing him to study in Canada from August 16, 2013 to November 30, 2014. During that period, he completed three semesters of study at the International College of Manitoba [ICM] and was in the midst of his fourth semester when the study permit expired and he lost his temporary resident status. The Applicant intended to transfer to the University of Manitoba upon completion of his studies at ICM, of which he has one course remaining.

[3] On December 5, 2014, the Applicant electronically applied for an extension of his study permit. He electronically received a request for the submission of an education transcript from ICM on March 23, 2015. The Applicant experienced technical difficulties and was unable to upload the document by the deadline of March 30, 2015. The Applicant was then denied the extension of his study permit on April 8, 2015 on the grounds that he had not submitted his education transcript.

[4] With the assistance of legal counsel, the Applicant re-applied for an extension of his study permit on May 28, 2015. In the second application, he noted his intention to change his study plans and attend the Manitoba Institute of Trades and Technology, where he had been accepted on June 22, 2015. This second application was denied on September 25, 2015. The Applicant sought judicial review of that decision but withdrew after receiving notice on November 17, 2015 that the application would be re-opened due to the receipt of new information before the refusal date.

III. DECISION UNDER REVIEW

[5] A decision sent from a Visa Officer to the Applicant by letter dated December 8, 2015 refused to grant the Applicant a temporary resident permit and a study permit.

[6] The Visa Officer concluded that the Applicant had not demonstrated sufficient reasons to justify the issuance of a temporary resident permit. According to the Global Case Management System [GCMS] notes, the Visa Officer was not satisfied that it would cause the Applicant undue hardship to return to Pakistan and apply for a new study permit outside of Canada. The Visa Officer based this decision on affidavits submitted by the Applicant's parents which contained assurances to financially support their son in his studies and confirmed their net worth as $17 million. The Visa Officer also considered that the Applicant was young, single, and had a valid passport. Additionally, the Visa Officer noted that the Applicant's loss of temporary resident status was not above and beyond the Applicant's control.

IV. ISSUES

[7] The Applicant submits in writing that the following are at issue in this proceeding:

1. Whether there was a breach of natural justice due to the incompetence of the Applicant's former counsel;
2. Whether the Visa Officer who refused the application for a temporary resident permit breached the principles of fairness and natural justice by:
    i. Not considering that the basis for refusal for the first application, the non-submission of the Applicant's education transcript, was due to a technical problem that was not discovered until after the application was refused;

ii. Not considering that the refusal would prevent the Applicant from completing his study program, amounting to undue hardship by rendering futile the time, effort, and money expended on the prior years of study since the Applicant cannot transfer or use the credits already earned towards the completion of a university degree;

iii. Not considering the lack of certainty regarding the success of a new study permit application if the Applicant returns to Pakistan, amounting to undue hardship if the Applicant is unable to return to Canada for his studies;

iv. Not considering that the refusal would interrupt Applicant's education for a significant amount of time, amounting to undue hardship by delaying his ability to establish his career;

v. Not considering that although the Applicant's parents may be financially able and willing to support the Applicant's education, this support is not unlimited and could be withdrawn due to the refusal, amounting to undue hardship if the Applicant were to lose financial support for his education;

vi. Not considering the effect of the refusal on the Applicant's mental health due to the stress and trauma, amounting to undue hardship; and

3. In the circumstances of this case, from a substantive perspective, is the Visa Officer's Decision unreasonable based upon his failure to consider all the relevant evidence and law; and,

4. The Applicant also raises bias.

V. STANDARD OF REVIEW

[8] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review

analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[9] The first issue concerns the Applicant's right to fully present his case, including an application for judicial review of an immigration decision. This is an issue of procedural fairness and attracts the standard of correctness: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43 [*Khosa*]; *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Galyas v Canada (Citizenship and Immigration)*, 2013 FC 250 at para 27.

[10] The second set of issues is not really about procedural fairness and asks the Court to consider whether the Visa Officer failed to take certain factors into account in rendering the Decision. These issues are reviewable on a reasonableness basis.

[11] The third issue regards a visa officer's assessment of an application for a temporary residence permit. This involves questions of mixed fact and law and is reviewable using the standard of reasonableness: *Appidy v Canada (Citizenship and Immigration)*, 2015 FC 1356 at para 5; *Rehman v Canada (Citizenship and Immigration)*, 2015 FC 1021 at para 13. Furthermore, as temporary resident permits are considered to be an exceptional regime, the decision to grant one is highly discretionary and this Court has held that considerable deference should be accorded to the judgment of the visa officer: *Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275 at paras 16 to 17 [*Farhat*]; *Alvarez v Canada (Citizenship and Immigration)*, 2011 FC 667 at para 18.

[12] As a matter of procedural fairness, the bias allegations will be reviewed under the standard of correctness: *Khosa*, above, at para 43.

[13] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Khosa*, above, at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[14] The following provisions of the Act are relevant in this proceeding:

Obligation – answer truthfully	**Obligation du demandeur**
16 (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.	16 (1) L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.
...	…
Temporary resident permit	**Permis de séjour temporaire**
24 (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet	24 (1) Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit

the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.	de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps.
…	…
Annual report to Parliament	**Rapport annuel**
94 (1) The Minister must, on or before November 1 of each year or, if a House of Parliament is not then sitting, within the next 30 days on which that House is sitting after that date, table in each House of Parliament a report on the operation of this Act in the preceding calendar year.	94 (1) Au plus tard le 1er novembre ou dans les trente premiers jours de séance suivant cette date, le ministre dépose devant chaque chambre du Parlement un rapport sur l'application de la présente loi portant sur l'année civile précédente.
Contents of report	**Contenu du rapport**
(2) The report shall include a description of:	(2) Le rapport précise notamment :
…	…
(d) the number of temporary resident permits issued under section 24, categorized according to grounds of inadmissibility, if any;	d) le nombre de permis de séjour temporaire délivrés au titre de l'article 24 et, le cas échéant, les faits emportant interdiction de territoire;

VII. ARGUMENTS

A. *Applicant*

[1] The Applicant submits that his former legal counsel was incompetent and that the Visa Officer's Decision was both procedurally unfair and unreasonable.

[2] After the denial of the Applicant's first application on September 8, the Applicant's former legal counsel advised him to re-apply rather than filing a judicial review application of the decision. The Applicant's first application failed due to a technical difficulty that was not discovered until after the decision had already been made. Since refusals of applications for temporary resident permits due to technical difficulties have previously been set aside upon judicial review, as in *Ni v Canada (Citizenship and Immigration)*, 2014 FC 725 [*Ni*], the Applicant believes his former legal counsel should have advised this remedy. Furthermore, decisions to deny applications due to non-receipt of requested information have also been previously set aside upon judicial review: *Courtney v Canada (Citizenship and Immigration)*, 2007 FC 252. The Applicant says that if he had proceeded with an application for judicial review of the September 8 decision, such an application may have succeeded.

[3] While the Applicant has not filed a complaint with the Law Society of Manitoba, this is not compulsory for judicial review of incompetent counsel: *Kavihuha v Canada (Citizenship and Immigration)*, 2015 FC 328 at para 24. The only requirement is that the complaint must be *bona fide* and adequate notice must be given to the former counsel, which the Applicant provided after filing for the present judicial review. The reason for the delay in notice is because the Applicant prioritized meeting the deadline for the application of judicial review in the midst of changing counsel. Thus, the Applicant seeks to review the April 8 refusal decision on the basis that he was unaware of the availability of judicial review due to the negligent incompetence of his former counsel.

[4] Based on the written record in the GCMS notes, the Applicant says the Visa Officer's conclusion that the Applicant would not suffer undue hardship if he was required to return to Pakistan and apply for a new study permit is biased. The Applicant believes that the inclusion of his family's net worth as evidence elicited a hostile attitude against him. There are many ways in which he will suffer undue hardship as a result of the refusal: the entire process is deeply traumatizing and mentally stressful; the success of obtaining a new study permit upon return to Pakistan is not guaranteed; beginning the application process anew will further delay his education and subsequent career; and although his family is wealthy, the financial support is not limitless and may be withdrawn, thereby ending his education and limiting his career prospects. Furthermore, the failure to allow the Applicant to complete his degree program renders futile the time, effort, and money expended on the prior years of study since the Applicant cannot transfer or use the credits already earned towards the completion of a university degree in Pakistan.

[5] The Applicant says that a reasonable visa officer would have considered that the reason for the April 8 decision was due to a technical difficulty. The Applicant followed the instructions provided by Citizenship and Immigration Canada [CIC] but was not able to electronically submit the education transcript. Despite CIC's encouragement for applicants to use their electronic system for applications, there are problems associated with CIC's electronic processes that are known to this Court, as seen in *Ni*, above. Furthermore, CIC does not allow applicants to submit documentation related to online applications through non-electronic methods such as fax or courier. The Applicant believes it was unreasonable for his application to be refused when the reason for his failure to submit the requested document was due to errors in CIC's in electronic system and the lack of an alternative method to make submissions.

B. *Respondent*

[6] The Respondent says the Applicant's argument on the alleged incompetence of counsel should be dismissed. The Respondent also submits that the Visa Officer's Decision and reasons as detailed in the GCMS notes are neither procedurally unfair nor unreasonable.

[7] There is no evidence that the Applicant's former counsel's alleged incompetence led to the refusal of the study permit or temporary resident permit. The Applicant admitted his study permit lapsed as a result of his own inadvertence. The Applicant's failure to re-apply for the study permit within the specified time period and subsequent attempts to file documentation are unrelated to the allegations against his former counsel, which was a failure to file for judicial review and occurred after the rejection of his study permit.

[8] Additionally, the Applicant has not met the high threshold governing the circumstances under which the Court will grant relief on the basis of the negligence of counsel. The relevant case law states that the negligence must be sufficiently supported by evidence and the legal counsel must be given an opportunity to respond to the allegations such as through notice to the governing body: see *R v GDB*, 2000 SCC 22 at para 26 [*GDB*]; *Shirwa v Canada (Minister of Employment and Immigration)*, [1994] 2 FC 51 (TD); *Pusuma v Canada (Citizenship and Immigration)*, 2012 FC 1025 at paras 55-56. The Applicant has not demonstrated evidence that his former legal counsel was provided an opportunity to respond to the allegations. The case law also provides that the incompetence of counsel will only constitute a breach of natural justice in extraordinary circumstances and where there is a reasonable probability that the result would

have been different but for the incompetence: see *GDB*, above. Furthermore, despite claims that he suffered undue hardship, the Applicant also has not provided any evidence that the result of his application would have been any different without his former counsel's alleged incompetence.

[9] The refusal letter and GCMS notes show that the Visa Officer reasonably concluded from the Applicant's file that there were insufficient reasons to justify the issuance of a temporary residence permit. The Visa Officer considered the Applicant's familial financial support and that he was young, single, and had a valid passport in concluding that it would not cause undue hardship to require the Applicant to return home and apply for a new study permit outside of Canada. In the context of a temporary resident permit application, the requirements for procedural fairness are relatively minimal when there is no evidence of serious consequences to the Applicant: *Qin v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1154 at para 5.

[10] Furthermore, the temporary resident permit regime is considered an exceptional regime and highly discretionary. See *Farhat*, above, at paras 22-24. Temporary resident permits are issued cautiously as the number issued must be reported annually to Parliament [Act, s 94(2)(d)]. The applicant also bears the burden of providing sufficient reasons to justify the issue of a temporary resident permit [Act, s 16(1)], which the Applicant did not provide. Thus, the Visa Officer's decision to deny the issuance of a temporary resident permit without evidence of undue hardship caused by a requirement to leave and apply for a new study permit outside of Canada is not unreasonable.

VIII. ANALYSIS

[11] In his written submissions, the Applicant makes serious allegations of negligence against his former counsel. He says that his former counsel was negligent in not applying to this Court for judicial review of a negative Restoration and Study Permit decision dated April 8, 2015.

[12] The present application deals with a refusal to grant the Applicant a temporary resident permit [TRP] dated December 8, 2015. Whether or not former counsel was negligent in failing to seek judicial review of the April 8, 2015 decision (and I make no findings in this regard) is simply irrelevant to a review of the December 8, 2015 Decision.

[13] As regards the Decision under review, the Applicant, in his written submissions, simply makes a series of bald, unexplained and unsupported allegations:

> [32] It is submitted that the Officer erred on assessment of the application that were not based on reasonable inferences drawn from the known facts, and therefore the decision is unreasonable.
>
> [33] In the event that the leave is granted, the application for judicial review is to be based on the following grounds:
>
> a. The Officer acted without jurisdiction, acted beyond his/her jurisdiction or refused to exercise his-her jurisdiction.
>
> b. The Officer failed to observe a principle of natural justice, procedural fairness or other procedure that he/she was required by law to observe.
>
> c. The Officer erred in law in making decision [*sic*] or an order, whether or not the error appears on the face of the record.
>
> d. The Officer based his/her decision or order on an erroneous finding of fact that he/she made in a perverse or

capricious manner or without regard for the materials before him/her, in particular the finding that the employment offer was not genuine.

e. The Officer did not treat the applicants fairly, and failed to provide the applicants with any procedural safeguards, including providing full disclosure, and allowing the applicant full opportunity to cross-examine on any evidence alleged against the applicant.

f. The Officer abused the process by taking irrelevant considerations into account and further, the said decision maker (Officer) failed to properly execute his/her discretion, fettered his/her discretion, and abused his/her discretion by using it for an improper purpose.

g. The Officer exhibited bias against the applicant & therefore, the impugned decision cannot be allowed to stand.

h. The Officer denied the applicant improperly, his right to a properly constituted hearing, conducted accordingly to all of the proper judicial principles, and applying all of the proper rules of evidence & procedure.

i. The Officer failed to follow the rules of *audi ulterum partem*, hearing both sides; that the decision was against the evidence and the weight of evidence, that he/she as decision maker failed to act judicially, in all of the circumstances; and that he/she as decision maker based his/her decision on undisclosed factors and assumptions, that were not made known to the applicant.

j. The Officer acted in any other way that was contrary to law.

k. Based on the above analysis, the Officer clearly failed to observe the principles of natural justice & procedural fairness & based his/her decisions on erroneous findings, without regard for the materials before him/her.

[14] The Decision is set out and fully explained in the letter of December 8, 2015 and the relevant GCMS notes:

> 2015/09/25: Client entered Canada on 16 Aug 2013 on a valid study permit. Status expired 30 Nov 2014. Client states in a letter that he had planned to take a semester off school and go home. He submitted an application for an extension of his study permit via e-app. It was received 05 Dec 2015 [sic], after his status expired. An officer reviewed the application and requested additional information. The client did not submit the requested information by the deadline requested and the application was refused. The client is currently out of status and not restorable. The client was advised to leave Canada. An application for a TRP and SP was received on 01 Jun 2015. The client states that he wants to remain in Canada to finish his studies. He has submitted proof that his parents have property and business worth 7 and 10 million dollars respectively. He is young and single and has a valid passport. It would undermine the integrity of the immigration system if the lack of a visa or valid temporary visitor, student or worker status could be overcome by issuance of a temporary resident permit. I am not satisfied that it would cause the client undue hardship financially to go home and apply for a new study permit and visa outside of Canada. This situation was not above and beyond the client's control. He has not demonstrated sufficient reasons to justify the issuance of a Temporary Resident Permit. Application refused. Client advised to leave Canada.
>
> 2015/12/08: This application was re-opened as additional information as received on 15 Jul 2015, prior to the refusal date. It included a LOA, a copy of receipt #R125588997, a letter from the rep advising of the client's course of studies and stating that his parents will support his studies. This additional information does not give any additional reasons why the student would not be able to leave Canada and apply from outside Canada or any undue hardship he would endure if he was required to do so. He has not demonstrated sufficient reasons to justify the issuance of a Temporary Resident Permit. Application refused. Client advised to leave Canada.

[15] Notwithstanding his fairly voluminous written submissions, by the time of the hearing before me in Saskatoon on September 15, 2016, the Applicant had distilled his allegations of unreasonableness to a single ground: given that his application for an extension of his study permit had been rejected because – for reasons beyond his control – he had not been able to submit his education transcripts within the seven-day deadline imposed by CIC – the

Visa Officer had all that was required to grant a TRP. The Applicant had provided transcripts and demonstrated that he was a genuine student, and to refuse him a TRP meant that 2 years of expensive education would be potentially wasted. The Applicant also raised a new ground of review before me. He now also says that the Visa Officer made a legal error when he used an "undue hardship" test to decide the TRP application. He says that the proper test is set out in *Ali v Canada (Minister of Citizenship and Immigration)*, 2008 FC 784 at paras 12 and 17 [*Ali*] and *Rodgers v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1093 at paras 9 to 11.

[16] Under past jurisprudence, a visa officer is only required to consider whether the relevant circumstances justify the issuance or refusal of a TRP: see *Ali*, above, at para 12. The relevant circumstances that can be considered are varied, including family ties and the interests of a minor, other pending applications under the Act, and previous immigration history: *Ali*, above, at para 12; *Betesh v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1374 at para 58; *Farhat*, above, at paras 23 to 24). In this case, the possibility or lack of undue hardship faced by the Applicant is relevant to the application and is a circumstance the Visa Officer was entitled to consider in deciding the TRP application.

[17] For the purposes of the present application, the Applicant has provided a Supplemental Affidavit which sets out the narrative of his attempts to complete his education in Canada and the difficulties he will face if he now has to return to Pakistan and apply for a new study permit. I have no reason to disbelieve anything in this Supplemental Affidavit, and I certainly have considerable sympathy for the Applicant whose correspondence with Canadian officials reveals him to be academically bright, honest, urbane and totally cooperative in any way required.

However, sympathy is not a ground of judicial review, and I cannot grant this application unless the Applicant can establish a reviewable error in the Decision.

[18] The Supplemental Affidavit that is before me was not before the Visa Officer. I can only assess the reasonableness of the Visa Officer's Decision against the evidence and submissions that the Applicant placed before him. This is not a *de novo* hearing. It is a judicial review and, unless the Court is dealing with some form of procedural unfairness, the only relevant evidence is the material that was before the Visa Officer and upon which he based his Decision: see *Castillo Afable v Canada (Citizenship and Immigration)*, 2010 FC 1317 at para 22; *Chopra v Canada (Treasury Board)*, [1999] FCJ No 835 (FCTD) at para 5.

[19] In his submissions to the Visa Officer, the Applicant sets out his educational history and then makes the following points:

> As my study permit was nearing its expiration date (November 30th, 2014) I had decided that I would take a semester off of school to go home and spend some time with my family. I began to apply for my extension with CIC and since I have not used their online site before, I enlisted the help of friends who have previously applied for their Study Permits on their own. A friend of mine offered to help and had uploaded all my documents to the CIC online portal.
>
> As my friend was still helping me fill out my application, CIC asked that I upload my transcript to their website. My friend attempted many times to upload the document, but for unknown reasons it just would not go through. I called the CIC helpline to see if they could figure out why it was not uploading but unfortunately they did not know what the issue was and they were unable to resolve it. I myself could not understand and began to get nervous as my expiration date was close and I did not want to lose my opportunity at a better education. After further inspection, I realized CIC had provided me with a link via email in which I could upload the document onto a different website. I then received a refusal letter dated April 8, 2015.

> Having attended the International College of Manitoba for four consecutive semesters, I decided that I want to go to the Manitoba Institute of Trades and Technology. I have been accepted into their Industrial Mechanics Program. Subject to approval of my Study Permit, classes with [*sic*] commence on the 27th of July, 2015. Moreover, my English courses will start on August 8th, 2015. I have full financial support from my parents and so all I need now is to be approved for my study permit so that I may be allowed to attend my classes when they have commenced.
>
> One might say it was pure negligence on my part because I should have been more alert and taken this matter into my own hands. I understand and take full responsibility for my actions as I did not realize that this would cause me to be refused of my study permit. I was foolish as to believe that I could be dependent on others to do things for me as at the time, I was not sure of myself and my own capabilities. I am fully aware that I have made a very big mistake and I am not sure that it can be fixed. All I can do is be responsible for my actions and kindly request for a chance to be allowed to continue my education.
>
> As a student here in Canada I have been doing well in my studies and my academics will show the same about me. While on my previous study permit, I have attended classes regularly because I am truly serious about the career path I have laid out for myself here in Canada. I cannot allow my negligence or ignorance to spoil my chances at a better education, which will allow me to have a better life.
>
> As most people are well aware of the living conditions of Pakistan, going back to my home country will not help shape my future for the better in any way. I hope that you can understand the reason I am submitting my application for a study permit. I speak from my heart when I say that I have the best interest for myself to complete my bachelor degree once I have completed my diploma here in Canada. Hence the reason I do need this chance to be given to me. I hope that you will consider my application for a study permit and grant me this amazing opportunity to get a world class education.

[20] There is little in these submissions to assist the Visa Officer in making a decision under s 24(1) of the Act, which reads as follows:

24 (1) A foreign national who, in the opinion of an officer, is	24 (1) Devient résident temporaire l'étranger, dont

inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.	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 les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps.

[21] It is well-established that a decision under s 24(1) is highly discretionary and that a negative TRP decision would have to be highly irregular to justify intervention by the Court. See *Nasso v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1003 at para 13.

[22] Given the submissions before him, the Visa Officer's Decision cannot be called irregular in any way, let alone "highly irregular." The Decision is transparent and intelligible and does not fall outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law. See *Dunsmuir*, above, at para 47. It is also notably responsive to the information (and the lack of information) evident in the Applicant's letter of May 28, 2015.

[23] It is also clear from the Decision that the Visa Officer did not apply a general "undue hardship" test. He simply noted that the Applicant's parents appear to be wealthy and that the Applicant has not established any undue hardship if he has to go home and apply for a new study permit. The main problem is that the Applicant "has not demonstrated sufficient reasons to justify the issuance of a Temporary Residence Permit." This is not an unreasonable assessment of the Applicant's submissions to the Visa Officer. As required by s 24(1), there is nothing to suggest that the Visa Officer does not consider all of the submissions made to him or fails to consider whether a TRP "is justified in all the circumstances."

[24] Nor is there any relevant procedural unfairness or an apprehension of bias.

[25] The Applicant has failed to establish any reviewable error in this case, which means that I cannot grant him the relief he seeks in this application. However, this case remains highly sympathetic. On the record before me, it would appear that the only reason the Applicant's request for an extension of his study permit could not be granted was because the Applicant was unable to provide his educational transcripts in the very short deadline he was given between March 23, 2015 and March 30, 2015. The Applicant applied for an extension of his study permit on December 5, 2014. The Applicant obtained the requested documents in time and he tried to submit them electronically. CIC say they were not received, but it is unclear why not. We just do not have the details of any technical problem.

[26] The Applicant did re-apply for an extension of his study permit explaining the problems he had encountered and providing the documents requested to CIC. This application was rejected in September 2015, and then again on December 8, 2015 after it was re-opened because of an administrative error. The apparent reason for the rejection was that the Applicant had not provided additional reasons as to why he was not able to leave Canada and apply from outside "or any undue hardship he would endure if he was required to do so."

[27] The Applicant says that, as a result of this Decision, he has invested two and a half years in pursuing his education in Canada, which is not yet complete, and he has not been able to graduate, and he cannot transfer his credits to a Pakistan university. This is why he sought a TPR and a study permit so that he could complete his studies.

[28] His having to now return to Pakistan to re-apply for a study permit does seem somewhat unfair and unnecessary to me given that his failure to provide the transcripts on short notice appears, on the evidence before me, to have resulted from some technical glitch for which the Applicant may not be responsible.

[29] While I can find no reviewable error with the TRP Decision under review, if there is some way that the Applicant's situation can be re-assessed and re-considered, I urge that it be done. It seems pointless to me, and unflattering to Canada, to require him to go back to Pakistan and apply again if the only problem was that he failed to submit his educational transcripts within a short deadline because of some kind of technical problem in communication that was beyond his control. However, I do not have all of the facts and this is not something I can order to be done.

[30] Counsel agree there is no question for certification and I concur.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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