

Federal Court



Cour fédérale

**Date: 20231215**

**Docket: IMM-12108-22**

**Citation: 2023 FC 1703**

**Vancouver, British Columbia, December 15, 2023**

**PRESENT: Madam Justice Pallotta**

**BETWEEN:**

**ARFAT ALMADANI MOHAMMED**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant, Arfat Almadani Mohammed, seeks judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] to challenge a visa officer's decision that refused his application for an open work permit (OWP).

[2] Mr. Mohammed entered Canada as an international student in November 2014. His study permit expired on August 31, 2019, and he applied to restore his status as a student in November 2019.

[3] In April 2021, while the application to restore status was still pending, Mr. Mohammed married an international student who was in Canada on a study permit valid until the end of March 2023.

[4] In June 2022, Mr. Mohammed filed an application for an OWP. He requested an OWP as the spouse of a study permit holder, under paragraph 205(c)(ii) and subsection 199(e) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. Mr. Mohammed sought authorization to work while his spouse completed her studies in Canada.

[5] Mr. Mohammed's restoration application was refused in October 2022. His OWP application was refused on November 17, 2023, and this is the decision under challenge.

[6] The letter refusing an OWP states Mr. Mohammed did not meet the requirements of the *IRPA* and *IRPR*. The letter further states the OWP application was made after Mr. Mohammed's status expired, and Mr. Mohammed was not eligible for restoration. The officer recorded the following notes in the Global Case Management (GCMS) system:

Client's status expired 2019-08-31. Client had applied for restoration and their Study Permit was referred to the CIC.  
Client's application for restoration was refused. Client DID NOT have implied status for the 3 years their restoration application was at the CIC awaiting a decision as their status was already expired at the time of that application. This work permit is therefore refused

due to be [*sic*] submitted after the expiry of their status (2019-08-31). Refusal letter sent. Client notified they must leave Canada. (Note that client has stated they have not left Canada and re-entered to regularize their status in the recently refusal SP application for restoration).

[7] Mr. Mohammed submits the officer erred in law by refusing the OWP application on the basis that Mr. Mohammed was ineligible to apply. Although his study permit expired in August 2019, Mr. Mohammed states he had implied status because he was authorized to stay in Canada while the restoration application was pending. Furthermore, Mr. Mohammed argues there is nothing in the *IRPR* or in Immigration, Refugees and Citizenship Canada (IRCC) policy that precludes a foreign national with a restoration application in progress from submitting an OWP application pursuant to paragraph 205(c)(ii) of the *IRPR*. Subsection 199(e) of the *IRPR* states and IRCC policy confirms that a foreign national spouse of a study permit holder can apply for a work permit after entering Canada.

[8] The respondent contends that while Mr. Mohammed was entitled to apply for an OWP under subsection 199(e) of the *IRPR*, the officer reasonably exercised discretion and refused the OWP because Mr. Mohammed had no status in Canada when he made the application, and his status was not restorable.

[9] For the reasons below, Mr. Mohammed has established that the officer's decision should be set aside.

[10] Before turning to the main issue, I will address the appropriate standard of review. In his written submissions, Mr. Mohammed argued that reasonableness is the appropriate standard of

review. He changed his position in oral argument, stating that the correctness standard should apply.

[11] I do not accept that the correctness standard of review should apply. Mr. Mohammed did not provide a compelling explanation for changing the position taken in his written submissions, and the respondent was taken by surprise. In any event, Mr. Mohammed's arguments in favour of the correctness standard were not convincing, and I agree with the respondent that reasonableness is the appropriate standard of review.

[12] Mr. Mohammed also argued that the officer's decision was unreasonable. In my view, he has met his burden in this regard.

[13] As noted above, the officer refused the application because Mr. Mohammed applied for an OWP after his status had expired. I do not agree that Mr. Mohammed had implied status or authorization while his restoration application was pending: *Shibu v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 148 at para 18, citing *Sui v Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1314 at para 32; see also *Mbaye v Canada (Citizenship and Immigration)*, 2016 FC 1037 at para 6. However, as Mr. Mohammed points out, the respondent agrees Mr. Mohammed was entitled to apply for an OWP under subsection 199(e) of the *IRPR* while his restoration application was pending. If Mr. Mohammed was entitled to apply for an OWP, which is not in dispute, then in my view, the officer's refusal is unintelligible and the decision must be set aside.

[14] If the officer's refusal was based on a particular interpretation of the applicable legislation or IRCC policy, the GCMS notes do not explain that interpretation, and it is not otherwise apparent from the record. In that case, the decision must be set aside because I am unable to determine whether the officer interpreted the legislative requirements reasonably: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 123. Based on this record and the parties' submissions, it appears that Mr. Mohammed was permitted to apply for an OWP under subsection 199(e) of the *IRPR* when he submitted his application from within Canada.

[15] In conclusion, the application for judicial review is allowed and the matter shall be returned for redetermination by a different officer. Neither party proposed a question for certification. In my view, there is no question to certify.

**JUDGMENT in IMM-12108-22**

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

1. This application for judicial review is allowed.
2. The officer's decision is set aside and the matter shall be redetermined by a different officer.
3. There is no question to certify.

"Christine M. Pallotta"

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Judge

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

**DOCKET:** IMM-12108-22

**STYLE OF CAUSE:** ARFAT ALMADANI MOHAMMED v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD IN PERSON IN VANCOUVER, BRITISH  
COLUMBIA, AND VIA VIDEOCONFERENCE  
(HYBRID)

**DATE OF HEARING:** DECEMBER 13, 2023

**JUDGMENT AND REASONS:** PALLOTTA J.

**DATED:** DECEMBER 15, 2023

**APPEARANCES:**

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