

Federal Court



Cour fédérale

Date: 20250116

Docket: IMM-3086-23

Citation: 2025 FC 93

Ottawa, Ontario, January 16, 2025

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

DELIGHT AYOMIDE ODESEYE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a Nigerian citizen who applied for restoration of her lapsed Study Permit [SP] and a Post-Graduate Work Permit [PGWP].

[2] In a decision dated March 2, 2023, an officer with Immigration, Refugees and Citizenship Canada [Officer] denied the Application finding that the Applicant had failed to maintain full-

time studies during each of the academic sessions of her program of study, a requirement set out in the PGWP Program Delivery Instructions [PGWP-PDIs].

[3] The Applicant applies under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review the Officer's decision arguing the decision is unreasonable and lacks a legal and factual basis, the Officer having ignored evidence. The Applicant also submits the Officer's failure to provide the Applicant with the opportunity to respond to the concerns the Officer had with the documentary evidence renders the process unfair.

[4] The Respondent takes the position that the Officer's decision was reasonable and that there was no breach of procedural fairness.

[5] It is not disputed that the Officer's factual assessment and refusal of the Application is reviewable on the presumptive standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 [*Vavilov*]). To succeed on a reasonableness review, the party challenging the decision must satisfy the Court that the decision's shortcomings cause it to lack in the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral missteps; instead, a reviewing court must be satisfied the flaws relied on by the challenging party are sufficient to render the decision unreasonable (*Vavilov* at para 100).

[6] Questions of fairness are to be assessed with a focus on the nature of the substantive rights involved and by asking whether the procedure was fair having regard to all of the circumstances. While no standard of review applies *per se*, correctness best reflects the Court's approach (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54, citing *Eagle's Nest Youth Ranch Inc v Corman Park (Rural Municipality #344)*, 2016 SKCA 20 at para 20).

[7] As set out in *Kaur v Canada (Citizenship and Immigration)*, 2020 FC 513 [*Kaur*] the PGWP Program is not expressly provided for in the IRPA or the *Immigration and Refugee Protection Regulations*, SOR/2002-227. Instead, the Program stems from the authority provided to the Minister to create programs allowing foreign nationals to receive work permits where the Minister deems it necessary for reasons of public policy relating to the competitiveness of Canada's academic institutions or economy (*Kaur* at para 8, citing *Osahor v Canada (Citizenship and Immigration)*, 2017 FC 666 at paras 13-14 and 17 [*Osahor*]).

[8] The Minister has established the criteria for the issuance of a PGWP through the PGWP-PDIs. This Court has repeatedly held that those criteria are to be strictly applied. An officer has no discretion to disregard the mandatory requirements set out in the PGWP-PDIs (*Osahor* at paras 14 -16, citing *Nookala v Canada (Citizenship and Immigration)*, 2016 FC 1019 at paras 11-12; *Abubacker v Canada (Citizenship and Immigration)*, 2016 FC 1112 at para 16 [*Abubacker*]; *Rehman v Canada (Citizenship and Immigration)*, 2015 FC 1021 at para 19).

[9] The Global Case Management System [GCMS] notes set out the Officer's reasons for refusing the Application, the relevant portion stating:

Client requested for [sic] Post Graduate Work Permit on 2022/12/11 and restoration of their status. As per transcript submitted, client was only enrolled in 2.5 credits in Fall/Winter 2017. According to Western University website "Students enrolled in 3.5 courses or more in Fall/Winter session are considered full-time students; students enrolled in fewer than 3.5 courses in any term are considered part-time students." Client's must be enrolled in full time studies in order to be eligible for a PGWP as per R205(c)(ii). To be Eligible for PGWP: Client should have maintained full-time student status in Canada during each academic session of the program or programs of study they have completed and submitted as part of their post-graduation work permit application. Exceptions can be made only for the following: • leave from studies • final academic session Application refused for Post-Graduate Work Permit and restoration refused [...]

[10] The Applicant does not dispute that she took "time off" in the course of her studies or that she was enrolled in fewer than 3.5 courses during certain academic terms in completing her study program. She does submit, however, that the designated learning institution [DLI] she attended continuously considered her to be a full-time student, citing two letters from the DLI stating the Applicant was registered as a full-time student in the 2020 summer term and was registered for full-time studies in the 2017 Fall/Winter term.

[11] Neither of the letters the Applicant relies upon contradict the Officer's finding that the Applicant "was only enrolled in 2.5 credits in Fall/Winter 2017," nor do they establish the Applicant was continuously viewed as being a full-time student by the DLI. The Officer notes the DLI website states "Students enrolled in 3.5 courses or more in Fall/Winter session are considered full-time students; students enrolled in fewer than 3.5 courses in any term are considered part-time students." The Applicant's transcript clearly indicates that the Applicant

was enrolled in less than 3.5 credits in the Fall/Winter 2017 term. The evidence, therefore, is not inconsistent with, or contradictory to, the Officer's finding that the Applicant had not maintained full-time student status during each academic session of the program of study.

[12] The Applicant relies on an IRCC document that details the conditions applicable to study permit holders to argue that the exemption provided therein for students who have suddenly become impoverished exempts her from the PGWP-PDI requirement to maintain full-time student status.

[13] This argument is not persuasive. The PGWP-PDI governs the criteria to be applied by the Officer in this case (*Abubacker* at para 10). As noted above, the Officer had no discretion to disregard the mandatory requirements of the PGWP-PDI, or to apply criteria applicable to study permit holders. The PGWP-PDI states that to be eligible for a PGWP, an applicant must "have maintained full-time student status in Canada during each academic session of the program or programs completed" with only limited exceptions for a period of leave authorized by the DLI, and the possibility of part-time status in the final academic session of a program. The Officer reasonably found that the Applicant did not fit into either of these exceptions – the Fall/Winter 2017 term was not the Applicant's final academic session.

[14] Nor was there a breach of procedural fairness in this instance. The Officer's concerns arose directly from the requirements of the PGWP-PDI; as such, the Officer had no obligation to issue a procedural fairness letter or offer to interview the Applicant (*Mehmi v Canada*

(Citizenship and Immigration), 2021 FC 1012 at para 38, citing *Ntamag v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 40 at para 9).

[15] The Application for judicial review is dismissed. The Parties have not proposed a question for certification, and none arises.

JUDGMENT IN IMM-3086-23

THIS COURT’S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No question is certified.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3086-23

STYLE OF CAUSE: DELIGHT AYOMIDE ODESEYE v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 28, 2024

JUDGMENT AND REASONS: GLEESON J.

DATED: JANUARY 16, 2025

APPEARANCES:

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Stephen Jarvis	FOR THE RESPONDENT

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