

Federal Court



Cour fédérale

Date: 20250306

Docket: IMM-12880-23

Citation: 2025 FC 417

Ottawa, Ontario, March 6, 2025

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

ABDUL HAKEEM HARUNA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Abdul Hakeem Haruna (the “Applicant”) seeks judicial review of the decision of an officer (the “Officer”), refusing his application for restoration of his study permit, issued to him under the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “*Regulations*”).

[2] The facts below are taken from the Certified Tribunal Record (the “CTR”) and the affidavit filed by the Applicant in support of this application for judicial review.

[3] The Applicant is a citizen of Ghana. He entered Canada on June 19, 2021, as a temporary resident and holding a study permit. The permit was valid until July 30, 2022.

[4] In his affidavit, the Applicant deposed that he began his studies in September 2021. He submitted a study permit extension application on July 1, 2022. Immigration, Refugees and Citizenship Canada (“IRCC”) requested that the Applicant provide certain documents, such as transcripts, by August 5, 2022.

[5] The Applicant deposed that he attempted to provide those documents, but that the IRCC website was down and so he was unable to do so until after the due date had already passed. He noted that the request letter he received from IRCC mentioned a deadline of August 5, 2022, while the “portal” he was using online said that the deadline was August 2, 2022.

[6] The Applicant’s extension application was refused on September 10, 2022.

[7] The Applicant did not leave Canada in September 2022. On October 28, 2022, he applied for restoration of his study permit. That application was refused on January 30, 2023. By mistake, the officer said that the Applicant’s status expired on the date of the decision, that is on January 30, 2023.

[8] He did not seek judicial review of this decision.

[9] The Applicant sought reconsideration of the decision of January 30, 2023. The reconsideration request was refused on February 14, 2023. The Applicant did not seek judicial review of either the decision of January 30, 2023, or of the decision of February 14, 2023.

[10] The Applicant submitted another application for restoration of his status on April 27, 2023. This application was refused on September 11, 2023, on the grounds that the application was submitted more than 90 days after the Applicant had lost his status. The decision of September 11, 2023 is the subject of this application for judicial review, that is the decision made relative to the restoration application that was submitted on April 27, 2023.

[11] The Applicant submits that he suffered a breach of procedural fairness resulting from the failure of the Officer to raise with him any concerns about the timeliness of his application to restore his status.

[12] The Applicant argues that the decision should not stand on the grounds of issue estoppel: he submits that he regained status as the result of the error made in the January 30, 2023 letter.

[13] The Applicant argues that the principle of issue estoppel applies in this case to make the Officer's decision that he was out of time to submit an application for restoration of his status, as unreasonable. He relies on the decision in *Danyluk v Ainsworth Technologies*, [2001] 2 S.C.R. 460, where the Supreme Court of Canada identified three elements of issue estoppel, as follow:

- That the same issue was decided
- That the parties to the matter are the same

- That the decision is final

[14] The Minister of Citizenship and Immigration (the “Respondent”) argues that there was no breach of procedural fairness since no officer was required to advise the Applicant about deficiencies in his application for restoration of status.

[15] As well, the Respondent relies on the decision in *JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250 to submit that the principles of issue estoppel do not apply to overcome the effect of statutory language, that is the clear wording of subsection 182(1) of the Act that requires an application for restoration of status to be made within 90 days of losing status.

[16] The Respondent further contends that the decision of the Officer meets the standard of reasonableness having regard to the evidence submitted and the applicable law.

[17] Further to the hearing, a Direction was issued giving the parties the opportunity to make submissions about the sufficiency of the Certified Tribunal Record. The Direction addressed gaps in the CTR.

[18] The Applicant submitted further submissions on October 16, 2024; the Respondent filed further submissions on October 30, 2024; and the Applicant submitted reply submissions on November 5, 2024.

[19] The Applicant argued that documents relating to the original decision on the Applicant's extension application are missing from the CTR, and that the decision on the second restoration application is therefore unreasonable.

[20] The Respondent argues that *Parveen, supra* is distinguishable because the missing documents in this case relate to previous decisions which are not the subject of this judicial review, and that the CTR provided includes all documents relevant to the decision under review.

[21] Any issue of procedural fairness arising in this application for judicial review is reviewable on the standard of correctness, following the decision in *Canada (Citizenship and Immigration) v Khosa*, [2009] 1 S.C.R. 339.

[22] Following the decision in *Canada (Citizenship and Immigration) v Vavilov*, [2019] 4 S.C.R. 653, the merits of the decision are reviewable on the standard of reasonableness.

[23] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision"; see *Vavilov, supra*, at paragraph 99.

[24] Upon considering the evidence and the submissions of the parties, in my view the Applicant has failed to show any breach of procedural fairness on the part of the Officer.

[25] I am satisfied that the decision meets the standard of reasonableness. Subsection 182(1) of the *Regulations* provides that an application for restoration of status be made within 90 days after losing temporary resident status:

182 (1) On application made by a visitor, worker or student within 90 days after losing temporary resident status as a result of failing to comply with a condition imposed under paragraph 185(a), any of subparagraphs 185(b)(i) to (iii) or paragraph 185(c), an officer shall restore that status if, following an examination, it is established that the visitor, worker or student meets the initial requirements for their stay, has not failed to comply with any other conditions imposed and is not the subject of a declaration made under subsection 22.1(1) of the Act.

182 (1) Sur demande faite par le visiteur, le travailleur ou l'étudiant dans les quatre-vingt-dix jours suivant la perte de son statut de résident temporaire parce qu'il ne s'est pas conformé à l'une des conditions prévues à l'alinéa 185a), aux sous-alinéas 185b)(i) à (iii) ou à l'alinéa 185c), l'agent rétablit ce statut si, à l'issue d'un contrôle, il est établi que l'intéressé satisfait aux exigences initiales de sa période de séjour, qu'il s'est conformé à toute autre condition imposée à cette occasion et qu'il ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi.

[26] I agree with the submissions of the Respondent that the decision of the Federal Court of Appeal in *JP Morgan, supra* is a complete answer to the argument about the application of the principles of issue estoppel. In that decision, at paragraph 75, the Federal Court of Appeal said that the language of a statute, in this case a Regulation, cannot be defeated by the principle of issue estoppel.

[27] I agree with the Respondent in his submissions about the sufficiency of the CTR. The decision under review here is the September 2023 decision finding the Applicant out of time, and

the question to be answered is whether that finding was reasonable. The documents relating to the original request for an extension have no bearing on whether the Applicant lost status in September 2022, or in January 2023.

[28] Other options are available to the Applicant to regularize his status in Canada, for example, an application for a Temporary Resident Permit. I refer to the recent decision in *Howlander v Canada (Citizenship and Immigration)*, 2025 FC 274.

[29] In the result, the application for judicial review will be dismissed. There is no question for certification.

JUDGMENT IN IMM-12880-23

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12880-23

STYLE OF CAUSE: ABDUL HAKEEM HARUNA v. MCI

PLACE OF HEARING: VIDEOCONFERENCE BETWEEN OTTAWA,
ONTARIO, AND WINNIPEG, MANITOBA

DATE OF HEARING: SEPTEMBER 23, 2024, OCTOBER 16, 2024,
OCTOBER 30, 2024, NOVEMBER 5, 2024

REASONS AND JUDGMENT: HENEGHAN J.

DATED: MARCH 6, 2024

APPEARANCES:

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