

Federal Court



Cour fédérale

Date: 20250403

Docket: IMM-14951-23

Citation: 2025 FC 620

Toronto, Ontario, April 3, 2025

PRESENT: Justice Andrew D. Little

BETWEEN:

EKEMUDEMEABASI JAMES AKPAN

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of a Minister's delegate dated November 8, 2023. The delegate found that the applicant was inadmissible to Canada and issued an exclusion order against her.

[2] The applicant, a citizen of Nigeria, is a student in Canada. She entered Canada in August 2018 as a temporary resident on a study permit.

[3] In February 2022, the applicant applied to renew her Nigerian passport, which was to expire on May 7, 2022. The new passport was delayed, which the applicant attributed to a glitch in the Nigerian system arising from an issue with one of the applicant's previous passports. She received the new passport on August 25, 2022.

[4] The applicant's study permit expired on May 7, 2022, and the 90-day period to restore her status also expired prior to the applicant receiving the new passport. The applicant remained in Canada.

[5] On February 2, 2023, an officer of the Canada Border Services Agency ("CBSA") prepared a report under subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, (the "*IRPA*"). The report found that the applicant was a foreign national who was authorized to enter Canada and was inadmissible under *IRPA* paragraph 41(a) for failure to comply with conditions applicable to her under subsection 29(2) of the *IRPA*. The basis for the inadmissibility was that the applicant did not leave Canada at the end of the period authorized in her study permit.

[6] The CBSA's officer's inadmissibility report was referred to a delegate of the respondent, the Minister of Public Safety and Emergency Preparedness.

[7] In November 2023, following an interview with the applicant, the Minister's delegate found that the applicant was inadmissible to Canada under paragraph 41(a) and subsection 29(2) of the *IRPA*. At the interview, the applicant did not contest the accuracy of the allegations in the

inadmissibility report. She advised the delegate about her efforts to obtain a new Nigerian passport and then to regularize her status.

[8] The Minister's delegate made an exclusion order dated November 8, 2023, under subparagraph 228(1)(c)(iv) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "*IRPR*").

[9] On this judicial review application, the applicant asks the Court to set aside the exclusion order as unreasonable under the principles set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[10] For the following reasons, I conclude that the application must be dismissed.

I. Standard of Review

[11] The standard of review of the decision of the Minister's delegate is reasonableness, as described in *Vavilov: Marogi v. Canada (Public Safety and Emergency Preparedness)*, 2024 FC 418, at para 18; *Shah v. Canada (Public Safety and Emergency Preparedness)*, 2024 FC 234, at para 10.

[12] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15; *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras 8, 63. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and

in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194; *Mason*, at paras 8, 59-61, 66.

[13] The requirements of the applicable statutory scheme and binding case law operate as constraints on a decision: *Vavilov*, at paras 106, 108, 111-113. As stated in *Vavilov*, “precedents on the issue before the administrative decision maker or on a similar issue will act as a constraint on what the decision maker can reasonably decide”, emphasizing that it would generally be unreasonable for the decision maker to interpret and apply a legislative provision without regard to a binding precedent: *Vavilov*, at para 112.

[14] The applicant bears the burden to show that the impugned decision is unreasonable, by satisfying the Court that the decision suffers from sufficiently serious flaws or shortcomings such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency: *Vavilov*, at paras 75, 100.

II. The Decision of the Minister’s Delegate and the Record

[15] On November 8, 2023, the delegate made the exclusion order under *IRPR* section 228. The delegate was satisfied that the applicant was a foreign national under paragraph 41(a) who was inadmissible for failing to comply with the *IRPA* through an act or omission that contravened, directly or indirectly, a provision of the *IRPA*, specifically subsection 29(2) that a temporary resident must comply with any conditions under the *IRPR* and *IRPA*.

[16] The Certified Tribunal Record contained the delegate's two-page notes, images of documents provided by the applicant, the CBSA officer's report and the officer's typewritten Notes to File.

[17] The delegate's notes show the process used at the applicant's interview on November 8, 2023. The process included consideration of the officer's report and the circumstances giving rise to alleged inadmissibility.

[18] The delegate's notes confirm that at the interview, applicant did not contest the circumstances giving rise to her inadmissibility under paragraph 41(a) – as she also acknowledged in this Court. When asked if she had anything to say about the allegations giving rise to her inadmissibility, the delegate's notes indicate that the applicant advised the delegate that:

- she tried to renew her passport but could not “because of fingerprints”;
- she applied for the new passport in March 2022;
- in August 2022 she applied for a new study permit; and
- in February 2023, applied for a “TRP” (temporary resident permit).

[19] The delegate's notes confirm that the delegate was satisfied on the basis of evidence that the allegations were correct and that the applicant was a person described in paragraph 41(a) of the *IRPA*. The delegate's notes confirm also that at the end of the interview, the delegate issued an exclusion order and provided the applicant with a copy of the report under subsection 44(1) and a notice about judicial review.

[20] The Certified Tribunal Record also contained:

- Images of the applicant's Nigerian passport, which was valid from May 8, 2017, to May 7, 2022;
- A study permit issued by Canada, which was valid from July 25, 2017, to July 31, 2021;
- A second study permit issued by Canada, which was valid from October 18, 2021, to May 7, 2022. Under "Conditions", the second study permit stated: "MUST LEAVE CANADA BY 2022/05/07". Under "Remarks", it stated: "TEMPORARY RESIDENT STATUS RESTORED AS PER R182" and "DOCUMENT ISSUED TO DURATION OF PASSPORT. MUST RENEW FOR FURTHER EXTENSIONS".

[21] The CBSA officer's report and Notes to File were also in the record before the delegate.

The Notes to File advised that the applicant "states that [she] was studying at Ryerson up until May 07, 2022. Applied for an extension but could not get proper documents required in time".

She also "stated that passport expired roughly the same time that she was advised to leave Canada May 07, 2022". In addition:

Client states that she was aware that she should have left Canada after her period had ended. Stated that at the time when she was to leave Canada her passport had expired. Stated that she was in contact with representative at the Nigerian High Counsel [sic] regarding the renewal of her passport. She did not get a renewal or reply until August of that year.

[22] The CBSA's officer's Notes to File confirmed that the applicant had applied for a study permit extension on January 6, 2023.

III. Statutory Provisions and Applicable Case Law

A. *Key Statutory Provisions*

[23] Subsections 44(1) and (2) of the *IRPA* provide:

Preparation of Report

44 (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister.

Referral or removal order

(2) If the Minister is of the opinion that the report is well-founded, the Minister may refer the report to the Immigration Division for an admissibility hearing, except in the case of a permanent resident who is inadmissible solely on the grounds that they have failed to comply with the residency obligation under section 28 and except, in the circumstances prescribed by the regulations, in the case of a foreign national. In those cases, the Minister may make a removal order.

Rapport d'interdiction de territoire

44 (1) S'il estime que le résident permanent ou l'étranger qui se trouve au Canada est interdit de territoire, l'agent peut établir un rapport circonstancié, qu'il transmet au ministre.

Suivi

(2) S'il estime le rapport bien fondé, le ministre peut déférer l'affaire à la Section de l'immigration pour enquête, sauf s'il s'agit d'un résident permanent interdit de territoire pour le seul motif qu'il n'a pas respecté l'obligation de résidence ou, dans les circonstances visées par les règlements, d'un étranger; il peut alors prendre une mesure de renvoi.

[24] Subsection 29(2) and paragraph 41(a) of the *IRPA* provide:

Obligation – temporary resident

29(2) A temporary resident must comply with any conditions imposed under the regulations and with any requirements under this Act, must leave Canada by the end of the period authorized for their stay and may re-enter Canada only if their authorization provides for re-entry.

[...]

Non-compliance with Act

41 A person is inadmissible for failing to comply with this Act

(a) in the case of a foreign national, through an act or omission which contravenes, directly or indirectly, a provision of this Act

Obligation du résident temporaire

29(2) Le résident temporaire est assujéti aux conditions imposées par les règlements et doit se conformer à la présente loi et avoir quitté le pays à la fin de la période de séjour autorisée. Il ne peut y rentrer que si l'autorisation le prévoit.

[...]

Manquement à la loi

41 S'agissant de l'étranger, emportent interdiction de territoire pour manquement à la présente loi tout fait — acte ou omission — commis directement ou indirectement en contravention avec la présente loi et, s'agissant du résident permanent, le manquement à l'obligation de résidence et aux conditions imposées.

[25] Subparagraph 228(1)(c)(iv) of the *IRPR* provide:

Subsection 44(2) of the Act — foreign nationals

228 (1) For the purposes of subsection 44(2) of the Act, and subject to subsections (3) and (4), if a report in respect

Application du paragraphe 44(2) de la Loi : étrangers Actes discriminatoires

228 (1) Pour l'application du paragraphe 44(2) de la Loi, mais sous réserve des paragraphes (3) et (4), dans le

of a foreign national does not include any grounds of inadmissibility other than those set out in the following circumstances, the report shall not be referred to the Immigration Division and any removal order made shall be	cas où elle ne comporte pas de motif d'interdiction de territoire autre que ceux prévus dans l'une des circonstances ci-après, l'affaire n'est pas déférée à la Section de l'immigration et la mesure de renvoi à prendre est celle indiquée en regard du motif en cause :
[...]	[...]
(c) if the foreign national is inadmissible under section 41 of the Act on grounds of	c) en cas d'interdiction de territoire de l'étranger au titre de l'article 41 de la Loi pour manquement à :
[...]	[...]
(iv) failing to leave Canada by the end of the period authorized for their stay as required by subsection 29(2) of the Act, an exclusion order,	(iv) l'obligation prévue au paragraphe 29(2) de la Loi de quitter le Canada à la fin de la période de séjour autorisée, l'exclusion,

B. *The Role of the Minister (and a Minister's Delegate) under subsection 44(2)*

[26] To situate the present case, it is helpful to start with section 44 of the *IRPA* and some of the case law interpreting it.

[27] There are wide-ranging fact scenarios and numerous *IRPA* provisions that feed into section 44, specifically into a report under subsection 44(1) and a decision under subsection 44(2). In addition, there are two places where subsection 44(2) uses the operative word “may” (“may refer the report” and “may issue a removal order”).

[28] The Federal Court of Appeal and this Court have often considered the meaning and scope of the word “may” in subsection 44(2), including the existence, nature and scope of the “discretion” under that provision: see e.g., *Cha v. Canada (Minister of Citizenship and Immigration)* (F.C.A.), 2006 FCA 126, [2007] 1 FCR 409, at paras 18-22, 38; *Obazughanmwun v. Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151, at para 40. In *Cha*, the Federal Court of Appeal explained:

[21] Subsection 44(2) of the Act applies to all grounds of inadmissibility. These grounds encompass such diverse areas as security, human or international rights violations, serious criminality, criminality, organized criminality, health, financial reasons, misrepresentation and noncompliance with the Act [*IRPA*]. The complexity of the facts at issue varies from ground to ground. Some grounds have legal components, others not. The subsection applies to permanent residents and to foreign nationals, who are not usually subject to the same treatment under the terms of the Act. The subsection applies both to the power of the Minister’s delegate to refer the report to the Immigration Division and to his power to issue the removal order himself.

[22] The scope of the discretion, therefore, may end up varying depending on the grounds alleged, on whether the person concerned is a permanent resident or a foreign national and on whether the report is referred or not to the Immigration Division. There may be a room for discretion in some cases, and none in others. This is why it was wise to use the term “may”.

[29] The Federal Court of Appeal has confirmed that the discretion of the Minister’s delegate’s under subsection 44(2) exists, but is “very limited”: *Obazughanmwun*, at paras 27, 29. That conclusion is consistent with Justice Côté’s observations in *Tran* (a serious criminality case) that “... even if he is of the opinion that the report is well founded, the Minister retains

some discretion not to refer it to the Immigration Division”: *Tran v. Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50, [2017] 2 SCR 289, at paras 6 (quotation), 54.

[30] The delegate’s role under subsection 44(2) is administrative, not adjudicative, and it serves as a screening function. The delegate is only to look into readily and objectively ascertainable facts concerning admissibility, and not adjudicate controversial and complex issues of law and evidence: *Obazughanmwun*, at paras 27, 30, 33-37; *Lin v. Canada (Public Safety and Emergency Preparedness)*, 2021 FCA 81, at para 4; *Cha*, at paras 38, 44, 47; *Sidhu v. Canada (Public Safety and Emergency Preparedness)*, 2023 FC 1681, at paras 55, 60-61, 78; *Shah*, at paras 22-23. Accordingly, controversial and complex issues of law and evidence are for the ID, not the delegate: *Obazughanmwun*, at para 49; *Lin*, at para 4.

[31] In cases under section 44 that involve criminality under sections 36 and 37, the “[p]articular circumstances of the person, the offence, the conviction and the sentence are beyond the reach of those decision-makers” due to the overall role and fact-finding mission of the Minister’s delegate and the officer under subsection 44(1): *Obazughanmwun*, at paras 31, 39 (quoting *Cha*, at para 35), 45.

[32] The reasoning in *Obazughanmwun* has led this Court to find that there is no mandate to consider particular circumstances, such as humanitarian and compassionate (“H&C”) factors, under subsection 44(2): *Sidhu*, at paras 60 #2, 62; *Marogi*, at paras 28-29. The Court has also held that a delegate may consider, but is not required to consider, H&C factors under subsection 44(2): *Matharu v. Canada (Public Safety and Emergency Preparedness)*, 2024 FC 902, at paras

15; *Dass v. Canada (Public Safety and Emergency Preparedness)*, 2024 FC 624, at paras 40-41; *Lawrence v. Canada (Public Safety and Emergency Preparedness)*, 2023 FC 1637, at para 10.

As Justice Diner recently stated, “[i]n practice, this means that the Minister’s Delegate is not required to look at all circumstances of a case beyond the factors directly related to the inadmissibility”: *Matharu*, at para 15; see *Obazughanmwun*, at para 55. If the delegate does consider H&C factors, the consideration need not be lengthy and will be reviewed on the reasonableness standard: *Akkari v. Canada (Public Safety and Emergency Preparedness)*, 2024 FC 1811, at para 7; *Matharu*, at paras 15-16, citing *Dass*, at paras 41-42 and *Marogi*, at para 31.

C. *Inadmissibility under IRPA subsection 29(2) and paragraph 41(a) leading to an exclusion order under IRPR subparagraph 228(1)(c)(iv)*

[33] The present case concerns an individual who is a foreign national who has overstayed her student visa, that is, she has remained in Canada after her study permit expired. She did not apply – or she was unable to apply due to extenuating circumstances – to extend her student visa or restore her status in Canada because she did not have a valid Nigerian passport. The Minister’s delegate found her inadmissible to Canada and issued a removal order.

[34] We start with the interaction amongst the applicable provisions of the statute and regulations.

[35] An individual breaches the *IRPA* by failing to leave Canada at the end of an authorized period of stay as required under *IRPA* subsection 29(2) and specified in *IRPR* paragraph 183(1)(a) (and in some cases 185(a)).

[36] A foreign national who directly or indirectly fails to comply with subsection 29(2) is inadmissible under paragraph 41(a) of the Act. In that case, an immigration officer may prepare and forward a report to the Minister under subsection 44(1).

[37] Under subsection 44(2), if the Minister (or a delegate) is of the opinion that the subsection 44(1) report is well founded, the Minister or delegate may refer the matter to the ID, except in two situations. The first exception arises in the case of a permanent resident who is inadmissible solely on the grounds that they have failed to comply with the residency obligation under *IRPA* section 28. The second exception concerns a foreign national and circumstances prescribed by subsection 228(1) of the *IRPR*.

[38] Subsection 44(2) provides that “[i]n those cases” – that is, if one of the two stated exceptions applies – the Minister may make a “removal order”. Under *IRPR* section 223, there are three types of “removal orders”: a departure order, an exclusion order and a deportation order. The consequences of each type of removal order are set out in *IRPR* sections 224, 225, and 226 respectively. Under section 225, an exclusion order obliges the foreign national to obtain a written authorization in order to return to Canada during the one-year period after the exclusion order was enforced: see also *IRPA* section 52.

[39] Under *IRPR* subparagraph 228(1)(c)(iv), if a subsection 44(1) report in respect of a foreign national does not include any grounds of admissibility other than failing to leave Canada by the end of the period authorized for their stay as required by subsection 29(2) of the *IRPA* and

the foreign national is inadmissible under section 41, then the report shall not be referred to the ID. Also in these circumstances, any removal order made shall be an exclusion order.

[40] In sum, if an individual is inadmissible because she did not leave Canada by the end of an authorized stay, an exclusion order is expected to be issued. One consequence of the exclusion order is that for a year after it is enforced, the individual must obtain written authorization to return to Canada.

[41] In the present case, the applicant is a foreign national who has been found to be inadmissible as a result of subsection 29(2) and paragraph 41(a) of the *IRPA* because she was in Canada without status at the material time when the CBSA officer made the subsection 44(1) report and the delegate made the impugned decisions. Accordingly, we are in the second exception in subsection 44(2) and thus the Minister “may” issue a removal order.

[42] Three points emerge from the Court’s decisions in this area. First, the Court has held that the officer’s obligation is to act on facts that indicate inadmissibility by issuing a removal order: *Pompey v. Canada (Citizenship and Immigration)*, 2016 FC 862, at paras 40-43; *Rosenberry v. Canada (Citizenship and Immigration)*, 2010 FC 882, at paras 10, 36-37; *Lasin v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1356, at paras 4, 7, 18 (cited by the Federal Court of Appeal in *Cha*, at para 37), 19. See also *Diakité v. Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1268, at paras 1, 3-4, 13 (a case under subparagraph 228(1)(c)(iii)).

[43] Justice LeBlanc stated in *Mbaye v. Canada (Citizenship and Immigration)*, 2016 FC 1037:

[12] It is well established that the mandate of the immigration officers and the Minister's delegates under section 44 of the Act is to find facts indicating inadmissibility and to follow through as necessary. When fact-finding reveals that a foreign national has remained in Canada beyond the authorized period of stay, they are required to prepare a report and follow through with it, in that order. They have limited, if any, discretion here and the findings of fact that led to the report being prepared and the ensuing actions are subject to the reasonableness standard when contested before this Court.

[Emphasis added.]

[44] This approach is consistent with comments in *Cha*, at paragraphs 34-36, and the remedy analysis in that case (at para 67). As the Federal Court of Appeal stated in *Cha*, and quoted in *Obazughanmwun*, Parliament's intent was to empower the Minister's delegate under subsection 44(2) to make removal orders in prescribed cases that are "clear and non-controversial and where the facts simply dictate the remedy": *Cha*, at para 38 (quoted in *Obazughanmwun*, at para 40).

[45] Second, the Court has also held that the delegate has no obligation to consider personal circumstances of the applicant or H&C factors: *Li v. Canada (Citizenship and Immigration)*, 2023 FC 1006, at paras 15-17; *Niare v. Canada (Citizenship and Immigration)*, 2021 FC 511, at para 13 (citing *Laissi v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 393 at paras 17-19). These cases effectively follow the contents of the Federal Court of Appeal's decisions, particularly *Cha* (although none of them considered *Obazughanmwun*).

[46] Third, the Court stated in *Ouedraogo* that an officer has very limited discretion to examine whether an individual who has overstayed a study permit has applied for restoration or could have been implied to have applied within the 90-day restoration period in the *IRPR*: *Ouedraogo v. Canada (Public Safety and Emergency Preparedness)*, 2016 FC 810, at paras 2, 4-5, 24, 39-40; *IRPR*, subsection 182(1). The Court also observed that the delegate has no discretion under subsection 44(2) if the overstaying individual is not within the 90-day restoration period: *Ouedraogo*, at para 44.

[47] In *Li*, Justice McDonald did not question the analysis in *Ouedraogo*, holding as follows:

[20] The facts in *Ouedraogo* are different from this case. Here, the Applicant did not apply for restoration of his status within 90 days and, in fact, remained in Canada without status for over 20 years. In any event, with respect to the Minister's Delegate discretion, this has been described as "limited, if not non-existent" in the context of issuing an exclusion order (*Diakité v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1268 at para 13).

IV. Application of Legal Principles

A. *The Parties' Positions on this Application*

[48] The applicant submitted that the delegate had the "discretionary power" under *IRPA* subsection 44(2) to consider the applicant's unique and particular extenuating circumstances and to decide not to issue an exclusion order against her. Those circumstances were that she applied for a new passport two months before the expiry of her existing passport, which coincided with the expiry of her study permit. However, due to circumstances related to the Nigerian government that were out of her control, it took until August 2022 to issue the new passport. By that time, her study permit had expired, as had the 90-day period to apply to restore her status.

[49] At the hearing in this Court, the applicant submitted that the delegate made a reviewable error by ignoring the extenuating circumstances and not accounting for all the applicant's efforts to keep her status in Canada. According to the applicant, the purpose of an exclusion order is to punish those who purposely breach the conditions under which they are validly in Canada by failing to take steps to regularize their status. The applicant argued that in this case, a departure order would be appropriate so that the applicant could leave Canada and regularize her status without being subject to the one-year period in *IRPR* subsection 225(1) that applies if she is issued an exclusion order.

[50] The applicant referred to the delegate's notes made in November 2023 and to the officer's typewritten Notes to File made in February 2023, which referred to her applications for a study permit extension and for a temporary resident visa to regularize her status. She also argued that when she lost her status in Canada at the expiry of the study permit in May 2022, she could not leave Canada because she did not yet have a valid passport. She did not receive her new Nigerian passport until August 25, 2022, after the 90-day period expired in which she could restore her study permit.

[51] Finally, the applicant argued that for judicial review purposes, the delegate's decision was not properly justified as there was no indication that the delegate accounted for her extenuating circumstances. The applicant maintained that the delegate's discretion was triggered by her request and there was nothing to suggest the delegate considered her circumstances.

[52] By contrast, the respondent submitted that the “legislated consequence” for non-compliance with the *IRPA* in the circumstances of the applicant was the issuance of an exclusion order under subparagraph 228(1)(c)(iv) because the applicant remained in Canada without status after the expiry of her study permit. As such, the respondent argued, there was a reasonable basis for the delegate’s decision to find the applicant inadmissible under *IRPA* paragraph 41(a) and to issue the exclusion order. While the respondent acknowledged that the delegate had “limited discretion”, there was no legal requirement for the delegate to consider the applicant’s circumstances. The decision to issue the exclusion order was reasonable under the statutory scheme.

[53] At the hearing, the respondent argued that the delegate had no discretion not to issue a removal order and could only consider whether the information in the officer’s report was accurate (citing *Pompey*). The respondent relied on *Ouedraogo* and *Li* to argue that any discretion of the delegate was limited to considering whether the applicant had applied to restore her status during the 90-day period in the *IRPR*. The delegate’s decision was made in November 2023, well over a year after that 90-day period ended. The respondent relied on *IRPR* section 183.

[54] The respondent maintained that the delegate did not decide to exercise the discretion to consider the applicant’s extenuating circumstances. According to the respondent, the delegate’s decision, read in light of the delegate’s two-page typewritten notes with handwriting added during the applicant’s interview, contained no reference to a request for relief (other than an implicit request not to make an exclusion order due to extenuating circumstances), no explicit

consideration of the applicant's extenuating circumstances and no conclusion on them. The respondent argued that this was consistent with the delegate's role and limited discretion set out in the case law. There was no request for a deferral for the applicant to regularize her status, as there was in *Akkari*.

B. *Assessment of the Delegate's Decision*

[55] In my view, the decision of the Minister's delegate was reasonable, applying the applicable judicial review principles in *Vavilov*.

[56] I do not agree with the respondent that the *IRPA* constrained the delegate's authority by providing no discretion at all and requiring the delegate only to consider whether the officer's report under subsection 44(1) was well-founded. While the officer's discretion was very limited under subsection 44(2), the statute itself ("... may issue a removal order") and the case law recognize that some discretion exists in determining whether or not to make a removal order.

[57] It is not necessary or wise to attempt to describe further the scope of a delegate's discretion as a matter of law. However, two points related to legal constraints are relevant to the outcome of this judicial review application.

[58] First, the delegate's discretion was affected by the existence of the 90-day restoration period in *IRPR* subsection 182(1). Under that provision, as a temporary resident on a student permit, the applicant could apply to restore her temporary status in Canada within 90 days of losing that status: see *IRPR* paragraphs 183(1)(a) and 185(a). Thus, the *IRPR* has already

provided a mechanism to restore status for a limited period of time after a foreign national loses status in Canada and is presumptively required to leave Canada. The statutory scheme contemplates that some individuals will have extenuating circumstances and need additional time after their temporary resident permits expire to regularize their status in Canada. See *Ouedraogo*, in which the Court examined whether the applicant had applied to restore status and considered the discretion to be different before and after the expiry of the 90 days: *Ouedraogo*, at paras 39-47. See also *Sui v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1314, [2007] 3 FCR 218, at paras 50-59.

[59] Second, I agree with the respondent that if the delegate decided to make a removal order in the present circumstances, the delegate was constrained in law by the *IRPA* and *IRPR* to make an exclusion order. Reading *IRPA* subsection 44(2) and *IRPR* subparagraph 228(1)(c)(iv) together, the only kind of removal order that the delegate was able to issue to the applicant was an exclusion order, after concluding that the inadmissibility report was well-founded.

Specifically, the statutory scheme has decided which type of exclusion order is to be made; that is the combined effect of the prescribed circumstances contemplated by subsection 44(2) and set out in subparagraph 228(1)(c)(iv), the mandatory language (“shall”) in the chapeau language of subsection 228(1) and the express reference to an exclusion order in subparagraph (iv).

[60] With these legal constraints and the applicable case law in mind, I am not persuaded that the delegate’s decision to issue an exclusion order was unreasonable in this case.

[61] The applicant's temporary status in Canada expired on May 7, 2022, in accordance with the conditions in her study permit and the *IRPR*. The applicant and the CBSA officer's report and Notes to File confirm that the applicant did not contest the facts showing her inadmissibility under paragraph 41(a) and subsection 29(2). The same sources confirm that the applicant did not apply to restore her status within the 90-day period in the *IRPR*. As such, the *IRPA* and the *IRPR* expect that a Minister's delegate will act on the uncontested facts related to her inadmissibility: *Cha*, at para 35 (quoted in *Obazughanmwun*, at para 31); *Mbaye*, at para 12; *Rosenberry*, at para 36; *Lasin*, at paras 18-19.

[62] The decision to issue a removal order in the form of an exclusion order was a decision open to the delegate to make. The delegate's decision to issue an exclusion order included reasons that referred to the relevant provisions of the *IRPA* and *IRPR*. The delegate acted in accordance with the uncontested facts relating to inadmissibility and the regime established by *IRPA* subsection 44(2) and *IRPR* subparagraph 228(1)(c)(iv).

[63] Looking at the decision in light of the record before the delegate, the Conditions on the applicant's study permit issued in November 2021 were clearly stated (she must leave Canada by May 7, 2022) and the Remarks confirmed that the permit would expire with the applicant's passport and a new passport would be required to extend it. The record does not disclose any explanation from the applicant why she did not apply for a new passport earlier than February 2022, or how long Nigerian passports typically take to renew.

[64] The applicant did not identify a provision in the *IRPA* or *IRPR*, or any binding case law, that required the delegate to consider the applicant's "extenuating" circumstances. The information provided by the applicant made the delegate aware of her efforts to regularize her status after the expiry of the 90-day restoration period in the *IRPR*. However, the applicant did not rely on any clear statement or unambiguous action by the delegate to signify an agreement to consider her "extenuating" circumstances. The delegate also did not expressly consider those circumstances in the reasons, confirm that they had been considered, or agree to give the applicant an opportunity to provide written submissions later on the topic (see *Akkari*, albeit for a decision on whether to refer the matter to the ID for an admissibility hearing).

[65] I do not exclude the possibility that there may be extraordinary circumstances in which an individual may demonstrate, for example, that it was impossible to apply to extend or restore the person's temporary resident status in Canada. However, the applicant did not argue that this is one of those cases.

V. Conclusion

[66] For these reasons, the application for judicial review must be dismissed.

[67] The parties agreed at the hearing that the proper respondent is Minister of Public Safety and Emergency Preparedness. The style of cause will be amended accordingly.

[68] Neither party proposed a question to certify for appeal and none arises.

JUDGMENT in IMM-14951-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The style of cause is amended so that the respondent is the Minister of Public Safety and Emergency Preparedness.
3. No question is certified for appeal under paragraph 74(d) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-14951-23

STYLE OF CAUSE: EKEMUDEMEABASI JAMES AKPAN v THE
MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: TORONTO, ONTARIO (VIDEOCONFERENCE)

DATE OF HEARING: JANUARY 30, 2025

**REASONS FOR JUDGMENT
AND JUDGMENT:** A.D. LITTLE J.

DATED: APRIL 3, 2025

APPEARANCES:

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Joseph Granton	FOR THE RESPONDENT

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