Federal Court Cour fédérale

Date: 20250505

Docket: IMM-9051-24

Citation: 2025 FC 812

Ottawa, Ontario, May 5, 2025

PRESENT: Madam Justice Azmudeh

BETWEEN:

NAVJOT SINGH BRAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview and Relevant Facts

[1] The Applicant, Navjot Singh Brar [Applicant], is a citizen of India who studied at University of Winnipeg from December 2018 until he lost his status due to his poor academic performance in April 2022.

[2] The Applicant overstayed his study permit and in August 2023, he applied for a Temporary Resident Permit [TRP] to normalize his status. He claims that his lack of status was

due to the effect of the changes made to the university setting in response to the COVID-19 pandemic on his mental health. The transition to online learning and the resulting loneliness contributed to his failing grades and serious mental health problems.

[3] The Applicant was treated by medical professional for his mental health issues. Once he felt he was ready to move on with his life, he applied to enroll in a program offered by the Red River College Polytechnic, and this is when he retained counsel to apply for the TRP and a new study permit.

[4] While it was the Applicant's intention to enroll in the new program in the winter of 2024, due to the processing time required for a TRP, the Applicant deferred his program start from Winter 2024 to Fall 2024. On January 10, 2024, counsel for the Applicant sent an additional submission to IRCC to advise of the deferred program start date which was delivered on January 12, 2024. It appears that this request never made it to the officer [Officer] who ultimately refused the TRP and the accompanying study permit application on May 15, 2024.

[5] The Applicant seeks judicial review of the TRP Decision on the basis that it is unreasonable and reached in a procedurally unfair manner, because the Officer failed to consider the evidence of his deferral of his studies.

[6] For the reasons that follow, I am dismissing this application as I find that the Officer engaged with the Applicant's evidence and central submission. I also find that the Officer reached the decision in a fair manner.

II. Legal Framework

[7] Subsection 24(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] provides for the issuance of a temporary resident permit as follows:

> A foreign national who, in the opinion of an officer, is 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.

[8] TRP decisions are highly discretionary and are intended to address short-term, pressing issues that allow individuals to obtain temporary residence in Canada, despite their inadmissibility or other non-compliances with Canadian immigration laws (*Ogbonna v Canada (Citizenship and Immigration)*, 2024 FC 1467 at para 14).

[9] As my colleague Justice Whyte Nowak has set out the legal framework in *Ocran v Canada (Citizenship and Immigration)*, 2025 FC 517 (CanLII) [*Ocran*], according to the IRCC's operational instruction and guideline,

> "Temporary resident permits (TRPs)" [TRP Guidelines], a TRP is discretionary and involves a determination whether "the individual's purpose for entering Canada balances Canada's social, humanitarian and economic commitments to the health and security of Canadians, per the objectives of the IRPA."

The TRP Guidelines specifically state that an officer may consider whether: (i) the need for the foreign national to enter or remain in Canada is "compelling"; and (ii) their presence in Canada outweighs any risk to Canadians or Canadian society (see *Ocran* at para 15).

III. Issues and Standard of Review

[10] The Applicant has raised two issues in this case:

1. Whether the TRP Decision is reasonable.
2. Whether the TRP Decision was reached in a procedurally fair manner.

[11] The parties submit, and I agree, that the standard of review applicable to refugee determination decisions is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1645 at para 13; *Shah v Canada (Citizenship and Immigration)*, 2022 FC 1741 at para 15). A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker" (*Vavilov* at para 85). The reviewing court must ensure that the decision is justifiable, intelligible, and transparent (*Vavilov* at para 95). Justifiable and transparent decisions account for central issues and concerns raised in the parties' submissions to the decision-maker (*Vavilov* at para 127).

[12] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 37-56 [*Canadian Pacific Railway Company*]; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at paras 21-28; *Canadian Pacific Railway Company* at para 54).

[13] Regarding questions of procedural fairness, as Mr. Justice Régimbald recently wrote in *Nguyen v Canada (Citizenship and Immigration)*, 2023 FC 1617 at para 11:

> the reviewing court must be satisfied of the fairness of the procedure with regard to the circumstances (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 215 at para 6; *Do v Canada (Citizenship and Immigration)*, 2022 FC 927 at para 4; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]). In *Canadian Pacific Railway*, the Federal Court of Appeal noted that trying to "shoehorn the question of procedural fairness into a standard of review analysis is… an unprofitable exercise" (at para 55). Instead, the Court must ask itself whether the party was given a right to be heard and the opportunity to know the case against them, and that "[p]rocedural fairness is not sacrificed on the altar of deference" (*Canadian Pacific Railway* at para 56).

IV. Analysis

A. *Was the TRP Decision Reasonable?*

[14] The Applicant submits that the TRP Decision reflects a failure on the part of the Officer to engage with the Applicant's evidence and central submission, including the extent to which his mental health issues were serious. On May 15, 2024, the Officer refused the TRP application, and as a result the applicant was not eligible for a study permit. This is the Officer's reason for refusal:

> "*Applicant is not a PR, nor a Canadian Citizen. They are a Foreign National from India. Client originally entered Canada on December 18, 2018 as a student and held status until April 30th, 2022. The applicant has remained in Canada without authorization since April 30th, 2022 and is inadmissible under A41(a) of the IRPA due to being an overstay. The applicant has applied for an initial TRP and subsequent SP on August 21, 2023. Applicant states becoming depressed as his grades were failing and was having a difficult time transitioning to online learning due to the Covid pandemic. Applicant was suspended from University of Winnipeg due to poor academics on February 2, 2022 for a three year period. Applicant has received psychiatric assessment in

> March/April 2023, letters provided. Applicant states wishing to remain in Canada to have another chance to pursue a post secondary education. Applicant has been accepted to Red River College for a IT Operations Diploma. Program commencing on January 2, 2024. Applicant's inadmissibility is status. There is a mechanism in place for clients to rectify this inadmissibility by leaving Canada and applying abroad for a visa and a study permit. Applicant has not provided sufficient documentation to prove that he would experience difficulty should he be expected to return to his home country in order to regularize his status, and re-apply for a SP. As per A24(1), a TRP may be issued to an individual who is inadmissible or does not meet the requirements of the act (IRPA) if the officer is satisfied that a TRP is justified in this circumstance. It is the client's responsibility of satisfying an officer. I have considered the application for a temporary resident permit, and all submissions in their entirety, and I am not satisfied that a TRP is justified in this circumstance. Application refused.

[15] The Applicant submits that the decision is unreasonable because the Officer has failed to engage with and/or misapprehended the evidence and admissibility issues before them. The Officer further failed to provide reasons that were justified/intelligible on the basis of the evidence before them and failed demonstrate how they reached the conclusion through weighting of the evidence.

[16] The Applicant had submitted in his TRP application that he needed the TRP because he wanted to have a second chance and that he did not feel he could go home to face his parents without having completed post-secondary education. He had also explained that once his parents learnt about his mental health issues, they took the necessary actions to help him improve and facilitated his medical treatment. The Applicant did not explain why he delayed his attempt to regularize his status until over a year after losing it, or at least since February 2023, when his mood started improving. In his TRP application, the main reason the Applicant provided for why he needed the remedy and wished to stay in Canada was that:

> To be able to study again will give me closure over my situation and I feel I can make peace with that. I cannot go home and face my parents without having completed my studies. I would always feel that I have let everyone down.

[17] This was also reflected in the psychiatrist report the Applicant had submitted that he needed to "stay in Canada and pursue his education":

> [The Applicant] has shown interest to improve and pursue his education with a two-year diploma which would be very beneficial to improve his psychological health and self-confidence. He should be given a chance to get temporary resident permit in this country, to help his family and rebuild his self-esteem.

[18] In their GCMS notes, the Officer observed that the applicant previously held status as a student until April 30, 2022, however, he became depressed because he was failing school and having a difficult time transitioning to online learning because of the COVID-19 pandemic. The Officer acknowledged psychiatric assessments submitted in support of his claims. They noted that the Applicant wanted to remain in Canada so he could have another chance to pursue post-secondary education. The Officer observed that the Applicant's inadmissibility, being lack of status, could be rectified under IPRA by leaving Canada and applying from abroad for a visa and study permit. The Officer determined that the Applicant had not provided sufficient evidence to demonstrate that he would experience difficulty should he apply to regularize his status from India, or that there was an impediment to his ability to apply for a study permit from there. The Officer concluded that they "considered the application for a temporary resident permit, and all submissions in their entirety, and [they were] not satisfied that a TRP is justified in this circumstance."

[19] It is important to note the context in which the Officer was deciding the TRP application. An officer's decision of whether to grant a TRP is "exceptional and highly discretionary" *Bhairon v Canada (Citizenship and Immigration)*, 2022 FC 739 at para 26 [*Bhairon*], and "considerable deference is owed to the deciding officer." A decision regarding a TRP must be "highly irregular" to justify intervention on judicial review (*Kaur v Canada (Citizenship and Immigration)*, 2024 FC 337 at para 13 [Kaur]; *Bhairon* at para 26).

[20] An applicant seeking a TRP bears the onus "to demonstrate the compelling reasons as to why the TRP should be granted" *Bhamra v Canada (Citizenship and Immigration)*, 2020 FC 482 at para 27 [*Bhamra*]. Applicants must demonstrate "that there is a compelling need for the applicant to remain in or enter Canada" (*Peng v Canada (Citizenship and Immigration)*, 2024 FC 20 at para 27 [*Peng*]). If an applicant has applied for a TRP from within Canada, this Court has confirmed that it is a relevant consideration whether the applicant would suffer any hardship in having to apply for a visa from outside of Canada (*Arif v Canada (Citizenship and Immigration)*, 2016 FC 1149 at para 23).

[21] In this case, the determinative issue for the Officer was that he did not need the TRP in order to be able to apply for the underlying study permit application. He could apply for a study permit from India, and that he had not satisfied his onus that he would face a hardship on his return to justify an exceptional remedy. While the Applicant does not agree with how the Officer weighed his evidence and did not find the psychiatric evidence determinative, the Officer properly exercised of his discretion, under the statutory framework. The Officer was also privy to

the fact that the Applicant's family was supportive and had prioritized their son's well-being after they had learnt that he was suspended from the University of Winnipeg.

[22] I agree with the Respondent that neither the Applicant nor the psychiatrist identified any hardship, other than not wanting to let his parents down by returning prior to the competition of his studies, that the Applicant might suffer if required to apply for a study permit from outside Canada in the normal course. It was reasonable for the Officer not to see this as hardship that would amount to the exceptional circumstances a TRP is designed to address. It was reasonable for the Officer to expect evidence that would establish something more than inconvenience (Bhamra at para 31).

[23] Earlier, I referred to a recent case of this Court, *Ocran*. In *Ocran*, if the applicant left Canada, she would become ineligible to apply for the Post-Graduate Work Permit that was the underlying application. Yet, the officer in that case based their decision on the fact that she could apply from abroad. This shows that the officer was clearly unresponsive to the central element of the case. By contrast, in this case, there is nothing that would prevent the Applicant to apply for a study permit from India. Counsel argued that the Officer failed to consider that in addition to his overstay, the Applicant had also failed to abide by the terms of his study permit, which he still needs to overcome when applying for a new study permit from abroad. While this is an evidentiary issue that the visa officer may consider, it does not pause a legal impediment to the Applicant's ability to apply or provide sufficient evidence to explain its specific context to mitigate its effect. I disagree with the Applicant's characterization that this will result in a lasting inadmissibility that cannot be overcome from overseas. It just means that the Applicant, like

every other study permit applicant, will be required to satisfy a visa officer that he meets the requirements of section 216 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[24] The Applicant points to the sections of the psychiatric report to argue that the Officer failed to consider the extent to which he struggled with mental health issues that caused his inability to pursue his education and resulted in his lack of status. This is what he wishes to rectify through the TRP. I disagree that the Officer was non-responsive to the evidence. Not only are officers presumed to have considered all the evidence without a need to address every piece (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paras 14–17), in this case, the Officer specifically grappled with the mental health arguments, but found them insufficient to amount to the degree of hardship contemplated as an exception by the legislation. The Applicant disagrees with the weight assigned to the evidence by the Officer.

[25] I also agree with the Respondent that the Applicant's position that the Officer failed to grasp the nature of his inadmissibility, has no merit. The Officer was correct in finding that the applicant's inadmissibility was his lack of status. A student, such as the Applicant, can find themselves lacking status if they allow their study permit to expire or by failing to respect the condition of the study permit. The Applicant's lack of status and failure to comply with the conditions of his previous study permit would not automatically preclude the applicant from obtaining a study permit in the normal course. Rather, the officer's observation that the applicant's inadmissibility can be resolved by leaving Canada and applying from abroad is factually and legally correct (*Salotra v Canada (Citizenship and Immigration)*, 2022 FC 797 at

paras 8–13). On leaving Canada, the Applicant would immediately be eligible to re-apply for a visa and study permit from abroad.

[26] The Applicant relies on *Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275 at para 22 and *Ogbonna v Canada (Citizenship and Immigration)*, 2024 FC 1467 at paras 25, 29–30 to argue that while exceptional, officers are to exercise their discretion with flexibility when there is undue hardship. I agree with this principle; however, the Applicant failed to establish undue hardship. *Farhat* had referred to the objective of TRP is to soften the harsh consequences of a strict application of the law. However, expecting the Applicant to apply for a study permit from India in the context that there are no legal impediments to do so immediately and that he is returning to a supportive family is not a harsh consequence and nor does it point to any potential risks.

[27] I also find that the Applicant's reliance on *Mousa v Canada (Immigration, Refugees and Citizenship)*, 2016 FC 1358 at para 11 is misplaced. This is the case of a Yemeni mother and daughter where the applicant's husband and father were found to be a Convention Refugee in Canada and had included them on his permanent residence application. It was in that context that the Court found the officer's finding that leaving the applicants abroad (in Malaysia) while their application was being processed had not sufficiently grappled with the hardship issues. Ultimately, hardship is a factual issue based on evidence before the decision-maker.

[28] The Applicant also relies on *Azucena v Canada (Citizenship and Immigration)*, 2023 FC 363 at paras 11–12 to argue that the Officer's GCMS notes in this case were substantially similar

to those in *Azucena*. I find that the Officer in this case grappled with the key evidence and arguments, and if in the process, they used efficiency tools, it did not undermine their independent assessment of the evidence. Administrative decision-making is a high-volume endeavour and reasons given by the Officer must, when read in the context of the record, adequately explain and justify why the application was refused: *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at paras 9 and 20; *Hashemi v Canada (Citizenship and Immigration)*, 2022 FC 1562 at para 35 [*Hashemi*]; *Vavilov* at paras 86 and 93–98. I find that it does in this case.

[29] For all these reasons, I find that the Officer's decision was responsive to the evidence and arguments presented and was reasonable.

B. *Did the Officer reach the decision in a procedurally fair manner?*

[30] The Applicant argues that the underlying study permit application depended on the approval of the TRP, and that the change in the timing of the study program was not before the Officer. There is no question that the Applicant sent submissions to establish that he has deferred his study program from Winter to Fall 2024 to ensure that his TRP was processed, but that this was not addressed, and in fact was not part of the record, before the Officer who made their decision in May 2024. The Applicant argues that this constitutes a breach of procedural fairness.

[31] I find that the timing of the study permit program was not relevant to the determinative issue before the Officer, namely whether the Applicant will face undue hardship if he has to apply for his study permit from abroad. The Applicant argued that the Officer may have assumed

that the January start time in Winter 2024 would make the application moot. I find that the record does not establish that the timing of the study program was a relevant consideration for the Officer.

[32] The Applicant relies on *Togtokh v Canada (Citizenship and Immigration)*, 2018 FC 581 at paras 16–23 to make his point on a breach of procedural fairness. However, in *Togtokh*, the Court assessed the evidence to find whether the deficiencies on the record constituted a breach of procedural fairness. It referred to instances where an immigration officer fad failed to consider a letter submitted by the applicant which directly contradicted a factual finding by the officer. It is understandable that in such cases, there is a breach of procedural fairness. However, in this case, the timing of the study program was irrelevant to the Officer's reasons for refusing the TRP. Accordingly, there is no breach of procedural fairness.

V. Conclusion

[33] The Applicant has not met his onus of showing that the TRP Decision is unreasonable or reached in a procedurally unfair manner. Accordingly, this application is dismissed.

[34] Neither party suggested a certified question, and I agree that none arises in this case.

JUDGMENT in IMM-9051-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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