

Federal Court



Cour fédérale

Date: 20250507

Docket: IMM-7181-23

Citation: 2025 FC 831

Toronto, Ontario, May 7, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

**LAVAUGHN DIANE JOHN
OLUFEMI OMOTAYO ELUGBAJU
VICTOR OLUSEUN FOLU ELUGBAJU
SOPHIA OLUKEMI BUKOLA ELUGBAJU**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicants seek judicial review of a decision by an Immigration Officer, refusing their application for permanent residence under an Immigration, Refugees and Citizenship Canada [IRCC] Public Policy stream.

[2] For the following brief reasons, I will grant this application for judicial review.

II. BACKGROUND

A. *Facts*

[3] The Principal Applicant [PA], Lavaughan Diane John, is a Partial Load Instructor (essentially a professor on a contract basis) at Seneca College. Her spouse and children are dependents in this application.

[4] The employment and compensation structure for contract professors at Seneca College is somewhat unusual and lies at the crux of this matter, and therefore warrants some description.

[5] Ms. John has been employed continuously by Seneca College as a Partial Load Professor since September 2019 and has taught multiple courses per semester since then. However, Partial Load Professors are not considered to be permanent employees and are instead hired onto a new contract for each academic semester in order to maximize the College's flexibility. Regardless of their contract status, Partial Load Instructors are required to perform job duties between semesters, including: marking final assessments and uploading those grades to the appropriate systems, meeting with students, and preparing or updating course content for the upcoming semester.

[6] Partial Load Professors do not receive regular pay stubs during these breaks between semesters, but their compensation received during semesters is expected to cover all work related to their course load. The Collective Agreement signed between Ontario's colleges and the union

representing professors dictates that the wages for Partial Load Professors, which are calculated based on the number of hours taught in class, are also intended to compensate for “out-of-class preparation and marking time.” Essentially, Partial Load Professors are paid a fixed sum per course, which includes all that teaching entails (preparation, marking, student meetings, etc.). These wages are paid out over the course of the semester, but are intended to compensate Partial Load Professors for all of the work they do that is relevant to their instruction.

[7] Further, while Partial Load Professors are not considered to be permanent employees, they do maintain access to employment benefits throughout the term of their employment, including inter-semester breaks.

[8] Ms. John applied for permanent residence under IRCC’s Temporary Public Policy: *Temporary Resident to Permanent Resident Pathway: recent international graduates from a Canadian institution* (“TR to PR Pathway” or “the Policy”) in May 2021. The application was received by IRCC on May 6, 2021, which coincided with an inter-semester break at Seneca College (from April 23, 2021, to May 18, 2021), and thus during a gap between Ms. John’s employment contracts as a Partial Load Professor.

[9] In December 2022, IRCC sent the Applicant a procedural fairness letter [PFL], advising her that she may not meet the TR to PR Pathway eligibility requirements, which include needing to be employed at the time the application was submitted to IRCC. The PFL indicated that “it appears you were not employed at the time of application. All documents you have provided state that you were employed in April, 2021. There are not pay cheques or letters that have been provided for May of 2021.”

[10] In January 2023, the Applicant submitted a detailed response to the PFL via her counsel. In this response, the Applicant argued that she was employed during the relevant period, and that this employment met the definition of “work” in the *Immigration and Refugee Protection Regulations* [IRPR], which is “an activity for which wages are paid or commission is earned.” The PFL reply explained the somewhat unusual compensation structure and the employment contract structure for Partial Load Instructors, per the terms of the union’s collective agreement with the Ontario colleges. It additionally detailed the mandatory duties Ms. John performed as part of her contract, including submitting final grades, submitting materials for the next semester’s courses, corresponding with students, and attending professional development events. Finally, the PFL reply confirmed that Ms. John’s employment benefits continue throughout the inter-semester breaks, and that emails from Seneca College during these inter-semester breaks have previously referenced her status as an employee (even during the break).

B. *Decision under Review*

[11] An Officer refused Ms. John’s application for permanent residence under the Policy in May 2023, on the basis that she was not employed at the time her application was received. The Officer concluded that because Ms. John had applied during a gap between her employment contracts, during the inter-semester break, that she was not employed as required by the IRPR. The relevant portion of the Officer’s reasons are as follows:

A procedural fairness letter was sent to you on December 2, 2022 explaining the reason for ineligibility. You did not provide any information to dissuade concerns that you were employed at the time of application.

The information that you have provided has been reviewed. It clearly shows that your contract ended April 23, 2021 and a new

contract started on May 18, 2021. As such you were not considered employed at the time of application on May 6, 2021.

III. ISSUES and STANDARD OF REVIEW

[12] The Applicants submit that the decision is unreasonable, because the Officer failed to adequately assess the evidence and failed to grapple with submissions that were central to the application.

[13] The parties do not dispute that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23.

IV. LEGAL FRAMEWORK

[14] The TRV to TRP Pathway was a public policy program instituted by the Minister of Citizenship and Immigration in 2021, to assist some temporary residents in Canada to acquire permanent residency based on certain policy considerations, including challenges from the COVID-19 pandemic.

[15] The stream of the TRV to TRP Pathway at issue in this matter is the international graduate stream, which included several eligibility requirements, including that applicants:

d. Be employed in Canada with a valid permit or authorization to work pursuant to the *Act* and *Regulations* at the time the application for permanent residence is received and must not be self-employed, unless working as a medical doctor in a fee-for-service arrangement with a health authority. The employment must meet the definition of work under subsection 73(2) of the *Regulations*.

[16] As noted above, “work” is defined at s.73(2) of the IRPR as “an activity for which wages are paid or commission is earned.”

V. ANALYSIS

[17] The Applicant submits that the decision is unreasonable because the Officer failed to meaningfully grapple with the Applicant’s central submission, which is that she was employed between contracts because she was performing work for which she was being paid. I agree.

[18] Recall that the Officer’s reasons merely stated:

The information that you have provided has been reviewed. It clearly shows that your contract ended April 23, 2021 and a new contract started on May 18, 2021. As such you were not considered employed at the time of application on May 6, 2021.

[19] While it is technically true that Ms. John was between contracts with Seneca College at the time her application was received by IRCC, this was not the end of the story, considering the evidence that was before the Officer. As noted above, in response to the PFL, the Applicant provided extensive evidence that quite persuasively established her continuous and ongoing employment with Seneca College in the relevant period. This included confirmation that: i) Ms. John was expected to perform work and complete numerous tasks in the period between semesters; ii) that her compensation for courses was expected to cover work required to prepare for and grade courses, which was done between semesters and contracts; iii) that she continuously worked on contracts for Seneca College since 2019; iv) that she was eligible for benefits from her employer, and these benefits bridged the teaching contracts; v) that she was a

member of the Ontario Public Service Employees Union bargaining unit for Seneca College throughout her employment; vi) that, according to her employer, Ms. John “has been employed as a Professor on a contract basis with Seneca College of Applied Arts & Technology since September 4, 2019”; and vii) that Ms. John affirmed in her submissions that she was performing work for Seneca at the time her application was submitted.

[20] Despite these extremely strong indicators of employment, there is no consideration of them in the Officer’s reasons. While a gap in a contract is also a relevant consideration in determining a person’s employment status, I find in the particular circumstances of this case that it was imperative for the Officer to substantively consider the submissions and evidence contained in the Applicant’s PFL reply, which overwhelmingly confirmed the Applicant’s employment status in the relevant period. As the Applicant notes, the conclusion that the Applicant was not employed between contracts suggests that Seneca College requires its Partial Load Instructors to perform unpaid work as non-employees. This is neither a reasonable nor a rational chain of analysis.

[21] In this case, I find the Officer’s failure to reference *any* of the information or evidence adduced by the Applicant in her PFL reply to be unreasonable. This Court has held that a failure to meaningfully grapple with the substance of an applicant’s response to a procedural fairness letter, is a reviewable error: *Grobler v Canada (Citizenship and Immigration)*, 2025 FC 79 at para 17; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 296 at para 20, 23; and more generally, *Vavilov* at para 128; *D’Lima v Canada (Citizenship and Immigration)*, 2025 FC 123; *Mersha v Canada (Citizenship and Immigration)*, 2023 FC 230.

[22] I have also concluded that the decision was unreasonable because it failed to have regard to the Minister's own Guideline on the public policy at issue. In that Guideline there is no indication that employment contracts are the sole basis on which to evaluate an individual's employment history. To the contrary, the Guideline states [with emphasis added]:

There are no requirements that the current employment be full-time or permanent.

Applicants do not need to remain employed throughout the processing of the application.

Principal applicants are requested to provide documentary evidence of their employment in Canada through a combination of

- a copy of their most recent work permit (unless they are work permit exempt) and
- an employer letter of reference from their current employment

In all cases, the onus is on the applicant to establish that they meet the public policy eligibility criteria at the time of their application. All applicants are required to provide satisfactory evidence of their work experience in Canada, including the fact that they were in an employer-employee relationship during their period of qualifying work experience.

[23] In the original application, the Applicant provided proof of her work permit and a letter from her employer. While I recognize that the letter from the employer may have raised valid questions related to the Applicant's employment, in my view, these answers were comprehensively addressed in the response to the procedural fairness letter. This evidence clearly aimed to "provide satisfactory evidence" of her work experience in Canada. This being the case, the Officer's failure to reference this evidence was unreasonable by the very terms of the Guideline.

[24] The Respondent submits that the Officer's decision was reasonable because the Applicant clearly did not have an existing employment contract and was not receiving wages or commission, as she did not receive a pay stub for the pay period during which she submitted her application for permanent residence. With respect, the Respondent is replicating the Officer's error. The Applicant is well aware that she was not paid in the relevant period; this was the departure point for her submissions, which urged the Officer to consider, *notwithstanding this fact*, that she was in an employment relationship at the relevant time. This was the submission that the Officer failed to consider. The PFL reply explained Ms. John's compensation structure and argued that she was paid, albeit prospectively or retroactively, for her work between semesters and thus between contracts, which formed part of her continuous employment with Seneca College. The evidence she provided was convincing in this respect, and warranted substantive consideration.

[25] I would also point out that this Court has found, in other contexts, that an expectation of future payment and a legal obligation to pay for work performed satisfied legislative criteria with respect to work: *Juneja v Canada (Citizenship and Immigration)*, 2007 FC 301 at para 11. There is also jurisprudential support for the fact that contractual language may not singularly define an employment relationship, and that there must also be consideration of how the relationship operates in practice: *Alberta Permit Pro v Booth*, 2007 ABQB 562 at para 126.

[26] Prior to the hearing, the Respondent provided the Court with the decision of this Court in *Kumar v Canada (Citizenship and Immigration)*, 2024 FC 1613. With respect, I find this decision to be of no assistance to the Respondent's argument. In *Kumar*, my colleague Justice Roy concluded that an Officer essentially did not have discretion to overlook the fact that the

Applicant in that case did not have a work permit and was not working in the relevant period.

This is not the situation here. On the contrary, the Applicant did have a work permit in the relevant period and her argument is that, properly construed, she was working in the relevant period.

VI. CONCLUSION

[27] For the foregoing brief reasons, this application for judicial review is granted. The matter should be remitted to a different decision-maker for reconsideration.

JUDGMENT in IMM-7181-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matter is remitted to a different decision-maker for reconsideration in accordance with these reasons.
3. No question is certified for appeal.

"Angus G. Grant"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7181-23

STYLE OF CAUSE: LAVAUGHN DIANE JOHN, OLUFEMI OMOTAYO
ELUGBAJU, VICTOR OLUSEUN FOLU ELUGBAJU,
SOPHIA OLUKEMI BUKOLA ELUGBAJU v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 22, 2025

JUDGMENT AND REASONS: GRANT J.

DATED: MAY 7, 2025

APPEARANCES:

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