

Federal Court



Cour fédérale

Date: 20250627

Docket: IMM-2811-24

Citation: 2025 FC 1158

Ottawa, Ontario, June 27, 2025

PRESENT: Madam Justice Pallotta

BETWEEN:

CANSU YARIMDAG

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Cansu Yarimdag, seeks judicial review of a visa officer's February 12, 2024 decision that refused her application for a temporary resident permit (TRP) under section 24 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The purpose of a TRP is to mitigate harsh consequences that may arise from a strict application of the *IRPA*. If a visa officer is of the opinion that a TRP is justified, a foreign national who is otherwise inadmissible or who does not meet *IRPA* requirements may be allowed to enter or to remain in Canada.

[2] Ms. Yarimdag is a citizen of Türkiye. She arrived in Canada on a study permit valid from 2017-2018. After obtaining two study permit extensions, she applied for and obtained a post graduation work permit (PGWP) that was valid until 2019 and later extended to February 17, 2021. She also filed an application for permanent residence (PR) in 2019.

[3] Before the PGWP expired, Ms. Yarimdag asked her representative at the time, an immigration consultant (Consultant), to file an application to further extend her PGWP. She communicated with the Consultant about preparing the application and the Consultant told her that it had been filed on time. She followed up repeatedly on the PR application and the PGWP extension and eventually the Consultant stopped responding. Ms. Yarimdag later learned that her PR application had been rejected in August 2020 and the PGWP extension application was never filed. Ms. Yarimdag's status therefore lapsed in February 2021.

[4] Ms. Yarimdag remained in Canada and retained her next representative (Lawyer). He pursued multiple avenues to attempt to restore her status, without success. Ms. Yarimdag then retained a different lawyer and filed the TRP application that is at issue here.

[5] Ms. Yarimdag's TRP application was refused because the officer was not satisfied there were compelling grounds to warrant granting this type of exemption from *IRPA* requirements.

The reasons for the refusal (as written) were:

Although, the circumstances by which Ms. Yarimdag fell out of status are unfortunate, it cannot be ignored that the onus is on the client to ensure their immigration in status is maintained. Therefore, Ms. Yarimdag should have been more keen on finding out the status of her applications and not have waited for as long as she did, especially since she had experienced difficulty with an

unresponsive representative once prior. Hence, I give this reason little positive weight on the application, as the applicant is expected to be able to navigate the immigration system to ensure their status is maintained, and Ms. Yarimdag has proven via her submissions that she is capable of and knowledgeable enough to be able to contact IRCC to stay informed on the status of her applications.

Furthermore, the applicant's want to stay in Canada is, "to ensure she can make use of the skills and training that she acquired at the Georgian College as a member of the Canadian workforce...[and] Cansu has become well-established in her community as she formed strong ties with those around her." The applicant has been in Canada for over 6 years now, which is acknowledged as a significant length of time in Canada, thus there is a degree of integration and establishment, however this is not a mitigating factor in the overall consideration of granting a permit. In fact, the skills the applicant has attained through her studies and work experience in Canada will be useful for her in finding employment in her home country if she were to return. Additionally, the applicant's family are all in her home country, Turkey. The applicant's father, Mr. Adil Yarimdag is a practicing lawyer in Turkey who has been supporting her stay in Canada since her work permit expired. Mr. Yarimdag states in his translated support letter, "I undertake that I am capable of financially supporting her and will be her guarantor during her stay in Canada." Considering her father's financial support, there is insufficient information to suggest that she would face significant hardship if she were to return to Turkey. I find that her establishment in Canada is not at the level where departing Canada and returning to Turkey would result in unwarranted or unexpected hardship.

[6] Ms. Yarimdag submits that the officer's decision was unreasonable and procedurally unfair.

[7] With respect to procedural fairness, Ms. Yarimdag submits the officer failed to provide adequate reasons. Generally, alleged deficiencies or flaws in the reasons are subject to reasonableness review. In this case, Ms. Yarimdag's allegations regarding the adequacy of the

officer's reasons do not raise an issue of procedural unfairness and they are properly reviewed on the deferential reasonableness standard of review.

[8] The guiding principles for reasonableness review are set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. The Court's role is to conduct a deferential but robust form of review that considers whether the decision, including the reasoning process and the outcome, was transparent, intelligible, and justified: *Vavilov* at paras 13, 99.

[9] TRPs must be issued cautiously, as they grant their bearers more privileges than other temporary statuses: *Kaur v Canada (Citizenship and Immigration)*, 2024 FC 337 at para 13. The decision to grant a TRP involves a high degree of discretion; considerable deference is owed, and the decision must be highly irregular to justify intervention on judicial review: *ibid*.

[10] Ms. Yarimdag submits the officer's finding that she should have been more diligent in retaining her status lacked transparency and intelligibility, as the evidence supporting her TRP application demonstrated an exceptional degree of diligence that would satisfy any standard of care and prudence. She relied on qualified representatives who provided negligent representation, and the evidence showed that the Consultant actively misled her. A week before the PGWP deadline, the Consultant stated in an email that she had filed the extension application when this was untrue. Furthermore, in response to Ms. Yarimdag's inquiries about the status of the PR application, the Consultant wrote that she was still expecting an update, there were delays at Immigration, Refugees and Citizenship Canada, and she would provide an update "as soon as there is any movement". In fact, the PR application had been refused many months earlier.

Relying on *El Rahy v Canada (Citizenship and Immigration)*, 2018 FC 1058, Ms. Yarimdag states it was an error for the officer to refuse her application on the ground that she should have been more diligent, when she provided objective proof of her diligence.

[11] Ms. Yarimdag submits the officer's decision was draconian, expecting an unreasonable level of diligence that "erodes the essence of a representative system in Canada". She submits the officer's decision exhibits the indicia of unreasonableness that warranted setting aside a TPR refusal in *Thind v Canada (Citizenship and Immigration)*, 2022 FC 1644 [*Thind*]. Officers must avoid misapprehending the evidence of an applicant's efforts to maintain status and their diligence in following up with representatives: *Thind* at paras 31, 33. Applicants may be vulnerable, and they may reasonably expect retained professionals to properly guide them through the legal process: *ibid*. Relying on *Ogbonna v Canada (Citizenship and Immigration)*, 2024 FC 1467, Ms. Yarimdag submits officers should avoid an excessively stringent evaluative standard that may unfairly penalize applicants who have demonstrated reasonable efforts to comply with immigration requirements.

[12] Ms. Yarimdag alleges that the officer's consideration of her establishment in Canada and the hardship of returning to Türkiye were also unreasonable. The officer failed to engage with the evidence and articulate why her 6 years in Canada and degree of integration was "not a mitigating factor in the overall consideration of granting a permit". Furthermore, Ms. Yarimdag provided evidence of her father's financial support to demonstrate that she had the means to support herself in Canada. Instead of assessing the evidence for that purpose, the officer turned it

against her to find that she would not face hardship in Türkiye. The officer also focused on the financial support without considering other hardship factors.

[13] I agree with Ms. Yarimdag that the officer's decision was unreasonable.

[14] I agree that the officer's decision exhibits the same indicia of unreasonableness that warranted setting aside the TPR refusal in *Thind*. The officer regarded the loss of status as "unfortunate" but stated that Ms. Yarimdag had the onus to ensure that her immigration status was maintained, and the officer expected that she should be able to navigate the immigration system to ensure that her status was maintained. In considering whether to grant a TRP, the officer afforded "little positive weight" to the circumstances that led to the loss of status. The officer did so without referring to any of the evidence of Ms. Yarimdag's efforts to maintain her status. This included evidence of multiple attempts to follow up with the Consultant and obtain information about her pending applications, and evidence showing that she had been misled by a Consultant who represented that the PR application was still being processed months after it had been rejected, and who reported that the application to extend the PGWP had been filed when it never was.

[15] The respondent confirmed at the hearing of this matter that the Consultant's license has been revoked, but argues that the officer's concerns were not about Ms. Yarimdag's efforts to follow up with the Consultant. Rather, the respondent states the concerns related to a lack of diligence in attempting to regularize status after it had lapsed and the delay in filing a TRP application. The respondent states that, by the time of the officer's decision, the Consultant had

not been involved for 16 months. Ms. Yarimdag had retained the Lawyer, and she had pursued various options to attempt to regularize her status.

[16] I disagree that the officer's real concern was a lack of diligent attempts to regain status or a delay in filing the TRP application. The reasons do not state or explain why Ms. Yarimdag's TRP application should be rejected on either basis. In my view, the officer was critical of Ms. Yarimdag's efforts to maintain her status, not her attempts to restore her status once it had been lost.

[17] I also find that the officer's treatment of Ms. Yarimdag's establishment in Canada was unreasonable. I do not agree with the respondent that the officer's statement that Ms. Yarimdag's establishment was "not a mitigating factor" merely reflects a conclusion that her degree of establishment was not determinative, as she would not face hardships that would justify an exception to the usual requirement to apply for a work permit from outside of Canada. Despite acknowledging that Ms. Yarimdag had "a degree of integration and establishment" in Canada, the officer seemed to ignore it as a factor that could weigh in favour of granting a TRP. The officer considered Ms. Yarimdag's experience gained in Canada and the availability of financial support from her father solely as factors that worked against her, to support a finding she would not face hardship from having to return to Türkiye.

[18] For these reasons, the application is allowed. Neither party proposed a question for certification, and I find there is no question to certify.

JUDGMENT IN IMM-2811-24

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted.
2. The officer's February 12, 2024 decision is set aside and the matter shall be remitted to a different officer for redetermination.
3. There is no question of general importance to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2811-24

STYLE OF CAUSE: CANSU YARIMDAG v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 16, 2025

JUDGMENT AND REASONS: PALLOTTA J.

DATED: JUNE 27, 2025

APPEARANCES:

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Jake Boughs	FOR THE RESPONDENT

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