Federal Court  Cour fédérale

Date: 20250715

Docket: IMM-3702-24

Citation: 2025 FC 1256

Ottawa, Ontario, July 15, 2025

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**PAUL UCHEMADU ADIELE,
WISDOM UGONNA ADIELE-PAUL,
MIRACLE NNEOMA ADIELE-PAUL;
PRAISE CHIDERA ADIELE-PAUL (Through a Litigation Representative – Paul Uchemadu Adiele)**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1] Mr. Paul Uchemadu Adiele (the "Principal Applicant") and his minor children Wisdom Ugonna Adiele-Paul, Miracle Nneoma Adiele-Paul, and Praise Chidera Adiele-Paul (collectively "the Applicants") seek judicial review of the decision of an officer (the "Officer") refusing his

application for an open work permit, in order to accompany his wife, a student at the University of Saskatchewan.

[2] The Principal Applicant's application was refused on February 2, 2024, on the grounds that there was insufficient evidence submitted to show that his wife was a full-time student at a Designated Learning Institution ("DLI") as defined in the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[3] On February 5, 2024, the Principal Applicant requested reconsideration of the decision. On February 7, 2024, Immigration, Refugees and Citizenship Canda ("IRCC") responded to Counsel for the Principal Applicant in the following terms:

> Thank you for your correspondence. We acknowledge receipt of your reconsideration request. We will contact you if there is a change in the status of your application. If you do not hear from us in 10 working days, then you should consider your request to have your application reconsidered on the grounds you presented in your request to have been refused.
>
> You may re-apply if you wish, according to the regulations, fees, and forms requirements in effect at the time you reapply. Any new application will be decided on its own merits based on the supporting evidence submitted with that application and the regulations in force at the time. We trust that this information suffices in responding to your enquiry.

[4] In his Further Affidavit sworn on May 19, 2025, in support of the within application for judicial review, the Principal Applicant deposed that he did not hear further from IRCC within 10 days about the reconsideration request. He filed his application for leave and judicial review about the February 2, 2024 decision on February 29, 2024.

[5] On October 21, 2024, IRCC sent the Principal Applicant an email advising that it had been determined that there was sufficient evidence to show that his spouse was a full-time student at a DLI in Canada. However, the Principal Applicant's application for an open work permit "remains refused based on funds".

[6] Following the issuance of a Production Order on June 26, 2024, Immigration, Refugees and Citizenship Canada ("IRCC") filed the Certified Tribunal Record (the "CTR"). The Minister of Citizenship and Immigration (the "Respondent") objected to the inclusion in that CTR of materials relating to the Principal Applicant's request for reconsideration of the February 2, 2024 decision.

[7] An amended CTR was filed on November 7, 2024, excluding materials about the reconsideration request.

[8] The Order granting leave in this matter was issued on April 16, 2025.

[9] The Principal Applicant now argues that the decision of the Officer about his wife's status as a full-time student is unreasonable because it was made without regard to the evidence and should be set aside. He also submits that the Officer breached the duty of procedural fairness by depriving him of the opportunity to address the question of sufficient funds, when making the decision on October 21, 2024.

[10] The Respondent submits that the application for judicial review is moot, since the application for an open work permit was reconsidered and refused on October 21, 2024 and no application for leave and judicial review was filed in respect of that decision.

[11] Any issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v Khosa*, [2009] 1 S.C.R. 339.

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

[13] 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 that decision"; see *Vavilov*, *supra* at paragraph 99.

[14] The decision made on February 2, 2024 is the subject of the within application for judicial review. In his application, the Principal Applicant seeks the following relief:

> a) An Order quashing the decision refusing the Applicant's application pursuant to Immigration and Refugee Protection Act;
>
> b) An Order quashing the decision finding the Applicant inadmissible to Canada the pursuant to Immigration and Refugee Protection Act; and
>
> b)[*sic*] An Order directing an officer at the High Commission of Canada, Visa /Study Permit Section, Kenya, to grant the Applicant's application pursuant to Immigration and Refugee Protection Act; or in the alternative

> c) An Order referring the matter to another Officer of Citizenship and Immigration Canada, High Commission of Canada, Visa /Study Permit Section, Kenya for re-determination by a different Officer in accordance with the law.
>
> d) Such further Orders as this Honourable Court allows.

[15] In its recent decision in *Prime Minister et al v. Hameed et al*, 2025 FCA 118, the Federal Court of Appeal addressed the issue of mootness at paragraph 10 as follows:

> The leading authority on mootness is the Supreme Court of Canada's decision in *Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (S.C.C.), [1989] 1 S.C.R. 342 (*Borowski*). *Borowski* sets out a two-step analysis to determine whether a case is moot and, in the affirmative, whether a court should nonetheless exercise its discretion to hear it. At the first step of the analysis, the court must determine whether a live controversy still exists. If no live controversy exists, the court then moves to the second step of the analysis and considers whether it should nonetheless hear the moot case. The second step of the analysis involves consideration of three factors: the presence of an adversarial context, the concern for judicial economy**,** and the need for the court to be sensitive to its role as the adjudicative branch in our political framework.

[16] I observe that application of the principle of mootness is a discretionary decision by a Court.

[17] In his Memorandum of argument filed at the leave stage, the Respondent did not raise the issue of mootness. He raised the issue in his Further Memorandum.

[18] The revised CTR does not contain the reconsideration decision, but it is attached as an exhibit to the Further affidavit filed by the Principal Applicant. The Respondent did not object to the inclusion of the exhibit.

[19] The “reconsideration” decision does not identify the decision-maker, whether it was the Officer or someone else. This decision is the basis of the Respondent’s argument about mootness.

[20] As noted above, disposition of a legal proceeding on the grounds of mootness involves the exercise of discretion. In this case, I decline to dismiss this application on the grounds of mootness.

[21] In my opinion, a “live controversy” remains between the parties, that is the application for an open work permit. It is not necessary for me to address the other elements of the mootness discussion.

[22] I agree with the submissions of the Applicants, that the decision of February 2, 2024 was made without regard to the evidence. This means that the decision fails to meet the standard of reasonableness.

[23] It is not necessary for me to address the issue of procedural fairness. In any event, this argument is not appropriately raised in the within application for judicial review.

[24] The application for judicial review will be granted, the decision will be set aside and the matter will be remitted to a different officer for re-determination. There is no question for certification.

JUDGMENT IN IMM-3702-24

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision is set aside and the matter is remitted to another officer for redetermination. There is no question for certification.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3702-24
STYLE OF CAUSE:	PAUL UCHEMADU ADIELE ET AL. V. MCI
PLACE OF HEARING:	CALGARY, ALBERTA
DATE OF HEARING:	JULY 8, 2025
REASONS AND JUDGMENT:	HENEGHAN J.
DATED:	JULY 15, 2025

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