Federal Court Cour fédérale

Date: 20250905

Docket: IMM-16742-24

Citation: 2025 FC 1467

Toronto, Ontario, September 5, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

KHANDAKER ROHAN KARIM

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of two administrative actions. The first is the preparation of a report under subsection 44(1) of the *Immigration and Refugee Protection Act* [IRPA]. The second is the issuance of an exclusion order pursuant to section 228 of the *Immigration and Refugee Regulations* [IRPR]. For the reasons that follow, this application for judicial review is dismissed.

I. BACKGROUND

A. *Facts*

[2] The Applicant, Mr. Karim, came to Canada in 2021 on a student visa to study at the Memorial University of Newfoundland [MUN]. In 2023, Mr. Karim was forced to withdraw from the university for two semesters due to unsatisfactory academic performance in the wake of his grandmother's passing. Once this period expired, he re-enrolled for full-time studies in the 2024-2025 fall semester.

[3] However, in August 2024, Mr. Karim was informed that he had breached the terms of his study permit, as he had been out of classes for more than 150 days, contrary to s.220.1(1) of the IRPR. A Canadian Border Services Agency [CBSA] officer prepared a s.44(1) report, setting out the opinion that Mr. Karim is inadmissible to Canada for violating the terms of his study permit, and called him in for an admissibility interview. Mr. Karim attended two interviews, at the close of which the Minister's Delegate [MD] found him inadmissible to Canada and issued an exclusion order against him pursuant to s.228(1)(c)(v) of the IRPR. As a result, Mr. Karim is under a removal order. He has since submitted a Pre-Removal Risk Assessment, and remains in Canada.

[4] The complicating factor in this otherwise straightforward sequence of events is Mr. Karim's ongoing, but somewhat on-again, off-again relationship with his partner, Tasnim Tanha. Ms. Tanha is also in Canada on a study permit, a fact that will be important to this application for judicial review.

[5] In or around September 2022, Mr. Karim began a live-in conjugal relationship with Ms. Tanha. They continue to reside together in St. John's. However, between June and October 2023, the couple underwent a period of tension in the relationship, during which the pair "contemplated the future" and spent some time apart. During this time, Mr. Karim largely remained at the shared residence in St. John's, while Ms. Tanha traveled to various locations in Canada. However, whenever she returned to St. John's she stayed at their shared residence. The couple assert that these were not "break-ups," and that the pair remained common law the entire time. The couple also travelled together to Toronto and Montreal for one week in mid-July 2023.

B. *Decision under Review*

[6] As noted above, the CBSA officer prepared a s.44 report on August 26, 2024, stating that Mr. Karim was inadmissible to Canada for breaching the terms of his study permit pursuant to s.29(2) of the IRPA. This report was based on the fact that the Applicant is a foreign national and violated the terms of his study permit by being un-enrolled from MUN classes for over 150 days. Mr. Karim was presented with the s.44 report on August 27, 2024, and attended admissibility interviews with the CBSA Agent and the MD on that day and the following day. In these interviews, he stated that he lives with a partner who is on a study permit. He mentioned that the couple faced relationship stressors, because his partner's parents wish her to marry immediately, while his parents want him to wait.

[7] At the conclusion of the second interview on August 28, 2024, the MD issued an exclusion order pursuant to s.228(1)(c)(v) of the IRPR, stating that Mr. Karim is inadmissible to Canada under s.41(a) of the IRPA for failing to comply with conditions imposed by the IRPR,

pursuant to s.29(2) of the IRPA. In brief reasons, the MD simply stated, “Report well founded, exclusion order issued.”

II. ISSUES

[8] The Applicant submits that the decision to issue the s.44(1) report and the subsequent exclusion order were unreasonable because a) he was in fact enrolled in classes at the time the exclusion order was rendered; and b) both the CBSA Agent and the MD failed to adhere to applicable statutory constraints, namely, subsection 220.1(1) and paragraph 220.1(3)(b) of the IRPR. He also submits that the decision was reached in a procedurally unfair manner, as he was never informed of the statutory exception to s.220.1(1) and thus could not meaningfully respond to the allegations that he had breached the conditions of his study permit.

III. STANDARD OF REVIEW

[9] On the substance of the decision, 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 [*Vavilov*]. In conducting a reasonableness review, a court “must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified” (*Vavilov* at para 15). It is a deferential standard, but remains a robust form of review and is not a “rubber-stamping” process or a means of sheltering administrative decision-makers from accountability (*Vavilov* at para 13).

[10] On issues related to procedural fairness, the standard is akin is correctness (see *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Association of Refugee Lawyers v*

Canada (Immigration, Refugees and Citizenship), 2020 FCA 196 at para 35). This requires the Court to assess whether the procedure followed was fair, having regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

IV. LEGAL FRAMEWORK

[11] Section 44 of the IRPA contemplates a two-step process for admissibility referrals. First, under s.44(1), a CBSA officer prepares a report of the "relevant facts" that have led them to conclude that there are serious reasons to believe the individual in question is inadmissible to Canada. This report is provided to the Minister or the MD. Then, under s.44(2), if the MD is of the opinion that the report is "well-founded," they may issue an exclusion order in certain circumstances.

[12] Section 220.1(1) of the IRPR requires that the holder of a study permit must remain enrolled at their designated learning institution until they complete their studies, and must actively pursue their course or program of study. However, s.220.1(3)(b) stipulates that the above conditions do not apply to "a family member of a foreign national who resides in Canada and is described in any of paragraphs 215(2)(a) to (i)." Paragraph 215(2)(a) states that a family member of a foreign national may apply for a study permit after entering Canada if that foreign national already holds a study permit. The IRPR defines "family member" as including the spouse or common-law partner of the person in question, and defines common-law partner as "an individual who is cohabiting with the person in a conjugal relationship, having so cohabited for a period of least one year."

V. ANALYSIS

A. *Preliminary Issue – New Material Provided on Judicial Review*

[13] In support of his application for judicial review, the Applicant has filed four affidavits. The Respondent contends that much of the content contained in these affidavits is improperly before the Court, as it was not before the officer or the MD. The Respondent further argues that this content does not fall under any of the recognized exceptions to the rule against the admission of new evidence on judicial review and, as such, the Court should not consider this evidence or the Applicant's submissions on this evidence. In addition, the Respondent points out that the affidavits themselves provide contradictory information about the nature of the relationship between the Applicant and Ms. Tanha.

[14] For ease of reference, I reproduce from the Respondent's memorandum the portions of the Applicant's affidavit evidence that are said to be inadmissible:

> 1) Applicant's affidavit dated October 15, 2024: Para. 6 (new evidence as to the Applicant's circumstances in Bangladesh) and para. 7 (new evidence as to the duration of the Applicant's cohabitation with Ms. Tanha);
>
> 2) Affidavit of Ms. Tanha dated October 15, 2024 and its exhibits, in their entirety;
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> 3) Applicant's affidavit dated May 22, 2025: Para. 6 (new evidence as to the Applicant's circumstances in Bangladesh), paras 8-10 and Exhibits B, C, and D (new evidence as to the timing and duration of the Applicant's cohabitation with Ms. Tanha), and para. 12 (evidence as to recent communications between the Applicant and MUN); and
>
> 4) Affidavit of Ms. Tanha dated May 22, 2025 and its exhibits, in their entirety.

[15] The Applicant does not dispute that new information was provided in his affidavits, but observes that the Respondent has also provided new information in the affidavit of Trevor Churchill, who was the Enforcement Officer who prepared the s.44(1) report. The Applicant suggests that it is well within the Minister's rights to point out that the affidavits are somewhat contradictory, but argues that this evidence is necessary to assess this application given the issues that were raised.

[16] The general rule is that judicial review is to be conducted on the basis of the record that was before the administrative decision-maker: *Gittens v Canada (Attorney General)*, 2019 FCA 256 at para 14; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*]. There are exceptions to this rule, which broadly include: a) general evidence of a background nature that may be of assistance to the Court; b) evidence relevant to an alleged denial of procedural fairness by the decision-maker that is not evident in the record before the decision-maker; or c) evidence that demonstrates the complete lack of evidence before a decision-maker for an impugned finding (*Access Copyright* at para 20).

[17] The Applicant has not provided detailed submissions as to how, in his view, the new evidence he has provided fits within one of the above exceptions. Nevertheless, one of his principal arguments is that the Respondent infringed his procedural fairness rights in failing to proactively apprise him of the case that he had to meet. In Mr. Karim's view, this included the right to be advised that his common-law relationship may have exempted him from the usual study permit requirements.

[18] In my view, little turns on the admissibility of this evidence, as I find that this application must be dismissed irrespective of whether it is considered. However, to the extent that the affidavits purport to establish the genuineness of the Applicant's relationship with Ms. Tanha, and consequently, the foundation of the alleged breach of procedural fairness, I will admit them into the record. Having said this, I share the concerns of the Respondent that the affidavits, taken at face value, raise considerable concerns as to whether the Applicant was, at the relevant times, in a common-law relationship with Ms. Tanha.

B. *The Decision Under Review Was Reasonable*

[19] On the reasonableness of the decision, it is important to note at the outset that the onus was on Mr. Karim to demonstrate that he met the conditions of his study permit. By extension, to the extent that Mr. Karim claims that he was not subject to his study permit conditions because of his common-law relationship with Ms. Tanha, the onus was on him to establish this relationship. From the record, it appears that Mr. Karim took essentially no steps in this regard.

[20] While it is clear that Mr. Karim mentioned Ms. Tanha in his interviews with the CBSA officials, there is no indication that he provided evidence establishing that he was in a common-law relationship, or that he even claimed to be in such a relationship. Moreover, it is clear from the Applicant's own application for an extension to his study permit in November 2023 that, at least to that point, he did not consider himself to be in a common-law relationship. He indicated in the application that he was single, even though the couple had apparently been living together since August 2022. Moreover, as the Respondent points out, in his application for temporary residence and in his request for an extension, the Applicant applied as the principal applicant and

not as a spouse, common-law partner, or dependent child of a principal applicant. While I accept that Mr. Karim was not in a common-law relationship with Ms. Tanha when he first submitted his application, the point remains that, at no point has Mr. Karim ever indicated to IRCC or CBSA that he is anything other than a single, primary applicant, who sought a permit to study in Canada. The Respondent cannot be blamed for failing to assess a *possible* exception to the study permit regime that was never raised by the Applicant, aside from a passing reference to a partner with whom he lived.

[21] Moreover, the s.44(1) report and the ensuing exclusion order are reasonable on their face. The Applicant does not dispute that, as of December 2023, he was not enrolled at MUN, and that he was still not enrolled with the university as of the spring semester in 2024. It is also not a matter of dispute that by the time the Applicant was interviewed by the Respondent, he was again enrolled at MUN and was expecting to resume his studies in the fall of 2024.

[22] Given the applicable statutory framework, it was reasonable for the Respondent to have concluded that the Applicant was in breach of the conditions imposed on study permit holders under s. 220.1(1) of the IRPR to: a) *remain enrolled* in school until they complete their studies; and b) to *actively* pursue their course or program [emphasis added]. The facts before the decision-makers in this case provided a sufficient basis on which to conclude that the Applicant had not complied with these conditions. As my colleague Justice Azmudeh recently noted in *Ndjaba Ngotty v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 725 at para 36, if a temporary resident "does not study, fails or stops studying for several semesters, one can only conclude that the temporary resident did not comply with the conditions of the study permit. This justifies an inadmissibility report and an exclusion order."

[23] Moreover, as the Respondent argues, it was entirely reasonable for the Respondent to interpret the IRPR as subjecting the Applicant to the conditions for study permit holders, as it was these very conditions that had been imposed upon him when he had entered Canada. The Applicant had applied, and been authorized, to enter and remain in Canada as a student (IRPR, s. 211), and *not* as an accompanying family member. To be eligible to renew his study permit, the Applicant was also required to have complied with all conditions imposed on [his] entry into Canada (IRPR, s. 217(1)).

[24] Moreover, I reject the contention that there were sufficient facts in the record such that the Respondent was required to consider whether the Applicant might be subject to any exception to the applicable conditions. First, I have considerable doubt as to whether the Applicant's relationship with Ms. Tanha brought him under the exception. Second, and more importantly, there is simply no basis on which to conclude that the Respondent agents were under an onus to consider an exception that was not put to them, was not clear from the record, and is only now, retrospectively and on judicial review, raised as a possible salve to the Applicant's inadmissibility.

C. *The Process was Fair*

[25] It is well-established that a "relatively low degree of participatory rights" is required in the context of subsections 44(1) and (2) of the IRPA: *Sharma v Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 319, at para 34; *Marcusa v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1092 at para22; *Huang v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 28 at para 84 [*Huang*]; *Lin v Canada (Citizenship and*

Immigration), 2025 FC 1043 at para 63. More specifically, the duty of fairness in this context has been described as conferring two principal rights: the right to make written or oral submissions and the right to obtain a copy of the reports: *Huang* at para 84.

[26] Given this context, I do not agree that the Respondent failed to provide Mr. Karim with an opportunity to address or respond to the applicable issues. As the Respondent notes, Mr. Karim was interviewed on two occasions, during which he had the opportunity to respond to the officer's concerns about the study permit. It also appears from the record that the Applicant had the opportunity to review the s. 44(1) report and respond by providing details of his relationship with Ms. Tanha and any other facts relevant to the issue of whether he met, or was exempt from, the statutory requirements for study permit holders under s.220.1(1) of the IRPR.

[27] At any given time, foreign nationals *may* be eligible for some form of status in Canada on numerous grounds, and under numerous statutory processes. It is not a requirement of either enforcement officers or Minister's Delegates to discern, let alone consider, each potential process for which an applicant may be eligible, without such processes being raised by the applicant.

[28] In these circumstances, and in this context, I do not agree that the Applicant's procedural fairness rights were infringed.

VI. CONCLUSION

[29] For the above reasons, this application for judicial review is dismissed. The parties did not propose a question for certification, and I agree that none arises.

JUDGMENT in IMM-16742-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Angus G. Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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