Federal Court Cour fédérale

Date: 20141023

Docket: IMM-2712-14

Citation: 2014 FC 1012

Vancouver, British Columbia, October 23, 2014

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

MICHELLE WONG KA PO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant seeks judicial review of the refusal by the respondent Minister of Citizenship and Immigration to restore her study permit and co-op work permit.

[2] The applicant, a citizen of Malaysia, was studying business at Sprott Shaw College under a student visa. Her programme included 980 hours of coursework and 980 hours of employment through a co-op arrangement for which she held a work permit.

[3] Her student visa expired during the programme. She made a timely application for its restoration. The Minister denied the application, giving only the following explanation from the examining officer:

> I'm not satisfied that you meet the requirements as a genuine student as per R183(1) and co-op work permit as per R205(c).

[4] The officer's notes show that the application was denied because the work component exceeded 50% of the programme, in violation of the Minister's policy. Originally the work component was exactly 50%, but the student received an exemption from five courses. By the officer's calculation, the academic component, excluding the exempted courses, totalled 802 or 826 hours, and the work component remained at 980 hours. Since work represented 54–55% of the programme, she found the applicant to be ineligible.

[5] The sole issue is whether the officer breached the applicant's right to procedural fairness by not offering the opportunity to address the officer's concerns.

[6] The *Immigration and Refugee Protection Regulations*, SOR/2002-227, subparagraph 205(*c*)(i)**,** allow for issuing a work permit "to a foreign national who intends to perform work that … is designated by the Minister as being work that can be performed by a foreign national on the basis of [being] work that is related to a research, educational or training program**"**.

[7] Citizenship and Immigration Canada's *Foreign Worker Manual FW 1* (29 January 2013**)** stipulates in s 5.37:

> The following academic or training programs and research activities are designated as work which can be performed by a foreign national based on the criteria listed in R205(c)(i), C30:
>
> 1. foreign students, (excluding those coming to work in medical residency or medical fellowship positions with the exception of those in the field of veterinary medicine), whose intended employment forms an essential and integral part of their course of study in Canada and this employment has been certified as such by a responsible academic official of the training institution and where the employment practicum does not form more than 50% of the total program of study.

[8] On its face, the officer's calculation suggests that employment represents more than the authorized 50% of the applicant's time in the programme. However, the officer does not explain her conclusion that, solely because the applicant was exempted from five courses, "the program ha[d] been changed to a program with a Theoretical component of 802 hours and a co-op work component of 980 hours." Academic institutions routinely offer exemptions for manifest mastery of the material. The exemptions do not change the programme itself; they merely waive coursework when the student has already fulfilled the requirement.

[9] For example, a programme that required 168 hours of courses in basic French could reasonably exempt a francophone student from that requirement. He might then find himself with only 802 hours of coursework and a 980-hour co-op. Likewise, the applicant in the present situation might have won a sensible exemption from five courses by demonstrating mastery of the subject matter ("Computerized Accounting Principles", "Database Applications", "Critical Skills in Communication", "Business Writing", and "Powerful Presentations") through prior training, experience, or examination. If so, the visa should not have been denied solely because of the exemption.

[10] I recognize that a raft of exemptions could suggest abuse, particularly if they minimized the academic component. The Minister enjoys discretion to deny visas for programmes that are nothing more than ruses to facilitate employment in Canada under the pretence of study. In the case at bar, however, an exemption reducing the academic component from 50% to 45% or 46% of the total does not stand out as a manifest abuse of the work–study scheme. The conclusion that the exemption changed the very nature of the programme requires a stronger basis in fact than the officer provided. In such a case, she should have sought an explanation of the exemption before drawing that conclusion. The officer's failure to give the applicant an opportunity to respond to her concerns, on the facts of this case, amounted to a breach of natural justice.

[11] For these reasons, the application for judicial review is allowed and the matter is referred to a different visa officer for redetermination.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed and the matter is referred to a different visa officer for redetermination.

"Danièle Tremblay-Lamer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	MICHELLE WONG KA PO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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