



[2022] 4 F.C.R. D-8

## CITIZENSHIP AND IMMIGRATION

### STATUS IN CANADA

#### *Persons with Temporary Status*

Application for judicial review of visa officer's decision to refuse applicant's application for study permit — Applicant applied for study permit after being offered admission to Mohawk College in Hamilton, Ontario — Visa officer's notes as recorded in Global Case Management System (GCMS) finding that applicant's financial situation not demonstrating that funds would be sufficient or available — Officer not satisfied that applicant would depart Canada at end of period authorized for their stay — Applicant submitting officer's reasons not coherent, decision not justified in light of factual, legal constraints — Also submitting, inter alia, that officer acted ultra vires by inquiring into, making decision based on reasonableness of expense of proposed program of study — Asking for order directing respondent to issue study permit together with all other authorizations necessary for him to arrive in Canada, commence program of study — Main issue whether Court should exercise discretion to grant "directed verdict" or mandamus — Applicant established that decision refusing his study permit application unreasonable — GCMS notes not articulating transparent, intelligible basis justifying officer's decision to refuse application — Officer not explaining how findings justified in light of any specific evidence or information in application — Determinative issue was reasonableness, officer's errors constituted sufficiently serious shortcoming to warrant setting aside decision — Since this was third assessment of applicant's study permit application, other issues raised by applicant also addressed — Based on record, reasons for refusal in GCMS notes, officer did not breach procedural fairness or act in a way that would give rise to legitimate expectation regarding process — Findings supporting officer's refusal not transparent, intelligible or justified in applicant's case, but applicant did not establish that findings were *ultra vires* — Applicant did not establish that decision refusing his study permit application engaged his *Canadian Charter of Rights and Freedoms*, ss. 7 or 2(b) rights — Did not establish that respondent should be directed to grant study permit — Exceptional remedy of directed verdict rarely granted where issue in dispute factual in nature — Applicant's circumstances distinguishable from *Canada (Public Safety and Emergency Preparedness) v. LeBon*, 2013 FCA 55 — However, respondent ordered to assess applicant's application in expedited manner to meet offer of admission deadline — Delay in applicant's matter (in study permit application process, court proceeding) largely due to respondent's conduct — Expedited decision required in interests of justice — Costs awarded to applicant — Pursuant to *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, r. 22, no costs awarded unless so ordered by Court for special reasons — Here, several factors constituting special reasons for awarding costs, including two prior refusals needed to be set aside, contributing to delay jeopardizing applicant's offer of admission; delays occasioned by respondent; absence of reasonable explanation for refusing offers to settle — In this case, respondent's actions occasioned delay, expense, but those actions not constituting misconduct — Matter remitted to different decision maker for reassessment — Application allowed.

ANIEKWE V. CANADA (CITIZENSHIP AND IMMIGRATION) (IMM-9558-22, 2023 FC 1477, Pallotta J.,

reasons for judgment dated November 6, 2023, 18 pp.)