

Federal Court



Cour fédérale

**Date: 20170616**

**Docket: IMM-4115-16**

**Citation: 2017 FC 600**

**Ottawa, Ontario, June 16, 2017**

**PRESENT: The Honourable Madam Justice McDonald**

**BETWEEN:**

**NOUH HUSSEIN ABDALLA HAMAD,  
MUNIRA SALEH MAHMOUD AND  
ABDALLA, AHMAD, ASIA, AND  
ABDERRAHMAN HAMAD, BY THEIR  
LITIGATION GUARDIAN, NOUH HUSSEIN  
ABDALA HAMAD**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicants are a family from Libya. This is a judicial review of a Visa Officer's [the Officer] decision to deny the Principal Applicant, Nouh Hussein Abdalla Hamad [PA] a permit to study in Canada. The PA argues that the Officer's decision is unreasonable and that his procedural fairness rights in being considered for a study visa were not respected. For the reasons

that follow, I conclude the Officer's decision is reasonable and that there is no merit to the procedural fairness argument. The application for judicial review is therefore denied.

I. Background and decision under review

[2] In 2011, the PA made his first application to study in Canada. His family made an application for temporary resident visas in conjunction with his study visa. His application was denied, as the Visa Officer was not satisfied that the PA and his family would return to Libya after the period of study. A judicial review of that refusal was successful. However, upon reconsideration, the application was again refused. Once again, the Applicants sought judicial review of the second denial and were successful. Eventually, the PA and his family were issued the necessary visas to come to Canada. In early 2014, the PA enrolled in English classes at George Brown College in Toronto. However, before the expiry of their visas, the PA and his family returned to Libya.

[3] In June 2016, the PA once again applied for a student visa and his family applied for temporary resident visas.

[4] Following a personal interview, the Officer denied the application. In his decision and accompanying notes, the Officer states that he was not satisfied that the PA would leave Canada at the end of his studies. The Officer was also not satisfied that the Applicant was a genuine student or that his intended course of study was a "logical continuation of [his] academic and professional career." This is the decision under review.

II. Issues

[5] There are two issues for determination in this application for judicial review:

- A. Is the Officer's decision reasonable?
- B. Was there a breach of the PA's procedural fairness rights?

III. Standard of Review

[6] A Visa Officer's decision to grant a temporary resident visa or a study permit is reviewable on a standard of reasonableness (see: *Ngalumulume v Canada (Citizenship and Immigration)*, 2009 FC 1268 at paras 15-16; *Punia v Canada (Citizenship and Immigration)*, 2017 FC 184 at para 20; *Patel v Canada (Citizenship and Immigration)*, 2009 FC 602 at para 28).

[7] A decision is reasonable when it is justifiable, intelligible, and transparent and "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (see *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47).

[8] Issues of procedural fairness are assessed on a standard of correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). Under this standard, the reviewing court shows no deference to the decision maker's reasoning process and will substitute its own view if it doesn't agree with the decision maker's determinations and provide the correct answer. (see *Dunsmuir* at para 50)

IV. Analysis

A. *Is the Officer's decision reasonable?*

[9] The PA argues that the Officer erred in finding his career plans were unrealistic in light of the political instability in Libya. The PA alleges that the Officer's conclusion that he would have little chance of being hired in a managerial position as a recent graduate was unreasonable. He argues that the Officer ignored his business background, and the fact that he is a successful and experienced businessman.

[10] The PA stated that he wanted to study in Canada to increase his chances of being hired by an international company after the conflict in Libya concluded. The PA advised the Officer that with a diploma from a Canadian college and the ability to speak English, he would be sought after for management level positions. The Officer found this to be "unrealistic" and it cast doubt on the PA's true purpose in applying for a study permit.

[11] The Officer also noted that the PA's businesses appeared to have done well without the PA having a college degree or speaking English. The Officer stated that it was "very unlikely that an international company would hire a fresh graduate from a community college in a managerial position."

[12] This was a reasonable conclusion for the Officer to make based upon the assessment of the evidence before him. In *Zhang v Canada (Minister of Citizenship and Immigration)*, 2003 FC

1493, this Court stated that a “visa officer has wide discretion in assessing the evidence and coming to a decision” (see para 7).

[13] The comments by Justice Leblanc in *Akomolafe v Canada (Citizenship and Immigration)*, 2016 FC 472, are applicable here:

[20] The Applicant explained in his “affidavit on purpose of visit” that he intends to studying at Centennial College to develop his “analytical, organizational and management skills” and that “studying in Canada will also help me to develop the skill needed to deal with ever-changing Business World.” He also explained in his affidavit to “show ties to the home country” that his intention is to “achieve a long standing dream to studying abroad to gain international relationship and position myself to harness the numerous available potentials in Nigeria as related to my profession.”

[21] These reasons are indeed vague and it was entirely open to the Officer to make a finding to that effect. The Applicant is a mature 37 year old adult who appears to be well-established at his place of work as a head business analyst and personal assistant to the Managing Director. He plans on returning to the same position following his studies with the view of eventually establishing a consultancy firm to advise companies on business development. I would presume that the Applicant already possesses the requisite analytical, organization and management skills to carry out his functions in his current position. It was therefore entirely open for the Officer to find that the Applicant did not sufficiently articulate the specific benefits to be accrued for his current position, thereby putting into question the genuineness of the Applicant’s intention.

[14] Here, the PA appears to be professionally well established in Libya as a purchasing officer for a University and running his own business as a partner in a building construction store. It was therefore reasonable for the Officer to conclude that improved English language skills and a Canadian college degree do not demonstrate how the PA could improve his

employment marketability such as to allow him to obtain a management level position with an international company.

[15] Additionally, it was reasonable for the Officer to consider gap in the PA's studies, namely that, since completing his business administration studies in Libya, he has not undertaken any further studies in the business field to improve his professional competencies.

[16] Ultimately, the burden of proof lies upon the PA to satisfy the Visa Officer that he would not remain in Canada once the visa expires. Here, the Officer was not satisfied that would be the case. It was open to the Officer to make a negative finding regarding the PA's genuine intention to study, especially given the PA's vague and intangible explanations and predictions that were not based on any concrete evidence.

[17] Accordingly, the Officer's decision is reasonable.

B. *Was there a breach of the PA'S s procedural fairness rights?*

[18] The PA argues that the Officer breached his duty of fairness by failing to disclose his concerns regarding the current situation in Libya as against the PA's assessment of the situation in Libya. The PA portrayed a positive view of the situation in Libya which the Officer found difficult to reconcile against the reality on the ground. The PA argues he should have had the opportunity to respond to the Officer's concerns in this regard.

[19] In *Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283, Justice Mosley explained the duty of fairness owed to Applicants by Visa Officers:

[24] Having reviewed the factual context of the cases cited above, it is clear that where a concern arises directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns. Where however the issue is not one that arises in this context, such a duty may arise. This is often the case where the credibility, accuracy or genuine nature of information submitted by the applicant in support of their application is the basis of the visa officer's concern (...)

[20] In this case, the Officer did not question the credibility or authenticity of the evidence presented by the PA. Rather, the Officer was simply not satisfied that the reasoning provided by the PA for his wanting to study in Canada was realistic. This finding fell within the Officer's discretion.

[21] Further, as has been noted by this Court, procedural fairness does not require a Visa Officer "to provide an applicant with a 'running score' of the weaknesses in their application" (*Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284 at para 23). Rather, in the "case of visa applicants, the minimum degree of procedural fairness to which they are entitled is at the low end of the spectrum" (*see Pan v Canada (Citizenship and Immigration)*, 2010 FC 838 at para 26).

[22] Here, there is no evidence that any breach in procedural fairness occurred.

**JUDGMENT in IMM-4115-16**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review of the Visa Officer's decision is dismissed.
2. No serious question of general certification is certified.

"Ann Marie McDonald"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4115-16

**STYLE OF CAUSE:** NOUH HUSSEIN ABDALLA HAMAD, MUNIRA SALEH MAHMOUD AND ABDALLA, AHMAD, ASIA, AND ABDERRAHMAN HAMAD, BY THEIR LITIGATION GUARDIAN, NOUH HUSSEIN ABDALA HAMAD v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 27, 2017

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** JUNE 16, 2017

**APPEARANCES:**

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