Federal Court  Cour fédérale

Date: 20191218

Docket: IMM-2323-19

Citation: 2019 FC 1631

Ottawa, Ontario, December 18, 2019

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

RUTENDO ANGEL MANDIVENGA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Ottawa, Ontario, on December 11, 2019 and edited for syntax and grammar with added references to the relevant case law.)

I. Introduction and Background

[1] In December of 2018, while the Applicant, Ms. Rutendo Angel Mandivenga [Ms. Mandivenga], was 15 years of age, she made an application for a student visa for purposes of coming to Canada to study. The program of study contemplated that she would attend one term at Brookfield High School in Ottawa from February to June 2019. Had her application been

successful she would have been 15 years of age upon entry into Canada and she still would have been 15 at the time of her return to Zimbabwe.

[2] At the time of making her application for a student visa, Ms. Mandivenga's family had, via a loan, paid her student fees, arranged for her to stay with relatives in the Ottawa region during the school term, and purchased a return airline ticket to Zimbabwe. These factors were before the Visa Officer. There is, of course, a presumption that they were considered, without the requirement that he or she necessarily refer to those factors.

II. Decision under Review

[3] In the refusal decision, the Visa Officer stated the following:

> "No evidence of pa's completed academic record to date. Although funds sufficient for one semester father appears to have contract until OCT19 only – obtained a loan to which payment of fees was made. Have concerns regarding continuous funding should pa continue studies. – third party funding can be withdrawn at any time. On balance I am not satisfied pa would leave Cda after authorised stay given the current economic and social crise in Zim which continues to deteriorate. I am not satisfied that study makes sense and justifies the expense of studying in Cda. Study plan submitted is general and does not outline a clear career path/goals to which such an educational program would be of benefit. Third party funds can be withdrawn at any time – limited employment prospects in Zim. Sp refused."

III. Relevant Provision

[4] The Applicant seeks judicial review pursuant to section 72(1) of the *Immigration Refugee Protection Act*, SC 2001, c 27 of the decision by the Visa Officer. The relevant provisions the

Officer was required to consider are found in subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227:

***Immigration and Refugee Protection Regulations* (SOR/2002-227)**	***Règlement sur l'immigration et la protection des réfugiés* (DORS/2002-227)**
Study permits	**Permis d'études**
216 (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national	**216 (1)** Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
(a) applied for it in accordance with this Part;	**a)** l'étranger a demandé un permis d'études conformément à la présente partie;
(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	**b)** il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;
(c) meets the requirements of this Part;	**c)** il remplit les exigences prévues à la présente partie;
(d) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and	**d)** s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);
(e) has been accepted to undertake a program of study at a designated learning institution.	**e)** il a été admis à un programme d'études par un établissement d'enseignement désigné.

IV. Submissions of the Parties

[5] While the Applicant raises a procedural fairness issue, I do not consider that issue meritorious.

[6] Essentially, the Applicant contends the Visa Officer's decision was unreasonable in that he or she speculated about whether the Applicant's financial resources could support a further period of study beyond that contemplated by the application. Second, that the Officer ignored evidence about funding then in place. Third, that the Officer unreasonably based his or her decision, in part, on the economic situation in Zimbabwe without regard to the Applicant's own circumstances. The Applicant cites *Demyati v Canada (Citizenship and Immigration)*, 2018 FC 701 at para 20.

[7] The Respondent contends the Visa Officer reached a reasonable conclusion that falls within a range of possible, acceptable outcomes on the facts and the law and that the analysis by which the Officer reached his or her conclusion meets the test of justification, transparency and intelligibility set out in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190. The Respondent contends that the Visa Officer's conclusion that the study plan was vague and simplistic was reasonable in the circumstances. The Respondent also contends that the Officer's consideration of the employment prospects in Zimbabwe was reasonable, given that Visa Officers are presumed to know country conditions (*Ayatollahi v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 248 at para 23, 26 Imm LR (3d) 184 and *Kaur Soor v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1344 at para 13, 58 Imm LR (3d) 62).

[8] Both counsel, to their credit, acknowledged weaknesses in their respective cases. The Applicant's counsel acknowledged her client's study plan was somewhat vague and simplistic. The Respondent's counsel acknowledged the Officer should not have taken into consideration the lack of funding for future study terms on this particular application.

V. Analysis

[9] My challenge is to consider the parties' submissions and the material before me in deciding whether the Officer's decision meets the test of reasonableness. When I look at the 13-line decision that was rendered in the circumstances and consider the underlying facts, I am satisfied that regardless of the weaknesses in the visa application, the decision, as a whole, is unreasonable and, in my view, unintelligible. I reach this conclusion based upon the following factors.

[10] First, in that 13-line decision, the Officer makes at least three references set out in four lines to the lack of funding for future studies. I am of the view that devoting that much space in a very brief decision to an irrelevant issue tends toward unreasonableness. This, because, I am unable to determine how much consideration of that irrelevant factor affected the Officer's weighing of other factors. Second, another significant portion of the decision concerns the issue of employment prospects in Zimbabwe, a factor that, in the circumstances, is irrelevant. While in many cases it may be relevant to consider country conditions, including economic conditions, in deciding whether to grant a student visa this, with respect, is not one of those cases. This visa applicant was a 15-year-old high school student in grade 11 who had a plane ticket to return to Zimbabwe in June, nearly two (2) months before her 16th birthday. There is no evidence she was

returning to Zimbabwe in search of employment. This is not a case where economic country conditions constitute the backdrop for a returning engineer, nurse, or other professional embarking upon his or her professional career. There was no evidence the Applicant, a high school student, intended to enter the Zimbabwean workforce upon her return.

[11] In summary, when I consider the irrelevance of the Applicant's ability to finance a period of study not contemplated by this visa application; the irrelevance of the employment prospects for a returning 15-year-old high school student; the fact her tuition was paid in full at the time of the application; and the fact that she had purchased a return airline ticket to Zimbabwe, the reasons for refusal are simply not intelligible. As a result, I grant the application for judicial review and remit the matter for reconsideration before a different Officer.

VI. An Observation about Mootness

[12] I wish to make a comment, *in obiter*, about mootness. Given that the period of study applied for has now long past, that the plane ticket has, no doubt, been redeemed, and that the father's contract from which the tuition fees were financed may now be expired, it appears this matter could have been entirely moot. Upon refusal, the Applicant, rather than bringing an application of judicial review, could have simply re-applied for a student visa. Such a procedure would have been more timely and less costly. Instead, the Applicant has been put to significant expense, the Canadian taxpayer has been put to significant expense and, given my decision to refer this matter for re-determination, the costs will continue to mount. There must be a better way.

[13] During frank discussions between counsel and the Court at the beginning of this hearing, we discussed this issue of mootness. See in this regard, *Canada (Public Safety and Emergency Preparedness) v Chhina*, 2019 SCC 29, 433 DLR (4th) 381. In my view, the present case contains all the hallmarks of a matter that is moot, and should not be before the courts, but for one factor. When one applies for a student visa, or any kind of visa for that matter, one must indicate whether one has previously been refused a visa. It would appear that any consideration by a decision-maker of a previous refusal means that litigation regarding the refusal is not moot. A failed applicant has an interest in having the refusal decision struck down or quashed, if for no other reason, in order that he or she may truthfully state in the future that there has been no previous refusal of entry. That, in my view, is the only factor that saves this case from being moot. See, for example, *Ogunfowora v Canada (Citizenship and Immigration)*, 2007 FC 471 at para 34, 63 Imm LR (3d) 157, where the Court found a similar application for judicial review was not moot, in part, because the refusal could affect future applications or the ability to gain entry into other countries.

[14] I am of the view there would be judicial and administrative efficiencies brought to the system if such applications for judicial review became unnecessary. That is, that an applicant, once refused, could have confidence that the opportunity to re-apply constitutes an adequate remedy. In this regard, I leave it to others to consider whether there is a need for applicants to declare prior refusals of visas in each subsequent application, and, whether the fact of a refusal for issues unrelated to national security need be recorded in the global case management system. I say this because in the particular circumstances of this case, had the Applicant not been

concerned about the impact of this refusal on future applications to enter Canada, she may have simply re-applied with a more detailed study plan.

[15] Neither party proposed a question to be certified for consideration by the Federal Court of Appeal and none appears from the record.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is granted;
2. The decision of the Visa Officer dated March 15, 2019 is quashed. The matter is remitted to a different Officer for redetermination; and
3. No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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