Federal Court  Cour fédérale

Date: 20200211

Docket: IMM-2887-19

Citation: 2020 FC 230

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 11, 2020

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

MOHAMED-REDA MEKHISSI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Mohamed-Reda Mekhissi, seeks judicial review of a decision of an immigration officer at the Canadian Embassy in Paris to refuse his application for a study permit. The officer was not satisfied that the applicant would leave Canada at the end of his stay because of his family ties, the reason for his visit and the inconsistency related to his proposed studies.

[2] For the reasons that follow, the application for judicial review is allowed.

I. Background

[3] The applicant is a single man born in 1995, and a citizen of Algeria. He has a brother and a sister who studied in Canada. His brother is now a permanent resident, and his sister's application for permanent residence is being processed. Other members of the applicant's immediate family reside in Algeria, including his father, his mother, a sister and two brothers. One of these brothers studied in Canada and returned to Algeria when his application for a post-graduation work permit was refused.

[4] In 2018, the applicant obtained a management degree and began his first year of studies in a master's degree program in economics in Algeria. The applicant submitted his first application for a study visa to Canada, which was refused in December 2018.

[5] The applicant submitted a second application for a study visa for an information technology support program leading to a diploma of vocational studies (DVS). This application was refused on March 6, 2019.

[6] The officer's decision refusing the application is brief. The officer notes that the application was refused because he was not satisfied that the applicant would leave Canada at the end of his stay as required by paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, based on his family ties in Canada and in his country of residence, and the reason for his visit; and because the applicant's study plan was inconsistent.

[7] The officer's Global Case Management System (GCMS) notes of May 6, 2019, which form part of the decision, provide further clarification on the reasons for the officer's refusal:

[TRANSLATION]

> [The applicant] will not be motivated to leave Canada because at least two members of his immediate family are in Canada.
>
> The [applicant] failed to demonstrate added value and consistency in undertaking the proposed studies in Canada considering that he already holds a licence degree (2018) in [sic] and is in his first year of his MASTER's degree studies in economics. Following my review of the file, I am of the view that the applicant submitted an application for a study permit with a view to establishing himself permanently in Canada, and I am not satisfied that he will be a bona fide student who will leave Canada if required, after an authorized stay. Application refused.

[8] The application for judicial review challenges this decision.

II. Issues and standard of review

[9] There is only one issue in this case: was the officer's decision to refuse the applicant's application for a study visa reasonable?

[10] The applicant raised another issue, alleging that the officer erred in concluding that a foreign student requesting a temporary stay in Canada could not simultaneously harbour an intention to establish him- or herself permanently in Canada. For the reasons that follow, I am not satisfied that it is necessary to address this issue in this case.

[11] When reviewing a visa officer's factual assessment of an application for a student visa and the officer's belief that an applicant will not leave Canada at the end of his or her stay, the standard of review is reasonableness: *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 12 [*Solopova*]; *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 11.

[12] The hearing in this case was held a few days before the Supreme Court of Canada issued the decision in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], and the parties filed further submissions on the impact of that decision. The analysis that follows takes into account their submissions.

[13] The standard of review remains that of reasonableness; there is a presumption that this standard applies, which is not rebutted in this case (*Vavilov*, at para 16). While there are a number of dimensions to this reasonableness standard, it suffices to highlight a few points. First, the Supreme Court focused on the reasons for the decision:

> Reasons explain how and why a decision was made. They help to show affected parties that their arguments have been considered and demonstrate that the decision was made in a fair and lawful manner. Reasons shield against arbitrariness as well as the perception of arbitrariness in the exercise of public power[.]
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> (*Vavilov*, at para 79).

[14] Second, the reviewing court must not seek perfection in the drafting of reasons, and it must take into account the decision-making context (*Vavilov*, at paras 88–90). The central questions it must ask itself are explained as follows:

> [85] Developing an understanding of the reasoning that led to the administrative decision enables a reviewing court to assess whether the decision as a whole is reasonable. As we will explain in greater detail below, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision.
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> [86] Attention to the decision maker's reasons is part of how courts demonstrate respect for the decision-making process: see *Dunsmuir*, at paras. 47-49. In *Dunsmuir*, this Court explicitly stated that the court conducting a reasonableness review is concerned with "the qualities that make a decision reasonable,

> referring both to the process of articulating the reasons and to outcomes": para. 47. Reasonableness, according to *Dunsmuir*, "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process", as well as "with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *ibid.* In short, it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.
>
> [87] This Court's jurisprudence since *Dunsmuir* should not be understood as having shifted the focus of reasonableness review away from a concern with the reasoning process and toward a nearly exclusive focus on the *outcome* of the administrative decision under review. Indeed, that a court conducting a reasonableness review properly considers both the outcome of the decision and the reasoning process that led to that outcome was recently reaffirmed in *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, [2018] 1 S.C.R. 6, at para. 12. In that case, although the outcome of the decision at issue may not have been unreasonable in the circumstances, the decision was set aside because the outcome had been arrived at on the basis of an unreasonable chain of analysis. This approach is consistent with the direction in *Dunsmuir* that judicial review is concerned with *both* outcome *and* process. To accept otherwise would undermine, rather than demonstrate respect toward, the institutional role of the administrative decision maker.
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> (Emphasis in the original.)

[15] The case law has consistently held that the decision of an officer to grant or refuse a study visa is "a discretionary decision based on factual findings [which] is entitled to considerable deference in view of the visa officer's special expertise [and experience]" (*Solopova*, at para 12). I agree that *Vavilov* does not change this approach.

III. Analysis

[16] The applicant submits that in the case at bar, the officer's refusal was unreasonable because the reasons given for refusing the study permit are unrelated to the evidence on record, and because the officer ignored evidence in the record that contradicts his findings. The role of a reviewing court is to detect the irrationality or arbitrariness of a decision: *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 17; *Kavugho-Mission v Canada (Citizenship and Immigration)*, 2018 FC 597 at para 13.

[17] The applicant notes, in particular, the following facts that are in the study visa application file, but that were not considered by the officer. First, the decision refers to the applicant's family ties, but there is no mention of the fact that his parents have multiple entry visas (and therefore, they can visit Canada without any problems), or the fact that his brother had previously studied in Canada with a study visa, but that he left Canada at the end of the authorized period because his application for a post-graduation work permit was refused.

[18] Most importantly, the decision failed to refer to the fact that the applicant's passport, at the time of his application for a study visa, showed that he had a multiple entry visitor visa. The officer's finding that the applicant was looking for a study permit to settle in Canada is illogical, considering the fact that he has a multiple entry visa, valid from March 2017 to November 2026. Therefore, he did not need a study visa to enter Canada.

[19] Furthermore, the officer ignored the fact that the applicant had previously visited Canada twice for shorter periods. The applicant left Canada well before the expiration of his visitor permits in both instances.

[20] The applicant submits that the accumulation of these errors makes the officer's decision irrational and arbitrary.

[21] The applicant also submits that the officer erred in concluding that [TRANSLATION] "the applicant submitted an application for a study permit with a view to establishing himself permanently in Canada". Subsection 22(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, explicitly states that "[a]n intention by a foreign national to become a permanent resident does not preclude them from becoming a temporary resident if the officer is satisfied that they will leave Canada by the end of the period authorized for their stay". The officer's decision is contrary to this provision.

[22] The applicant notes that Canada's policy has evolved. The government now wants to attract students, and encourage them to continue their journey in Canada after their studies. The post-graduation work visa is a testament to this intention. In this context, the fact that an applicant harbours another intention simultaneous with an intention to study, so long as this intention is legitimate, cannot be a ground for refusal.

[23] It is not necessary to address all of these issues, as I am of the view that there is a fatal flaw in the officer's decision.

[24] The determining error in the case at bar is that the officer's decision does not explicitly explain the process of analysis that led him to the conclusion that the applicant is not a [TRANSLATION] "real" student, but that he is actually seeking a study visa to settle permanently in Canada. It is important to bear in mind that the officer noted in the decision, [TRANSLATION] "I am of the view that the applicant submitted an application for a study permit with a view to

establishing himself permanently in Canada, and I am not satisfied that he will be a bona fide student who will leave Canada if required, after an authorized stay".

[25] I agree with the applicant that it is not possible to follow the officer's logic because the applicant has the right to come to Canada with his multiple entry visa, and therefore, if he wishes to settle here, he need not apply for a study permit. The officer's decision failed to consider this information, which was in the applicant's file at the time of the decision.

[26] Although I can understand why the absence of an explanation by the applicant of his desire to pursue a program of study at a level lower than his education level is an important consideration for the officer, and despite the degree of deference I must give to the decision, it is not possible to follow the decision-making logic in this case.

[27] At the hearing, the respondent stated that the officer's conclusion could be related to the fact that the multiple entry visa does not provide the applicant with a pathway to permanent residence. That may be the explanation for the officer's conclusion, but it is not obvious in the decision itself. This is unreasonable, based on the direction of the Supreme Court of Canada in *Vavilov*:

> [96] Where, even if the reasons given by an administrative decision maker for a decision are read with sensitivity to the institutional setting and in light of the record, they contain a fundamental gap or reveal that the decision is based on an unreasonable chain of analysis, it is not ordinarily appropriate for the reviewing court to fashion its own reasons in order to buttress the administrative decision. Even if the outcome of the decision could be reasonable under different circumstances, it is not open to a reviewing court to disregard the flawed basis for a decision and substitute its own justification for the outcome: *Delta Air Lines*, at paras. 26-28. To allow a reviewing court to do so would be to allow an administrative decision maker to abdicate its responsibility to justify to the affected party, in a manner that is

> transparent and intelligible, the basis on which it arrived at a particular conclusion. This would also amount to adopting an approach to reasonableness review focused solely on the outcome of a decision, to the exclusion of the rationale for that decision. To the extent that cases such as *Newfoundland Nurses* and *Alberta Teachers* have been taken as suggesting otherwise, such a view is mistaken.

[28] I agree that the decision in this case is unreasonable, as I cannot follow the officer's logic with respect to the applicant's motivation. This is a fundamental flaw in the decision.

[29] For all of these reasons, the application for judicial review is allowed, and the matter is referred back for redetermination by a different officer. There is no question of general importance to certify.

JUDGMENT in IMM-2887-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed, and the matter is referred back for redetermination by a different officer.

2. There is no question of general importance to certify.

"William F. Pentney"
Justice

Certified true translation
This 20th day of February 2020.

Johanna Kratz, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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