Federal Court  Cour fédérale

Date: 20200625

Docket: IMM-4584-19

Citation: 2020 FC 726

Ottawa, Ontario, June 25, 2020

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

FAYZAN IBRAHIM MOTALA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 of the decision of an immigration officer dated July 15, 2019 which refused the Applicant's application for a study permit.

[2] At the conclusion of the hearing, I informed the parties that the application would be granted. These are the reasons and judgment for that decision.

II. **Background**

[3] Fayzan Ibrahim Motala [the Applicant] is a 16-year-old citizen of India. He was accepted at the Pine Ridge Secondary School in Durham Region, Ontario for the school year beginning September 2019. The tuition fees in the amount of $14,800.00 were paid by the Applicant's father. An amount of $10,000.00 was committed by the father to cover the Applicant's room and board. The Applicant indicated in his Statement of Purpose that he would be staying at his aunt's house in the region, who would also be his custodian.

[4] The Applicant initially made an application for a student visa on November 21, 2018. This application was refused on December 10, 2018 because the immigration officer was not satisfied that the purpose of the studies was reasonable and that the Applicant would depart Canada at the end of the authorized stay. The Applicant made a second application for a study permit on May 27, 2019.

III. **Decision Under Review**

[5] In the July 15, 2019 decision the Officer indicated that he was not satisfied that the Applicant would leave Canada at the end of his stay based on the purpose of his visit. He also noted that the proposed studies are not reasonable considering the Applicant's level of

establishment, language abilities and financial ability. Finally, the Officer was not satisfied that the Applicant is a genuine student.

[6] In the Global Case Management System (GCMS) notes, which form part of the decision, the Officer entered the following brief justification:

> I have reviewed all the documentation provided for this application. Summary of key findings below: -The applicant seeks to attend secondary school in Canada -The applicant has failed to satisfy me that pursuing this level of study in Canada is reasonable given the high cost of international study in Canada, and considering the local options available for similar studies, and the applicant's personal financial, and familial circumstances. Therefore, I am not satisfied that the applicant would be a bona fide student in Canada who will leave Canada by the end of the period authorized for their stay. Application refused.

IV. **Issues**

[7] The Applicant raised several issues in his written argument including reviewable error of law and denial of procedural fairness. When pressed at the hearing, the Applicant agreed that the sole issue was whether the decision was reasonable.

V. **Standard of Review**

[8] The parties submit and I agree that the standard for an evidence-based review of a study permit application and an immigration officer's conclusion about whether an applicant will leave Canada at the end of his stay is reasonableness: *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 12 [*Penez*]; *Solopova v Canada (Citizenship and Immigration),* 2016 FC

690 at paras 12-13. None of the situations that would rebut the presumption that all administrative decisions are reviewable on a reasonableness standard are present in this proceeding: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 9-10.

[9] An Officer's analysis of a study permit application is highly discretionary and should be afforded a significant degree of deference on review: *Akomolafe v Canada (Minister of Citizenship and Immigration)*, 2016 FC 472, at para 12.

[10] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with whether it "bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99).

VI. **Analysis**

[11] I agree with the Applicant that the Officer made unsupported statements which did not conform with the evidence.

[12] In *Penez*, above at para 18, the Court noted that "the standard of reasonableness requires that the findings and overall conclusion of a decision-maker withstand a somewhat probing examination" and that "where parts of the evidence are not considered or are misapprehended,

where the findings do not flow from the evidence and where the outcome is not defensible, a decision will not withstand such probing examination".

[13] A visa officer may rely on common sense and reason in the exercise of their discretionary power but that does not allow them to ignore the uncontradicted evidence submitted: *Kavugho-Mission* v *Canada (Minister of Citizenship and Immigration)*, 2018 FC 597, at para 24. While a visa officer is not required to give extensive reasons in a study permit application, they will only pass review as long as they are sufficient to explain why the application was rejected: *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at para 20 [*Yuzer*].

[14] In the present matter, the Officer did not address the documentation provided in the Applicant's second application to address weaknesses in his first. In particular, the Officer did not address the evidence that the Applicant was relying on his father's ability to fund his education and had explained his reasons for wanting to study in Canada. He wished to improve his English language skills with the objective of applying subsequently to attend university in Canada. The evidence submitted indicated that the Applicant's language skills, as tested by the IELTS exam, were sufficient to attend high school. If the Officer did not agree with that assessment, it was incumbent upon him or her to explain why.

[15] The Officer indicated that he was not satisfied the Applicant would leave Canada at the end of his stay given the Applicant's personal, financial, and familial circumstances. It is not clear what the Officer is referring to in terms of personal and familial circumstances. With respect to the Applicant's financial circumstances, the Officer was required to give more reasons

beyond that blanket statement, especially considering the contradicting evidence indicating that the Applicant's father will be supporting him financially in Canada. The Applicant's father owns income producing property and had substantial funds in a bank account. The tuition fees had been paid in advance, and arrangements had been made for the Applicant to reside with his aunt. Sufficient funds were also available to cover his living expenses.

[16] The Officer here commented on the high cost of the program and the availability of less expensive local courses. Similar concerns were expressed by the officer in *Yuzer*, above. The Court in that case commented as follows at para 21:

> …The problem with the officer's reasons is that the bald statement that "[s]imilar programs [and] courses are readily available in the region and for much lower costs" leaves me unable to determine whether this is a reasonable finding of fact or not. There is no explanation for how the officer came to this conclusion…While I am expected to defer to the officer's knowledge and experience, the application of a reasonableness standard of review does not require blind submission to the officer's assessment…

[17] There is no indication in the present case why the Officer considered the cost of the program to be unreasonable in the Applicant's circumstances. The evidence did not suggest that the tuition fees would exhaust the father's savings, unlike in *Onyeka v Canada (Citizenship and Immigration)*, 2017 FC 1067, a case relied upon by the Respondent. Rather, the evidence indicated that the father had sufficient savings and healthy investments in properties and could support his son financially during his studies in Canada. The Officer may have considered that the cost of a year in a Canadian High School for an international student was unreasonable but that evidently was the choice the Applicant was prepared to make and one that the father could support.

VII. **Conclusions**

[18] I am satisfied that the Officer did not adequately engage with the evidence. The Officer's reasons do not live up to the reasonableness framework established by the Supreme Court of Canada in *Vavilov.* In particular, the decision does not allow this Court to understand the reasoning process followed by the decision maker to arrive at his or her conclusion: *Vavilov* at para 84.

[19] In the result, this application will be granted, and the matter remitted for reconsideration by another officer. Given that the 2019-2020 school year was concluded by the time required to present and determine this application and has, in any event, been disrupted by the effects of the global pandemic, the Respondent should make every reasonable and practical effort to reconsider the application before the 2020-2021 school year commences in Durham Region.

[20] No serious questions of general importance were proposed, and none will be certified.

JUDGMENT IN IMM-4584-19

THIS COURT'S JUDGMENT is that:

1) The Application is granted, and the matter is remitted for reconsideration by a different visa officer;

2) The Respondent shall make every reasonable and practical effort to reconsider the matter prior to the commencement of the school year; and

3) No questions are certified.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4584-19
STYLE OF CAUSE:	FAYZAN IBRAHIM MOTALA V THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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ORDER AND REASONS:	MOSLEY J.
DATED:	JUNE 25, 2020

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