Federal Court  Cour fédérale

**Date: 20211021**

**Docket: IMM-2697-20**

**Citation: 2021 FC 1116**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, October 21, 2021**

**PRESENT: The Honourable Associate Chief Justice Gagné**

**BETWEEN:**

**NOUNAMEY YONATHAN NOULENGBE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] Nounamey Yonathan Noulengbe is seeking judicial review of a decision by a visa officer at the Canadian Embassy in Accra, Ghana, who denied, for the second time, his application for a study permit.

[2] The applicant failed to demonstrate to the officer that he would leave Canada at the end of his period of stay, nor did he convince the officer that he had sufficient financial resources to pay the tuition fees for the nursing program offered by the University of Moncton, where he is enrolled, as well as his other expenses related to his stay in Canada.

[3] The officer found that the applicant's parents' modest income was not sufficient to support their eight children, three of whom were already studying in France. In addition, the applicant did not, in his opinion, demonstrate sufficient establishment in his country of origin; he was a young man of 17 at the time of application, with no children or personal assets in Togo.

[4] The officer concluded that on the basis of the information before him, he was not satisfied that the applicant's primary objective was to further his education in Canada and that he would leave voluntarily when his permit expired.

## II. Issues

[5] This application for judicial review raises the following issues:

A. *Did the officer breach his duty of procedural fairness by failing to inform the applicant of his concerns about the source of his guarantor's funding before denying the application for a study permit?*

B. *Did the officer err in denying the applicant a study permit based on the evidence before him?*

## III. Standard of review

[6] In *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraph 54, the Federal Court of Appeal stated that "[a] court assessing a procedural fairness argument is required to ask whether the procedure was fair having regard to all of the circumstances". If procedural fairness has been breached, the Court must intervene. That said, however, the content or degree of fairness required is a function of the five non-exhaustive contextual factors set out in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at pages 837 to 841.

[7] For the second issue, however, the standard of reasonableness applies, as set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Aghaalikhani v Canada (Citizenship and Immigration*), 2019 FC 1080 at para 11; *Kavugho-Mission v Canada (Citizenship and Immigration)*, 2018 FC 597 at para 8; *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 12; *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at paras 12 and 13).

## IV. Analysis

### A. *Did the officer breach his duty of procedural fairness by failing to inform the applicant of his concerns about the source of his guarantor's funding before denying the application for a study permit?*

[8] The applicant submitted that the officer breached his duty of procedural fairness by raising a doubt about the source of certain funds deposited to his father's bank accounts and not

giving him an opportunity to explain (*Nsiegbe v Canada (Citizenship and Immigration)*, 2018 FC 1262 at para 13). The applicant argued that this violation alone justifies the Court's intervention.

[9] I disagree with the applicant. The degree of procedural fairness to which an applicant for a study permit is entitled is at the lower end of the spectrum (*Patel v Canada (Citizenship and Immigration*), 2020 FC 77 at para 10; *Al Aridi v Canada (Citizenship and Immigration)*, 2019 FC 381 at para 20; *Hakimi v Canada (Citizenship and Immigration)*, 2015 FC 657, at paras 21 and 22; *Tran v Canada (Citizenship and Immigration)*, 2006 FC 1377, at para 30).

[10] An administrative decision maker must communicate to the applicant his or her concerns about the credibility of the evidence or the authenticity of documents (*Patel* at para 10; *Salman v Canada (Citizenship and Immigration*), 2007 FC 877 at para 12; *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24). However, the officer is not required to advise the applicant of any concerns about the sufficiency of the evidence or documents in support of the application (*Patel* at para 10). In the case of documents submitted in support of the application, the applicant is deemed to be aware of their content and the decision maker is not required to provide the applicant with an opportunity to improve his or her evidence (*Hakimi* at para 22; *Poon v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1993 at para 12).

[11] In this case, the officer did not question the credibility of the applicant, nor did he doubt the authenticity of the documents submitted. He simply noted that he does not have evidence of

the source of certain deposits made to the applicant's father's bank accounts and therefore finds the financial evidence insufficient.

[12] I conclude, therefore, that the officer did not breach his duty of procedural fairness.

B. *Did the officer err in denying the applicant a study permit on the basis of the evidence before him?*

[13] The applicant acknowledged that he has the burden of rebutting the presumption that he is an immigrant seeking to remain in Canada, and that it is up to him to satisfy the officer that he will leave at the end of his stay. He also acknowledged that the officer is presumed to have considered all the evidence before him. He argued, however, that the officer did not focus sufficiently on the key issues or arguments he raised (*Vavilov* at para 128). He argued that the officer made no mention of the study plan he submitted, in which he clearly explained why he wishes to study in Canada. Even if the officer was not required to accept his statement of intent, he was nevertheless required to explain why he considered it insufficient (*Iyiola v Canada (Citizenship and Immigration)*, 2020 FC 324 at para 19). The officer therefore ignored evidence that contradicted his conclusions, which are irrational and not based on the evidence.

[14] It is well established that when the Court conducts an analysis under the standard of reasonableness, it must give great deference to the administrative decision maker. The Court should only intervene where the decision under review, taken as a whole, is not based on an internally coherent and rational analysis and is not justified in light of the legal and factual constraints on the decision maker (*Vavilov* at para 85).

[15] A decision maker is not required to refer to all the evidence and failure to do so does not make a decision necessarily unreasonable (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). However, where a decision maker ignores evidence that is relevant to his or her conclusion and supports an opposite conclusion, the Court may be justified in intervening (*Jack v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 2 at para 8; *Herrera Andrade v Canada (Citizenship and Immigration)*, 2012 FC 1490 at para 9). For example, it will intervene where the decision maker's silence relates to key evidence and his or her reasons suggest that he or she did not consider it (*Zhong v Canada (Citizenship and Immigration*), 2017 FC 223 at para 25).

[16] Applying these principles to the decision at hand, I am of the view that the officer could reasonably be dissatisfied with the evidence submitted as to the financial resources available to the applicant to support himself during his four-year program of study.

[17] The only documentary evidence submitted is an attestation from the applicant's father, a letter of employment confirming that he is a financial and accounting manager at the Port of Lomé and a copy of Orabank account statements showing a credit balance of Can$108,231.

[18] In his sworn statement, the applicant's father stated that his employment income is Can$81,712, that he also owns gas stations and stores which provide him with an annual income of approximately Can$282,352 and that he owns two city lots worth Can$697,362. However, there is no documentary evidence to support these claims. There is no evidence of the existence of the businesses in question, nor is there any evidence of the revenues they generate. As for the

land, only one appears to be owned by the applicant's father, but its value is not demonstrated. Insofar as this is a bolstered application for a study permit, the applicant's first application having been refused for similar reasons, it seems to me that it would have been easy for the applicant to produce sufficient proof of all the alleged income and assets.

[19] In my opinion, the officer was correct to consider only the employment income of the applicant's father in assessing his financial capacity, and it was open to him to conclude that it was insufficient to cover the applicant's education in Canada, when the applicant has seven siblings, three of whom are already studying abroad. As for the bank statements, the officer could reasonably doubt the source of these funds given the evidence, or lack thereof, of the applicant's father's total annual income.

## V. Conclusion

[20] I am of the opinion that the applicant's application was subjected to a fair examination procedure and that the immigration officer could reasonably conclude that the applicant had not met his burden of proof to show that he had sufficient financial resources to meet his educational expenses in Canada without needing to work.

[21] The parties have not proposed a question of general importance for certification, and I am of the view that no such issue arose in this case.

**JUDGMENT in IMM-2697-20**

**THIS COURT ORDERS as follows:**

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Jocelyne Gagné"
Associate Chief Justice

Certified true translation
Michael Palles

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-2697-20 |
| **STYLE OF CAUSE:** | NOUNAMEY YONATHAN NOULENGBE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD VIA TELECONFERENCE |
| **DATE OF HEARING:** | JULY 7, 2021 |
| **JUDGMENT AND REASONS:** | GAGNÉ ACJ |
| **DATED:** | OCTOBER 21, 2021 |

**APPEARANCES:**

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| Sonia Bédard | FOR THE RESPONDENT |

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| Attorney General of Canada<br>Montréal, Quebec | FOR THE RESPONDENT |