Federal Court Cour fédérale

Date: 20211115

Dockets: IMM-2915-20

IMM-2923-20

Citation: 2021 FC 1238

Ottawa, Ontario, November 15, 2021

PRESENT: Madam Justice Sadrehashemi

Docket: IMM-2915-20

BETWEEN:

MADY QUERENE NIYONGABO

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-2923-20

AND BETWEEN:

ADONAI ELIORA NIYONGABO

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Mady Querene Niyongabo and Adonai Eliora Niyongabo, are two minor sisters, who applied for study permits to study in Canada. The Applicants were 15 years old and 11 years old when they applied for study permits. Their study permit applications were refused by the same visa officer at the High Commission of Canada in Tanzania ("Officer") in two separate decisions. This is a judicial review of these two refusals.

[2] As the refusal decisions for both sisters are based on the same grounds, and the arguments challenging the refusals rely on the same arguments for each sister, my reasons will address the Applicants' challenge to the refusals jointly.

[3] The Applicants argue that the Officer failed to explain their reasoning in finding that they would not leave Canada at the end of the authorized period for their stay. I agree with the Applicants. The Officer's reasons are not transparent, intelligible or justified in light of the evidence before them. For the reasons set out below, I am granting both applications for judicial review.

II. Background Facts

[4] The Applicants are sisters and citizens of Burundi. They were accepted to study at a school in Windsor, Ontario. Their father completed the study permit applications on their behalf. At the time the applications were filed, the sisters were 11 and 15 years old. The Applicants have two older siblings who are already studying in Canada at a university in Ottawa.

[5] In support of their applications, the Applicants provided proof of funds, which included proof of assets in Burundi as well as Canada. They also provided proof of their parents' employment in Burundi.

[6] The study permit applications were refused because the Officer concluded they were not satisfied that the sisters would leave Canada at the end of the period authorized for their stay.

III. Issue and Standard of Review

[7] The only issue on judicial review was whether the Officer's determination that they were not satisfied that the Applicants would leave Canada at the end of their authorized stay was a reasonable one.

[8] Both parties agree that the standard of review that I should apply in evaluating the Officer's decision is reasonableness. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is

the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

IV. Analysis

[9] Applicants who are applying to come to Canada temporarily, including those who are applying to study in Canada, must demonstrate that they intend to stay temporarily. Accordingly, prior to a student visa being issued, an officer needs to be satisfied that the applicant will leave Canada before their authorization to remain ends (subsections 11(1), 20(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]).

[10] The Officer's reasons on the sole basis for refusal — their conclusion that the Applicants would not leave at the end of the authorized period for their study—are limited to the following:

> Parents have a bank account in Canada with high savings and a condo. In the light of the current socioeconomic situation in Burundi, the upcoming elections and their aftermath, as well as weak ties to the home country and strong pull factors in Canada, I am not satisfied that the applicant will be motivated to leave Canada and return to Burundi.

[11] In evaluating the reasonableness of a decision, the institutional context in which it took place must be considered. The Supreme Court of Canada in *Vavilov* held at paragraph 103 that "formal reasons should be read in light of the record and with due sensitivity to the administrative regime in which they were given…" (see also *Vavilov* at para 91).

[12] Visa officers are responsible for considering a high volume of study permit applications. While extensive reasons are not required, an officer's decision must be transparent, justified and intelligible. There needs to be a "rational chain of analysis" so that a person impacted by the decision can understand the basis for the determination (*Vavilov* at para 103; see also *Patel v Canada (Minister of Citizenship and Immigration)*, 2020 FC 77 at para 17; *Samra v Canada (Minister of Citizenship and Immigration)*, 2020 FC 157 at para 23; and *Rodriguez Martinez v Canada (Minister of Citizenship and Immigration)*, 2020 FC 293 at paras 13–14).

[13] I agree with the Applicants that the Officer's reasons are not transparent, intelligible or justified in light of the evidence before them. First, in finding that the Applicants had "weak ties" to Burundi, the Officer does not address evidence in the record that suggests the opposite or explain how they came to this determination; and second, the Officer does not explain the relevance of their vague statements on conditions in Burundi to their conclusion that the Applicants would not leave by the end of their study period.

[14] There is no explanation as to how the Officer came to the determination that the sisters had "weak ties" to Burundi, given that they had grown up and gone to school there, their parents planned to remain living and working in Burundi, and both parents had stable jobs and owned property in Burundi. The Officer does not mention any of these facts in their analysis though they are highly relevant to the strength of the Applicants' ties to Burundi. The Applicants are left not understanding, given this evidence, why the Officer believed that their ties to Burundi were "weak".

[15] The Respondent's arguments are based on the premise that the Officer found that the Applicants had weak ties to Burundi and therefore the Officer was entitled to go on to weigh the other factors, including the "pull factors" in Canada, and come to the determination that they were not satisfied that the sisters would leave by the end of their study period. This fails to address the Applicants' argument.

[16] The Applicants are arguing that the Officer failed to justify their conclusion that the Applicants had "weak ties" to Burundi. I agree. The Officer's failure to explain this central finding in light of the evidence in the record suggesting the opposite is unreasonable.

[17] Another area of concern is the Officer's failure to explain the relevance of their comments about the "upcoming elections in Burundi" and the "current socio-economic situation in Burundi." These issues are raised as a negative factor in the Officer's reasons but there is no explanation as to what about the "upcoming elections" or the "current socio-economic situation in Burundi" causes the Officer to not be satisfied that the Applicants would leave by the end of their study period. There is no explanation of the relevance of these general statements or their significance for the personal situation of the Applicants.

[18] The Respondent argued that the Officer was entitled to rely on their personal knowledge of the country conditions, citing the case *Bahr v Canada (Minister of Citizenship and Immigration)*, 2012 FC 527 at paragraph 24. I do not need to consider whether it was appropriate in this case for the Officer to make these vague statements on country conditions without providing an evidentiary foundation or notice to the Applicants.

[19] The issue being argued on this judicial review is whether it was reasonable that the Officer relied on these general country conditions facts as a negative factor, without explaining how these facts connected to the Applicants' personal situation. As noted by the Applicants, this family has significant assets in Burundi and stable jobs, including one parent working for an international agency. The Officer failed to explain how either of these country conditions (the upcoming election or the general socio-economic situation in the country) would have an impact on this family or would even be relevant to the Applicants' motivation to not return to Burundi. There is a gap in the Officer's reasoning; there is no "rational chain of analysis" between these statements and the conclusion reached.

[20] The applications for judicial review are allowed and the matters will be referred back to a different officer for reconsideration in accordance with these reasons.

[21] The parties have not asked to certify a question and I agree that none arises.

JUDGMENT IN IMM-2915-20 and IMM-2923-20

THIS COURT'S JUDGMENT is that:

1. The applications are granted;

2. The matters are referred back to a new officer for redetermination;

3. There is no question for certification.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-2915-20 AND IMM-2923-20
DOCKET:	IMM-2915-20
STYLE OF CAUSE:	MADY QUERENE NIYONGABO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-2923-20
STYLE OF CAUSE:	ADONAI ELIORA NIYONGABO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	AUGUST 25, 2021
JUDGMENT AND REASONS:	SADREHASHEMI J.
DATED:	NOVEMBER 15, 2021

APPEARANCES:

Richard Kurland	FOR THE APPLICANTS
Brett J. Nash	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Richard Kurland Barrister and Solicitor Kurland, Tobe Vancouver, British Columbia	FOR THE APPLICANTS
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT