Federal Court  Cour fédérale

Date: 20211202

Docket: IMM-1081-20

Citation: 2021 FC 1342

Ottawa, Ontario, December 2, 2021

PRESENT: Madam Justice Pallotta

BETWEEN:

RAMDAI ROOPCHAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ramdai Roopchan, seeks judicial review of a visa officer's (Officer) decision that refused her application for a study permit to attend a one-year culinary skills program at Niagara College Canada (Niagara College). The Officer was not satisfied that Ms. Roopchan would leave Canada at the end of her authorized stay based on: her history of having contravened the conditions of admission on a previous stay in Canada; her family ties in Canada

and in Guyana, her country of residence; the purpose of her visit; and her personal assets and financial status.

[2] Ms. Roopchan submits that the Officer did not provide intelligible and transparent reasons to justify the decision, rendering the decision unreasonable. Also, she submits the Officer breached procedural fairness by making veiled credibility findings without affording an opportunity for her to address the Officer's concerns.

[3] For the reasons below, I am not persuaded that the Officer's decision is unreasonable or that the Officer breached procedural fairness. Accordingly, this application must be dismissed.

II. **Issues and Standard of Review**

[4] In her written memorandum, Ms. Roopchan outlines three issues for judicial review, all of which she characterizes as breaches of procedural fairness: (i) failing to provide adequate reasons; (ii) making a veiled credibility determination without giving an interview or an opportunity to present evidence and arguments to address the Officer's concerns; and (iii) basing the determination on incorrect facts, speculation, and conjecture without regard to the evidence.

[5] Only the second issue raises a question of procedural fairness. Questions of procedural fairness are reviewable on a standard that is akin to correctness: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. The role of the reviewing court is to determine whether the process followed by the decision maker was fair, having regard to all the

circumstances: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Canadian Association of Refugee Lawyers v Canada (Minister of Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35.

[6] The first and third issues outlined by Ms. Roopchan relate to the merits of the Officer's decision. The parties agree that the merits of the Officer's decision are reviewable according to the reasonableness standard. The reasonableness standard requires a deferential but robust form of review: *Vavilov* at paras 12-13, 75 and 85. A reviewing court must determine whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

III. **Analysis**

A. *Are the Officer's reasons inadequate?*

[7] In the decision letter refusing Ms. Roopchan's study permit application, the Officer provides the following grounds for concluding that they are not satisfied Ms. Roopchan will leave Canada at the end of her authorized stay:

- Ms. Roopchan's history of having contravened the conditions of admission on a previous stay in Canada;
- her family ties in Canada and in her country of residence;
- the purpose of Ms. Roopchan's visit; and

- Ms. Roopchan's personal assets and financial status.

[8] In addition to the letter, the Officer's reasons for refusing Ms. Roopchan's application as recorded in the Global Case Management System (GCMS) notes are as follows:

> PA [applicant] has enlisted multiple sponsor (sister and friend) to assist with expenses. [R]elationship to PA and history of financial support not well substantiated. PA has not provided compelling reason for study in Canada. Unclear why applicant would incur cost of relocating to Canada rather than to undertake similar course of study in country of residence. Concerns applicant is using study permit as means to facilitate entry to Canada rather than educational advancement. Based on the evidence provided I am not satisfied app[licant] is a genuine student who intends to complete course of study in Canada and would depart at end of authorized stay. Refused.

[9] Ms. Roopchan submits the Officer's scant reasons are inadequate in that they lack the requisite transparency, justification and intelligibility. She submits the GCMS notes do not elaborate on two of the bases for refusal as set out in the refusal letter: having contravened the conditions of admission on a previous stay, and family ties in Guyana. Furthermore, she contends the GCMS notes merely list factors that the Officer considered, without providing any analysis of the factors. Ms. Roopchan submits that there is no explanation as to why the Officer decided that she is merely using a study permit as a way to enter Canada, or why evidence from Ms. Roopchan's sister and her friend regarding their financial support was effectively disregarded as not credible.

[10] Also, Ms. Roopchan submits the Officer disregarded the evidence and/or relied on extrinsic evidence in finding there was no compelling reason for her to study in Canada, and in finding it was unclear why she would incur the cost of relocating to Canada rather than undertake

a similar course of study in her country of residence. Ms. Roopchan argues that her study permit application indicated that her lifelong dream is to study culinary arts and become a specialist baker, that if the first year of study at Niagara College should go well she plans to apply to another program of culinary studies at Niagara College or another institution, and there is no parallel program in Guyana.

[11] Finally, Ms. Roopchan contends that the Officer was required to address the question of dual intent, since she had made her dual intent clear from the outset. Although she intends to use the study permit to find a path that would allow her to remain in Canada permanently, if she is not able to immigrate to Canada she "vows to leave the country" at the end of her visa.

[12] The respondent contends that the Officer provided an adequate explanation for Ms. Roopchan to understand why her application was denied, and so the fundamental purpose for providing reasons is met: *Singh v Canada (Minister of Citizenship and Immigration)*, 2009 FC 621 at para 9. The Officer explained why they were not satisfied Ms. Roopchan would leave Canada at the end of her authorized stay, as required under paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR /2002-227 [*IRPR*]. The respondent contends that the Officer did not question the credibility of Ms. Roopchan's sister and friend, but rather, found the evidence to be insufficient.

[13] I agree with the respondent that the Officer was concerned with the sufficiency of the evidence. I am not persuaded that the Officer disregarded evidence, or relied on extrinsic evidence.

[14] Based on the record, it was reasonable for the Officer to find that Ms. Roopchan failed to provide a compelling reason why she would relocate to Canada in order to pursue her intended studies. Ms. Roopchan's study permit application stated that she does not have options to study culinary arts in Guyana, but she did not expand on this point. I am not persuaded that the Officer was relying on extrinsic evidence about programs in Guyana, rather than making a finding that was based on the insufficiency of Ms. Roopchan's evidence. Also, the study permit application did not provide a description of the culinary arts program at Niagara College, or explain what it offered that was different from other programs. Ms. Roopchan did not state in her study permit application, as she does now in this application for judicial review, that she hopes this Niagara College program will allow her to be admitted to a specific second year program at Niagara College that specializes in baking and pastry arts.

[15] I disagree with Ms. Roopchan that the Officer should have provided an opportunity to address the concerns with further evidence. The onus rests on an applicant to bring forward all information relevant to support the application: *Saloni v Canada (Minister of Citizenship and Immigration)*, 2021 FC 474 at para 40, citing *Masam v Canada (Minister of Citizenship and Immigration)*, 2018 FC 751 at para 11.

[16] The Officer's findings about the evidence regarding financial support from Ms. Roopchan's sister and friend also relate to the sufficiency of the evidence. Ms. Roopchan's study permit application provided no evidence of her own savings or a plan to support herself financially, and she would be reliant on support from others. It was open to the Officer to raise a concern that the history of financial support from the sister and friend was not well substantiated.

It was also open to the Officer to find that the relationship between Ms. Roopchan and her friend was not well substantiated. Visa officers have wide discretion in assessing student visa applications (*Onyeka v Minister of Citizenship and Immigration*, 2017 FC 1067 at para 10, citing *Solopova v Canada (Minister of Citizenship and Immigration)*, 2016 FC 690 at paras 11, 33 [*Solopova*]) and I am not satisfied the Officer committed a reviewable error in making these findings. It is trite law that a decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings: *Vavilov* at para 125.

[17] Furthermore, concerns with the evidence regarding financial support was not the only factor that led to the Officer's refusal. Ms. Roopchan has not established that the Officer's consideration of this factor, among the others, was unreasonable.

[18] Ms. Roopchan correctly points out that, according to subsection 22(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], dual intent does not preclude a foreign national in becoming a temporary resident if the officer is satisfied the foreign national will leave at the end of the authorized period. However, the Officer made it clear that they were not satisfied Ms. Roopchan met this condition: *Solopova* at para 29. It was not necessary to address Ms. Roopchan's dual intent further.

[19] In summary, Ms. Roopchan has not established that the Officer's decision is unreasonable due to a failure to provide adequate reasons. The reasons allow Ms. Roopchan to understand the multiple concerns with her application that led to the refusal: the relationship with

Ms. Roopchan's sponsors and their history of financial support were not well substantiated, Ms. Roopchan failed to provide a compelling reason for studying in Canada, and it was unclear why she would incur the cost of relocating to Canada, rather undertake a similar course of study in Guyana. These led to the Officer's concern that Ms. Roopchan was using a study permit as a means to facilitate entry to Canada rather than educational advancement, and the conclusion that the Officer was not satisfied she will leave Canada at the end of her authorized stay.

[20] Reasons must be read with due sensitivity to the administrative setting in which they were given, and in light of the context of the proceedings: *Vavilov* at paras 91 and 94. Read in light of the submissions and evidence supporting Ms. Roopchan's study permit application, the Officer's reasons are transparent, intelligible and justified.

B. *Did the Officer make a veiled credibility finding?*

[21] Ms. Roopchan argues that the Officer breached procedural fairness by failing to provide an opportunity to address concerns that were based on the credibility, accuracy or genuine nature of the information she submitted in support of her study permit application: *Hamad v Canada (Minister of Citizenship and Immigration)*, 2017 FC 600 at para 19, citing *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24. Ms. Roopchan submits the Officer made a veiled credibility determination by finding that she is not a genuine student who intends to complete a course of study in Canada and depart at the end of her authorized stay. She states that her intentions, as declared in her affidavit, must be taken to be true unless reasons exist to believe otherwise. Also, Ms. Roopchan submits the Officer made a veiled credibility finding regarding her friend's evidence that he would support her financially, as the Officer was

questioning the friend's statement of support: *Khodchenko v Canada (Minister of Citizenship and Immigration)*, 2015 FC 819 at para 10 [*Khodchenko*].

[22] The respondent submits the Officer did not raise concerns with credibility or the genuineness of documents. Rather, the Officer weighed the evidence and determined that elements of the application were not substantiated, raising a legitimate concern that Ms. Roopchan will overstay her visa. The respondent notes that the duty of fairness "is minimal and relaxed" for student visas (*Bahr v Canada (Minister of Citizenship and Immigration)*, 2012 FC 527 at paras 32 and 38, *Weng v Canada (Minister of Citizenship and Immigration)*, 2020 FC 151 at para 20) and argues that the Officer was not required to provide an opportunity to respond to concerns in this case.

[23] I agree with the respondent that the Officer did not make a veiled credibility finding.

[24] In my view, it is not sufficient for an applicant to point to declared intentions to argue that the Officer made a veiled credibility finding; if it were otherwise, there would be a veiled credibility finding every time an applicant declares an intention to leave Canada at the end of their authorized stay. It cannot be assumed that in cases where an officer finds that the evidence does not establish the applicant's claim, the officer has not believed the applicant: *Solopova* at para 40, citing *Gao v Canada (Minister of Citizenship and Immigration)*, 2014 FC 59 at para 32. An applicant has the onus to put forward evidence to support an application, and an officer is required to assess the totality of the evidence. In my view, the Officer did so in this case. I agree with the respondent that Ms. Roopchan's study permit application does not provide evidence to

demonstrate that she wanted to return to Guyana or had reasons to return. Indeed, the evidence shows that Ms. Roopchan has spent a majority of her adult years outside of Guyana and does not want to return to the country. Ms. Roopchan did not demonstrate that she has significant ties to Guyana or a level of establishment there. While she explained her hope that the program of study at Niagara College would help with an application for permanent resident status in Canada, she did not demonstrate how it would assist her in Guyana.

[25] Ms. Roopchan stated in her application that if the program of study does not lead to permanent resident status in Canada, she "will not repeat the same mistakes she made in the past". She stated that she had "learned her lesson" that non-compliance with immigration laws will destroy any chance she might have of staying in Canada. According to her study permit application, Ms. Roopchan was in Canada from October 2007 to September 2016, when she was deported. There was evidence that Ms. Roopchan had contravened Canadian immigration laws and made a false refugee claim in order to stay in Canada. Ms. Roopchan explained that she did these things to build a better life in Canada, and she raises the same motivation for coming to Canada to study.

[26] With respect to the evidence of financial support, the circumstances of this case are distinguishable from those of *Khodchenko*. In *Khodchenko*, the GCMS notes indicated that the officer's only concern with financial support from a family friend was that it was "not clear why he would pay such amount of money". Since the family friend clearly stated why he was funding Ms. Khodchenko's education in Canada, the Court found that the officer's real concern was a suspicion that there were strings tied to the gift, which led the officer to doubt the veracity

of the family friend's statement. In the circumstances, the Court held that the officer breached procedural fairness, as they should have apprised Ms. Khodchenko of the suspicion and provided an opportunity to respond. In contrast, I am not satisfied the Officer made a veiled credibility assessment about Ms. Roopchan's friend's intentions in this case. As noted above, the Officer's concerns relate to the sufficiency of the evidence, and the Officer weighed that evidence in the context of the record as a whole.

[27] I am also unpersuaded by Ms. Roopchan's alternative argument that, even if the Officer did not make a veiled credibility finding, the Officer was required to provide a further opportunity to respond because the concerns went beyond the requirements of the *IRPA* or *IRPR*. Ms. Roopchan asserts that she provided all the necessary documentation to conform with the legislated requirements. I disagree. Pursuant to paragraph 216(1)(b) of the *IRPR*, the Officer had to be satisfied that Ms. Roopchan will leave Canada by the end of the period authorized for her stay. Apart from an assertion that she will not repeat the same mistake of contravening Canada's immigration laws, the application does not provide evidence to establish that Ms. Roopchan has reasons to leave or a desire to leave Canada.

[28] There is no duty for an officer to bolster an incomplete application: *Hamza v Canada (Minister of Citizenship and Immigration)*, 2013 FC 264 at para 24; *Kuhathasan v Canada (Minister of Citizenship and Immigration)*, 2008 FC 457 at para 37. Ms. Roopchan was required to meet her onus of satisfying the Officer that a study permit should be issued, and she failed to do so: *Solopova* at para 37; see also *Balepo v Canada (Minister of Citizenship and Immigration)*, 2017 FC 1104 at para 27.

C. *Did the Officer base the determination on incorrect facts, speculation, and conjecture without regard to the evidence?*

[29] Ms. Roopchan submits the Officer did not consider her study plan, evidence of her long relationship with her sponsors, and the sponsors' financial situation.

[30] I agree with the respondent that visa officers are not required to address every piece of evidence from an applicant: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), [1999] 1 FC 53 at para 16, 1998 CanLII 8667 (FCTD). Decision makers are presumed to have weighed and considered all of the evidence before them, absent strong indications to the contrary: *Hakimi v Canada (Minister of Citizenship and Immigration)*, 2015 FC 657 at para 16.

[31] Ms. Roopchan has not established that the Officer misapprehended the facts, failed to consider an important factor, or weighed the factors unreasonably. The refusal letter and GCMS notes indicate that the Officer considered the submissions and evidence in Ms. Roopchan's study permit application and made a determination that was reasonably based on the totality of the evidence. Ms. Roopchan's arguments amount to a disagreement with how the Officer weighed the evidence, and it is not the Court's role on judicial review to reweigh evidence or decide the issue for itself: *Vavilov* at paras 83, 125.

IV. **Conclusion**

[32] Ms. Roopchan has not established that the Officer's decision is unreasonable or that the Officer breached procedural fairness. Neither party proposes a question for certification, and in my view, there is no question to certify in this case.

JUDGMENT in IMM-1081-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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