

Federal Court



Cour fédérale

Date: 20211223

Docket: IMM-1317-20

Citation: 2021 FC 1468

Ottawa, Ontario, December 23, 2021

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

DANIELA GEGA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Ms. Gega [Applicant], a citizen of Albania, seeks to judicially review a January 16, 2020 decision [Decision] of a visa officer [Officer] refusing the reconsideration request of her study permit application. The application, refused on December 9, 2019, related to a three-year diploma program in Business Administration (Finance) [Finance Program] at George Brown College of Applied Arts and Technology [George Brown College] in Canada.

[2] On November 15, 2019, the Officer denied the Applicant's original study permit application because the Officer was not satisfied that the Applicant would leave Canada at the end of her stay. The Officer reached this conclusion based on the purpose of her visit, family ties in Canada and in her country of residence, current employment situation, and her personal assets and financial status. The Applicant filed an application for leave and judicial review of that refusal in Court File IMM-214-20. On November 4, 2021, Justice Heneghan adjourned Court File IMM-214-20 pending delivery of this decision, as both Court files relate to the same subject matter.

[3] On December 3, 2019, the Applicant requested a reconsideration of the November 15, 2019 refusal. On December 3 and 10, 2019, Immigration, Refugees and Citizenship Canada acknowledged her request for reconsideration. The reconsideration request was ultimately refused.

[4] The Applicant states that she first learned of the refusal of the reconsideration request when she received reasons for the original refusal in Court File IMM-214-20 [Refusal], by letter dated January 16, 2020, which contained the November 15, 2019 letter and Global Case Management System [GCMS] notes. The reasons for the Refusal and the GCMS notes indicate that on December 9, 2019, the reconsideration request was refused.

[5] The application for judicial review is granted.

II. Background

[6] The Applicant is a 41-year-old citizen of Albania. She is an accountant at Valu Add Management Services [Valu Add] and is a business owner of a travel agency called Diell Travel. She resides with her husband in Tirana, Albania. She obtained a bachelor's degree with a major in marketing from Ismail Qemal Vlora University in 2002 in Albania. The Applicant worked at multiple companies, moving up to a specialist position in accounting.

[7] The Applicant decided to pursue further education in business and finance to grow her travel agency business and to shift into a senior executive position in the financial industry. The Applicant was accepted into the Finance Program at George Brown College on September 9, 2019.

[8] On October 4, 2019, Valu Add offered the Applicant a promotion as a financial controller, which required additional qualifications in finance. Valu Add was supportive of the Applicant's goals of furthering her education in Canada.

[9] On October 18, 2019, the Applicant submitted her study permit application. By letter dated November 15, 2019, the Officer refused the Applicant's study permit application.

[10] On December 3, 2019, the Applicant sent the reconsideration request. On December 9, 2019, the Officer refused the reconsideration request, although the Applicant did not know of the

refusal until January 16, 2020. The Officer was not satisfied that the Applicant's study plan was logical.

III. Issues and Standard of Review

[11] The issues in this matter are:

1. Was the Decision reasonable?
2. Did the Officer breach the duty of procedural fairness?

[12] The parties agree that the applicable standard of review for an officer's reconsideration decision is reasonableness (*Khaira v Canada (Citizenship and Immigration)*, 2018 FC 950 para 16; *Kaur v Canada (Citizenship and Immigration)*, 2015 FC 674 at para 32). The reasonableness standard is also appropriate in light of *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. When determining whether a decision is reasonable, a Court must consider both the outcome and the underlying rationale to assess whether the "decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). For a decision to be reasonable, a decision-maker must adequately account for the evidence before it and be responsive to the Applicant's submissions (*Vavilov* at paras 89-96, 125-128). The Court will not interfere with a decision unless it is satisfied that there are "sufficiently serious shortcomings such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at paras 12-13, 99-100).

[13] The parties agree that issues of procedural fairness are reviewable on the correctness standard. Issues of procedural fairness are reviewed on the correctness standard (*Mission*

Institution v Khela, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). On a correctness review, no deference is owed to the decision maker and the reviewing court determines if the duty of procedural fairness owed to the applicant was breached (*Connolly v Canada (National Revenue)*, 2019 FCA 161 at para 57). However, as noted in *Vavilov* at paragraph 77, “the duty of procedural fairness in administrative law is ‘eminently variable’, inherently flexible and context-specific”. I agree with the parties. The second issue is reviewable on a correctness standard.

IV. Analysis

A. *Was the Officer’s decision reasonable?*

(1) Applicant’s submissions

[14] First, the Decision is unreasonable because the Officer failed to properly consider the evidence. As a result, the Officer’s reasons are not intelligible or justified. The Officer was not satisfied that the study plan was reasonable or logical because the Applicant already held a university degree in business. The Applicant argues that she provided a plausible, cogent, and well-documented explanation for wanting to complete further studies in finance: her business education was limited to marketing and she required further education in finance to qualify for a more senior position in her field. To support this explanation, the Applicant provided a letter from Valu Add confirming that she would qualify for a position as a financial controller once she completed a program in finance. The Applicant submits that she advised that studying finance would also assist in growing her travel agency.

[15] The Applicant submits that her study plan is not “so extraordinary as to be beyond the realm of possibility” and is not “incapable of belief” (*Bao v Canada (Citizenship and Immigration)*, 2008 FC 282 at para 7). She submits her study plan is entirely plausible and that a finding of implausibility should only be made in the clearest of cases (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at paras 7-8).

[16] Second, the Applicant submits the Officer erred in questioning her motivation for studying in Canada due to the “prevailing conditions” in Albania. The Officer failed to explain which social, economic or other “conditions” are of concern in Albania, and how these relate to the Applicant.

[17] Third, the Applicant submits the Officer erred in referring to local options for study in Albania without identifying them and without having regard to the Applicant’s explanation for seeking international studies. The Applicant relies on *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 [*Aghaalikhani*]. In that case, the Court held that it was unreasonable for an officer to focus on “elusive programs at home” while ignoring evidence of the applicant’s reasons to come to Canada. At the very least, the Officer was required to engage with the Applicant’s reasonable explanation for choosing studies in Canada and her statement that no local options were available.

[18] Fourth, the Officer inadequately assessed the Applicant’s establishment in Albania. The Officer found, “[t]his whole application shows that her level of establishment is sufficient [sic] to motivate return after temporary stay in Canada”. The Applicant concedes that the Officer likely

intended to write “insufficient”, but argues that such an error illustrates the cursory way in which the Officer drafted their brief reasons. In any case, the Officer failed to explain how the Applicant’s level of establishment was insufficient to motivate her return. It is a reviewable error when an officer makes no serious efforts to assess an applicant’s ties to their home country (*Zhang v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1493 at para 22 [*Zhang*]; *Aghaalikhani* at para 21). The Applicant argues that she had provided a detailed explanation on how her business, employment, and family ties required her to return to Albania at the completion of her studies.

[19] Lastly, while the January 16, 2021 refusal letter identifies four separate grounds as to why the Applicant will not leave at the end of her stay, the Applicant notes that the original reasons only identify one: the purpose of her visit. The Officer does not address her “family ties” in Canada and Albania, her “current employment situation”, or her “personal assets and financial status”. Accordingly, the Decision is incoherent. With respect to “family ties”, the Officer mentioned that the Applicant is recently married. The Applicant argues this fact is not, on its face, a reason to find the Applicant would remain in Canada. To the contrary, it is a reason for her to return to Albania.

(2) Respondent’s submissions

[20] The Respondent submits that the Officer reasonably refused the application because the Applicant failed to establish that she would leave Canada at the end of her stay. The Respondent notes that the Officer found it was not logical for the Applicant to sell her assets in Albania to study in Canada. The Officer also found that the Applicant failed to provide a logical study plan,

as she already had a university degree in business from Albania. Further, the Officer did not make a negative determination based on her family status. The Officer only reiterated the facts that were not in dispute: her age, marital status, family status, and education. The Respondent submits the Applicant is alleging an unfounded connection to her family status.

[21] The Respondent also submits the Officer reasonably found that the Applicant failed to adequately address how a business college program in Canada would support her educational and professional development. In this regard, the Applicant failed to demonstrate what the proposed diploma could offer, since she already held a degree in the same field. The Respondent notes that the Applicant's university transcript indicates a wide range of business courses, including finance, and that the letters from Valu Add make vague and general statements about "studies in Canada" or "education in Canada". The Respondent argues that such letters do not indicate the employer's knowledge of the program the Applicant wishes to study in Canada.

[22] The Respondent submits that the Applicant had the opportunity to address the Officer's concerns via her email dated December 3, 2019. The Applicant chose not to provide any additional documents in support of her application. The Applicant simply failed to provide sufficient evidence and justification to satisfy the Officer that she is a *bona fide* student and that she would leave Canada at the end of the authorized period (*De La Cruz Garcia v Canada (Citizenship and Immigration)*, 2016 FC 784 at paras 8-12).

[23] The Respondent submits that the Officer did not ignore or misconstrue evidence that squarely contradicted the Officer's conclusions (*Solopova v Canada (Citizenship and*

Immigration), 2016 FC 690 at para 28 [*Solopova*]). The Respondent also submits that the Applicant merely disagrees with the Officer's weighing of the evidence, which is not a ground for judicial review (*Boughus v Canada (Citizenship and Immigration)*, 2010 FC 210 at paras 56-57; *Solopova* at para 33). The Respondent further submits that the written reasons by an administrative body must not be assessed against a standard of perfection.

(3) Analysis

[24] I find that the Officer erred by failing to properly consider the evidence in the record. Accordingly, the Officer's decision is unreasonable. While the Decision being reviewed in this application is the reconsideration, to the extent that I can parse the reasons of the reconsideration from the original refusal, I will do so.

[25] The GCMS notes with respect to the original refusal of the Applicant's study permit application state:

File reviewed. Previous refusal disclosed. 40 yr old female. Albania applying for SP to go to George Brown in Admin Business finance program for three years. Accepted for session starting January 2020. Recently married (less than two months ago). She is a business owner and also works for another company. Overall not satisfied study plan is reasonable [*sic*]. She already has a university degree in business. Taking into consideration the prevailing conditions in home country, and the fact that this kind of program is readily available [*sic*] in the country of residence, I am not satisfied with her motivation for pursuing studies in Cda at this point. This whole application shows that her level of establishment is sufficient to motivate return after temporary stay in Canada.

[26] The GCMS notes regarding the reconsideration request state:

PA sent a reconsideration request. Uses the same argument she had put into her study application. Wants the level of specialisation George Brown college offers. Says she cannot get that in Albania that in Toronto which is the finance centre of Canada she will get [sic] hands on experience in finance. Says she has strong ties in Albania: husband. They have no children. Still not satisfied this is a logical study plan. She says she can't obtain a promotion without the college degree from Canada when she already has a bachelor in business from a University in her country of origin. She sold her apartment [sic] to have the funds to pay for that project. Not logical that someone would sell all of the assets to go study in Canada. Decision remains the same.

[27] The overall finding of the Officer was that the Applicant's study plan was not "logical".

The Officer appears to take issue with the fact that the Applicant already holds a university degree in business. However, the Officer fails to recognize the difference between the Applicant's marketing background and her goals of furthering her career as a senior executive position in the finance industry. The Officer also fails to account for the Applicant's explanation that she wishes to grow her travel agency business by developing her education in finance.

[28] In her statement of interest, the Applicant clearly explained that while she holds a university degree in business administration, it was a specialization in marketing. The Applicant also explained that in Albania, there are no programs that combine business administration and finance. She stated that a Canadian degree would help her career grow by setting her apart from others. Furthermore, the Applicant demonstrated a tangible promotion opportunity for a financial controller position at Valu Add with a letter of offer. Valu Add also provided an additional letter, clarifying that "an education in Finance" is a requirement for the promotion, as the position would require knowledge in "ensur[ing] quality control over financial transactions and

identify[ing] the technical accounting issues”. In the same letter, Valu Add also expressed interest in growing the Applicant’s career, and explained that this was the reason for encouraging the Applicant to complete her education in Canada.

[29] In my view, contrary to the Officer’s inferred finding that the Applicant would be eligible for the promotion with her current education, Valu Add’s letter makes it apparent that further education in “finance” is a prerequisite for the promotion.

[30] With respect to the travel agency business, the Applicant had noted that she faced a roadblock in growing her business due to her lack of professional training and education in business and finance. The Applicant indicated that she wants to pursue the Finance Program to learn how to better manage and grow her travel agency.

[31] The Officer’s reasons lack intelligibility, transparency, and justification. From the Officer’s reasons, I am unable to appreciate which aspects of the proposed study plan were not “logical” or “reasonable”.

[32] The Officer commits a similar error as found in *Aghaalikhani*. The Officer dismisses the Applicant’s rational explanations for her desire to pursue studies in Canada and her demonstrated ties to Albania.

[33] Furthermore, in the November 19, 2019 letter, the Officer concluded that the Applicant would not leave Canada at the end of her stay based on her “family ties in Canada and in [her]

country of residence”. The Officer made this finding notwithstanding the Applicant’s detailed study plan and statement of intent and a description of her ties to Albania. I agree with the Applicant that the Officer erred in making no serious efforts to assess the Applicant’s ties to Albania (*Zhang* at para 22).

[34] For the above reasons, I conclude that the Officer’s reasons are not intelligible, transparent, or justified. Therefore, the Officer’s decision is unreasonable.

B. *Did the Officer breach the duty of procedural fairness?*

(1) Applicant’s submissions

[35] The Applicant submits that the Officer breached her rights to procedural fairness. She argues that the reasons exhibit stereotypical reasoning and generalizations and that she was denied a reasonable opportunity to respond to the Officer’s unanticipated concerns (*Lin v Canada (Minister of Citizenship and Immigration)*, 2004 FC 96 at para 30).

[36] The Applicant submits that the Officer made two credibility findings related to her intent to temporarily remain in Canada. First, without explaining why, the Officer raised a concern about the Applicant’s lack of children. Second, the Officer concluded that it is “not logical that someone would sell all of their assets [*sic*] to go study in Canada”. Due to these findings, the Applicant submits that she should have been notified and given an opportunity to respond (*Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24 [*Hassani*]). The Applicant also states that the second finding was not based in the evidence.

(2) Respondent's submissions

[37] The Respondent submits that the degree of procedural fairness in the context of temporary residence applications is minimal, and visa officers do not have an obligation to advise the applicant of every concern (*Arias Bravo v Canada (Citizenship and Immigration)*, 2010 FC 411 at para 17; *Kamchibekov v Canada (Citizenship and Immigration)*, 2011 FC 1411 at para 26 [*Kamchibekov*]). The Respondent submits that the burden was on the Applicant to satisfy the Officer that her intentions to pursue studies in Canada were *bona fide*.

[38] The Respondent submits that the Officer was not satisfied that the Applicant would leave Canada at the end of her stay. This cannot be equated to the Officer's disbelief of the evidence (*D'Almeida v Canada (Citizenship and Immigration)*, 2019 FC 308 at para 70; *Ibabu v Canada (Citizenship and Immigration)*, 2015 FC 1068 at para 35).

(3) Analysis

[39] I find that the Officer did not breach the duty of procedural fairness. It is well established that the degree of procedural fairness in the context of temporary residence applications, such as a study permit, falls on the lower end of the spectrum (*Kamchibekov* at para 26). The jurisprudence indicates that where a concern arises directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address their concerns. However, such a duty may arise where the "credibility, accuracy or genuine nature of information submitted by the applicant in support of their application is the basis of the visa officer's concern" (*Hassani* at para 24).

[40] I am not persuaded by the Applicant's arguments that the Officer made adverse credibility findings with respect to her family status and financial assets. The Officer noted such factors in assessing the Applicant's ties to her country of residence, Albania. The Officer noted this when assessing whether the Applicant would likely return to Albania after the completion of her studies in Canada. Given that this assessment arose directly from the statutory requirements, the Officer was not obligated to provide the Applicant an opportunity to respond (*Pascal v Canada (Citizenship and Immigration)*, 2017 FC 595 at para 8). Whether such findings were coherent or intelligible goes to the reasonableness of the Officer's decision, which I have already addressed above.

V. Conclusion

[41] The Officer's decision is unreasonable. The Application for judicial review is allowed. There is no question for certification and none arises. There is no order as to costs.

JUDGMENT in IMM-1317-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. There is no question for certification.
3. There is no order as to costs.

"Paul Favel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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