Federal Court  Cour fédérale

**Date: 20220322**

**Docket: IMM-6418-20**

**Citation: 2022 FC 378**

**Ottawa, Ontario, March 22, 2022**

**PRESENT: Mr. Justice Gascon**

**BETWEEN:**

**MUHAMMAD ALI AQEEL ABBAS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The applicant, Mr. Muhammad Ali Aqeel Abbas, is a citizen of Pakistan. He is seeking judicial review of a decision [Decision] rendered on November 27, 2020 by an immigration Officer [Officer] of the Visa Section of the Embassy of Canada in Poland. The Decision

dismissed Mr. Abbas's April 2020 application for a temporary permit to pursue studies in Canada.

[2] The Officer found that Mr. Abbas's study permit application did not meet the requirements set out in subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], and that he was thus not a *bona fide* visitor to Canada. The Officer was not convinced that Mr. Abbas would leave Canada and return to Pakistan at the end of his studies due to the purpose of his visit, his limited employment prospects in that country, his current employment situation and his personal assets and financial status.

[3] Mr. Abbas seeks to have the Decision set aside and to see his case referred back to a different visa officer for redetermination. He claims that the Officer breached the principles of procedural fairness by making veiled credibility findings without offering him an opportunity to respond to the Officer's concerns. Mr. Abbas further contends that the Decision is unreasonable because it lacks adequate justification and is not sufficiently responsive to his submissions and evidence.

[4] For the following reasons, Mr. Abbas's application for judicial review will be dismissed. Having considered the Decision, the evidence before the Officer and the applicable law, I conclude that the Officer did not make any veiled credibility findings but instead was not satisfied with the evidence adduced by Mr. Abbas to meet the applicable legislative and regulatory requirements. In my view, no issue of procedural fairness arises from the treatment of Mr. Abbas's study permit application. I also find that the Decision is reasonable and has the

qualities that make the Officer's analysis logical and consistent in relation to the relevant legal and factual constraints.

## II. Background

### A. *The factual context*

[5] Mr. Abbas was born on October 1, 1998, in Chakwal, Pakistan, where he still resides to this day. He graduated from high school in 2017 with the alleged intention of pursuing higher education in science and engineering. However, Mr. Abbas has not undertaken further studies in this area, nor has he been employed since finishing high school in 2017. Mr. Abbas's mother still lives in Pakistan and he has two brothers who are Canadian permanent residents and reside in Pickering, Ontario.

[6] On April 27, 2020, Mr. Abbas filed a study permit application to Canada with the intention of studying at Seneca College, Toronto, in the Electrical Engineering Technology – Automation program. This Seneca College program is a co-op program that would offer Mr. Abbas the opportunity to study and work in electrical and mechanical engineering. Mr. Abbas, who hopes to have a competitive career in electromechanical engineering, submits that no equivalent program exists in Pakistan. Mr. Abbas was planning to start his studies on September 8, 2020, and to graduate in August 2023.

[7] On September 4, 2020, a few days before the beginning of the school year, Mr. Abbas's study permit application was refused. On September 17, 2020, Mr. Abbas filed an application for

leave and judicial review of that decision. The parties agreed to settle the litigation in late October 2020, and Mr. Abbas's study permit application was therefore reopened by the Canadian immigration authorities. Mr. Abbas was allowed to provide additional submissions and evidence in support of his application.

[8] On November 27, 2020, the Officer rendered the Decision, refusing again Mr. Abbas's study permit application.

**B. *The Decision under review***

[9] The Officer begins the Decision by listing the reasons why it concluded that Mr. Abbas's application fell short of meeting the requirement stated at paragraph 216(1)(b) of the IRPR. This paragraph states that an officer shall issue a study permit to a foreign national if it is established that the foreign national will leave Canada by the end of the period authorized for its stay. In this case, the Officer was not satisfied that Mr. Abbas would leave Canada and return to Pakistan after his studies given : (i) the purpose of his visit; (ii) his limited employment prospects in Pakistan; (iii) his current employment situation; and (iv) his current personal assets and financial status.

[10] The Officer's notes in the Global Case Management System [GCMS], which form part of the Decision, further elaborate on the reasons for refusing Mr. Abbas's application. In these notes, the Officer takes particular notice of the fact that Mr. Abbas has not undertaken further studies nor has he been employed since he graduated from high school three years earlier. This fact, said the Officer, is unusual for a study permit applicant, and raises doubt regarding the

motivation of Mr. Abbas to engage in his studies, and to then research and enter the labour market when he will be back in Pakistan. The Officer concludes that Mr. Abbas's employment prospects are rather weak in Pakistan. The Officer further notes that Mr. Abbas only has one remaining relative in Pakistan (his mother), which weakens the probability that his establishment in his country of origin is sufficient for him to return to Pakistan after his study sojourn to Canada.

[11] Throughout its analysis, the Officer referred to the evidence provided by Mr. Abbas in support of his study permit application, notably: his participation in a two-day workshop in his area of contemplated studies; pictures of Mr. Abbas's projects; the presence of his mother in Pakistan; his expression of interest for a scientific specialty; and his own research about the labour market conditions for electrical and mechanical engineering in Pakistan.

[12] At the end of its analysis, the Officer was not satisfied that Mr. Abbas's purpose for applying for a study permit, his unusually long break in studies, his current unemployment and activities in Pakistan, his future career prospects and economic situation in his home country, and his limited ties to Pakistan were such that they would motivate him to leave Canada upon the expiry of any status granted to him.

## C. *The standard of review*

[13] Mr. Abbas claims that parts of this judicial review application raise concerns of procedural fairness and of natural justice, and should thus be decided on the standard of correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at

para 34). For the reasons discussed in more detail below, I disagree. The Decision should instead be reviewed according to the standard of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[14] There is indeed no dispute that, when reviewing a visa officer's factual assessment of an application for a student visa and an officer's belief that an applicant will not leave Canada at the end of his or her stay, the standard of review is reasonableness (*Marcelin v Canada (Citizenship and Immigration)*, 2021 FC 761 [*Marcelin*] at para 7; *Ali v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 702 at para 8; *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 11; *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 12).

[15] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The reviewing court must therefore consider whether the "decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are borne (*Vavilov* at paras 15, 95, 136).

[16] Such a review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must begin its inquiry by examining the reasons provided with "respectful attention," and seeking to understand

the reasoning process followed by the decision maker to arrive at its conclusion (*Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13).

## III. Analysis

### A. *Did the Officer breach its duty of procedural fairness?*

[17] Mr. Abbas first submits that the Officer failed to provide him with an opportunity to address the concerns about the genuineness of his application, which he claims is contrary to the principles of natural justice. According to Mr. Abbas, the Officer should have offered him an opportunity to address the concerns regarding his intention to study in Canada and to leave the country afterwards to find employment in Pakistan.

[18] Mr. Abbas contends that his case is similar in facts to *Al Aridi v Canada (Citizenship and Immigration)*, 2019 FC 381 [*Al Aridi*]. In that case, the applicant's study permit application had been refused due to the officer's doubt that the applicant would leave Canada at the end of her stay based on her past academic history and economic situation in her current country. The Court found that the decision maker's finding that Ms. Al Aridi was not a *bona fide* visitor was in fact a negative credibility finding on the part of the officer (*Al Aridi* at para 29). Mr. Abbas thus argues that his case is analogous, that the Officer made veiled credibility findings about his application, and that the Officer breached its duty of procedural fairness by failing to give him an opportunity to respond to these credibility concerns.

[19] Despite the able arguments put forward by counsel for Mr. Abbas, I am not persuaded that the Officer's conclusion that Mr. Abbas was not a *bona fide* visitor who would leave Canada upon completion of his studies can be qualified as a negative credibility finding.

[20] When applying for temporary residence to Canada, the onus lies on an applicant to demonstrate that he or she meets the requirements set out in the legislation and regulations regarding the relevant type of visa sought (subsection 11(1) and paragraph 20(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]). One of the requirements for study permits is that the applicant will leave Canada at the end of the period authorized for the stay (paragraphs 179(b) and 216(1)(b) of the IRPR). To satisfy this requirement, an applicant cannot simply assert that he or she will leave Canada; evidence on the record must rather satisfy the decision maker that the applicant will actually do so (*D'Almeida v Canada (Citizenship and Immigration)*, 2019 FC 308 [*D'Almeida*] at para 47; *Zhang v Canada (Citizenship and Immigration)*, 2014 FC 499 at para 8; *Huang v Canada (Citizenship and Immigration)*, 2012 FC 145 at paras 12–13). An applicant who meets the requirements set out in subsection 216(1) of the IRPR will be called, as part of the administrative decision makers' lexicon, a "*bona fide*" applicant.

[21] There was therefore a "positive obligation" on Mr. Abbas to establish that he would leave Canada for Pakistan at the end of his studies in order to be granted a study permit (*Gupta v Canada (Citizenship and Immigration)*, 2019 FC 1270 at para 20, citing *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at para 9). In the case of Mr. Abbas, the Officer was simply not satisfied that the evidence on the record was sufficient to establish that eventuality.

[22] The reference to a *bona fide* concern in the Decision must not be conflated with a credibility concern (*D'Almeida* at para 65; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 517 at para 14). It is simply part of the task of visa officers who must be satisfied, pursuant to paragraph 216(1)(b) of the IRPR, that an applicant will leave Canada following completion of his or her studies. The use of the words *bona fide* is not determinative. In some cases, it can amount to a veiled credibility finding; in other cases, it does not engage issues of credibility. It all depends on the context and on the analysis conducted by the decision maker.

[23] In the case of Mr. Abbas, as pointed out by counsel for the Minister, the Officer repeatedly stated that it was not satisfied that, based on the evidence before it, Mr. Abbas would have the motivation to leave the country and return to Pakistan at the end of his studies. I do not read the Officer's reasons as amounting to veiled credibility findings, or as expressing suspicion or skepticism vis-à-vis Mr. Abbas's submissions. On the contrary, the Officer repeatedly acknowledged and noted the various pieces of evidence submitted by Mr. Abbas in support of his study permit application, such as his attendance at a two-day workshop, his employment research or his pictures. But these were not enough. While the Officer did not expressly refer to the sufficiency of the evidence or did not use the term "sufficient," it is clear that the Officer was not satisfied and convinced that Mr. Abbas had provided the required elements to meet the legislative and regulatory requirements to obtain a study permit. This, in my view, is not a credibility finding but rather a finding of lack of evidence. Stated differently, it was a failure, on the part of Mr. Abbas, to meet the applicable requirements and to demonstrate, on a balance of probabilities, that he would leave Canada at the end of the period authorized for his stay, as set out in subsection 216(1) of the IRPR.

[24] In those circumstances, the Officer was under no obligation to provide an opportunity for Mr. Abbas to address this *bona fide* concern (*Perez Pena v Canada (Citizenship and Immigration)*, 2021 FC 491 [*Perez Pena*] at para 35; *Marcelin* at para 18; *Sharma v Canada (Citizenship and Immigration)*, 2020 FC 381 at para 32). It is not disputed that the case law clearly distinguishes between adverse findings of credibility and adverse findings regarding the insufficiency of the evidence: "[w]here the visa officer raises doubts about the credibility, truthfulness or authenticity of the information submitted in support of an application, it is incumbent upon the visa officer to provide the applicant with an opportunity to resolve those doubts. On the other hand, if the decision is based on the sufficiency of the evidence presented by the applicant, or on the failure to meet the statutory requirements, the visa officer has no obligation to inform the applicant" (*Perez Pena* at para 35). A study permit applicant must satisfy all requirements, and visa officers are not required to inform an applicant of concerns regarding the sufficiency of the materials in support of the application (*Al Aridi* at para 20). Here, Mr. Abbas did not satisfy all requirements, and the Officer was under no duty to inform him of the weaknesses in his application.

[25] I am mindful of the fact that some cases have recognized that negative *bona fide* findings can sometimes amount to veiled credibility findings reflecting concerns about the genuineness of an application (*Al Aridi* at para 29; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 [*Patel*] at para 12). However, these cases reflect particular underlying factual circumstances and can be distinguished from the case at bar. For example, in *Al Aridi*, Justice Walker determined that the applicant had submitted sufficient evidence of a degree of establishment to their current home country, noting that the family-owned properties, that they could count on a stable

employment situation and that they had relatives living there (*Al Aridi* at paras 27–29). The officer in *Al Aridi* gave no reasons for discounting this degree of establishment, and it was thus open to the Court to conclude, on the facts of that case, that the officer had made a "veiled credibility finding" (*Al Aridi* at para 29). Mr. Abbas's situation is significantly different from both *Al Aridi* and *Patel*, given that he has not undertaken further studies nor been employed for three years, that his siblings live outside Pakistan, and that he does not appear to have assets or strong ties in Pakistan.

[26] In light of the foregoing, I am not persuaded that the Officer made a veiled credibility finding. In sum, the Officer's findings arose from the lack of evidence on the record and the failure to meet the requirements under the IRPA and the IRPR. In such a situation, the Officer was under no obligation to offer Mr. Abbas the opportunity to clarify the issues arising from his application.

## B. ***Did the Officer err by failing to provide justifiable, intelligible and transparent reasons for the Decision?***

[27] Mr. Abbas further contends that the Decision provides no insight into the Officer's reasoning process and is therefore unreasonable for lack of justification, transparency and intelligibility (*Vavilov* at para 99). Mr. Abbas takes particular issue with the weight accorded by the Officer to the three-year gap between his graduation from high school and the anticipated start of his studies at Seneca College, in comparison to the little weight given to his stated purpose of study in Canada. The Officer, says Mr. Abbas, did not explain why it rejected the stated purpose of study. Mr. Abbas argues that administrative decisions must be both justifiable

in their outcome and justified by their reasons (*Vavilov* at para 42). These reasons must be "clear, precise and intelligible" and must inform the applicant of the underlying rationale for the decision (*Canada (Citizenship and Immigration) v Jeizan*, 2010 FC 323 at para 17).

[28] I am not persuaded that the Decision is not sufficiently justified or that the reasons do not allow Mr. Abbas to understand the rationale for the conclusion reached by the Officer.

[29] On the question of the sufficiency and adequacy of reasons, the jurisprudence of this Court is clear that the obligation to give reasons for a decision on a temporary resident visa application is minimal due to reasons of practical efficiency (*Marcelin* at para 9; *Zamor v Canada (Citizenship and Immigration)*, 2021 FC 479 at para 22; *Nimely v Canada (Citizenship and Immigration)*, 2020 FC 282 [*Nimely*] at para 7; *Hajiyeva v Canada (Citizenship and Immigration)*, 2020 FC 71 [*Hajiyeva*] at para 6). This is in line with *Vavilov*, which states that the "context" in which an administrative decision is rendered must be taken into account (*Vavilov* at para 94; *Hajiyeva* at para 6). Additionally, it bears reminding that visa officers have considerable expertise in hearing and determining visa applications, and this requires the reviewing court to accord them a high degree of deference on evidentiary issues (*Mohammadzadeh v Canada (Citizenship and Immigration)*, 2022 FC 75 at paras 18–19; *Nimely* at para 7).

[30] Mr. Abbas's arguments are grounded in his criticism of the Officer's assessment of the evidence submitted in this case. However, on judicial review, a reviewing court must not re-weigh and reassess the evidence brought before the decision maker. A reviewing court is only

permitted to interfere with factual findings of an administrative decision maker in exceptional circumstances (*Vavilov* at para 125; *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55). As long as all the evidence has been properly examined, the question of the weight remains entirely within the expertise of the visa officer. This is the case here. This is not a situation where the administrative decision maker has ignored the evidence on the record and the general factual matrix that bears on its decision, or "fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at para 126).

[31] Following *Vavilov*, the reasons given by administrative decision makers have taken on a greater importance and are now the starting point for the analysis. They are the primary mechanism by which administrative decision makers show that their decisions are reasonable, both to the affected parties and to the reviewing courts (*Vavilov* at para 81). They serve to state "how and why a decision was made," demonstrate that "the decision was made in a fair and lawful manner," and shield against "the perception of arbitrariness in the exercise of public power" (*Vavilov* at para 79). In short, it is the reasons that establish the justification for the decision. Here, I am of the view that the Officer's reasons in the GCMS notes provide a transparent and intelligible justification for the Decision (*Vavilov* at paras 81, 136). They demonstrate that the Officer considered the evidence adduced by Mr. Abbas, and that it followed a rational, coherent and logical reasoning in its analysis.

## IV. Conclusion

[32] For the above-mentioned reasons, Mr. Abbas's application for judicial review is dismissed. The Decision constituted a reasonable outcome based on the law and the evidence, and it has the requisite attributes of transparency, justification and intelligibility. According to the reasonableness standard, it is sufficient for the Decision to be based on an inherently coherent and rational analysis, and to be justified having regard to the legal and factual constraints to which the decision maker is subject. Moreover, no issue of procedural fairness arises as the Officer did not make any veiled credibility findings in this case.

[33] As the Officer stated in the Decision, and as counsel for the Minister reiterated at the hearing before this Court, Mr. Abbas is free to reapply for a study permit if he feels he can meet the applicable requirements and address the concerns expressed by the Officer.

[34] Mr. Abbas has named the Minister of Immigration, Refugees and Citizenship as the respondent in this matter. The correct respondent is the Minister of Citizenship and Immigration (*Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 at subsection 5(2); IRPA at subsection 4(1)). Accordingly, the respondent in the style of cause is amended to the Minister of Citizenship and Immigration.

[35] There are no questions of general importance to be certified.

**JUDGMENT in IMM-6418-20**

**THIS COURT'S JUDGMENT is that**:

1. This application for judicial review is dismissed, without costs.

2. No question of general importance is certified.

3. The style of cause is amended to name the Minister of Citizenship and Immigration as the respondent.

"Denis Gascon"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-6418-20 |
| **STYLE OF CAUSE:** | MUHAMMAD ALI AQEEL ABBAS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD BY VIDEOCONFERENCE |
| **DATE OF HEARING:** | MARCH 16, 2022 |
| **JUDGMENT AND REASONS:** | GASCON J. |
| **DATED:** | MARCH 22, 2022 |

**APPEARANCES:**

| | |
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| Bradley Bechard | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| Attorney General of Canada<br>Toronto, Ontario | FOR THE RESPONDENT |