Federal Court Cour fédérale

Date: 20220412

Docket: IMM-3967-21

Citation: 2022 FC 530

Toronto, Ontario, April 12, 2022

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

PEACHES SHEENA MONTEZA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of a visa officer [Officer] refusing the Applicant's application for a study permit pursuant to subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] [Decision]. The Officer was not satisfied that the Applicant would leave Canada at the end of her stay based on the purpose of her visit and her family ties in Canada and in her country of residence.

[2] For the reasons set out below, I find that the Decision was not reasonable and that the application should be allowed.

I. Background

[3] The Applicant is a citizen of the Philippines. She completed her Bachelor of Science in Management Accounting in 2006 and has been working as an accountant in the United Arab Emirates [UAE] since 2012. She is legally separated and has a teenage daughter that lives in the Philippines with her mother. The Applicant has lived separate from her daughter since 2012.

[4] The Applicant had a previous temporary resident visa [TRV] application refused. She subsequently obtained a multiple-entry TRV to Canada. She has a lengthy travel history, including a number of visits to Canada over the past five years.

[5] The Applicant applied for a Canadian study permit in February 2020 to take a one-year post-graduate program at Centennial College in Strategic Management –Accounting [Program]. The request was refused in August 2020. She sought judicial review of the decision. The matter was settled in November 2020 on terms that provided for the application to be re-determined by a different officer after allowing the Applicant to make further submissions. Further submissions were filed, but the application was again refused on June 4, 2021.

[6] The Officer concluded that the Applicant would not leave Canada at the end of her stay based on the purpose of her visit and on her family ties in Canada and in her country of

residence. The reasons provided in the Global Case Management System [GCMS] notes stated that:

> ... Applicant's residence status in the UAE is temporary and tied to her employment; once she departs her residency will cease. Letter from employer stating that the applicant can return to the company in a different position after her studies; however, no indication that this is a promotion or higher salary as a result. Applicant has weak professional and economic ties to COR and home country. Study plan is vague and general. She has been working as an accountant in the UAE since 2012. Applicant states she wishes to enhance her professional skills and personality and obtain quality education; however, limited explanation regarding how this program differentiates from previous degree in management accounting which is a higher level than the one she is proposing to study. I am not satisfied that the intended studies make sense given the significant cost and the applicant's previous study/work history. Study plan submitted does not outline a clear career path for which such educational program would be of benefit. The documents provided do not show that the applicant is well established. I am not satisfied that the applicant would depart Canada at the end of a period of stay authorized. Application refused.

II. Issues

[7] The following issues are raised by this application:

1. Did the Officer err in assessing the purpose of the Applicant's visit?
2. Did the Officer err in assessing the Applicant's family ties?

III. Standard of review

[8] The standard of review for both issues is reasonableness: *Musadiq v Canada (Citizenship and Immigration)*, 2020 FC 316 [*Musadiq*] at para 10; *Nimely v Canada (Citizenship and Immigration)*, 2020 FC 282 [*Nimely*] at para 5; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 [*Patel*] at para 8. None of the situations that would rebut the presumption that all

administrative decisions are reviewable on a standard of reasonableness are present: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 9-10.

[9] In this case, the Court must start from an understanding that the decision of a visa officer on a study permit is entitled to significant deference: *Musadiq* at para 38; *Nimely* at para 7. Extensive reasons are not required given the high volume of applications visa officers are required to process: *Nimely* at para 7. However, the reasons must still be responsive to the submissions and evidence before the decision-maker: *Patel* at paras 15 and 17.

[10] A reasonable decision is "based on an internally coherent and rational chain of analysis" that is "justified in relation to the facts and law that constrain the decision maker": *Vavilov* at paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A decision is reasonable if, when read as a whole and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 85, 91-95, 99-100.

IV. Analysis

A. *Did the Officer err in assessing the purpose of the Applicant's visit?*

[11] The Applicant argues that the Decision is unreasonable because it is based on findings of fact that are not supported by the evidence submitted. She identifies three proposed errors in the Officer's assessment of the purpose of her visit: 1) the Officer's reliance on the Applicant's previous degree being at a higher level than the one she is proposing to study; 2) the Officer's requirement that the Applicant explain how the Program differentiates from her previous degree;

and 3) the Officer's claim that the study plan is "vague and general" and does not outline a clear career path for which the Program would be of benefit. I agree with each of the Applicant's assertions.

[12] The Officer states that the Applicant has provided "limited explanation regarding how this program differentiates from [her] previous degree in management accounting which is a higher level than the one she is proposing to study." However, this statement runs contrary to the nature of the Program and the Applicant's submissions in her study plan.

[13] First, there is no basis to state that the Applicant's former degree program is at a higher level than the proposed Program as the two programs are not related. The new Program is a post-graduate certificate course for students who have already graduated with a degree, designed for students to update and expand on existing skills. As the Applicant explains in her study plan, she is looking to "polish and contemporize" her skill-set. The characterization of the Program as being at a lower level than the Applicant's former degree disregards the basis for the Program.

[14] Second, the Officer imposes a requirement for the Applicant to differentiate the Program from her previous degree when her objective is instead to study in the same area and to update her skills and "deepen" her understanding and knowledge in her chosen field of study. The Applicant has been working in her field since 2006. She is seeking to enhance her knowledge in areas such as computerized accounting systems and software and in managerial strategy. It is a logical progression for the Applicant to want to pursue further studies in the same field: *Patel* at

para 20. It was not reasonable for the Officer to require the Applicant to differentiate between the Applicant's former degree and the Program considering the Applicant's objectives.

[15] The Respondent argues that in any event, the Applicant has not sufficiently described how the Program will upgrade her existing university credentials. It suggests that greater detail on the Program and a university transcript from the Applicant's past degree should have been provided, although neither were requested by the Officer. The Respondent cites the decision in *Musasiwa v Canada (Citizenship and Immigration)*, 2021 FC 617 [*Musasiwa*] as support for its argument. In *Musasiwa*, the applicant provided no information on the content of the new program she intended to pursue. In this case, the Applicant refers to specific courses and skills she is seeking to update (i.e., computerized accounting systems and software, and management strategies and practices). The Officer does not engage with this evidence nor indicate that more course specific detail is lacking.

[16] While it is not the role of the Court to reweigh the evidence and to substitute its own conclusions for those of visa officers (*Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 [*Penez*] at para 16), the Court may intervene where factual findings are made without an acceptable basis or where, as noted above, an Officer's analysis appears illogical in the face of the evidence or unresponsive to the evidence (*Penez* at para 17; *Patel* at paras 15 and 17). The Officer's analysis suffers from this deficiency.

[17] The Officer's further finding that the study plan is "vague and general" and does not "outline a clear career path for which such educational program would be of benefit" also falls

into this category as it unreasonably disregards aspects of the study plan and the evidence from the Applicant's employer.

[18] The Applicant provides two letters from her employer. The first letter indicates that she pursued the Program upon recommendation from her employer that she make her qualifications and training contemporary and relevant to the industry. The letter indicates that the employer supports the Applicant's enrollment in the Program and that she shall maintain employment upon her return. The second letter again states that the company has no objection to the proposed study plan and that the company looks forward to the Applicant rejoining them where she "will gladly take on a new role as part of [the company's] strategy team." The employer states that they are of the view that the knowledge and experience gained through the program will "add great value to the organization."

[19] The Respondent argues that there is no evidence that the Program will lead to advancement with her employment. However, I do not consider a promotion to be necessary to establish a benefit.

[20] As explained by the Applicant, the Program "allows students to gain a perspective on the organization techniques required for executing strategic decisions in accounting". She refers to developing leadership skills and knowledge of strategies and economic forecasting, which will assist her in her work environment. She also refers to gaining advanced skills in computerized accounting systems and software and acquiring intangible knowledge from the international study experience that will enhance her market relevance. In my view, common sense dictates that

these objectives will benefit the Applicant in her workplace as expressly stated by the employer. As noted in *Adom v Canada (Citizenship and Immigration)*, 2019 FC 26 at paragraph 16, it is not the role of the Officer to act as career counsellor and to determine if the intended studies will enhance the applicant's role. It was unreasonable for the Officer to require there to be a promotion or higher salary to consider there to be a benefit to the Program.

[21] For all of these reasons, I consider the Officer to have erred in their analysis of the purpose of the Applicant's visit. While this finding is sufficient to allow this judicial review application, in order to streamline the further redetermination that will be ordered, I will also indicate why I consider the Officer to have erred in their assessment of the Applicant's family ties.

B. *Did the Officer err in assessing the Applicant's family ties?*

[22] The refusal letter states that the Officer is not satisfied that the Applicant will leave Canada at the end of her stay based on the Applicant's family ties in Canada and in her country of origin. However, apart from noting that the Applicant has a daughter in the Philippines, the Applicant's family ties are not discussed in the GCMS notes.

[23] The Applicant has no ties to Canada and has travelled to Canada in the past, without contravening immigration laws. The Applicant's entire immediate family is in the Philippines. Her personal statement indicates her intention to return to work in the UAE to support her daughter and to make frequent visits to her daughter in the Philippines. The Officer does not

address any of these facts in the reasons, instead focussing on the Applicant's professional and economic ties. It is unclear how this analysis fits with the overall category of refusal.

[24] As stated in *Menkem Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596 [*Afuah*] at paragraph 17, although efficiencies are gained in high-volume decision-making through form letters and check-boxes, this does not mean that those letters and boxes can be ignored as a result. Similar to this case, in *Afuah*, the officer cited the applicant's family ties as a reason for the refusal of the study permit, but there was no substantive discussion of the applicant's family ties in the GCMS notes.

[25] The Officer's failure to fully address the Applicant's ties to the Philippines and explain how she has ties to Canada in the absence of any evidence to that effect, was unreasonable.

[26] Further, even if the Officer could consider the Applicant's economic and professional ties, there are difficulties with the Officer's analysis. The Officer's conclusion that the Applicant's savings and salary is modest compared to the living costs in the UAE is not supported on the record. Similarly, the conclusions reached on professional ties are not responsive to the Applicant's evidence. The Officer states that the Applicant's status in the UAE will be lost upon her departure as it is tied to her employment. However, this statement ignores the letters from the Applicant's employer stating that the Applicant will continue working while she is studying, and will be offered a new role on her return.

[27] It is therefore also my view that the Officer erred in their analysis of the Applicant's family ties.

V. Conclusion

[28] The application is allowed and will be remitted back to another officer for redetermination. As the study plan is based on program admission, it is encouraged that the redetermination proceed in a timely manner to avoid the necessity for repeated requests for deferral into the accepted program.

[29] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-3967-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed and the study permit application will be remitted back to another officer for redetermination.

2. No question of general importance is certified.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Luke McRae	FOR THE APPLICANT
Rachel Hepburn Craig	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bondy Immigration Law Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT