Federal Court  Cour fédérale

Date: 20220614

Docket: IMM-6008-21

Citation: 2022 FC 886

Ottawa, Ontario, June 14, 2022

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

OMER HAMID

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant seeks judicial review of the decision of a visa officer dated July 18, 2021 refusing his study permit application pursuant to section 72(1) of the *Immigration and Refugee Protection Act,* SC 2001 c 27 [IRPA].

[2] For the reasons that follow, the application is dismissed.

II. **Background**

[3] The Applicant is a twenty-nine year old male citizen of Pakistan. He obtained a bachelor's degree in 2016 in Lahore. He remained in Pakistan until August 2019, working as a sales consultant with two separate marketing companies.

[4] In August 2019, Mr. Hamid relocated to the United Arab Emirates (UAE) with his sister. He began working as an account manager with a marketing company which allowed him to obtain an Emirati residence permit. The permit was issued on December 15, 2019 and is valid until December 14, 2022.

[5] In October 2020, Mr. Hameed was accepted into a one-year International Business Management Program at Centennial College in Toronto. He applied for a study permit the following month.

[6] The Centennial College program was expected to begin on January 18, 2021. With his application for a study permit, Mr. Hamid included proof of funds available for the program from his sister, Fatima Hamid, and proof of payment of his first semester tuition fees. He explained that he sought to "upgrade his skills to match modern workforce requirements" so that he could "return to the UAE and work with big multinational companies at a good position."

[7] The application was refused on July 18, 2021.

III. **Decision under Review**

[8] The visa officer was not satisfied that the Applicant would leave Canada at the end of the authorized period, as required by section 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. The officer made findings in respect of the Applicant's family ties, the purpose of his visit, and his immigration status in reaching the decision.

[9] In the Global Case Management System (GCMS) notes which serve as reasons for the decision, the officer assessed that:

- The Applicant is single and mobile;
- Because his residency permit in the UAE is tied to his employment, he would need to be sponsored again in order to return to the UAE;
- The Applicant gave a poor rationale for this course of study in his study plan, given the eight year gap in his education and significant cost of the program; and
- He has weak professional and economic ties to his home country (Pakistan) and to his country of residence (UAE).

IV. **Issues and Standard of Review**

[10] The Applicant raises the following issues:

1. Was the officer's decision reasonable?
2. Was there a breach of procedural fairness?

[11] The parties submit and I agree that the substance of the officer's decision is to be reviewed on the standard of reasonableness per *Canada v Vavilov*, 2019 SCC 35 [*Vavilov*]. As discussed by Justice Roussel in *Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552, at para 13, while it is not necessary to have exhaustive reasons for a decision concerning a visa application to be reasonable, given the volume of applications that must be processed each day, the decision must still be based on an internally coherent and rational chain of analysis and be justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85). It must also bear "the hallmarks of reasonableness — justification, transparency and intelligibility" (*Vavilov* at para 99).

[12] In *Ocran v Canada (Minister of Citizenship and Immigration)*, 2022 FC 175 [*Ocran*] at para 16, Justice Little added the following observation:

> I only add that in order to intervene, the court must find an error in the decision that is sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156, at para 36; *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157, at para 13.

[13] The Supreme Court in *Vavilov* and the Federal Court of Appeal in *Mason* reminded reviewing courts that we should not be too hasty to find material flaws. Respect for the role of the administrative decision maker requires a posture of restraint on review.

[14] The standard applicable to issues of procedural fairness is whether, "having regard to all of the circumstances and focusing on the nature of the substantive rights involved and the consequences for the individual affected," the procedure followed by the decision-maker was

fair: *Canadian Pacific Railway Company v Canada (Transportation Agency)*, 2021 FCA 69 at paras 46-47. This standard involves no deference to the decision-maker.

V. **Analysis**

A. *Was there a breach of procedural fairness?*

[15] The Applicant contends, relying on *Bajwa v Canada*, 2017 FC 2020 [*Bajwa*], that the officer drew a veiled credibility finding in the assessment of his evidence and, therefore, he ought to have been given an opportunity to respond to the officer's concerns.

[16] The officer made no explicit reference to the veracity or reliability of the Applicant's evidence nor does the applicant point to any instances in which it could be reasonably be said that the officer made an implicit finding of this type.

[17] In my view *Bajwa* is distinguishable as in that case the officer made findings that support letters, tendered by the applicant, were not authentic and made a referral under s 44(1) of the *IRPA* on the basis of misrepresentation. The officer clearly doubted the *bona fides* of the applicant's status as a temporary worker and the court's reasoning on procedural fairness was informed by that factor.

[18] This case is analogous to the circumstances in *Ocran*, above, and in *Patel v Canada (Minister of Citizenship and Immigration)* 2020 FC 517 [*Patel*] at paras 11-14. In *Ocran*, Justice Little stated at paras 51-52 that the jurisprudence of this Court did not support the proposition

that a visa officer must alert an applicant to concerns about the sufficiency of their evidence and give them an opportunity to respond. In *Patel* Justice Norris wrote:

> [13] Foreign nationals wishing to enter Canada must rebut the presumption that they are immigrants (*Danioko v Canada (Citizenship and Immigration*), 2006 FC 479 at para 15; *Ngalamulume* at para 25). Applicants for study permits must therefore establish, among other things, that they will leave Canada at the end of the requested period for the stay: see section 216(1)(b) of the IRPR.
>
> [14] The officer concluded that the applicant had failed to establish that he met the legal requirements for obtaining a study permit. The onus was on the applicant to establish his entitlement to a study permit with sufficient evidence. The officer was not obliged to warn him about the deficiencies of his application before making a decision when those deficiencies related to legal preconditions that must be met for the application to succeed as opposed to matters he could not reasonably have anticipated (*Solopova v Canada (Citizenship and Immigration),* 2016 FC 690 at para 38; *Yuzer* at para 16; *Al Aridi v Canada (Citizenship and Immigration),* 2019 FC 381 at para 20; *Majdalani v Canada (Citizenship and Immigration),* 2015 FC 294 at para 34). I agree with the respondent that, in the context of this case, the officer's use of the term "bona fide student" does not engage issues of credibility (cf. *D'Almeida v Canada (Citizenship and Immigration),* 2019 FC 308 at para 65). There was no breach of the requirements of procedural fairness.

[19] Here, the officer considered the applicant's evidence and found that it did not rebut the presumption that a person seeking entry into Canada will remain in Canada as an immigrant. This finding relates to the legal requirements for a study permit under the IRPA and the IRPR, and as such, there was no duty to raise this factor with the Applicant.

B. *Was the decision reasonable?*

[20] The essence of the Applicant's arguments on the substantive merits of the decision is that the officer ignored evidence that the Applicant had strong economic and professional ties to the UAE and Pakistan and evidence that the sole purpose of his trip to Canada was to study.

[21] As the Respondent notes, a visa officer is not required to refer to every piece of evidence in their reasons. The failure to consider evidence may lead to the decision being set aside only where the non-mentioned evidence is critical, the evidence contradicts the tribunal's decision and the reviewing court determines by inference that its omission means the tribunal did not have regard to the material before it: *Khir v Canada (Minister of Citizenship and Immigration)*, 2021 FC 160 at para 48 [*Khir*].

[22] In *Khir*, at para 49, Justice Little observed that the *Cepeda-Gutierrez* principles and the principles for reasonable and responsive justification are largely the same:

> [49] This analysis shows that the Court's assessment when it applies the *Cepeda-Gutierrez* principles is substantially the same as when it applies the standard set out in *Vavilov*, especially at paras101 and 126. Both focus on the reasoning process used by the decision maker. Both involve a permissive conclusion that the decision may be unreasonable through an assessment of the importance of the erroneous factual finding to the overall decision and the probative value of the ignored or misapprehended evidence to that factual finding. In *Cepeda-Gutierrez* parlance, the decision may be set aside if the non-mentioned evidence is critical, contradicts the decision and the reviewing court infers that the decision maker must have ignored the material before it. In *Vavilov* language, the Court may lose confidence in the decision if the factual finding was untenable in light of the factual constraints in the evidence, or if the decision maker fundamentally misapprehended or failed to account for the evidence in reaching

> its decision. (I note that the quoted indicia of an unreasonable decision in *Vavilov* may well capture circumstances not covered by the *Cepeda-Gutierrez* cases, for example if there was no evidence at all to support a decision maker's decision or factual finding.)

[23] The officer in the present matter was not required to refer to every piece of evidence and the evidence that was not specifically referred to does not amount to critical or contradictory evidence capable undermining the decision. In particular, aside from a brief reference in his study plan and mention of his family member in Pakistan, the Applicant did not provide evidence of his establishment in Pakistan or the UAE. Supporting letters from his sister and father were similarly brief and referred only to the funds available for his tuition costs. No details were provided to support the Applicant's submission that he had a very close-knit relationship with either country.

[24] It was open to the officer to find that the proposed studies were not reasonable given the Applicant's career path to that point and that his study plan was not well developed. It is not clear from his visa application, for example, how a one year certificate program at an Ontario college would constitute the post graduate educational qualification he asserts is highly valued by UAE and Pakistan employers. However, an alternative finding may have been open to the officer on the evidence submitted, but it is not the role of the Court on judicial review to substitute its view for that of the decision maker.

[25] Echoing the words of Justice Little in *Ocran* at para 34, I cannot conclude that the officer fundamentally misapprehended the evidence, reached an untenable result, or ignored or failed to account for critical evidence in the record that runs counter to the conclusion.

VI. **Conclusion**

[26] Having considered the Applicant's written and oral submissions, I am satisfied that his application must be dismissed. There is no merit to his argument about procedural fairness. It was reasonable for the officer to conclude based on the Applicant's employment history, his weak professional, economic and family ties to the UAE and to Pakistan, the vagueness of his motivation for his planned course of study and the fact that he is single and mobile that he would be unlikely to leave Canada at the end of his stay.

[27] For those reasons the application is dismissed. No serious questions of general importance were proposed and none will be certified.

JUDGMENT IN IMM-6008-21

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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