Federal Court Cour fédérale

Date: 20220822

Docket: IMM-6527-20

Citation: 2022 FC 1220

Ottawa, Ontario, August 22, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

NANDIPA JORDAN MUNDANGEPFUPFU
RORISANG LISA-RAYE MUNDANGEPFUPFU, BY HER LITIGATION GUARDIAN
NANDIPA JORDAN MUNDANGEPFUPFU

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a mother, Nandipa Jordan Mundangepfupfu ("Ms. Mundangepfupfu"), and her minor daughter. Ms. Mundangepfupfu applied for a study permit to study at Humber College in Toronto. She also filed a related study permit application for her

daughter. The study permit applications were refused on December 15, 2020 by an officer at the High Commission of Canada, Visa Section, in South Africa ("Officer"). Ms. Mundangepfupfu challenges the refusal in this judicial review.

[2] Ms. Mundangepfupfu has raised a number of arguments challenging the Officer's decision. Overall, I find that the Officer ignored central evidence in the application and relied on general country conditions that were not responsive to Ms. Mundangepfupfu's particular circumstances.

[3] Based on the reasons set out below, I grant this application for judicial review.

II. Background

[4] Ms. Mundangepfupfu is a 28-year-old citizen of Zimbabwe. She is a single mother of a daughter who is approximately eight years old. Ms. Mundangepfupfu completed her secondary education and a business management course in South Africa. She returned to Zimbabwe in March 2018 and has resided there since that time. She lives in her grandmother's home, rent-free and mortgage-free, with her daughter. Her two siblings are studying in the United Kingdom; her mother has passed away; and her father, with whom she has not lived in the same country for over 16 years, is a permanent resident in Canada. Ms. Mundangepfupfu has a close and father-daughter-like relationship with her uncle (her father's brother), who lives in Zimbabwe and has committed to financially supporting her education in Canada.

[5] Ms. Mundangepfupfu has been attempting to study in Canada since 2018. Her first application for a study permit was to study in a diploma program in business management in Toronto. This application was refused. She applied again in November 2018, attempting to address the officer's concerns. This second application was refused in January 2019.

[6] Ms. Mundangepfupfu did not challenge the second refusal. Instead, in September 2019, she applied for a study permit to study at a different program where she could combine her interests in fashion and business. She was accepted to study at a two-year Fashion Arts and Education program at Humber College in Toronto. This study permit application was refused in November 2019 because the officer was not satisfied that Ms. Mundangepfupfu would leave Canada at the end of her authorized stay. The officer raised concerns in relation to: establishment and employment prospects in Zimbabwe, ties to Zimbabwe versus ties to Canada, country conditions in Zimbabwe, and speculation about her uncle's other potential financial obligations.

[7] Ms. Mundangepfupfu challenged the November 2019 refusal in this Court. Prior to a decision on leave, the parties agreed that the refusal should be set aside and the matter should be remitted back to the visa office in South Africa for redetermination by a different officer. Ms. Mundangepfupfu was given an opportunity to file further submissions and evidence, which she filed in October 2020.

[8] On December 15, 2020, Ms. Mundangepfupfu's study permit and the related study permit application for her minor daughter were refused. It is this December 2020 decision that is under review in this judicial review. The Officer refused the applications because they were not

satisfied that Ms. Mundangepfupfu and her daughter would return to Zimbabwe at the end of their authorized stay in Canada.

III. Issues and Standard of Review

[9] The key issue on judicial review is whether the Officer unreasonably determined that they were not satisfied that the Applicants would leave Canada at the end of their authorized stay. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

[10] In *Vavilov*, the Supreme Court of Canada described the reasonableness standard as a deferential but nonetheless "robust form of review," where the starting point of the analysis is the decision-maker's reasons (*Vavilov* at paras 13 and 84). The Supreme Court of Canada described a reasonable decision as "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). Administrative decision-makers must ensure that their exercise of public power is "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

[11] In evaluating the reasonableness of a decision, a reviewing court must consider the decision's institutional context (*Vavilov* at paras 91 and 103). Visa officers are responsible for considering a high volume of study permit applications. While extensive reasons are not

required, an officer's decision must be transparent, justified, and intelligible (*Vavilov* at para 15). There needs to be a "rational chain of analysis" so that a person impacted by the decision can understand the basis for the determination (*Vavilov* at para 103; see also *Patel v Canada (Minister of Citizenship and Immigration)*, 2020 FC 77 at para 17 [*Patel*]; *Samra v Canada (Minister of Citizenship and Immigration)*, 2020 FC 157 at para 23; and *Rodriguez Martinez v Canada (Minister of Citizenship and Immigration)*, 2020 FC 293 at paras 13–14).

[12] Ms. Mundangepfupfu also raised a procedural fairness concern with respect to the Officer's reliance on their own research into the country conditions in Zimbabwe. I have not needed to address the procedural fairness issue in my reasons because I have found that the decision needs to be set aside on other grounds.

IV. Analysis

[13] The requirement that an officer be satisfied that a person applying to study in Canada will not overstay the period authorized for their stay is set out in subsections 11(1) and 20(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and in subsection 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. *IRPA* also provides that an applicant's intention to apply for permanent status cannot be used as a basis to find that they will overstay the period authorized for their temporary stay in Canada. (The concept of "dual intent" is set out in subsection 22(2) of *IRPA*).

[14] The sole basis of the Officer's refusal of the Applicants' study permit applications was the Officer's view that Ms. Mundangepfupfu and her daughter would not "leave Canada at the

end of the authorized stay." Several factors informed the Officer's refusal: 1) country conditions in Zimbabwe; 2) the Applicants' limited family ties in Zimbabwe; 3) the Applicants' limited economic establishment in Zimbabwe; and 4) doubts about the study plan. With respect to each of these factors, I find that the Officer either ignored or mischaracterized the evidence before them and/or failed to justify their findings with transparent and intelligible reasons.

A. *Country conditions in Zimbabwe*

[15] A significant portion of the Officer's decision focused on country conditions in Zimbabwe. The Officer relied on a few articles from their own research from 2018 to 2019 and set out a long list of disjointed facts from these articles relating generally to economic and political instability in Zimbabwe. The relevance of some details is unclear. For example, the Officer noted that there was a cholera outbreak caused by sewage leaking from broken pipes in which at least 30 people had died.

[16] There is no connection made between this list of disjointed statements relating to country conditions and the personal situation of Ms. Mundangepfupfu. The only connection made is to state the ultimate conclusion that "considering current political and economic situation in home country as detailed above, I am not satisfied that the PA [Principal Applicant] will leave Canada at the end of the authorized stay as per R216." There is no explanation as to how these general facts on a wide variety of political and economic issues result in the conclusion that Ms. Mundangepfupfu would not return to Zimbabwe at the end of her authorized stay.

[17] The Respondent pointed to the length of the Officer's reasons as an indicator of thoroughness of the review. Much of the length of the reasons was a recitation of these disjointed country condition statements as I have noted above. This Court has explained that it is not the length of the reasons that signifies adequate justification; it matters whether the reasoning is explained in an intelligible and transparent way (*Patel* at paras 15-16).

[18] The personal circumstances of Ms. Mundangepfupfu were not considered. It is not clear how the country conditions set out by the Officer would affect Ms. Mundangepfupfu, given her living conditions and family support that were described in her applications. The Officer failed to meaningfully account for and respond to key issues and evidence raised by the Applicants, as required (*Vavilov* at paras 127-128). I agree with the Applicants that this kind of boilerplate recitation of country conditions without an application to the personal circumstances of an applicant could provide the basis for refusing every application for temporary resident status made by a citizen of Zimbabwe. This approach is unreasonable.

B. *Limited economic establishment in Zimbabwe*

[19] The Officer relied on their determination that Ms. Mundangepfupfu had limited economic establishment in Zimbabwe to find that she would likely overstay the period authorized for her to stay in Canada. I find that this determination was unreasonable because the Officer ignored evidence, mischaracterized evidence, and relied on irrelevant factors.

[20] Ms. Mundangepfupfu was straightforward in her evidence, stating that she currently had limited employment prospects in Zimbabwe. She explained that her intention was to leverage her

education into employment, and in particular, she hoped to create a fashion business in Zimbabwe. She hoped to be able to do this either following her fashion and business diploma at Humber College or after obtaining a Master of Business Administration.

[21] Ms. Mundangepfupfu has a home to go back to in Zimbabwe where she has been living for years, rent-free and mortgage-free, without economic difficulty because of her family's financial situation and support. She explained in her affidavit that she will be able to return to this home when she returns to Zimbabwe. The Officer did not reference this part of her evidence that is directly relevant to her economic establishment in Zimbabwe. Moreover, the Officer did not address Ms. Mundangepfupfu's submission that, like many young students, she was seeking further education to improve her potential for employment and further study. Ms. Mundangepfupfu's family support and her economic situation were not considered by the Officer, though they were highly relevant in these circumstances to Ms. Mundangepfupfu's economic establishment.

[22] I also agree with the Applicants that the Officer mischaracterized their evidence. In my view, that mischaracterization led to the Officer's misapprehension of the nature of Ms. Mundangepfupfu's future plans following her diploma and to the Officer's assessment of her likelihood of overstaying the period authorized for her study in Canada. The Officer found that Ms. Mundangepfupfu stated that she intended to "establish a business in Zimbabwe aligned with the country's prominent fashion and textile industry" and then faulted her for not providing evidence of this "prominent fashion and textile industry" in Zimbabwe. As is clear in Ms. Mundangepfupfu's affidavit and her counsel's submissions, the reference was not to a *currently*

prominent fashion industry in Zimbabwe but rather that at one time there had been such an industry and that Ms. Mundangepfupfu aspired to be part of recreating it in Zimbabwe.

[23] The Officer also raised concerns about Ms. Mundangepfupfu's statement describing her choice of program, particularly her view that education from a Commonwealth country would assist her employment prospects at home. The Officer noted that Ms. Mundangepfupfu had not explained "how a 'commonwealth' education in Canada would be more beneficial than any other Commonwealth country in the region such as Kenya, or South Africa, which would offer comparable courses of study at a significantly reduced cost of pursuing similar courses of study abroad in Canada."

[24] There are several problems with the negative inference drawn by the Officer on this point. First, as this Court found in *Yuzer v Canada (Minister of Citizenship and Immigration)*, 2019 FC 781 at paragraph 21, it was unreasonable for the Officer to not identify particular programs that they claim were similar and at lower costs in other countries. Second, the ability to finance the program of study in Canada was not an issue identified by the Officer, given the financial support of Ms. Mundangepfupfu's family. Third, Ms. Mundangepfupfu made it clear in her evidence that she selected Canada in part due to the presence of her father who could assist her, as a single mother, with childcare while she would study full-time. In these circumstances, the Officer's reference to these other programs was unreasonable and was not a basis on which to draw a negative inference about Ms. Mundangepfupfu's future plans to study in Canada.

C. *Doubts about study plan*

[25] The Officer also expressed doubts about Ms. Mundangepfupfu's key reason for selecting Toronto as a place to pursue her full-time studies. The Officer acknowledged that Ms. Mundangepfupfu had chosen Toronto because her father lived there and could assist her with childcare but raised doubts about this plan: "I note that the [Principal Applicant's] father has provided confirmation of his full time employment with [a bank], and it would be unclear how he could assist with child care options when engaged in full time employment himself."

[26] There are several difficulties with the Officer's view of this factor in the application. The Officer failed to consider the evidence in Ms. Mundangepfupfu's father's affidavit that, as a manager, he had flexibility in his work schedule so that he could assist with caring for the minor Applicant. Further, the intention was not that he be a full-time caregiver for the minor Applicant, who would be attending elementary school full-time. We can presume, unless there is evidence to the contrary, that having another willing adult to share in the duties of caring for a school-age child would lessen the load relative to having to do the caring all on one's own, which would include: meal preparation, taking the child to and from school and activities, assisting with bedtime, homework, etc. In light of this common sense presumption, the Officer's comment on this issue is illogical. The Officer's dismissal of this factor, which the Applicants presented as a key reason for selecting Toronto as a place to study, was contrary to evidence in the record and common sense.

D. *Limited family ties in Zimbabwe*

[27] The Officer's finding on Ms. Mundangepfupfu's family ties in Zimbabwe was limited to the following two statements. First, at the outset of the Officer's notes: "Source of funding is noted, including proof of declared relationships, as well as affidavits declaring support." Second, in the conclusion, at the end of the Officer's notes: "Dual intent is, of course, noted. However, I am not satisfied that the [Principal Applicant] has sufficient economic and family ties to [Country of Reference, Zimbabwe] to motivate departure at the end of an authorized stay, or if PR refused or is not eligible to apply for PR."

[28] There is no explanation for the Officer's finding that Ms. Mundangepfupfu has insufficient family ties in Zimbabwe. In making this finding, the Officer did not evaluate the extensive evidence provided by way of affidavits from herself, her uncle, and her father, all detailing the nature of the relationship between herself and her uncle who lives in Zimbabwe and who is committed to funding her education in Canada. This relationship is described as akin to a "father-daughter relationship."

[29] Ms. Mundangepfupfu also noted that she has a close relationship with aunts, uncles, and other members of her extended family who remain in Zimbabwe. She noted that she has lived most of her life in Zimbabwe and some of these family members are her only connection to her deceased mother.

[30] The Respondent argued it was open to the Officer to find that Ms. Mundangepfupfu had limited family ties in Zimbabwe because her remaining family members were extended family and her biological father was in Canada. In oral submissions, the Respondent emphasized that Ms. Mundangepfupfu's uncle had two biological children, seeming to imply that this was relevant to the nature of his relationship to Ms. Mundangepfupfu.

[31] None of these arguments assist. First, these were not the reasons given by the Officer. Despite the central submissions made with respect to Ms. Mundangepfupfu's close relationship with her uncle and other family members in Zimbabwe and the evidence filed in relation to it, the Officer made no findings on this point. This is sufficient to find the decision unreasonable. Second, assumptions about the way families operate, despite evidence to the contrary, is not a reasonable basis on which to make a finding. The evidence in the record sets out Ms. Mundangepfupfu's strong ties to family members in Zimbabwe.

V. Remedy

[32] Ms. Mundangepfupfu requested that the Court use its power under subsection 18.1(4)(d) of the *Federal Courts Act*, RSC 1985, c F-7 to direct the Officer to accept the Applicants' study permit applications. The basis for this request is the similarity of the previous refusals she has already received and the concern that the same mistakes may be made again on redetermination.

A. *Similarity of previous refusals*

[33] The Applicants argued that if the matter is sent back to be redetermined, I should consider that this will be the fifth time Ms. Mundangepfupfu's study permit application will be considered. As noted above, Ms. Mundangepfupfu had applied two times in 2018. Neither of these decisions were challenged in this Court. The materials that were filed in support of these applications and the refusal decisions have not been put before me; a legal assistant at the Applicants' counsel's office provided a short summary of the first refusal decision in their affidavit filed in this judicial review. This is not sufficient for me to be able to draw conclusions about the nature of these refusals.

[34] The Applicants submitted that the Respondent's agreement to remit the November 2019 refusal decisions for redetermination "may be taken as an acknowledgment of errors in that decision." The Respondent argued that it was inappropriate to speculate about why the Minister agreed to send the matter back on consent, and that it was not necessarily an admission that the decision was unreasonable. The terms of the settlement do not comment on the reasonableness of the decision.

[35] I have reviewed the evidence filed in support of the 2019 applications and the 2020 applications. The evidence is substantively the same, except for updating the documentation because of the time that had passed since the November 2019 decision. The same deficiencies I identified in the 2020 decision under review were present in the November 2019 decision. The overarching problem was a failure to consider: i) the general country conditions in the context of

the Applicants' personal circumstances, ii) evidence of the Applicants' close family ties in Zimbabwe, and iii) access to stable housing accommodations and financial support in Zimbabwe as these relate to their economic establishment or prospects there.

B. *Indirect substitution remedy*

[36] The Court's power of indirect substitution is exceptional and only used where sending the case back for redetermination would be pointless, or where there is only one possible outcome (*Canada (Minister of Citizenship and Immigration) v Tennant*, 2019 FCA 206 at paras 79-82; *Vavilov* at para 142).

[37] In *Vavilov,* the Supreme Court of Canada commented on the relevant considerations for a reviewing court applying the reasonableness standard and deciding the appropriate remedy in the context of a judicial review. This case raises a potential tension discussed in *Vavilov* between, on the one hand, the "recognition… that the legislature has entrusted the matter to the administrative decision maker, and not to the court, to decide" and, on the other hand, "concerns related to the proper administration of the justice system… and 'the goal of expedient and cost-efficient decision making'" (*Vavilov* at para 140).

[38] The Supreme Court of Canada noted that "it will most often be appropriate to remit the matter to the decision maker to have it reconsider the decision, this time with the benefit of the court's reasons" (*Vavilov* at para 141). However, reviewing courts cannot be blind to the impacts on access to justice of endorsing "an endless merry-go-round of judicial reviews and subsequent reconsiderations" (*Vavilov* at para 142).

[39] I am cognizant of the time and expense required to engage in the judicial review and reconsideration process. Going through multiple rounds of successful judicial review only to receive the same result with very similar reasons raises serious access to justice concerns and the potential for litigants to lose confidence in the justice system.

[40] However, given the length of time that has lapsed since much of the evidence was provided, I am not in a position to direct, as the Applicants have asked me to do, that the study permits be issued. There may be relevant factual elements connected to the Applicants' eligibility for a permit that have shifted and of which I am not aware, leaving me unable to say that there is only one reasonable outcome and that to send the matter back would be pointless. For example, the Applicants may have to provide confirmation of acceptance to their programs of study again, as their last acceptances are now dated, and confirmation that financial support is still available.

[41] I addressed the issue of a changing factual landscape in relation to a request for indirect substitution in my decision in *He v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1027 [*He*]. As I referenced in *He*, Justice Barnes explained in *Zhang v Canada (Minister of Citizenship and Immigration)*, 2020 FC 53 at paragraph 33 that indirect substitution is inappropriate when it is "dependent on a potentially changing factual landscape where [the applicant's] continuing eligibility is not assured."

[42] I note that there may be situations where in spite of the potential changing factual landscape, it is appropriate to order an indirect substitution, or construct a remedy where the

decision-maker is constrained from re-assessing certain factors in the decision again. It will be dependent on the facts of the case.

[43] In this case, in an attempt to avoid the “endless merry-go-round” of judicial review and reconsideration, I have provided detailed reasons setting out several deficiencies in the Officer’s reasoning and evaluation of the extensive evidence filed in support of the applications. Based on my review, the following common issues arise relating to the Applicants’ motivation to return to Zimbabwe when their study permit authorization ends: limited economic prospects in Zimbabwe, limited family ties in Zimbabwe, and political and economic instability in Zimbabwe. In my reasons, I have addressed all three of these issues and the deficiencies in the underlying decision. It is my expectation that the next decision-maker will carefully review my reasons and not make the same errors.

[44] The application for judicial review is granted. The parties did not raise any question for certification and I agree that none arises.

JUDGMENT IN IMM-6527-20

THIS COURT'S JUDGMENT is that:

1. The December 15, 2020 refusals of the Applicants' study permit applications are set aside;
2. The Applicants' study permits are to be redetermined by a different officer in accordance with these reasons;
3. The Applicants should be given an opportunity to provide an update prior to redetermination; and
4. No question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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