Federal Court  Cour fédérale

Date: 20221110

Docket: IMM-6470-21

Citation: 2022 FC 1528

Ottawa, Ontario, November 10, 2022

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

REBECCA EGESIRI ASAGBA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision by a visa officer of the Visa Section of the High Commission of Canada in Nairobi Kenya [the "Officer"], dated September 9, 2021, refusing the Applicant's application for a study permit [the "Decision"]. The Officer was not satisfied that the Applicant would leave Canada at the end of her study period as required

under paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

II. Background

[2] The Applicant, Rebecca Egesiri Asagba, is a 45-year-old female citizen of Nigeria.

[3] The Applicant completed an undergraduate degree in Computer Science from the University of Benin. She currently works in Nigeria for the Delta State Judiciary as an Assistant Chief Registrar.

[4] The Applicant has family members in Canada and visits frequently. In January 2021 during a visit in Canada, she applied and was offered admission at Humber College for their Advanced College Diploma in Business Administration program.

[5] The Applicant applied for a study permit on May 14, 2021 to enroll in this program and her husband applied for an extension of his visitor visa until December 2021. The Applicant's sister, Rachel Eta Brown, a Canadian Citizen and Ontario lawyer, was to support the Applicant financially during her studies and served as her representative during the study permit application.

[6] In her application, the Applicant included the following relevant information:

A. In a study plan, the Applicant explained her interest in the Humber College Business Administration program.

    i. The program was relevant to her job in Nigeria and she found the mandatory work component appealing.

    ii. She was impressed by the Canadian education of her family members and wary of the Nigerian education system, as she had previously applied to complete a Master's of Business Administration degree at a Nigerian educational institution that turned out to be unaccredited.

    iii. She had ties and therefore reason to return to Nigeria through family and friends, employment and property.

B. Financial records of her income and funds available to her sister.

[7] In the Decision dated September 9, 2021, the Officer refused the Applicant's study permit application because he was not satisfied that the Applicant would leave Canada at the end of her studies, as required under subsection 216(1) of the *IRPR*.

[8] The Applicant asks the Court to set aside the Decision and refer the matter back for redetermination by a different visa officer.

III. Decision Under Review

[9] In refusing the study permit applications, the Officer made the following findings in the reasons provided in the Global Case Management System Notes:

i. The Applicant had a positive immigration record as a visitor.

ii. While the Applicant had provided information about her income level, she had not provided information about other available funds. It was not clear that the Applicant's sister could afford expenses for the Applicant and her spouse on top of the expenses for the rest of her family.

iii. Despite her gainful employment, the Applicant had a lack of family ties and economic incentives to return to Nigeria and her reasons to remain in Canada may outweigh her reasons to leave.

iv. Incurring costs of studying in Canada in the selected program was not reasonable when weighed against the potential career benefits. Pursuing a diploma in Business Administration was not reasonable or relevant in light of the Applicant's previous education, completing a degree in Computer Science. Furthermore, the expenses of studying in Canada are high in comparison with pursuing a similar program in Nigeria.

[10] The Officer's refusal of the study permit application was based on subsection 216(1) of the IRPR, in that the Officer was not satisfied the Applicant would leave Canada at the end of the study period, having considered:

i. The Applicant's family ties in Canada and in her country of residence;

ii. The purpose of the Applicant's visit;

iii. The Applicant's personal assets and financial status

IV. Issues

A. *Has the Applicant improperly included fresh evidence in this application for judicial review?*

B. *Was the Officer's decision reasonable?*

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

V. Standard of Review

[11] The substantive standard of review is reasonableness [*Canada (Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paragraph 25].

[12] The standard of review for issues relating to procedural fairness is correctness or a standard of the same import [*Canadian Pacific Railway Company v Canada (Attorney General),*

2018 FCA 69 at paragraphs 34 to 35 and 54 to 55, citing *Mission Institution v Khela*, 2014 SCC 24 at paragraph 79].

VI. Analysis

A. *Has the Applicant improperly included fresh evidence in this application for judicial review?*

[13] The Applicant has included in the Application Record evidence that was not before the Officer when making the Decision. The Respondent objects to the inclusion of this new evidence. The Applicant argues that these have been appropriately included to highlight procedural deficiencies.

[14] There are a few exceptions to the general rule that a reviewing Court cannot accept new evidence on judicial review [*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paragraph 20].

[15] While one of these exceptions does relate to evidence necessary to highlight procedural defects, it is inapplicable in this case. The Applicant primarily makes the procedural argument that the Officer made a veiled credibility finding when claiming that the Applicant's evidence was insufficient and that this necessitated that the Officer contact the Applicant for further submission before making the Decision. There is no additional evidence other than what was before the Officer that would assist the Court in deciding this issue.

[16] To the extent there is support for the alleged new evidence in the Certified Tribunal Record, it will be considered; if specific to the Applicant's reconsideration request, it is not relevant. In any event, the extent of this evidence does not change the outcome of this Decision.

B. *Was the Officer's decision unreasonable?*

[17] Under paragraph 216(1)(b) of the *IRPR*, a foreign national must satisfy an officer that they will leave Canada by the end of their study period in order to receive a study permit. The onus is on the Applicant to prove to the Officer that she would leave Canada at the end of her study period [*Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 at paragraph 16].

[18] The Applicant claims that the Officer ignored evidence, rendering the Officer's conclusions on each of the grounds of refusal unreasonable:

(1) The Applicant's family ties in Canada and in country of residence;

[19] The Applicant first argues that the Officer unreasonably found that the Applicant lacked family ties to Nigeria. The Applicant points to a form submitted with the application that states that five out of the Applicant's seven siblings currently reside in Nigeria. Furthermore, the Applicant claims her husband and adult stepdaughter were to continue to reside in Nigeria.

[20] In light of the record, I find the Officer's conclusion that the Applicant lacked family ties in Nigeria in comparison with those she had in Canada was reasonable. While several of the Applicant's siblings do reside in Nigeria, several of the Applicant's family members, including

at least two of her siblings and her mother and father were living in Canada. Furthermore, the Applicant's husband had applied for an extension to his visitor status in Canada, the address provided for him in the application is a Canadian address, and he was listed as accompanying the Applicant.

[21] While I may not agree with the Respondent's position on this front, the Officer's decision is not unreasonable.

(2) Purpose of the Applicant's visit;

[22] The Applicant argues that the Officer was unreasonable in not accepting the Applicant's explanation of her proposed study plan. The Applicant had claimed that business administration was relevant to her career as a court registrar. She desired to study in Canada because she highly regarded the Canadian education system and had a poor experience with a Nigerian university. The Applicant claims that though the Officer acknowledged that the Applicant had provided an explanation for her choice of studies, he failed to grapple with this explanation and unreasonably cast it aside.

[23] I agree with the Applicant. The Applicant provided a clear and rational explanation for pursuing her chosen course of study in Canada. The Applicant was mistrustful of the Nigerian education system; she had high regard for the Canadian education system; she valued the mandatory co-op requirement of the program, as it would allow her to gain valuable practical work experience; and, the business-focus of the education was relevant to her work as a court

registrar. There was also no reason to diminish the Applicant's bona fides based on her travel history to Canada.

[24] Moreover, the Officer's explanation for his dissatisfaction with the Applicant's study plan does not make sense. To the Officer, the Applicant's study plan was illogical, in part, due to her previous computer science degree. However, the Officer neglected to consider that the Applicant had completed that degree in the year 2000 and had since pursued an entirely unrelated career. He also failed to grapple with the Applicant's explanation about how the study plan was relevant to her career and her other expressed motivations.

(3) The Applicant's assets and finances

[25] The Applicant argues that the Officer unreasonably disregarded the Applicant's financial establishment in Nigeria. The Applicant claims the Officer erred by failing to observe that the Applicant's income is above average in Nigeria, and by not mentioning that the Applicant and her spouse owned property in Nigeria.

[26] Further, the Applicant claims that the Officer made a contradictory finding when observing that the Applicant's sister had sufficient funds, but nonetheless concluding that the Applicant lacked financial support.

[27] I find it was unreasonable for the Officer to be dissatisfied with the Applicant's financial status.

[28] The Officer unreasonably found that the Applicant's income, even when combined with support from her sister, would be inadequate to cover the study period costs. There is sufficient evidence to reasonably find that financial ability to pay for the Applicant's study plan exists. The Applicant's financial documents may have disclosed a modest income in the Canadian context, but the Applicant's sister provided extensive evidence of her income, available funds and willingness to support the Applicant in her studies.

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

(1) Opportunity to Respond

[29] The Applicant argues that the Officer violated the duty of procedural fairness by making a veiled credibility finding. The Applicant believes that the Officer made such a finding by not accepting the Applicant's explanation for how the proposed courses in the business administration program related to the Applicant's career.

[30] The level of procedural fairness owed to applicants in a study permit application is on the low-end of the spectrum [*Opakunbi v Canada*, 2021 FC 943 [*Opakunbi*] at paragraph 8]. In limited circumstances, an officer that is skeptical about the authenticity or credibility of information provided by an applicant may be under a duty to provide the applicant with the opportunity to address these concerns [*Opakunbi* at paragraph 8]. However, where an officer's concerns arise directly from the requirements of the *IRPR* the officer will not be under such a duty [*Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 at paragraph 24].

[31] In the present case, the Officer was not obligated to contact the Applicant as concerns that the Applicant would not depart Canada at the end of her stay arise directly from paragraph 216(1)(b) of the *IRPR*. Moreover, in study permit applications the onus is on the applicant to satisfy an officer of the merits of her study plan and cannot rely or expect an officer to inform her of the deficiencies in her record or give her the chance to respond to these deficiencies [*Charara* at paragraph 27].

[32] The Applicant was aware of the case to meet from the outset and had sufficient opportunity to meet it.

(2) Legitimate Expectations

[33] The second procedural argument that the Applicant advances is that the Officer failed to follow a news release by Immigration, Refugees and Citizenship Canada that stated that study permit applications completed before May 15, 2021 would be processed by August 6, 2021 [“study-permit-fall-2021-eng” (June 3, 2021), online: *Government of Canada* <https://www.canada.ca/en/immigration-refugees-citizenship/services/reference-include/study-permit-fall-2021-eng.html>]. The Officer in this case did not make the Decision until September 9, 2021.

[34] While tribunal guidelines and communications are not law, in certain circumstances they may create legitimate expectations, the breach of which would violate the duty of procedural fairness [*Agraira v Canada (Public Safety and Emergency Preparedness),* 2013 SCC 36 at paragraphs 94 to 95].

[35] No such expectations were created in this case. The new release cited by the Applicant clearly states that applicants "… should get a decision by August 6, 2021" [emphasis added]. Furthermore, the release says that an applicant must submit a complete study permit application "including [the applicant's] biometrics and immigration medical examination results". The Applicant's health-examination documents indicate a visit date of August 19, 2021.

[36] There was no breach of procedural fairness.

JUDGMENT in IMM-6470-21

THIS COURT'S JUDGMENT is that:

1. The application is allowed and the matter is remitted to a different officer for reconsideration.

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6470-21
STYLE OF CAUSE:	REBECCA EGESIRI ASAGBA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 8, 2022
JUDGMENT AND REASONS:	MANSON J.
DATED:	NOVEMBER 10, 2022

APPEARANCES:

ANNA AAZAM	FOR THE APPLICANT
ZOFIA ROGOWSKA	FOR THE RESPONDENT

SOLICITORS OF RECORD:

PACE LAW FIRM TORONTO, ONTARIO	FOR THE APPLICANT
ATTORNEY GENERAL OF CANADA TORONTO, ONTARIO	FOR THE RESPONDENT