

Federal Court



Cour fédérale

Date: 20221214

Docket: IMM-4626-21

Citation: 2022 FC 1729

Ottawa, Ontario, December 14, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

SOMAYEH ASLANI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Somayeh Aslani, seeks judicial review of a decision of an immigration officer (the “Officer”) of Immigration, Refugees and Citizenship Canada (“IRCC”) dated June 24, 2021, refusing the Applicant’s study permit application.

[2] The Officer found the Applicant ineligible under subsection 215(1)(f)(iii) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (“*IRPR*”), which allows temporary residents to apply for a study permit from within Canada if they have completed a course of study that is a prerequisite for enrolling in a designated learning institute. The Officer determined that the Applicant’s letter of acceptance (“*LOA*”) from Georgian College did not explicitly state that her course at the International Language School of Canada (“*ILAC*”) was a prerequisite to her admission, and she is therefore ineligible.

[3] The Applicant submits that the Officer’s decision is unreasonable because it failed to consider the evidence accompanying her study permit application, which states the relevance of the *ILAC* course of study to her enrolment at Georgian College as an international student, and fettered their discretion.

[4] For the reasons that follow, I find the Officer’s decision is reasonable in light of the evidence. This application for judicial review is therefore dismissed.

II. Facts

A. *The Applicant*

[5] The Applicant is a 40-year-old citizen of Iran. She has a professional background in commerce and previous studies in business.

[6] On February 2, 2021, the Applicant arrived in Canada on a temporary resident visa (“TRV”) to visit her sister, who resides in Canada. While in Canada, the Applicant began exploring business programs at Canadian colleges. She became interested in the Global Business Management Certificate at Georgian College in Barrie, Ontario.

[7] The Applicant read the Georgian College admissions website to find that enrollment requires proof of English language proficiency, and one way to complete this requirement is through an authorized “partner school” pathway program. One such program, which is explicitly listed on the Georgian College website, is the ILAC University Pathway Program Level III. While a visitor in Canada, the Applicant completed this ILAC program, after which she applied and was offered unconditional acceptance to Georgian College’s Global Business Management Certificate program for the 2021 fall semester.

[8] On June 9, 2021, the Applicant filed an application for a study permit from within Canada. This application included the following supporting documentation:

1. Completed Application to Change Conditions and Remain in Canada as a Student;
2. Proof of completion of the ILAC program;
3. LOA from Georgian College;
4. A study plan;
5. A copy of her passport and Canadian TRV;
6. Proof that the Applicant had paid the tuition for the first semester at Georgian College;
7. Proof of continued employment post-studies in Iran;

8. Proof of financial resources and assets in Iran; and
9. A submission letter from the Applicant's Authorized Representative confirming that the eligibility requirements under subsection 215(1)(f)(iii) of *IRPR* were met and a list of supporting documentation accompanying the study permit application.

[9] On June 24, 2021, the Applicant received a letter from the IRCC Case Processing Center in Edmonton, indicating that her study permit application was refused.

B. *Decision Under Review*

[10] The Officer's decision is contained in their Global Case Management System ("GCMS") notes, which form part of the reasons for the decision. The GCMS notes, dated June 24, 2021, states the following:

Client stated on their application IMM5709 that they last entered Canada as a visitor on 2021/02/02 valid to 2021/08/02. Client is requesting a study permit and intends to enroll in Global Business Management Post-Graduate Certificate at Georgian College until 2023/04/21. Client completed University Pathway program at International Language Academy of Canada (ILAC) on 2021/03/30, within the initial six month period of initial entry. Client's LOA from Georgian College states there are no conditions of acceptance, including prerequisite courses. As client failed to complete a course or program of study that is a prerequisite to their enrolling at a designated learning institution, they are not eligible to apply for a study permit from within Canada under R215(1)(f)(iii) and must apply abroad. Application refused and letter sent advising of status.

[11] The refusal letter states that the study permit application was refused because the Applicant is “not a person described in Immigration Legislation who can apply for this type of document from within Canada” and “an application of this type must be made at a Canadian Visa office in another country.”

III. Issue and Standard of Review

[12] This application for judicial review raises the sole issue of whether the Officer’s decision to refuse the study permit application is reasonable.

[13] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree. This is also consistent with this Court’s jurisprudence reviewing the decisions of visa officers on study permit applications: *Noulengbe v Canada (Citizenship and Immigration)*, 2021 FC 1116 at para 7; *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 11; *Kavugho-Mission v Canada (Citizenship and Immigration)*, 2018 FC 597 at para 8.

[14] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is 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). Whether a decision is reasonable depends on the relevant administrative setting, the record

before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[15] For a decision to be unreasonable, an applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

IV. Analysis

[16] The Applicant submits that the Officer unreasonably found that she is ineligible to apply for a study permit from within Canada under subsection 215(1)(f)(iii) of *IRPR*. She submits that this finding is contrary to both this Court’s interpretation of subsection 215(1)(f)(iii) and the evidence accompanying the application.

[17] The Applicant relies on *Li v Canada (Citizenship and Immigration)*, 2020 FC 279 (“*Li*”), where my colleague Justice Fuhrer found that a LOA that does not specify conditions of acceptance “cannot be the end of the inquiry for a Visa Officer when an in-Canada study permit applicant provides additional evidence demonstrating that one or more prerequisites ‘for enrolling at [the] designated learning institute’ have been completed” (*Li* at para 13). The Applicant also relies on *Virk v Canada (Citizenship and Immigration)*, 2018 FC 1181 (“*Virk*”),

where an officer refused a study permit application on the basis that the applicant failed to provide a conditional LOA or proof of completion of prerequisite studies, despite additional evidence pointing to the completion of prerequisite requirements. This Court found this refusal unreasonable because this additional evidence showed that the applicant was, in fact, eligible under subsection 215(1)(f)(iii) of *IRPR* (*Virk* at para 7).

[18] The Applicant submits that the findings in *Li* and *Virk* can be applied here. The LOA provided by Georgian College similarly indicated “N/A” for conditions of acceptance, showing that no *further* conditions were left to be met, since she had already completed the prerequisite requirement through the ILAC program. The Applicant contends that her additional evidence clearly shows that she fulfilled a prerequisite course of study and the Officer’s reasons exhibit a failure to engage with this evidence, rendering the decision unreasonable.

[19] The Respondent submits that the findings in *Li* and *Virk* are distinguishable from the Applicant’s case. The Respondent notes that in both cases, there was evidence before the officer demonstrating that the applicant had completed a prerequisite for enrolment. The Respondent submits that in the Applicant’s case, the printout from the Georgian College website was not before the Officer and it cannot be assumed that this information would have satisfied the Officer that the ILAC program was indeed a prerequisite to enrolment at the College.

[20] The Respondent contends that the Applicant did not state that she included this printout from the Georgian College website in her study permit application and does not mention doing so in her affidavit. It is well established that judicial review is constrained to the evidence before

the decision-maker, barring an allegation of a breach of procedural fairness. The Respondent submits that the excerpts from the Georgian College website cannot be considered by this Court. Considering that this evidence was not presented to the Officer, the Respondent further submits that the Officer engaged with the available evidence, with only that the program was completed, not that the program was a prerequisite requirement, as required.

[21] I agree with the Respondent. Although this Court's decisions in *Li* and *Virk* contain highly similar factual scenarios to the Applicant's case, the key differentiation is in the evidence before the decision-maker. In *Li*, Justice Fuhrer referenced the "evidence on record, which includes what appears to be a printout from the MITT website" [emphasis added], explicitly stating that international students must complete an English language course of study as a prerequisite (at para 15). Similarly, in *Virk*, the study permit application was accompanied by a letter from the Director of the school stating that the applicant had completed a prerequisite program (at paras 5-7). The significant factor that led this Court to decide that the decisions in both *Li* and *Virk* were unreasonable was that there was evidence before the decision-maker clearly indicating that the completed program was a prerequisite course of study.

[22] In this case, however, no such evidence was presented to the Officer. Although the Applicant references the Georgian College website, which states that an English proficiency program from an authorized "partner school" pathway program is required, a printout of this website was not included in the supporting documentation as it was in *Li*. The Applicant's list of supporting documentation that accompanied her study permit application does not include any information from the Georgian College website. I also agree with the Respondent that when

viewed holistically, the evidence does not show that the ILAC program satisfies a prerequisite for enrolment at Georgian College. It only shows that the Applicant completed the ILAC program, which does not in and of itself provide sufficient evidence of her eligibility under subsection 215(1)(f)(iii) of *IRPR*.

[23] It is not for this Court to impugn the reasonableness of a decision on the basis of evidence that was never before the decision-maker. An unreasonable decision is one that fails to account for the evidence before it, but evidence showing that the ILAC program was a prerequisite of enrolment at Georgian College was not before the Officer in this case, and can therefore not be considered on judicial review (*Vavilov* at para 126). The Officer's decision is reasonable in light of the evidentiary record.

V. Conclusion

[24] The Officer's refusal of the Applicant's study permit application is reasonable. This application for judicial review is therefore dismissed. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-4626-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4626-21

STYLE OF CAUSE: SOMAYEH ASLANI v THE MINISTER OF
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