Federal Court  Cour fédérale

Date: 20230412

Docket: IMM-2111-22

Citation: 2023 FC 512

Ottawa, Ontario, April 12, 2023

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

NAIMA PIERRE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Naima Pierre is a 19-year-old citizen of Haiti who applied for and was refused a study permit to pursue secondary school studies at the Faith Academy in Winnipeg at a cost of approximately $8,000. The Applicant was to be supported while in Canada by her father's cousin who resides in Winnipeg [Sponsor].

[2] The Visa Processing Officer [Officer] refused the application on the basis that the Officer was not satisfied Ms. Pierre would leave Canada at the end of her stay, citing her financial status. The Officer's brief reasons are set out in the Global Case Management System notes:

> I have reviewed the application.
>
> Taking the applicant's plan of studies into account, the documentation provided in support of the applicant's financial situation does not demonstrate that funds would be sufficient or available. I am not satisfied that the proposed studies would be a reasonable expense.
>
> I note support from third party, however, support would significantly deplete savings of sponsors. PA fails to provide proof of sufficient and available funds of their own.
>
> Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay.
>
> For the reasons above, I have refused this application.

[3] The Applicant applies under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of the Officer's February 24, 2022 decision. For the reasons that follow, the Application is granted.

II. Issues and Standard of Review

[4] The Application raises two issues: (1) whether the Officer's decision was unreasonable in light of the evidence of the Sponsor's financial circumstances, and (2) whether the Officer acted unfairly by failing to notify the Applicant of concerns with the financial evidence.

[5] The parties agree that the Officer's refusal decision is to be reviewed on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65; *Chantale v Canada (Citizenship and Immigration)*, 2021 FC 544 at para 5 [*Chantale*]; *Gill v Canada (Citizenship and Immigration)*, 2021 FC 934 at para 16 [*Gill*]).

[6] A reasonableness review is a deferential but robust form of review (*Vavilov* at paras 12-13; 75). A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85). A reviewing court must determine whether the decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility (*Vavilov* at para 99).

[7] The party challenging the decision bears the onus of demonstrating that it is unreasonable (*Vavilov* at para 100). What is reasonable is to be assessed contextually having regard to the legal and factual context in which the impugned decision was made. In this regard, this Court has recognized that the volume of visa applications impose significant pressures on officers tasked with determining these applications, and as such exhaustive reasons for decisions are not expected or required (*Chantale* at para 5, *Gill* at para 16). However, to be reasonable, a visa officer's reasons must be consistent with the evidence.

[8] The issue of fairness is to be reviewed on the basis of whether the procedure was fair having regard to all of the circumstances, with a focus on the substantive rights engaged by the impugned process and the consequences for an individual (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 para 54).

III. Analysis

A. *The Officer's decision is unreasonable*

[9] Section 220 of the *Immigration and Refugee Protection Regulations*, SOR 202-227 [IRPR] provides that the Officer shall not issue a study permit unless there are sufficient financial resources available to the Applicant to pay tuition fees, maintain the Applicant and any accompanying family members while in Canada and pay the cost of travel to and from Canada.

[10] The Applicant notes that the Respondent's Operational Manual confirms that evidence of financial sufficiency must be provided where a study permit is sought. The Manual further notes that such evidence may take the form of verbal or written statements that satisfy an officer the financial support of friends or family is available and has been arranged to cover all reasonable expenses to be incurred by an applicant during a stay in Canada.

[11] The Applicant sought to establish financial sufficiency in the form of a letter from the Sponsor, which stated she is employed fulltime, is the owner of a fully paid-for home in Winnipeg, and that her financially independent adult daughter lives with her. The Sponsor included copies of financial records disclosing her savings, a letter of employment confirming her annual income, and a copy of the title to her home.

[12] In refusing the application, the Officer identified three concerns relating to the Applicant's financial situation, noting that: (1) it had not been demonstrated that funds would be

sufficient, (2) it had not been demonstrated that funds would be available, and (3) the Sponsor's support of the Applicant would "significantly deplete savings" of the Sponsor.

[13] The Respondent argues the Officer was not convinced the necessary funds were readily available, pointing to the unpaid tuition, the low income of the Sponsor, and the fact that the Sponsor is not the sole account holder according to investment statements provided.

[14] The Officer's decision is owed significant deference and it is not the role of the Court on judicial review to reweigh the evidence. However, a decision will be unreasonable where it is not justified in light of relevant factual and legal constraints.

[15] In this case, the Officer was required to consider the sufficiency of funds within the context of the cost of the Applicant's education. The tuition was $8,000 to be paid in monthly installments of $800. The Applicant was to live with the Sponsor.

[16] The evidence before the Officer was that the Sponsor was employed full-time with an annual gross income of $32,760. The evidence also shows savings accounts, solely in the name of the Sponsor and held at a Canadian financial institution with total assets of $55,376.81 CAD and $28,161.51 USD. Approximately $21,000 of the identified Canadian funds are held in an account labelled "Retirement Savings Plan – Personal." The Account also identifies credit card liabilities for $3,200. It was not unreasonable for the Officer to conclude the retirement funds were not available to fund the Applicant's education. However, nothing in the evidence suggests the remaining funds (approximately $30,000 CAD and $28,000 USD) are not immediately

accessible and available. The evidence also demonstrates the Sponsor owns her home, and holds significant savings in other accounts albeit, as the Respondent has noted, possibly with other co-account holders who appear to be named on the financial statements.

[17] In summary, the evidence, which the Officer did not take issue with, indicates the Sponsor's income and accessible savings are sufficient to cover the Applicant's education costs ($8,000, to be paid over ten months, plus living expenses). There is nothing to suggest the amounts detailed above (approximately $30,000 CAD and $28,000 USD) are not immediately available to the Sponsor. The Officer's findings relating to the sufficiency and availability of funds to the Sponsor are simply untenable in light of the evidence, rendering the decision unreasonable (*Vavilov* at para 101).

[18] The Officer's conclusion that the Sponsor's support of the Applicant would significantly deplete her savings is similarly inconsistent with the evidence. The $8,000 cost of tuition, which is to be paid in installments, amounts to less 15 percent of those savings. While I am not prepared to conclude that significant depletion of a Sponsor's savings will never be relevant in a study permit context, in this instance I am satisfied it was not for the Officer to determine how the Sponsor's savings were to be used or spent in support of a family member (*Adom v Canada (Citizenship and Immigration)*, 2019 FC 26 at para 16).

B. *No breach of procedural fairness*

[19] The Applicant argued she was entitled to notice from the Officer regarding any concerns with the evidence of the Applicant and her Sponsor's finances. The Respondent submits the onus

is on the Applicant to provide sufficient evidence, and that the Officer did not breach fairness in finding she had not met that onus.

[20] In refusing the application, the Officer did not take issue with the credibility of the evidence provided but instead was of the opinion the evidence was insufficient to support a positive determination. No issue of fairness arises.

IV. Conclusion

[21] The Application is granted. The parties have not identified a question of general importance for certification, and I am satisfied none arises.

JUDGMENT IN IMM-2111-22

THIS COURT'S JUDGMENT is that:

1. The Application is granted.

2. The matter is returned for redetermination by a different decision maker.

3. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	NAIMA PIERRE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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