Federal Court  Cour fédérale

Date: 20231116

Docket: IMM-6457-22

Citation: 2023 FC 1510

Toronto, Ontario, November 16, 2023

PRESENT: Justice Andrew D. Little

BETWEEN:

PRECIOUS OLAEDO UZOMA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant applied for judicial review of a decision dated May 27, 2022, made by an officer at the High Commission of Canada in Nairobi, Kenya. The decision refused her application for a study permit under subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the *"IRPR"*).

[2] For the reasons set out below, the application will be allowed.

[3] The applicant is a citizen of Nigeria. Since 2019, she has been employed as a flight attendant based in Lagos.

[4] In March 2022, the applicant applied for a study permit to Canada to pursue a one-year post-graduate certificate program at Centennial College in Toronto. Under cover of an immigration consultant's letter, the applicant provided:

a) The applicant's Application for Study Permit Made Outside Of Canada, which advised that the applicant holds a degree from Ebonyi State University. She requested a one-year study permit to attend Centennial College in Toronto from September 2022 to September 2023, with expected expenses of $25,239 (tuition), $10,800 (Room and board) and $2,510 (Other) to be paid by the applicant herself. The total of these amounts is $38,549;

b) A letter from Centennial College to her dated November 26, 2021, showing that she was admitted to a one-year (3 semesters) Post Graduate Certificate Program starting in September 2022, with tuition fees of $25,238.93 to cover the three semesters. The college also advised that the applicant's living expenses were approximated at $13,310 (room and board of $10,800 plus transportation, miscellaneous) plus books and supplies at $875, for a total of $39,423.92;

c) A statement of intent from the applicant;

d) A letter from the applicant's employer supporting her studies, and a copy of her employment agreement and a pay stub indicating her monthly salary;

e) Copies of two bank statements from the applicant, one in United States dollars and the other in Nigerian naira;

f) An "Affidavit of Sponsorship" from the applicant's uncle, which advised that he was an industrialist and manufacturer of construction materials as owner of a firm (set out in the affidavit). He had "over the years taken it up to see [the applicant] through her education and assistance in life till marriage". The uncle had immensely contributed to her growth and had decided to further the applicant's education to post graduate studies, and would be responsible for the cost of those studies in Canada, including accommodation and flights for the period of study; and

g) Corporate and personal bank statements from the applicant's uncle.

[5] The cover letter from the immigration consultant made clear that the applicant was re-applying for a study permit, with additional evidence to address the issues identified in a previous officer's decision. The letter advised in part that after the applicant had paid $8,900 in tuition, she had around $35,000 in total in her two bank accounts and that her uncle was ready to support her application in case she needed "emergency funding for her education".

[6] By letter dated May 27, 2022, the visa officer in Nairobi denied her application because he was not satisfied that she would leave Canada at the end of her stay, "based on [her] personal assets and financial status".

[7] The officer's notes entered in the Global Case Management System ("GCMS") on May 27, 2022, stated:

> 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. Bank statements show large, unexplained lump-sum deposits and volatile balances, which does not satisfy me that bank account was inflated for the visa application, and is required to so financial establishment and sustainability for the first, and subsequent year(s) of studies. Applicant provides third party bank statements but does not indicate or document relationship to account holder. Based on the documentation on file, and the limited information demonstrating nature of relationship between applicant and what appears to be a financial sponsor, I have concerns that third party funds would be sufficient and available for the proposed studies. 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.

[8] The applicant requests that the Court set aside this decision on the basis that it was unreasonable, applying the principles in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 563.

[9] As the parties agreed, it is well established that reasonableness is the applicable standard of review: see e.g. *Iyiola v. Canada (Citizenship and Immigration)*, 2020 FC 324 at paras 11-14; *Aghaalikhani v. Canada (Citizenship and Immigration)*, 2019 FC 1080, at para 11. In *Lingepo v. Canada (Citizenship and Immigration)*, 2021 FC 552, the Court stated at paragraph 13:

> The standard of review applicable to a review of a visa officer's decision to refuse a study permit application is that of reasonableness (… *Vavilov*, at paras 10, 16–17 … ; *Nimely v Canada (Citizenship and Immigration)*, 2020 FC 282 at para 5 …; *Hajiyeva v Canada (Citizenship and Immigration)*, 2020 FC 71 at para 6). While it is not necessary to have exhaustive reasons for the decision to be reasonable given the enormous pressure on visa officers to produce a large volume of decisions 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).

[10] The reviewing court focuses on the reasoning process used by the decision maker: *Vavilov*, at paras 83, 84 and 87. The court does not consider whether the decision maker’s decision was correct, or what the court would do if it were deciding the matter itself: *Vavilov*, at para 83; *Canada (Justice) v. D.V.*, 2022 FCA 181, at paras 15, 23.

[11] Part 12 of the *IRPR* governs how “Students” as a class of persons may become temporary residents of Canada. To study in Canada, *IRPR* section 213 requires a foreign national to apply for a study permit before entering Canada. Under subsection 216(1), an officer shall issue a study permit to a foreign national if, following an examination, certain criteria are established. Those criteria include that the foreign national must meet the requirements of Part 12 of the *IRPR*: see paragraph 216(1)(*c*).

[12] In *IRPR* Part 12, section 220 provides that an officer shall not issue a study permit to a foreign national unless the person has “sufficient and available financial resources, without working in Canada”, to pay tuition fees for their course or program of studies, maintain themselves during their proposed period of study and pay the costs of transportation to and from Canada. The Court has held that if an applicant does not meet the requirements of this *IRPR* provision, the officer must deny the study permit application: *Ohuaregbe v. Canada (Citizenship and Immigration)*, 2023 FC 480, at para 23.

[13] On this application, the applicant submitted that the sole reason for the denial of her study permit was an insufficiency of funds, but that her application met the requirements of the *IRPR*

and, in particular, her own evidence established that she had both the sufficiency and availability of funds to pay for her one-year studies in Canada.

[14] The applicant contended:

a) She had pre-paid $8,900 for tuition fees and had approximately $35,000 in her own bank accounts. Thus, even without financial support from her uncle as a sponsor, she had sufficient and available funds to cover all her expenses in accordance with *IRPR* section 220;

b) Her uncle provided an affidavit confirming that he would cover her study expenses in Canada, supported by his bank statements, and he had over $400,000 available to support her;

c) The officer misapprehended the clear evidence about the length of her program in the letter from Centennial College, based on the GCMS notes which indicated that the officer erroneously believed that her study program was longer than one year. As such, the officer expected her to have more available funds than required by the *IRPR* section 220;

d) The officer's notes did not link the comment about "unexplained lump-sum deposits and volatile balances" in the GCMS notes to the evidence in the record of any bank account or specific deposits or balances. The applicant raised concerns about a lack of transparency and failure to explain evidence contrary to the decision (citing *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1999] 1 F.C. D-53, [1998] FCJ No 1425).

She argued that the comments could only refer to her uncle's bank accounts and were explained by the nature of his business as described in his affidavit; and

e) The officer overlooked her sworn evidence that she was the sponsor's niece and his sworn evidence that he was her uncle, as the GCMS notes advised that she "provide[d] third party bank statements but [did] not indicate or document relationship to account holder".

[15] According to the respondent, the officer reached a reasonable decision based on the record. At the hearing, the respondent agreed with the applicant that the key issue for the officer was sufficiency of funds. However, the applicant did not discharge her onus to show that she had the financial means to complete her studies and would leave Canada at the end of her permitted stay.

[16] The respondent argued that the onus on the officer to provide reasons was not onerous. While the words used by the officer could have been clearer, the rationale for the decision was apparent (citing *Ocran v. Canada (Citizenship and Immigration)*, 2022 FC 175, at para 35; *Singh v. Canada (Citizenship and Immigration),* 2023 FC 199, at para 24).

[17] The respondent argued that the relationship between the applicant and her financial sponsor was not clear, as the officer's notes indicated. The respondent noted that while the applicant and her sponsor were niece and uncle, there were no details about their biological relationship nor particulars as to how he had supported her in the past (as suggested in his affidavit).

[18] The respondent also maintained that the record supported the statement that the sponsor's bank statements reflected lump sum payments and volatility, noting the range of balances and significant transfers in and out within a single day. The respondent argued that the evidence in the uncle's affidavit was not probative to explain these issues.

[19] The respondent noted that the applicant's employer gave her a two-year leave of absence for studies, despite her one-year program of study and that the immigration consultant referred to that two-year leave. According to the respondent, it was therefore open to the officer to assess the applicant's "financial establishment and sustainability for the first, and subsequent year(s) of studies", as the GCMS entry indicated.

[20] Applying the principles in *Vavilov*, I conclude that the officer's decision was unreasonable.

[21] First, I agree with the applicant that the GCMS notes' reference to a requirement to show "financial establishment and sustainability for the first and subsequent year(s) of studies" is problematic in the present case. It is unambiguous in the Application for Study Permit Made Outside of Canada and in Centennial College's admission letter to the applicant that her studies were for one year. It was surely the officer's responsibility to rely on those sources to determine the proposed period of study in Canada. Nothing in the GCMS notes suggests that the officer relied on the two-year leave of absence from employment.

[22] Second, the applicant challenged the statement that she provided "third party bank statements" but did not indicate or document the "relationship to account holder". I agree that there is evidence that is inconsistent this statement. The relevant bank statements on their face

have the same account name as the uncle. In addition, the applicant's and uncle's affidavits both stated their niece-uncle relationship. The officer did not expressly challenge the evidence that the applicant and her uncle were in fact members of the same family. Indeed, their bank statements also show several money transfers out of the uncle's account and correspondingly into the applicant's account, and apparent cash deposits by him into her account dating back about a year before her application for a study permit.

[23] Third, the officer stated that "the documentation provided in support of the applicant's financial situation does not demonstrate that funds would be sufficient or available". However, as I will show, the GCMS notes provided no discernable explanation as to how the officer reached that conclusion that was reasonably supported by the record.

[24] It was not disputed in this Court that the applicant's bank accounts contained, in aggregate, $35,000 at the time of her application – about US$7,850 and the balance in Nigerian naira. The immigration consultant's cover letter made this point expressly and prominently. The applicant had already paid $8,900 in tuition and received an estimate of tuition and expenses of about $39,000 over one year from Centennial College. Thus, the applicant's submission and the evidence in the record both suggested that the applicant herself had sufficient and available liquid funds at that time to pay for her year of studies in Canada for the purposes of *IRPR* section 220. In the circumstances, the officer had to provide some responsive explanation, even if brief, to support a conclusion to the contrary – that her funds were not sufficient and available for a year of study in Canada. See e.g., *Motlagh v. Canada (Citizenship and Immigration)*, 2022 FC 1098, at para 22; *Patel v. Canada (Citizenship and Immigration)*, 2020 FC 77, at para 17; *Vavilov*, at para 128.

[25] The GCMS notes did refer to bank statements showing "large, unexplained lump-sum deposits and volatile balances". However, as the parties' submissions revealed, the GCMS notes are ambiguous as to which bank statements were at issue. The applicant's oral submissions at the hearing and the respondent's written and oral submissions all argued that this statement referred to the uncle's bank statements, rather than the applicant's. The applicant's memorandum addressed both – she argued that the officer's boilerplate language provided no explanation for which lump-sum deposits were a concern in the context of the uncle's manufacturing business, and that the officer must not have considered the nature of his business. The applicant also submitted that the officer did not articulate clearly where there were such deposits in her own bank statements and any concerns would have been allayed by engaging with the evidence.

[26] The inherent ambiguity in this aspect of the GCMS notes raises concerns about intelligibility and justification under *Vavilov* principles. Nonetheless, I will consider both alternatives.

[27] If this part of the GCMS notes referred to the uncle's bank statements, it implies that there was no express justification for the officer's conclusion on the sufficiency and availability of the applicant's funds to pay for her education expenses in Canada, apart from a statement that merely parroted the language in *IRPR* section 220. In the present case, that would end the reasonableness analysis of the conclusion under section 220 given the liquid funds in the applicant's accounts.

[28] On the other hand, this part of the GCMS notes could refer to the applicant's bank statements – which was my own first impression, before examining the record or reading the parties' submissions, owing to the references elsewhere in the GCMS notes to "third party" bank

statements and funds. If that were the case, then it is appropriate to consider the phrase “large, unexplained lump-sum deposits and volatile balances” in light of the applicant’s bank statements in the record and with sensitivity to the institutional setting of a study permit application: *Vavilov,* at paras 94-97; *Lingepo,* at para 13.

[29] The bank statement for the applicant’s US dollar account for 2021 shows few deposits and withdrawals and a stable balance from May to December 2021 of about US$7,850. Her Nigerian bank account statement from January 2021 to January 2022 shows many deposits and withdrawals, in naira – which is hardly unusual for an individual’s account. On closer review, the applicant’s bank account has apparent deposits from the applicant’s uncle – including several significant deposits made in January 2022, a month or two before her study permit application. These deposits, while large, are consistent with his affidavit evidence that he would support her financially for her post-graduate education – and therefore could be considered “explained” by his evidence. In addition, as noted already, her uncle also appears to have made other, albeit smaller deposits into her account dating back nearly a year before her study permit application. Thus these deposits may also be “explained” as they are consistent with his affidavit evidence of prior support for her. That said, the largest single deposit into the account in January 2022 was from the applicant herself, which I acknowledge was not expressly “explained” in her affidavit.

[30] In light of this evidence, the reference to “large, unexplained lump-sum deposits and volatile balances” does not, without more, reasonably explain the conclusion that the applicant’s funds would not be sufficient or available for the purposes of *IRPR* section 220: see *Aniekwe v. Canada (Citizenship and Immigration),* 2023 FC 1477, at paras 8, 11, 13-14. I add that the

evidence does not resolve, with confidence, whether the same phrase refers to the applicant's bank accounts: see *Zeifmans LLP v. Canada,* 2022 FCA 160, at paras 9-11; *Roodsari v. Canada (Citizenship and Immigration),* 2023 FC 970, at paras 19-21, 26-27. I note that in this case, unlike *Roodsari,* the officer did not raise an issue as to the providence of the funds in the applicant's account: see *Roodsari,* at paras 29-33.

[31] The GCMS notes stated that the large, unexplained lump-sum deposits and volatile balances did "not satisfy [the officer] that bank account was inflated for the visa application". Apparently, the officer omitted the word "not" and meant to suggest that the account could have been inflated for the visa application.[1] This statement, and the officer's oblique comment about the limited information demonstrating the nature of the relationship between the applicant and "what appears to be a financial sponsor", underscore the need for an adequate and responsive explanation to justify a denial of this study permit on the grounds of lack of sufficient or available funds. The officer did not expressly challenge the family relationship or express any concern about the contents of the uncle's affidavit. In my view, if the officer was sceptical of the uncle's evidence, or doubted whether the financial support by the uncle for his niece's studies was genuine, or was not persuaded by the evidence that the individuals were niece and uncle, the reasons in the GCMS notes should have clearly articulated the concern.

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[1] In fact, there are two places in the GCMS entry that should have included the word "not": in the statements "… which does not satisfy me that bank account was [not] inflated for the visa application …" and "… I have concerns that third party funds would [not] be sufficient and available for the proposed studies…" Neither party made submissions on these omissions.

[32] Lastly, the officer was not satisfied that the proposed studies were a “reasonable expense”. The parties made no direct submissions on this conclusion. However, it is unclear what that may mean or how the officer arrived at this finding. See *Singh*, at paras 27-29; *Motlagh*, at para 25; *Lingepo*, at para 17; *Caianda v. Canada (Citizenship and Immigration)*, 2019 FC 218, at para 5.

[33] For these reasons, I conclude that the decision denying the applicant’s study permit was unreasonable. The officer’s GCMS notes did not provide a reasoned justification for the decision that respected the constraints in the evidence and that was responsive to the applicant’s position and the evidence in the record related to sufficient and available funds: *Vavilov*, at paras 125-128.

[34] While this application was argued before the release of *Mason*, in my view, nothing in the Supreme Court’s decision alters the reasons in the present case: *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21.

[35] Neither party proposed a question to certify for appeal and none arises.

JUDGMENT in IMM-6457-22

THIS COURT'S JUDGMENT is that:

1. The application is allowed. The decision of the officer dated May 27, 2022, is set aside and the matter is remitted for redetermination by another officer.
2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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