Federal Court Cour fédérale

Date: 20240502

Docket: IMM-12904-22

Citation: 2024 FC 674

Ottawa, Ontario, May 2, 2024

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

DANIEL ENIOLA AROBO-ILESANMI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Daniel Eniola Arobo-Ilesanmi [Applicant], a citizen of Nigeria, seeks a judicial review of the November 28, 2022 decision [Decision] of a visa officer [Officer] refusing the Applicant's application for a study permit under the *Immigration and Refugee Protection Act*, SC 2001, c 27

[*IRPA*]. The Officer was not satisfied that the Applicant would leave Canada at the end of his stay.

[2] The Applicant requests the Court to quash the Decision and direct an officer to grant the Applicant's application or alternatively, remit the matter to a different officer for re-determination.

[3] The application for judicial review is dismissed. The Decision is reasonable and the Applicant's right to procedural fairness was not breached.

II. Background

[4] The Applicant applied for a study permit to attend an undergraduate program at the University of Manitoba [U of M] to study economics. The Applicant's supporting documents included a letter of acceptance from the U of M dated July 24, 2021, which listed start dates of September 8, 2021, January 10, 2022, and May 9, 2022. The Respondent received the application on February 11, 2022.

[5] On May 28, 2022, the Applicant submitted a new letter of acceptance dated May 2, 2022, because the start dates had passed from the original letter. The updated letter of acceptance referenced a starting term of "Fall 2022" in two places. It also listed start dates of September 8, 2022, January 10, 2023, and May 9, 2023. On November 3, 2022, the Respondent sent the Applicant a letter requesting an updated letter of acceptance by December 2, 2022. The

Applicant submitted the same letter of acceptance as above with start dates of September 8, 2022, January 10, 2023, and May 9, 2023.

III. Decision

[6] On November 28, 2022, the Officer refused to issue a study permit to the Applicant because the Officer was not satisfied that the Applicant would leave Canada at the end of his stay. The Global Case Management System [GCMS] notes on the Decision state the following:

> Applicant is a 22 year old who intends to enter Canada to study at University of Manitoba. Applicant was asked to provide an updated LOA. However, applicant submitted old LOA which indicates program has already commenced as of Fall 2022. Given the program has already started and the first semester is nearly finished, I am not satisfied this program is reasonable. Refused R216(1)(b).

IV. Issues and Standard of Review

[7] After considering the parties’ submissions, this matter raises the following issues:

1. Was the Decision reasonable?
2. Did the Officer breach procedural fairness requirements?

[8] The Applicant and Respondent agree that the standard of review on the merits of the Decision is reasonableness and I agree. This case does not engage one of the exceptions set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*,

2019 SCC 65 [*Vavilov*]. Therefore, the presumption of reasonableness is not rebutted (at paras 16-17).

[9] Procedural fairness issues are reviewed on a standard akin to correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]). In assessing procedural fairness allegations, the Court will determine whether the process followed was fair having regard to all the circumstances (*Canadian Pacific* at para 54). It is well established that the level of procedural fairness owed to study permit applicants is at the low end of the spectrum (*Nourani v Canada (Citizenship and Immigration)*, 2023 FC 732 at para 50).

V. Analysis on Reasonableness

(1) Applicant's Submissions

[10] The Officer's reasons failed to address specific evidence contradicting its determination. The GCMS notes indicated that the program had already started and that the first semester was nearly completed, however, the Officer disregarded the alternate commencement dates on the letter of acceptance. The Applicant was not restricted to a September 8, 2022 commencement date.

[11] The Officer also made an unreasonable assessment of the Applicant's evidence, erroneous generalizations, and ignored or failed to attach weight to the evidence before the Officer. The Officer's conclusion that the purpose of the visit was inconsistent with a temporary

stay is unreasonable because the Applicant provided evidence addressing each of the statutory and regulatory requirements necessary for the issuance of a study permit, including his admission to the U of M, the payment of tuition fees, his evidence of strong ties in Nigeria and sufficient funds for his studies and stay in Canada. The letter of acceptance also did not restrict the Applicant to the Fall 2022 start date since it provided three start dates. The Officer did not provide justification for why the Officer believed that the Applicant would not leave Canada at the end of his stay because his intended program of study already commenced. Instead, the Officer made an oversimplified generalization without individual assessment of the letter of acceptance provided, which is an error (*Baylon v Canada (Citizenship and Immigration)*, 2009 FC 938 at para 34).

(2) Respondent’s Submissions

[12] The letter of acceptance stated that the Applicant was accepted for “Starting Term: Fall 2022”. The letter of acceptance further indicated that the start date for the Fall 2022 term was September 8, 2022 and the late registration date was September 22, 2022. It was reasonable for the Officer to conclude then that the Fall 2022 semester was nearly finished by the time the Officer reviewed the application.

[13] On the face of the letter of acceptance, one cannot reasonably conclude that the three dates are optional start dates. The first page of the letter of acceptance contradicts the Applicant’s belief that he could start on any of the three dates since it stated that the starting term was Fall 2022. The letter of acceptance and the record do not indicated that the dates were optional start dates offered for the students to accept.

(3) Conclusion

[14] The Decision was reasonable. The Applicant has not satisfied his onus of establishing that he met the requirements under *IRPA* and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 for the issuance of a study permit. The Applicant has not demonstrated that the Officer ignored evidence relating to the letter of acceptance; rather, the Applicant essentially argues that the Officer should have interpreted it differently. I agree with the Respondent that, on the basis of the information before the Officer, it was reasonable for the Officer to infer from the letter of acceptance that the starting term was September 8, 2022, then the later terms began on January 10, 2023 and May 9, 2023 respectively. The Officer provided the Applicant with an opportunity to give an updated letter of acceptance in November 2022 when the Officer was reviewing the application. The Applicant did not provide the Officer with an updated letter of acceptance. The Applicant also did not submit any other evidence or any explanation to support his position, that the term dates were optional start dates meaning he could start in January 2023, for instance, or that the U of M was allowing him to start his studies part way through the program. An applicant is required to put their best foot forward in support of their application (*Aghvamiamoli v Canada (Citizenship and Immigration)*, 2023 FC 1613 at para 19).

[15] Furthermore, the Applicant submits that the Officer's statement about being unsatisfied that the Applicant would leave at the end of his studies was unreasonable given the other evidence in support of his application. Respectfully, the real issue is that the letter of acceptance raised concerns about whether the Applicant would leave Canada at the end of his studies. In my view, the Applicant is asking the Court to reweigh evidence before the Officer in favour of the

Applicant's application. This is not the role of a reviewing Court on judicial review (*Vavilov* at para 125).

B. *Analysis on Procedural Fairness*

(1) Applicant's Submissions

[16] The Officer breached natural justice by failing to seek clarification on the alternative commencement dates of the program in the letter of acceptance. A decision-maker should have provided an explanation when ignoring conflicting evidence (*Ali v Canada (Minister of Employment and Immigration)*, 64 FTR 229, 20 Imm LR (2d); *Benitez v Canada (Solicitor General)*, 66 FTR 224, 42 ACWS (3d)). Where an officer has concerns related to the credibility, accuracy, or genuineness of information submitted by an applicant, the expectation is that those concerns should be brought to the applicant's attention.

(2) Respondent's Submissions

[17] The duty of procedural fairness in visa applications is at the low end of the spectrum (*Khan v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345 at paras 31-32; *Talpur v Canada (Citizenship and Immigration)*, 2012 FC 25 at para 21).

[18] The burden is on the Applicant to satisfy the Officer that he met all the legislative requirements for the study permit (*Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 at para 12). The Officer asked the Applicant to provide a letter of acceptance on November 3, 2022, despite having no obligation to do so. This request provided an opportunity for the

Applicant to explain his understanding of the dates or provide some documentation showing that he could choose any of the three dates as start dates. Instead, the Applicant provided the same letter of acceptance and did not provide any other information. The Officer was under no obligation to take steps to satisfy the Officer's concerns or to supplement the Applicant's evidence when it was lacking (*Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 41).

(3) Conclusion

[19] The Officer did not breach procedural fairness requirements.

[20] Generally, there are three circumstances in which an officer is required to give an applicant the opportunity to respond: the officer identifies evidence giving rise to credibility concerns; the officer identifies evidence of a possible misrepresentation by the applicant; or the officer identifies new, salient internal information or extrinsic evidence not available to the applicant (*Garcia Diaz v Canada (Citizenship and Immigration)*, 2021 FC 321 at para 80).

[21] A review of the record confirms that these circumstances do not apply to the facts here. An adverse finding of credibility is different from a finding of insufficient evidence (*Ibabu v Canada (Citizenship and Immigration)*, 2015 FC 1068 at para 35). When an officer has doubts regarding the sufficiency of evidence, the officer is not required to inform an applicant of those doubts (*Zeinali v Canada (Citizenship and Immigration)*, 2022 FC 1539 at para 24). Here, the Officer found that there was insufficient evidence concerning the letter of acceptance for the Applicant to meet the requirement of showing that he would leave at the end of his studies. The

Officer was under no obligation to advise the Applicant of his concerns, as an officer is under no obligation to provide applicants with a running score of the weaknesses in their application (*Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284 at para 23). Regardless, the Officer still provided the Applicant with an opportunity to supply a new letter of acceptance and was not satisfied that the Applicant met the requirements for the Officer to issue a study permit.

VI. Conclusions

[22] The application for judicial review is dismissed. The Decision is reasonable and the Officer did not breach the Applicant's right to procedural fairness.

[23] The parties do not propose a question for certification and I agree that none arises.

JUDGMENT in IMM-12904-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Paul Favel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-12904-22
STYLE OF CAUSE:	DANIEL ENIOLA AROBO-ILESANMI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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