Federal Court  Cour fédérale

Date: 20240618

Docket: IMM-2606-23

Citation: 2024 FC 937

Ottawa, Ontario, June 18, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

OLABISI BILIKISU ASEMEBO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Olabisi Bilikisu Asemebo [Applicant], seeks judicial review of a decision dated January 18, 2023 by an Immigration Officer [Officer] denying a study permit [Decision]. The Officer was not satisfied that the Applicant would leave Canada at the end of the authorized study period based on the purpose of her visit not being consistent with a temporary stay in Canada given the details provided in her application.

[2] The Applicant's position is that, the Decision lacked the requisite coherence, intelligibility and justifiability, thereby warranting the intervention of this Court. The Applicant contends that the Officer erred when deciding that the Applicant would not leave Canada. The Applicant argues that the Officer should have given her an opportunity to respond to their concerns through a procedural fairness letter before refusing the visa permit.

[3] For the reasons set out below, the application for judicial review is dismissed. Based on the record and the applicable law, I find that the Decision was not unreasonable and that there was no breach of procedural fairness.

II. Issues and Standard of Review

[4] The issues I am to address are as follows:

a) Was the Decision rejecting the study permit application unreasonable?

b) Was there a breach of procedural fairness?

[5] Both parties confirmed at the hearing that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. In respect of the merits of the Decision, the standard of review in matters related to study permits is reasonableness (*Hajiyeva v Canada (Citizenship and Immigration)*, 2020 FC 71 at para 4). I agree that the applicable standard of review is reasonableness.

[6] The reasonableness standard of review finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers (*Vavilov* at para 13). A reviewing court applying the reasonableness standard must focus on the decision

actually made, including the reasoning process and the outcome. It does not ask what decision it would have made instead, does not attempt to ascertain the "range" of possible conclusions, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem (*Vavilov* at para 83).

[7] The decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker" (*Vavilov* at para 125). A reasonable decision is one 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. The reasonableness standard requires that a reviewing court defer to such a decision (*Vavilov* at para 85). Reasonableness review is not a "line-by-line treasure hunt for error" (*Vavilov* at para 102).

[8] A reviewing court "must bear in mind that the written reasons given by an administrative body must not be assessed against a standard of perfection. That the reasons given for a decision do "not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" is not on its own a basis to set the decision aside" (*Vavilov* at para 91). Moreover, "even where elements of the analysis are left out and, in the whole scheme of the things, the decision is not undermined as a whole and must stand" (*Vavilov* at para 122).

[9] The burden of proof lies with the party claiming that the decision is unreasonable. The party must prove to the reviewing court that the decision is so seriously flawed that it cannot be said to meet the requirements of justification, intelligibility and transparency (*Vavilov* at para 100).

[10] In respect to allegations of procedural fairness, the Court's task is to determine "whether the procedure was fair having regard to all of the circumstances" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]). If a proper allegation of a breach of procedural fairness has been framed, the Court will review the alleged breach on the standard of correctness (*Canadian Pacific* at para 34, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

III. Applicable Legislation

[11] Foreign nationals seeking to enter or remain in Canada as temporary residents must hold a visa or other documents issued under the *Immigration and Refugee Protection Act*, SC 2001, c 2, [IRPA]. Section 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] deals with applications for study permits.

IV. Background

[12] The Applicant is a citizen of Nigeria and resides in the United Arab Emirates [UAE]. The Applicant holds a Bachelor of Science from the University of Lagos. Since 2017, the Applicant was employed as a Property Consultant.

[13] In November 2022, the Applicant applied for a study permit to allow her to pursue a Business Management and Supply Chain Management at Saskatchewan Polytechnic in Saskatchewan. Saskatchewan Polytechnic accepted the Applicant to their two-year program on December 23, 2022.

[14] On January 18, 2023 Officer refused the application as they were not satisfied the Applicant would leave Canada at the end of the authorized period. The Officer found the purpose of her visit was not consistent with a temporary stay given the details provided in her application.

V. Analysis

A. *Was the Decision Reasonable?*

[15] The Applicant alleges the Officer failed to consider evidence in her application such as her guarantor's (her husband) financial situation, the Applicant's study plan providing a narrative of the benefits she would yield from attending Saskatchewan Polytechnic, and employment letter that she would be elevated to a management position after completing her studies. The Applicant argues that the advancement of her career is reasonable in light of the cost, considering the Applicant's socio-economic situation and overwhelming financial resources, which were all before the Officer.

[16] The Respondent's position is that the Decision was brief but sufficiently outlined the reasons to understand the Officer's logic. The Respondent contends that the Officer's reasons demonstrate that the Decision took into consideration the evidence on record, and was based on

their broad discretion to refuse the study permit. Reading the Decision as a whole, the Officer had considered the high cost of international study in Canada given the Applicant's previous educational history, relevance of the proposed course of study and taking into account factors such as personal establishment and immigration status in her country of residence. The Respondent alleges that the Applicant is seeking to have the Court reweigh the evidence.

[17] The Applicant submitted that a midlife career change is permitted (*Emesiobi v Cnada (Citizenship and Immigration)*, 2018 FC 90). The Applicant also cited *Yuzer v Canada (Citizenship and Immigration)* 2019 FC 781 [*Yuzer*], at paragraph 21, for the proposition that the Officer's statement on local options available with no other details was a reviewable error. In *Yuzer*, the determinative issue was related to the costs and expenses associated with the proposed trip to Canada not being reasonable. The Officer made a statement that there were similar programs and courses readily available and for much lower cost. The Applicant further contends that the Decision is unintelligible given the significant financial assets of her husband, as guarantor, who was in a position to pay for the costs associated with her studies.

[18] With respect, while the Applicant strenuously made these arguments at the hearing, the Officer's Decision related to other factors as well, which I must consider on judicial review. The factors that the Applicant raised cannot be considered in isolation and must be reviewed in the context of the Decision as a whole.

[19] Based on the record before them, it was open to the Officer to consider whether the Applicant already achieved the benefits of the intended course of study, and whether they are

repetitive or inconsistent with their career path in addition to her family's circumstances. The onus is on the applicant to sufficiently explain the benefits of pursuing the program and the study plan (*Rajabi v Canada (Citizenship and Immigration)*, 2024 FC 371 at para 12 [*Rajabi*]; *Mehrjoo v Canada (Citizenship and Immigration)*, 2023 FC 886 at para 12 [*Mehrjoo*]).

[20] The Respondent highlighted the income that the Applicant earned was modest and comprised of basic salary and commission. Other than vague and generalized statements in her application about the anticipated studies filling in the gaps in the market, it was unclear what those gaps were, and what advantages would be gained from her chosen program of study. As such, it was open for the Officer to find that, in that context, the proposed study plan was short on detail. (*Sayyar v Canada (Citizenship and Immigration)*, 2023 FC 494 at para 20). The record also demonstrated that the Applicant had a temporary resident status in the UAE with no guarantee of renewal.

[21] Furthermore, based on the records from the Applicant's current employer, the Officer noted that the employer did not guarantee a promotion, nor any need for the Applicant's proposed studies to obtain the promotion. It was unclear if she would have employment upon her return. Upon review of the letter from the Applicant's employer, I cannot agree with the Applicant that she would obtain a promotion upon completion of her program or that the program was required for a promotion.

[22] I agree with the Respondent's position that the Officer weighed many factors, the cost and benefits of the proposed study plan and assessed the evidence that was submitted in support of the

visa application. I find no reviewable error in the manner in which the Officer appears to have assessed the Applicant's study permit application from the notes.

[23] Foreign nationals must establish that they will leave Canada by the end of the period authorized for their stay before a study permit may be issued. When this criterion is not met, an immigration officer will not issue a study permit (*Rajabi* at para 12).

[24] The Applicant is asking me to reweigh the evidence. That is not the role of this Court on judicial review.

B. *No breach of procedural fairness*

[25] The Applicant argued that the Officer made the Decision based on stereotypes or generalizations and should have given the Applicant time to respond (*Hernandez Bonila v Canada (Citizenship and Immigration)*, 2007 FC 20 at para 25, 27 [*Bonila*]). The Applicant was not allowed to address the concerns on the facts such as the adverse inferences about her intentions and negative opinion about her application. While an oral hearing was not required, the Applicant states a procedural fairness letter should have been provided. Not doing so is a breach of natural justice.

[26] The Respondent suggests that a procedural fairness letter was not required, because there had been no credibility issues. The Respondent argues that procedural fairness falls on the lower end of the spectrum in the context of temporary resident visa applications and remains contextually driven.

[27] Current case law is clear that study permit decisions attract a low level of procedural fairness and officers do not have to seek out additional information to assuage concerns arising on the face of an application (*Rajabi* at para 23).

[28] Upon reviewing the record and the Decision, I cannot find, like the Court did in *Bonila,* that the officer subjectively formed an opinion that the applicant would not return to her country. Rather, in the Applicant's case, the Officer's concerns focused on the Applicant's study plan, as well as the information and documentation that the Applicant submitted in support of the current application. The onus remains on an applicant to present all the information necessary to support a convincing application (*Rajabi* at para 12, citing *Mehrjoo* at para 12).

[29] The Applicant's case did not give rise to any procedural obligations on the part of the Officer to follow up with her or to identify concerns with her application. Where concerns arise directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address their concerns (*Rajabi* at para 25). I do not agree with the Applicant that there was a breach of procedural fairness.

VI. Conclusion

[30] For above reasons, this application for judicial review is dismissed. The Applicant has not demonstrated that the Decision is unreasonable, or that the Decision was not justified, transparent, and intelligible. There has been no breach of procedural fairness.

[31] The parties confirmed that there was no question of general importance to certify, and I agree none arises.

JUDGMENT in IMM-2606-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There are no questions for certification.

"Phuong T.V. Ngo"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2606-23
STYLE OF CAUSE:	OLABISI BILIKISU ASEMEBO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL (QUÉBEC)
DATE OF HEARING:	MARCH 27, 2024
JUDGMENT AND RESONS:	NGO J.
DATED:	JUNE 18, 2024

APPEARANCES:

Me Idorenyin E. Amana Esq.	FOR THE APPLICANT
Me Margarita Tzavelakos	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Amana Lawyers Barristers and Solicitors Cornwall (Ontario)	FOR THE APPLICANT
Attorney General of Canada Montréal (Québec)	FOR THE RESPONDENT