Federal Court  Cour fédérale

Date: 20210526

Docket: IMM-7104-19

Citation: 2021 FC 479

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 26, 2021

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

Jonathan ZAMOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Jonathan Zamor is seeking judicial review of the November 11, 2019 decision of a visa officer of the Canadian Embassy in Mexico, denying his application for a temporary resident visa and study permit.

[2] For the reasons set out below, the Court finds that there was no breach of procedural fairness and that the decision is reasonable. This application for judicial review will therefore be dismissed.

II. Background

[3] Mr. Zamor is a citizen of Haiti. On June 20, 2019, he applied for a temporary resident visa and study permit to pursue university studies in computer science and software engineering in Canada.

[4] The Canadian visa service rejected this application and Mr. Zamor filed an application for judicial review to challenge the refusal. The parties to the dispute agreed to set aside the decision, refer the file to another officer and allow Mr. Zamor the opportunity to submit additional documents. The file was subsequently assigned to another officer for reconsideration.

[5] On November 1, 2019, Visa Services sent a letter to Mr. Zamor and asked him to submit (1) original academic transcripts; (2) an original letter of acceptance from the intended educational institution; (3) documents showing bank account activity and transactions within the last year; (4) valid proof of income for the person who intends to sponsor his arrival in Canada; and (5) any other information he would like to have considered.

[6] On November 6, 2019, Mr. Zamor essentially responded that (1) he had previously indicated that it would be difficult for him to obtain documents; (2) the requested transcript is not helpful since the institution has already issued a letter of admission, and it is currently impossible

for him to provide the original; (3) he attached a copy of the acceptance letter, having never received an original document himself, and the letter confirming deferral of admission to the winter 2020 session; and (4) all other documents in connection with proof of funds are already on file.

[7] On November 11, 2019, the new officer refused Mr. Zamor's application for a study permit because he was not satisfied that Mr. Zamor would leave Canada at the end of the period of stay under subsection 216(1) of the *Immigration and Refugee Protection Regulations* (SOR/2002-227) [Regulations], given (1) the reason for the visit; (2) Mr. Zamor's current employment situation; and (3) Mr. Zamor's personal property and financial situation. The notes in Citizenship and Immigration Canada's Global Case Management System, which are contained in the Certified Tribunal Record, provide details of the reasons for the officer's decision.

[8] Subsection 216(1) of the Regulations, to which the officer referred, provides that "an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national":

> a) applied for it in accordance with this Part;
> b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;
> c) meets the requirements of this Part;
> d) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and
> e) has been accepted to undertake a program of study at a designated learning institution.

III. Parties' arguments

[9] Mr. Zamor made two arguments.

[10] First, he submitted that the officer breached procedural fairness by (a) doubting his return at the end of his stay and failing to allow him to respond to the doubt with an interview; (b) failing to notify him or call him for an interview; and (c) finding an implied lack of credibility based on evidence of Mr. Zamor's parents' sources of income, his travel habits and other factors.

[11] Second, Mr. Zamor submitted that the officer erred in concluding, based on reasons that are not supported by facts and law, that Mr. Zamor was unlikely to leave Canada.

[12] As remedies, Mr. Zamor asked the Court to allow the application, set aside the visa officer's decision, order the issuance of the visa, and order the Minister of Citizenship and Immigration [the Minister] to pay him the sum of $1,500,050.00 [TRANSLATION] "plus interest at the rate of 25%".

[13] The Minister responded that the officer's decision is reasonable. In essence, he stated that the officer analyzed (1) all of the documentary evidence filed by Mr. Zamor, and provided detailed reasons to support the decision to refuse the application; (2) Mr. Zamor's complete financial situation, taking care to analyze the evidence; and (3) the reason for Mr. Zamor's visit as well as his current employment situation. The officer concluded that the evidence on record did not support a finding that he would leave Canada at the end of the authorized period. Finally,

the Minister added that the officer is not obliged to express doubts to the applicant or to give him an opportunity to perfect his evidence.

IV. Analysis

[14] Where issues of procedural fairness are raised, the Court must determine whether the proceedings were fair in light of all the circumstances (*Canadian Pacific Railway Ltd. v Canada (Attorney General)*, 2018 FCA 69, at para 54).

[15] Regarding Mr. Zamor's procedural fairness argument, it is well established that a visa officer is not obliged to make known to an applicant his or her doubts about the conditions set out in the Act, and the officer also has no obligation to report to the applicant the outcome of his or her application at each stage of the process (*Sharma v Canada (Citizenship and Immigration)*, 2009 FC 786 at para 8; *Fernandez v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8267 (FC) at para 13; *Lam v Canada (Minister of Citizenship and Immigration)* (1998), 152 FTR 316 (FC) at para 4).

[16] In relation to Mr. Zamor's allegation of an implied finding of credibility by the officer, the Court has already ruled in *Ibabu v Canada (Citizenship and Immigration)*, 2015 FC 1068 [*Ibabu*], as in *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 [*Solopova*], that "[a]n adverse finding of credibility is different from a finding of insufficient evidence or an applicant's failure to meet his or her burden of proof" (at para 35). As the Court stated in *Gao v Canada (Minister of Citizenship and Immigration)*, 2014 FC 59 at para 32, and reaffirmed in *Herman v Canada (Minister of Citizenship and Immigration)*, 2010 FC 629 at para 17, "it can

not be assumed that in cases where an Officer finds that the evidence does not establish the applicant's claim, that the Officer has not believed the applicant".

[17] Mr. Zamor appears to confuse an adverse credibility finding with a finding of insufficient evidence. Rather, the officer's finding stems from the obligation imposed on Mr. Zamor to establish, on a balance of probabilities, that he will leave Canada at the end of the period authorized for his stay, as set out in subsection 216(1) of the Regulations. The burden of proof was on Mr. Zamor to provide the officer with all the information and documentation necessary to satisfy the officer that he met all the statutory requirements.

[18] According to *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the standard of review that is presumed to apply is reasonableness, and there is nothing to rebut the presumption in this case. Where the standard of reasonableness applies, the "burden is on the party challenging the decision to show that it is unreasonable" (at para 100). The Court must focus "on the decision actually being made by the decision maker, including both the decision maker's reasoning process and the outcome" (at para 83) to determine whether the decision 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" (at para 85). It is not for the Court to substitute the outcome with one that it prefers (at para 99).

[19] In addition, the Court's case law confirms that an officer's assessment of the facts of the application, and the officer's belief that an applicant would not leave Canada at the end of his or her stay, is reviewed on a standard of reasonableness (*Akomolafe v Canada (Citizenship and*

Immigration), 2016 FC 472 at para 9; *Li v Canada (Citizenship and Immigration)*, 2008 FC 1284 at para 15; *Guinto Bondoc v Canada (Citizenship and Immigration)*, 2008 FC 842 at para 6). The officer's decision is discretionary and is "an administrative decision made in the exercise of discretionary power" (*My Hong v Canada (Citizenship and Immigration)*, 2011 FC 463 at para 10). For this reason, it is entitled to considerable deference given the specialization and experience of the visa officer (*Solopova* at para 12; *Kwasi Obeng v Canada (Citizenship and Immigration)*, 2008 CF 754 at para 21).

[20] A temporary residence and student visa applicant bears the burden of providing a visa officer with all of the relevant information to satisfy the officer that he or she meets the statutory requirements (*Solopova* at para 22). I am satisfied in this case that Mr. Zamor disagrees, and in some way challenges the weight that the officer gave to the evidence. However, under the standard of reasonableness, it is not the role of the Court to reweigh the evidence.

[21] Mr. Zamor has not satisfied me that the officer failed to consider the evidence or ignored material evidence contradicting his findings (*Canada (Citizenship and Immigration) v Abdulghafoor*, 2015 FC 1020 at para 22). A tribunal is presumed to have considered the evidence as a whole and is not required to refer to each piece of evidence (*Mirmahaleh v Canada (Citizenship and Immigration)*, 2015 FC 1085 at para 25; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[22] The obligation to give reasons for a decision on a temporary resident visa application, in this case related to a study permit application, is minimal, and the reasons given by the officer in

this case make it possible to understand the basis for his decision. Moreover, as the Minister points out, the Court's case law confirms that the officer could consider the travel history and verify Mr. Zamor's ties to his country of origin.

[23] The fact that the first officer did not raise concerns about the adequacy or source of funds is not binding on the second officer. The first decision was overturned and the second officer was instructed to reconsider the file.

[24] Finally, and since the application will be dismissed, it is not necessary to consider whether all of the remedies sought by Mr. Zamor are available on an application for judicial review. The Minister has clearly identified the issues in his submission.

[25] In reviewing the entire file before the officer, I have not been satisfied that the officer made his decision in a procedurally unfair manner, that he ignored evidence that contradicted his conclusions, or that his decision is unreasonable. Mr. Zamor has therefore not met his burden of proof.

JUDGMENT in IMM-7104-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Martine St-Louis"
Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7104-19
STYLE OF CAUSE:	JONATHAN ZAMOR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC – HELD VIA VIDEOCONFERENCE
DATE OF HEARING:	MAY 12, 2021
JUDGMENT AND REASONS:	ST-LOUIS J.
DATED:	MAY 26, 2021

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