

Federal Court



Cour fédérale

**Date: 20210715**

**Docket: IMM-5173-20**

**Citation: 2021 FC 743**

**Vancouver, British Columbia, July 15, 2021**

**PRESENT: Madam Justice Walker**

**BETWEEN:**

**KAVITHA BINU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Ms. Kavitha Binu, is a citizen of India who has been working in the United Arab Emirates (UAE) for the past 17 years. She seeks judicial review of a decision by a visa officer (Officer) in the Canadian Embassy in Abu Dhabi dated September 27, 2020, refusing her application for a study permit. The Officer was not satisfied that the Applicant would leave Canada at the end of her stay based on: the purpose of her visit; the limited employment

prospects in her country of residence; her current employment situation; and her personal assets and financial status.

[2] The Applicant submits that the Officer's decision is unreasonable for several reasons. She also alleges bias or reasonable apprehension of bias on the part of the Canadian Embassy in Abu Dhabi based on her history with the office and its prior refusals of her applications for Temporary Resident Visas (TRVs) and study permits.

[3] I have carefully considered the Applicant's arguments contesting the substance of the Officer's decision and her apprehension of bias on the part of the Abu Dhabi office. I am not persuaded by the Applicant's arguments in either regard and will dismiss her application for judicial review.

I. Background

[4] The Applicant submitted two TRV applications to the Abu Dhabi office, one in 2018 and one in 2019, both of which were refused. She then applied for her first study permit for Canada in January 2019. The first application was refused and the Applicant submitted a second application.

[5] The Applicant's intended course of studies is a Master of Business Administration (MBA) program at the University of Canada West (UCW) in Vancouver, British Columbia.

[6] The Applicant's second study permit application was refused on September 10, 2019 by a visa officer in the Abu Dhabi office, reconsidered and refused again on October 24, 2019. The Applicant applied for leave and for judicial review of the October 2019 decision. She subsequently accepted an offer to settle and filed a Notice of Discontinuance of her request for judicial review in June 2020.

[7] The Applicant's second study permit application was reassigned to the Officer who requested additional documents and submissions in August 2020. The Applicant responded to the Officer's request but her application to study in Canada was once again refused on September 27, 2020 in the decision under review.

## II. Decision under review

[8] The Officer's refusal of the Applicant's request for a study permit to pursue her MBA in Canada was made in reliance on subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPRs). The Officer's decision is comprised of a decision letter and Global Case Management System (GCMS) notes.

[9] The Officer first summarized the Applicant's intention to pursue an MBA to improve her leadership, risk management and other skills, or to create her own business. She indicated an intention to return to India in part to revitalize her family's plantation and to accept an unrelated offer for employment in India in 2023. The Applicant expected the Indian economy to grow significantly in 2022-2023, allowing her and her husband to return to India and for her to assume a finance management position. The GCMS notes also explain the Officer's concerns with the

Applicant's rationale for pursuing a degree at UCW and her lack of ties to both India and the UAE:

- The Applicant's plans are speculative and her economic predictions optimistic given the global consequences of the COVID-19 pandemic, nor are they supported by evidence.
- The Applicant indicated that she undertook significant research into the UCW MBA program but most of the information in her application is about the school or program itself and not the research she undertook. The Applicant also indicated that she spoke to current students but did not relay the information she received.
- The Officer was concerned with the state of the application and study plan as the writing switched to the second person, suggesting it may have been copied from an external source, and contains sentence fragments, spelling and stylistic errors. The study plan was organized under several headings but the content did not match the headings provided.
- The Applicant's study plan gave few concrete or personal details and was vague and unpersuasive.
- The Applicant has weak ties to India as she has lived in the UAE apart from her family for 17 years.
- The Officer also placed little weight on her 17 years of residence in the UAE as she intends to move to India.

### III. Analysis

#### 1. *Is the Officer's decision unreasonable?*

[10] The merits of the Officer's decision are subject to review for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*)). A visa officer's decision is owed a high level of deference by the Court and may be brief but must respond to the requirements for a reasonable decision: one that 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 (*Vavilov* at para 85). The Supreme Court emphasizes two components to a

reasonable decision: the decision maker's reasoning process and the outcome (*Vavilov* at para 86). The reasons given must reflect a logical chain of analysis and intelligibly explain the outcome of the decision maker's analysis.

[11] In this matter, I find that the Officer's decision meets both required elements of a reasonable decision. The Officer provided a detailed and rational analysis of the Applicant's study permit application against the requirements of the IRPRs and the refusal falls within a range of possible and acceptable outcomes when considered against the facts and applicable law.

[12] As noted above, the Applicant submits that the Officer's decision is unreasonable for a number of reasons but her primary challenge centres on the Officer's treatment of her family ties. The Applicant states that the Officer merely mentioned the fact that her nuclear family resides in the UAE and will remain there during her course of study. She questions why the Officer did not evaluate this factor as a strong tie outside of Canada and argues that the Officer committed a reviewable error in failing to explain more fully their analysis (*Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 19). The Applicant also faults the Officer's evaluation of her study plan for the MBA and her future employment prospects and plans in India. She argues that the level of scrutiny afforded to her study plan was beyond what is normal in study permit cases. In the Applicant's opinion, she had established the fact that she would leave Canada at the end of her authorized stay.

[13] The GCMS notes set out the Officer's consideration of each material aspect of the Applicant's evidence against the requirement that the Applicant must establish that she will leave

Canada at the end of her stay. The Officer stated that “[t]he applicant’s strongest ties outside Canada are her nuclear family” but that those ties were not sufficient to establish general, strong family ties outside of Canada due to the absence of strong links to either India or the UAE. First, with respect to the Applicant’s remaining family in India, the Officer assessed this factor as weak because she has lived apart from them for 17 years. Second, having indicated that she and her immediate family intend to leave the UAE, the Applicant could not be said to have strong ties in that country. Contrary to the Applicant’s submission, this is not a case in which the Officer ignored or was silent on the Applicant’s family ties outside of Canada.

[14] The focal point of the Officer’s analysis was the Applicant’s study plan and her failure to persuasively explain how the intended UCW program will benefit her future employment plans. The Officer noted that most of the information in the study plan is about the school or program. The plan provides general information which appears to be written in the second person and is not personal to the Applicant, her research or her circumstances. There is little connection to her stated future objectives. The Officer also noted inconsistencies within the study plan as to why the Applicant chose UCW and, in some instances, no correlation between the headings used and the content of the plan.

[15] The Officer’s decision as reflected in the GCMS notes is more detailed than many decisions issued in respect of study permit applications. However, I do not agree with the Applicant’s argument that the level of detail renders the decision unreasonable or beyond the proper exercise of a visa officer’s discretion. The Officer provided an explanation for each aspect of the Applicant’s submissions and a summary assessment of her evidence. Having reviewed the

record, including the Applicant's study plan, and the relevant jurisprudence, I find that it was open to the Officer to make the findings reflected in the GCMS notes and, ultimately, to refuse the Applicant's request for a study permit.

2. *Allegation of bias in the Abu Dhabi office*

[16] The Applicant alleges that it is clear her history with the Abu Dhabi office was central to the Officer's decision. She argues that the decision exudes suspicion regarding her study plan and that "nothing would have reasonably caused the suspicion exposed in the reasons given for her refusal". The Applicant bases her allegation of bias in the office on the fact that she has been refused permits a number of times by personnel within the office and that it is very unlikely, in her view, for the prior refusals not to have somehow influenced the Officer.

[17] I do not agree.

[18] There is no doubt that the right to be heard by an impartial decision maker is a critical element of an individual's broader right to procedural fairness. However, a party's disagreement with a decision maker's interpretation and application of the evidence and law does not form the basis for an allegation of bias (*Sir v Canada*, 2019 FCA 101 at paras 6, 8).

[19] The threshold for finding bias or a reasonable apprehension of bias is high as decision makers are presumed to be impartial (*Sagkeeng First Nation v Canada (Attorney General)*, 2015 FC 1113 at para 105; *Lostin v Canada (Citizenship and Immigration)*, 2013 FC 1098 at para 26). The test for reasonable apprehension of bias is whether an informed person, viewing the matter

realistically and practically and having thought the matter through, would think it more likely than not that the decision maker would unconsciously or consciously decide an issue unfairly (*R. v S. (R.D.)*, [1997] 3 SCR 484 at para 112). An allegation of bias should not be made lightly and must be supported by substantive and concrete evidence. It cannot rest on suspicion and conjecture (*Arthur v Canada (Attorney General)*, 2001 FCA 223 at para 8).

[20] In this light, I have carefully considered the Applicant's submissions and find that she has not satisfied her considerable evidentiary burden. The Officer's assessment of the Applicant's study permit application was comprehensive and there is no evidence of a lack of impartiality in the decision. The fact that the Applicant considers the reasons given in the GCMS notes as more detailed than usual is not a persuasive argument in support of her apprehension of bias. With respect to her general concerns of bias on the part of the Abu Dhabi office, the Applicant relies on her opinion that the prior refusals must have influenced the Officer. However, she has provided no objective evidence that would establish actual bias or a reasonable apprehension of bias. The prior TRV and study permit refusals issued by the Abu Dhabi office do not in and of themselves provide a basis for the Applicant's allegations.

#### IV. Conclusion

[21] I have found no reviewable error in the Officer's decision. The GCMS notes set out a coherent chain of analysis that relates the Officer's consideration of the Applicant's request for a study permit to the reason for the refusal: the Officer's inability to conclude that the Applicant would leave Canada at the end of her stay. Therefore, the application is dismissed.



[22] No question for certification was proposed by the parties and none arises in this case.

**JUDGMENT IN IMM-5173-20**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Elizabeth Walker"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5173-20

**STYLE OF CAUSE:** KAVITHA BINU v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** JULY 5, 2021

**JUDGMENT AND REASONS:** WALKER J.

**DATED:** JULY 15, 2021

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