Federal Court  Cour fédérale

Date: 20211026

Docket: IMM-2671-20

Citation: 2021 FC 1140

Ottawa, Ontario, October 26, 2021

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

ABDI RAHMAN KASSIM MOHAMUD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is a judicial review of the negative decision of a Visa Officer ("Officer") of the High Commission of Canada in Nairobi, Kenya of the Applicant, for a study permit. Mr. Mohamud's (the "Applicant") application was rejected on the grounds that the Officer was not satisfied he would leave Canada at the end of his stay.

II. Background

[2] The Applicant is a 24-year old male citizen of Uganda. He graduated high school in 2010, and completed a Bachelor's Degree in Business Administration (Accounting) from Arab Open University in Egypt in 2012. He subsequently worked as an accountant, and is presently employed by ISAB International Limited, a human resources firm, as a Senior Accountant. The Applicant sought to study for a diploma in accounting in Canada in order to further his accounting career in Uganda, and for the stated purpose that his firm is "thinking of expanding to Europe and North America".

[3] At the time of his study permit application, Seneca college diploma program was expected to begin in May 2020, and end in December 2021. He submitted an application for a study permit in Canada on or about February 28, 2020, with proof of funds available for his study in Canada from his father, and a deposit toward his tuition fee.

III. Decision

[4] The Officer, upon review of the Applicant's study permit application and supporting documentation, refused the application on the grounds that it did not meet the requirements of the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 [IRPA] and *Immigration and Refugee Protection Regulations*, SOR /2002-227 [IRPR]. Specifically, the application was rejected on the grounds that the Officer was not satisfied that the Applicant would leave Canada at the end of his stay, as stipulated in s. 216(1) of the IRPR. This conclusion was based on: (1)

the Applicant's family ties in Canada and in his country of residence; (2) the purpose of the Applicant's visit; and (3) the Applicant's current employment situation.

[5] In the Global Case Management System ("GCMC") notes that followed, the Officer assessed, among other factors, that:

- The Applicant's income is low;
- He has another university degree in the same discipline;
- He has poor rationale for this course of study enhancing his employment prospects in his country of citizenship;
- He has weak family and economic ties in his country of citizenship (Uganda) which would provide little incentive to leave Canada.

IV. Issues

[6] The issues are:

A. Did the Officer breach procedural fairness?

B. Was the Officer's decision reasonable?

V. Standard of Review

[7] The standard of review is reasonableness. As set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, reasonableness is the presumptive standard of review of the merits of an administrative decision, and none of the circumstances warranting a departure from this presumption arise here.

[8] As de Montigny JA wrote in *Canadian Association of Refugee Lawyers v Canada (Minister of Immigration, Refugees, and Citizenship)*, 2020 FCA 196 at paragraph 35:

> Neither *Vavilov* nor, for that matter, *Dunsmuir* … have addressed the standard for determining whether the decision-maker complied with the duty of procedural fairness. In those circumstances, I prefer to rely on the long line of jurisprudence, both from the Supreme Court and from (the Federal Court of Appeal), according to which the standard of review with respect to procedural fairness remains correctness… it goes to the manner in which a decision is made rather than to the substance of the decision… what matters is whether or not procedural fairness has been met.

Neither party in this case made submissions on the standard of review for procedural fairness, so I will examine it based on procedural fairness has been met, akin to a correctness standard.

VI. Analysis

[9] The Applicant included, in his affidavit, evidence that was not before the Officer. For example, in his affidavit he says he is an only child (para 3) which was not before the Officer. I will disregard all evidence not before the Officer. It is settled law that judicial reviews proceed on the basis of the evidence which was before the decision-maker (*Fabiano v MCI*, 2005 FC 1260). The Court is tasked with reviewing the Officer's decision based on the facts before them, not on new facts as presented in the Applicant's affidavit.

A. *Did the Officer breach procedural fairness?*

[10] On the issue of procedural fairness, the Applicant submits that he should have had an opportunity to respond to the Officer's concerns, citing *Yuan v Canada (MCI)*, 2001 FCT 1356, for the proposition that there is a requirement that visa officers provide the applicant with such

an opportunity. A more comprehensive version of the same requirement arises in *Patel v Canada (MCI),* 2020 FC 77 [*Patel*], so I will deal with it in my analysis there.

[11] The Applicant acknowledges that the level of procedural fairness owed to Visa and student permit applicants falls on the low end of the spectrum, but asserts that concerns with credibility should be raised with the Applicant (at a minimum, in writing). I agree it is on the low end of the spectrum as this Court has previously held that "the procedural requirements mandated by the duty of fairness should be relaxed for the processing of applications for student authorizations by visa officers overseas" (*Li v Canada (MCI)*, 2001 FCT 791, at para 50). But I do not agree that in this case the Officer made credibility findings.

[12] The Applicant lengthily quotes Justice Diner in *Patel*, for this proposition, and the quote acknowledges that if this is not a question of credibility but rather is a question of evidence or sufficiency of supporting materials, then they are not required to inform the Applicant. He argues that the Officer had the Applicant's letter and an application, both of which explained why he wanted to study in Canada, and, the Applicant contends, that he would return afterward. Given the Officer's concerns, the Applicant argues that the Officer should have interviewed the Applicant or "at the least sent (a) procedural fairness letter." By failing to do so, they submit that the Officer breached procedural fairness.

[13] *Patel* is not an authority for the principle that the Applicant cites it. While it is true that in *Patel*, the officer made a credibility finding for which Justice Diner found that the applicant should be afforded the ability to respond, the officer's finding in that case that the applicant

would not leave Canada at the end of their authorized stay was not the credibility finding in that case. Rather, the officer concluded that the applicant in *Patel* was not a *bona fide* student. At paragraph 10 of that decision, Justice Diner writes, "Here, the Officer made a negative credibility finding against Mr. Patel …. in concluding that he would not be a bona fide student." This was the credibility finding, on which point Justice Diner found the applicant was entitled by procedural fairness to have the officer raise with him.

[14] Secondly, the Officer's true concerns in the instant case pertain to the sufficiency of the Applicant's evidence, not their credibility. As indicated by the Applicant's own quoted passage from *Patel,* "visa officers are not required to inform Applicants (of) concerns regarding the sufficiency of supporting materials or evidence." It is acknowledged in the jurisprudence (see: *Musasiwa v Canada (MCI),* 2021 FC 617 at paras 12, 13, 19; and *D'Almeida v Canada (MCI),* 2019 FC 308) that there has been some consistent difficulty in differentiating between the Applicant's evidence and their credibility. However, it is nonetheless my finding that the Officer's conclusion in the instant case that the Applicant will not leave Canada at the end of his stay is one pertaining to the sufficiency of the Applicant's evidence, not his credibility. While the Applicant asserted that he had no intention to remain in Canada beyond his authorized stay, he provided – in the view of the Officer – weak evidence to support this, citing his parents living in Uganda and a goal of "taking (his education) back home with him."

[15] The Officer does not question the credibility of this evidence, but rather its sufficiency in establishing the Applicant's likelihood of leaving Canada. In his reasons, he concludes that the Applicant has "overall weak family and economic ties in the country of citizenship," not that the

Applicant has no economic or family ties. The Officer does not, conclude that the Applicant is lying about the presence of his parents in Uganda, but rather than on the spectrum of possible ties to the country, the evidence the Applicant has presented is weak. This is not a credibility finding, but one of sufficiency of evidence, and as such, the case law does not establish that the Applicant is entitled to have the Officer raise their concerns with him (*Patel* at para 10).

[16] The obligation of the Applicant, as a foreign national, which must be fulfilled before a study permit may be issued, for foreign nationals to establish that they will leave Canada at the end of their authorized stay is clear on the face of s. 216(1) of the IRPR. I agree with the Respondent that, given this section is publicly available; there was no obligation for the Officer to notify the Applicant of this requirement.

[17] I find that the Applicant was afforded the requisite degree of procedural fairness, and that consequently, the Officer's finding that he would not leave Canada by the end of his authorized stay is determinative.

B. *Was the Officer's decision reasonable?*

[18] The Applicant asserts that the Officer erred in concluding that the Applicant would not leave Canada by the end of his authorized stay, and that this decision was thus unreasonable. He submits that the Officer either failed to consider, or erred in how he considered, a multitude of evidence, including (1) failing to consider the Applicant's ties to Uganda (his parents); (2) erring in considering the Applicant's lack of travel history as a factor against him; and (3) failing to consider the Applicant's evidence that he intends to return to Uganda after graduation. The

Applicant argues that the Officer ignored the Applicant's family ties in Uganda and that the GCMS notes on this point are unintelligible.

[19] This is not borne out on the evidence. Rather, the Officer simply did not specifically mention the presence of the Applicant's parents in Uganda. However, this is not required of the Officer in order for his conclusion to be reasonable. *Vavilov*, at paragraph 301, instructs that "administrative decision-makers are not required to consider and comment upon every issue raised by the parties in their reasons." Rather, what is required is that "a reasoned explanation for the decision can be discerned," based on an internally coherent and rational chain of analysis, and the outcome is acceptable and defensible in light of the factual and legal constraints acting on the decision-maker (*Vavilov* at paras 102, 85 and 101). In this case, the Officer was clearly alive to the fact that the Applicant had some ties to Uganda, but the Applicant had not provided detailed information concerning his family ties. This is evidenced by the fact that the Officer assessed the Applicant as having "weak family … ties," rather than no family ties, to his country of citizenship. This is not conflicting or contradictory evidence, akin to *Kavugho-Mission v Canada (Citizenship and Immigration),* 2018 FC 597, as it is merely a statement concerning the Applicant's family ties, which the Officer assessed and deemed to be weak. To conclude otherwise would equate to a reweighing of evidence, which is not the role of judicial review (*Vavilov*, at para 125).

[20] On the issue of the Applicant's travel history, there is little evidence of the Officer using it as a major factor against the Applicant. Rather, it was simply part of his larger analysis, and does not render the decision unreasonable.

[21] A similar analysis to the Applicant's family ties applies to the argument about his intention to return to Uganda, as expressed in his plans (as stated in his motivation letter) to grow his career as an accountant and gain "… a competitive advantage over (his) counterparts with similar qualifications obtained in (his) home country." The Officer did not ignore this information, but rather it served as a portion of his broader analysis. He was not required to specifically comment on the letter, as discussed above. There is indication in the Officer's reasons that they considered the Applicant's employment already as a degree-holding accountant, and the assertion that this course of study will improve it. The reasons indicate that the Applicant had "poor rationale for study … to enhance employment in country of citizenship." Again, the word "poor" indicates that the Officer considered this factor, and concluded that it was weak. The consideration that he had a degree in accounting and was working as an accountant yet his study was for a diploma in accounting was a factor in the Officer's reasoning. I find this determination to be reasonable.

[22] The Applicant's argument, in essence, may be boiled down to an assertion that the Officer's finding that the Applicant would not leave Canada by the end of his authorized stay was unreasonable on the facts and evidence before him. On their merits, this argument equates to a disagreement with the Officer's weighting of evidence, and a challenging of the Officer's failure to mention some specific pieces of evidence. Reviewing in this manner is not the purpose of reasonableness review. Reviewing courts must "refrain from reweighing and reassessing the evidence considered by the decision maker" (*Vavilov,* at para 125). Rather, in conducting reasonableness review, "… (t)he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov,* at para 100). *Vavilov* is clear that a reviewing court does not ask what

decision in what would have in place of an administrative decision-maker, but rather must assess whether the decision-maker's decision – and the reasons therefor – fall within the range of possible conclusions that were open to the decision-maker. In this case, I find that the decision was reasonable.

[23] No question for certification was presented by the parties.

JUDGMENT IN IMM-2671-20

THIS COURT'S JUDGMENT is that:

1. I will dismiss the application;

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2671-20
STYLE OF CAUSE:	ABDI RAHMAN KASSIM MOHAMUD v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 7, 2021
JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	OCTOBER 26, 2021

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