Federal Court Cour fédérale

Date: 20230113

Docket: IMM-753-22

Citation: 2023 FC 52

Ottawa, Ontario, January 13, 2023

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

SHAHRUKH ALI KHAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by a visa Officer at the Canadian embassy in Abu Dhabi, dated November 21, 2021, which found that the Applicant had not met the onus on him to satisfy the Officer that he would leave Canada at the end of their stay based on the purpose of his visit, current employment situation and limited employment prospects in Pakistan.

II. Facts

[2] The Applicant is a 28-year-old citizen of Pakistan who was accepted into the Business Diploma Program at the Southern Alberta Institute of Technology via the Student Direct Stream [SDS]. The Applicant supposedly met the requirements to apply under the SDS, including:

> a) have an acceptance letter from a post-secondary designated learning institution;
>
> b) have proof you have paid your tuition for your first year of study;
>
> a) have a Guaranteed Investment Certificate (GIC) of CAN$10,000;
>
> b) have your most recent secondary or post-secondary school transcript(s); and
>
> c) have a language test result that shows a score of 6.0 or higher in each skill (reading, writing, speaking and listening).

[3] The Applicant's application for a study permit included the Applicant's personal and educational background, study plan, and a description as to why the program in Canada would be personally and professionally valuable. The Applicant had previously applied for a study permit, which was refused in March 2018.

[4] As proof of financial self-sufficiency, the Applicant provided:

> a) Affidavit from uncle in Pakistan promising to pay for all necessary expenses related to the Applicant's studies, uncle's employment showing annual income of 2,400,000 Pakistani Rupees (equivalent to about $16,560 Canadian dollars), and bank statement from uncle showing 1,364,744.80 Pakistani Rupees (equivalent to about $9,417 Canadian dollars in available balance);

b) Statutory declaration from the Applicant’s sister and brother-in-law in Canada confirming that they are able to provide all necessary financial support for the Applicant’s studies; and

c) Proof of the sister and brother-in-law’s business in Canada, and proof of available funds in the amount of about $400,000 Canadian dollars.

[5] The Applicant has been unemployed since July 2021. The Applicant previously worked for three months as a customer service representative. Notably, the Applicant already has a Bachelor’s Degree in Business Administration from Capital University of Science and Technology, in Islamabad, Pakistan. His transcript shows he attended that program for over four years with his degree requirements completed January 2021. His transcript shows he completed a wide variety of business courses including: management, marketing, accounting, business finance, mathematics, financial management, organizational behavior, English, psychology, project management, financial management, cost accounting, international business management, communications, entrepreneurship, etc. In the summer of 2020, he also completed a business project for credit.

III. Decision under review

[6] Upon examining the Applicant’s family, financial and professional ties, the Officer was not satisfied that these connections were sufficient to compel the Applicant’s return to Pakistan at the end of the period authorized for their stay. In the Officer’s view, the explanation provided by the Applicant for their intended studies poorly explained why they would like to take this course at this point in their life and what benefit they expect to get from it. Moreover, the Officer

found the explanation lacking in concrete details that would make it convincing. The Officer's notes read:

> I have reviewed the application. 26yrs old. single. pakistani ctzen. Seeking SP to study 2yrs Business Admin diploma at SAIT. PA obtained BBA & states being unemployed since july 2021; previously has worked as customer sales rep. After examining the applicant's family, financial, and professional ties, I'm not satisfied that those related to their country of residence are sufficient to compel their return at the end of the period authorized for their stay in Canada as required by R179(b). The explanation provided by the applicant for their intended studies poorly explains why they would like to take this course at this point in their life and what benefit they expect to get from it. It is often vague and lacking in concrete details that would make it convincing. After considering the applicant's academic and professional history, as well as their planned studies and explanation provided for it, I am not satisfied that the applicant is a genuine student who will pursue studies in Canada. The stated benefits of their intended studies do not seem to warrant the cost and difficulty of undertaking foreign education. Taking the applicant's current employment situation into consideration, the employment does not demonstrate that the applicant is sufficiently well established that the applicant would leave Canada at the end of a period of authorized stay. Based on the applicant's limited employment prospects in their country of residence/citizenship, I have accorded less weight to their ties to their country of residence/citizenship. Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

IV. Issues

[7] Respectfully, the only issue is whether the Officer's decision is reasonable.

V. Standard of Review

[8] The parties agree as do I that on judicial review in a student visa case the standard of review is reasonableness. With regard to reasonableness, in *Canada Post Corp v Canadian*

Union of Postal Workers, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Vavilov*, the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "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). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
>
> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
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> [Emphasis added]

[9] *Vavilov* establishes that the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances". The Supreme Court of Canada instructs:

> [125] It is trite law that 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": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
>
> [Emphasis added]

[10] The Federal Court of Appeal recently held in *Doyle v Canada (Attorney General)*, 2021 FCA 237 that the role of this Court is not to reweigh and reassess the evidence:

> [3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be drawn, and makes a decision. In conducting reasonableness review of the Director's decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability of the decision. Reweighing and second-guessing the evidence is no part of its role. Sticking to its role, the Federal Court did not find any fundamental errors.
>
> [4] On appeal, in essence, the appellant invites us in his written and oral submissions to reweigh and second-guess the evidence. We decline the invitation.

[11] Reasons visa officers in cases such are not assessed against a standard of perfection, nor may they be reviewed microscopically. The Supreme Court of Canada ruled that where reasons "do not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" that is not on its own a basis to set aside the decision: see

Vavilov at paras 91 and 128, and *Canada Post* at paras 30 and 52. In addition, reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion": *Vavilov*, paras 91 and 128 again, and *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, at paras 16 and 25.

[12] All applicants, including the Applicant in this case, have the onus to establish the merits of their claim to the satisfaction of the issuing officer. It is also the case that because visa applications do not raise substantive rights — foreign nationals have no unqualified right to enter Canada — the level of procedural fairness is low, and generally does not require that applicants be granted an opportunity to address the officer's concerns: see for examples *Bautista v Canada (MCI)*, 2018 FC 669 at para 17; *Kaur v Canada (MCI)*, 2017 FC 782 at para 9 and *Sulce v Canada (MCI)*, 2015 FC 1132 at para 10.

[13] Finally, by way of the legal framework, the visa administrative context is highly relevant. Every year, Canada receives upwards if not in excess of one million (1,000,000) applications for various types of permission to enter Canada, of which some 400,000 are granted annually. That leaves some 600,000 applicants annually who receive negative decisions. Each decision may be supported by reasons on its face, or more usually in cases such as this, they are supported by an explanation letter that is to be read in association with the underlying record. Given this huge volume of applications, the law has developed as noted above.

[14] More specifically, the requirement to give reasons in such visa cases is "typically minimal": see *Iriekpen v Canada (Citizenship and Immigration)*, 2021 FC 1276 where Justice McHaffie said, and I agree:

> [7] The "administrative setting" of the visa officer's decision includes the high volume of visa and permit applications that must be processed in the visa offices of Canada's missions: *Canada (Minister of Citizenship and Immigration) v Khan*, 2001 FCA 345 at para 32; and *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at paras 15, 17. Given this context and the nature of a visa application and refusal, the Court has recognized that the requirements of fairness, and <u>the need to give reasons, are typically minimal</u>: *Khan* at paras 31–32; *Yuzer* at paras 16, 20; *Touré v Canada (Citizenship and Immigration)*, 2020 FC 932 at para 11.
>
> [Emphasis added]

[15] The Federal Court of Appeal affirmed this principle going one step further in *Zeifmans LLP v. Canada*, 2022 FCA 160:

> [9] We disagree. *Vavilov* goes further. *Vavilov* tells us that reviewing courts <u>must not insist on the sort of express, lengthy and detailed reasons that, if asked to do the job themselves, they might have provided</u>: *Vavilov* at paras. 91-94. <u>To so insist could subvert Parliament's intention that administrative processes be timely, efficient and effective.</u>
>
> [10] *Vavilov* says more. It tells us that an administrative decision should be left in place if reviewing courts can discern from the record why the decision was made and the decision is otherwise reasonable: *Vavilov* at paras. 120-122; *Canada (Citizenship and Immigration) v. Mason*, 2021 FCA 156 at paras. 38-42. In other words, the reasons on key points do not always need to be explicit. They can be implicit or implied. Looking at the entire record, the reviewing court must be sure, from explicit words in reasons or from implicit or implied things in the record or both, that the administrator was alive to the key issues, including issues of legislative interpretation, and reached a decision on them.
>
> [Emphasis added]

[16] An example of these principles at work is *Hashem v Canada (Citizenship and Immigration)*, 2020 FC 41 per Boswell J:

> [27] It is not for the Court to reweigh the evidence before the visa section. I agree with the respondent that Mrs. Hashem is essentially asking the Court to reweigh the evidence and to substitute its view for that of the visa section officers.
>
> [28] A decision-maker is not obliged to refer explicitly to all the evidence. It is presumed that the decision-maker considered all the evidence in making the decision unless the contrary can be established (*Hassan v Canada (Minister of Employment & Immigration)*, [1992] FCJ No 946 at para 3; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] 157 FCJ No 1425 at para 16).
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> [29] Mrs. Hashem's failure to show that the visa section officers ignored evidence amounts to a mere disagreement with the factors they found to be determinative (*Boughus v Canada (Minister of Citizenship and Immigration)*, 2010 FC 210 at paras 56 and 57). There is no reason to intervene and set the decision aside.

[17] I also refer to my decisions in *Sharafeddin v Canada (Citizenship and Immigration)*, 2022 FC 1269 and *Siddiqua v Canada (Citizenship and Immigration)*, 2022 FC 1263, for additional practical applications of the relevant principles.

[18] Finally, as this Court noted in *Alaje v Canada (Citizenship and Immigration)*, 2017 FC 949, at para 14 per Justice Martineau, this Court owes great deference to an Officer's assessment, and I would add, to the Officer's weighing of the evidence: "… the Court owes great deference to the officer's assessment of the evidence."

VI. Analysis

[19] In my respectful view, the Applicant takes exception to the Officer's assessment and weight given to the material contained in the application. I note the Officer's weighing and assessing relevant evidence is criticized by the Applicant in terms of the study plan which the Officer found vague given the Applicant's academic history and other factors, especially the fact the Applicant has already completed a four-year business degree in Pakistan. The Applicant also asks the Court to reassess the reasonableness of the expense of Canadian study: the Officer found the benefits of the Applicant's studies did not warrant the cost and difficulty of undertaking foreign education. The Court is also asked to reweigh and reassess the Applicant's establishment in Pakistan, along with his prospects of employment in Pakistan if the Canadian courses are added to those already taken in Pakistan.

[20] With respect, I am not persuaded to set aside the deference owed to the decision of the Officer in this case – if deference is to mean anything, the Applicant must establish to the satisfaction of this Court that the presumption of deference is displaced. That did not occur in this case.

[21] In addition, I am not persuaded that "exceptional circumstances" exist in this case as per *Vavilov* at para 125, and therefore decline to reweigh and reassess the Applicant's evidence with a view to coming to a different conclusion in respect of any of the bases on which the Court is asked to reweigh and reassess evidence. Reassessing the evidence is simply not the role of this

Court on judicial review, as established by both the Federal Court of Appeal and the Supreme Court of Canada in the many decisions referred to already.

[22] The Applicant refers to numerous other cases decided by this Court. It is trite to observe that, and as a general rule, every case is different. Of course, if cases are the same they may be decided similarly. Otherwise, cases favouring other applicants on other facts no matter how numerous are irrelevant. I am far from persuaded the evidence in the decisions relied on by the Applicant are the same or substantially similar to the evidence in the case at bar. The same goes for references to other decisions by the Respondent. Ultimately, each case must be assessed on its own factual merits in accordance with constraining law on judicial review from the Supreme Court of Canada and Federal Court of Appeal.

[23] Finally, the Applicant submitted the Officer ignored or failed to engage on various aspects of evidence in this case. Counsel argued the Officer was required to specifically refer to such evidence. As proof of the allegation evidence was ignored or not engaged with, the Applicant observes the Officer did not specifically refer to material the Applicant claims was ignored or overlooked. With the greatest respect, there is no merit in this submission. It is trite to observe – and as has recently been reaffirmed by the Supreme Court of Canada - there is no obligation on the Officer to specifically refer to “all the arguments, statutory provisions, jurisprudence or other details” a party advanced or a reviewing judge might prefer; failure to mention any such material is not a basis to set aside the decision per *Vavilov* at paras 91 and 128. This is because tribunals such as this Officer are deemed to have read and considered the entire record, a proposition equally well established in the jurisprudence.

[24] I have considered the Applicant’s written and oral submissions. Notwithstanding counsel’s able submissions, and applying constraining law, I am not persuaded the Applicant has established reviewable error.

VII. Conclusion

[25] Therefore, this application for judicial review will be dismissed.

VIII. Certified Question

[26] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-753-22

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed, no question of general importance is certified and there is no Order as to costs.

"Henry S. Brown"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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