

Federal Court



Cour fédérale

Date: 20230215

Docket: IMM-9033-21

Citation: 2023 FC 221

Ottawa, Ontario, February 15, 2023

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

SHERIFATU ATIDIGAH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Sherifatu Atidigah is a citizen of Ghana. In a decision dated October 27, 2021, a Visa Officer [Officer] of the High Commission of Canada in Ghana refused her application for a study permit for a second time. She has brought this Application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of the Officer's decision. She argues that in refusing the study permit, the Officer

failed to consider or misapprehended evidence that directly responded to the Officer's stated concerns regarding her income and assets, and that the Officer's finding she would not leave Canada based on family ties in Canada and in Ghana was not justified

[2] The Officer's reasons for refusal are set out in the Global Case Management System [GCSM] notes as follows:

PA seeking to study in Canada. PA is being financially assisted by extended family, funds shown are not well documented in terms of how they were accumulated. Funds seen show large deposits, and or volatile balances, land sales, unclear why PA and fiancée [sic] are not funding alone in this context. Based on information provided I'm not satisfied funding presented is durable and not merely for demonstration purposes. On balance, I'm not satisfied that PA is well-established in home country, ties to home country appear weak. I'm not satisfied PA would leave Canada following period of authorized stay. Refused.

[3] The Respondent argues that the Applicant has not demonstrated a reviewable error, but instead takes issue with the Officer's assessment of the evidence.

II. Preliminary matter

[4] The Respondent argues that paragraphs 6 to 26 of the Applicant's affidavit contain opinion evidence and argument contrary to Rule 81 of the *Federal Courts Rules*, SOR/98-106 and should either be struck or given no weight.

[5] I agree. Much of the Applicant's affidavit sets out the arguments advanced in written submissions and is inappropriate. The purpose of an affidavit is to set out material and relevant facts, not advance opinion or argument (*Abi-Mansour v Canada (Attorney General)*, 2015 FC

882 at para 30). I have not given any weight to paragraphs 6 to 26 of the Applicant's affidavit but have considered the contents of Exhibit "A" setting out portions of the record that was before the Officer.

III. Analysis

[6] The Officer's decision is reviewable on the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). A reasonableness review begins with an examination of the reasons provided and requires that a reviewing court consider not only the outcome, but also the underlying reasoning process. A reviewing court should also recognize that what is reasonable will be influenced by the particular decision-making context (*Vavilov* at paras 84, 87, 89, 90 and 93).

[7] The Applicant submits the decision and supporting GCSM notes indicate the Officer failed to consider the evidence, and argues:

- A. The Applicant's documentation and submissions addressed the Officer's concerns relating to the durability of funding, bank deposit history and balance volatility;
- B. The Officer's concerns with land sales do not reflect the evidence which disclosed the Applicant's real property in Ghana, not land sales; and
- C. The Officer's finding that the Applicant's ties to her home country are weak does not reflect the evidence demonstrating strong economic and family ties to Ghana.

[8] The Respondent argues that the Officer is not required to address each piece of evidence and benefits from the presumption that all evidence has been considered. Citing *Watts v Canada (Minister of Citizenship and Immigration)*, 2020 FC 158 at paragraph 22, where Justice Henry Brown took judicial notice of the volume of applications that visa officers are required to review, the Respondent asserts that concise decisions are both appropriate and necessary in this context. The Respondent submits the Officer's notes demonstrate that material factors to the Application were identified and addressed, and that the Applicant's arguments amount to nothing more than disagreement with the assessment of the evidence.

[9] The volume of applications to be processed and considered in the visa context favours the provision of brief and concise reasons. However, to be reasonable, those reasons must respond to and be consistent with the evidence and submissions made (*Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 17). In this instance, the decision does not satisfy that threshold.

[10] The Officer's notes identify funding concerns based on large deposits and volatile balances. The Applicant sought to explain this situation in the supporting documentation, yet the Officer does not acknowledge that an explanation for the deposits and volatility was provided, and the reasons do not indicate why these concerns remained despite the explanation. The Respondent argues that the Officer's concerns were justified because the Applicant failed to address specific deposits or fluctuating balances at key times. If this was the case, it was for the decision maker, in satisfaction of the requirement for basic responsiveness in the visa context, to

so note in their reasons (*Patel* at para 17; *Khansari v Canada (Citizenship and Immigration)*, 2023 FC 17 at para 19).

[11] The Officer's stated concern with respect to land sales is similarly unclear. The documents in support of the Application suggest the Applicant had acquired rights over real property in Ghana. Why "land sales" were a concern for the Officer is not evident when the record reflected the acquisition of property rights in Ghana.

[12] Finally, the conclusion that the Applicant's ties to Ghana are "weak" is also facially at odds with the evidence, which indicates the Applicant's father, extended family members, including an uncle, and her fiancé are all located in Ghana. The refusal letter also identifies "family ties in Canada" as a ground for refusal, yet there is no evidence of any family ties in Canada. Without some explanation and in the absence of some justification, the Officer's consideration of factors pushing the Applicant to return to Ghana are not transparent.

[13] Accepting that in the visa context, concise reasons are warranted and deference is owed, I am nonetheless convinced that the deficiencies identified above render the decision unreasonable.

IV. Conclusion

[14] The Application is granted. The parties have not identified a question of general importance for certification, and I am satisfied none arises.

JUDGMENT in IMM-9033-21

THIS COURT'S JUDGMENT is that:

1. The Application is granted.
2. The matter is returned for redetermination by a different decision maker.
3. No question is certified.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9033-21

STYLE OF CAUSE: SHERIFATU ATIDIGAH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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