

Federal Court



Cour fédérale

**Date: 20230308**

**Docket: IMM-2471-22**

**Citation: 2023 FC 316**

**Ottawa, Ontario, March 8, 2023**

**PRESENT: The Honourable Mr. Justice Mosley**

**BETWEEN:**

**SAFWAN MOHMEDSHAKIR JOGIYAT (A MINOR)  
BY WAY OF HIS (PROPOSED)  
LITIGATION GUARDIAN  
MOHMEDZUBER ABD JOGIYAT**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an Application for judicial review of the decision of an unnamed Immigration, Refugee and Citizenship Canada officer (the “Officer”) dated January 20, 2022 refusing the Applicant’s student permit application made from outside of Canada.

[2] At the hearing, the Court advised the parties that the application would be granted. These are the reasons for that decision and the formal judgment.

## II. **Background**

### A. *Permit application*

[3] The Applicant is a 16-year-old citizen of India. He applied for a study permit to attend secondary school (grade 10) in the Waterloo Region in Ontario, beginning February 1, 2022. The Applicant also applied for a multiple entry visa to Canada along with his study permit.

[4] In his application, the Applicant provided several reasons for wanting to attend secondary school in Ontario. These reasons were outlined in a Joint Statement from the Applicant and his mother, as well as a Statutory Declaration by the Applicant's cousin (the Applicant's proposed custodian while in Canada), all of which were included in the initial study permit application. The Applicant's father recently passed away.

[5] The Applicant's cousin is a Canadian citizen and long time resident of the Waterloo Region. In addition to offering to act as the Applicant's custodian while he was in Canada, the cousin also paid for the Applicant's tuition, and offered to provide room and board while he was in Canada. As part of the study permit application, documentation was provided by the cousin to demonstrate that financing the Applicant's education would not be a hardship for him. These documents showed evidence of significant income, savings, investments and ownership of

properties in Cambridge, Ontario (within the Waterloo Region) including the cousin's residence and payment of the tuition fees.

[6] In addition to the cousin's financial statements, the initial application provided financial documentation of the Applicant's uncle in India who also offered to provide support. The Applicant's mother provided information about their own financial resources including their home and business.

[7] Other documents submitted as part of the initial application include: notarized copies of the Applicant's father's death certificate, proof of the Applicant's cousin's Canadian citizenship, proof of the cousin's custodianship over the Applicant while he is in Canada (i.e., Custodian Agreement Letter, an affidavit of the Applicant's mother's consenting to this arrangement), the Applicant's acceptance letter to the high school in Waterloo and subsequent proof of tuition payment, proof of the Applicant's educational success in India, proof of the Applicant's English abilities.

B. *Decision under review*

[8] The Officer determined that the application did not meet the requirements of the *Immigration and Refugee Protection Act* S.C. 2001, c 27 [IRPA] and *Immigration and Refugee Protection Regulations* [IRPR].

[9] The decision letter set out the usual boilerplate grounds for refusal. Additionally, the Global Case Management System (GCMS) notes included the following insight into the Officer's thinking:

I have reviewed all the documentation provided for this application. Summary of key findings below: - No custodianship form submitted - Noted no language test scores provided; I am unable to determine applicant's English-language abilities. See file - Insufficient proof of financial status; I have concerns the applicant does not have sufficient finances readily available to fully cover their tuition and/or living costs while studying in Canada. See proof of funds - Applicant is a minor destined to Canada for grade school. No rationale provided for removing the child from current school and from residing with parent and family. I am therefore not satisfied that the applicant would be a bona fide student in Canada who will leave Canada by the end of the period authorized for their stay.

### III. Issues

[10] In his Memorandum of Fact and Law, the Applicant submits that the Officer's decision raised two issues: whether it was reasonable and whether there was a breach of procedural fairness.

[11] At the hearing, I advised counsel that in my view there was no basis for alleging a breach of procedural fairness. This is not a case in which it could be reasonably argued that there had been a veiled credibility determination. The issue was not then pressed.

### IV. Analysis

[12] There is no dispute between the parties, and I agree, that the standard of review of a decision in relation to an application for a study permit with respect to findings of fact and mixed

fact and law is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[13] The decision in this instance was not reasonable in my view.

[14] The Officer made the following findings:

- The Applicant does not have sufficient funds to pay the tuition fees;
- The Applicant does not have sufficient funds to maintain himself without working;
- The Officer was unable to determine the Applicant's language abilities;
- No custodianship form was provided;
- No rationale was provided for removing the child from his current school and from his family.

[15] All of these concerns could be explained or determined by looking at one of more of the documents submitted with the application.

[16] The most egregious error was with respect to the question of whether the Applicant had sufficient funds to pay his tuition and to maintain himself without working. There was abundant documentation of the financial resources of the family members who would be supporting the Applicant in Canada, especially those of the cousin who paid the tuition fees and would provide room and board for the duration of the stay. The Respondent conceded this error but argued it did not offset the other grounds for denying the application.

[17] While the Applicant did not submit a language test score, he submitted evidence that he was currently attending an English language school in India. Moreover, the Canadian school did not require language test scores. Its policy was to assess students after their arrival before determining the appropriate school and program for their profile. It was unreasonable for the Officer to substitute a judgment of what the required level of English proficiency should be for that of the school board: *Patel v Canada (MCI)*, 2020 FC 517 at para 26.

[18] It may be correct, as Respondent's counsel submitted during oral argument, that there is a specific form required to establish custodianship. If so, the Court did not see a reference to it in the record. Be that as it may, there was also abundant evidence that the Applicant's mother had bestowed custodianship of her son on the cousin and the cousin had accepted that responsibility.

[19] Finally, the application provided several rationales for why the Applicant and his family thought it would be a good idea for him to travel from India to Canada to complete his high school education. Chief among them was that it would better prepare him for post-secondary education in either India or Canada. While this was a choice that the Officer might not have made for an adolescent child, it could not be said that no rationale was provided to justify the Applicant's study in Canada.

## V. **Conclusion**

[20] A reasonable decision is one that is justified in light of the facts: *Vavilov*, at para 126. The decision must be reasonable in light of the evidentiary record before the decision maker. A decision is unreasonable where the decision maker has fundamentally misapprehended or failed

to take into account the evidence before it: *Vavilov*, at para 126. The decision maker must be alert and sensitive to the matter before it: *Vavilov* at para 128. This was not the case here.

[21] Where an officer ignores or overlooks relevant evidence the decision will be unreasonable: *Jafari v Canada (Citizenship and Immigration)* 2023 FC 183.

[22] Neither party proposed questions for certification.

**JUDGMENT in IMM-2471-22**

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

1. The application is granted and the matter is remitted for redetermination by a different visa officer.
2. No questions are certified.

"Richard G. Mosley"

Judge



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

**DOCKET:** IMM-2471-22

**STYLE OF CAUSE:** SAFWAN MOHMEDSHAKIR JOGIYAT (A MINOR),  
BY WAY OF HIS (PROPOSED), LITIGATION  
GUARDIAN MOHMEDZUBER ABD JOGIYAT v  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** FEBRUARY 16, 2023

**JUDGMENT AND REASONS:** MOSLEY J.

**DATED:** MARCH 8, 2023

**APPEARANCES:**

COREY JOHN LELLIOTT FOR THE APPLICANT

DANIEL ENGEL FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

COREY JOHN LELLIOTT FOR THE APPLICANT  
BARRISTER AND SOLICITOR  
CAMBRIDGE, ONTARIO

ATTORNEY GENERAL OF FOR THE RESPONDENT  
CANADA  
DEPARTMENT OF JUSTICE  
CANADA  
TORONTO, ONTARIO