

Federal Court



Cour fédérale

**Date: 20230801**

**Docket: IMM-7226-22**

**Citation: 2023 FC 1048**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, August 1, 2023**

**PRESENT: Madam Justice Tsimberis**

**BETWEEN:**

**AKOMOLA ATIKPATI ASMA**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The applicant, Akomola Atikpati Asma, is a single, 33-year-old Togolese man. He is seeking judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of a Visa Service officer [the officer] in Accra, Ghana, dated May 30, 2022 [the decision], refusing his application for a study permit. The officer was not

satisfied that the applicant would leave Canada at the end of the period authorized for his stay and return to his country of residence at the end of his studies in accordance with subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], given the purpose of his visit and the limited job prospects in his country of residence (Togo). According to the officer, the applicant also failed to satisfy another requirement of section 216 of the IRPR with respect to his personal property and his financial situation.

[2] For the reasons that follow, the application for judicial review is dismissed.

## **II. Background**

[3] On October 10, 2021, the applicant was admitted to the “Business” program at Collège Boréal’s Toronto campus. The offer of admission letter indicated that tuition, including incidental expenses, would be approximately CAN\$14,500 for one year of study, with additional costs of approximately CAN\$10,000 required for housing, food, books and school supplies. The total amount for the first year of study would therefore come to approximately CAN\$24,500.

[4] On October 29, 2021, the applicant submitted a study permit application to Citizenship and Immigration Canada so that he could embark on his program of study. The applicant specified in his application that his employer, Assima International Business Consulting EIRL (Assima International), would be covering half of his tuition and would continue to pay him his full net monthly salary each month—namely, €1004.48 per month (approximately CAN\$1,450), representing 35% of his salary in the form of a study training allowance, and the remaining 65% of his salary in the form of wages—in exchange for 20 hours of remote work. The Court notes

that the employer had already transferred CAN\$8,060.92 into the applicant's account. The applicant also stated that his cousin, Afoh Gado Katakiti, a lawyer and member of the Togo Bar, had signed an authenticated letter of custodianship undertaking to support him financially and cover all the costs associated with his period of study in Canada.

[5] The documents in the Certified Tribunal Record in support of the study permit application include, among others:

1. A bank statement from Ecobank Togo showing that on January 31, 2022, the applicant had the equivalent of CAN\$8,447.48 in his bank account in Togo;
2. Another Wise Payments Canada account, located in Ottawa, showing a balance of CAN\$8,060.92 on January 31, 2022. The three deposits made to the account (CAN\$59.95, CAN\$7,500 and CAN\$500.97) came from Assima International, the applicant's employer;
3. A letter explaining the financial documents submitted, his employment contract with Assima International, and a second letter of explanation setting out his reasons for wanting to study at Collège Boréal; and
4. A funding commitment letter from Assima International stating that a People Trust bank account in Canada was opened in the applicant's name and that monthly payments of €1,004.48 (approximately CAN\$1,450) would be made from January 31, 2022, until the

end of the study program. The Court notes that the record contains no evidence demonstrating the existence of such a People Trust bank account or that the monthly transfers of €1,004.48 had been made.

[6] Thus, apart from the undetermined financial support of the applicant's cousin, a sum of CAN\$16,508.40 would be available to cover the first year of his studies at Collège Boréal. There would therefore be a shortfall of approximately CAN\$8,000.

(1) **Impugned decision**

[7] On May 30, 2022, the officer rejected the applicant's application for a study permit, finding that the latter did not meet the requirements of IRPA and the IRPR.

[8] In rejecting the application, he relied on subsection 216(1) of the IRPR. The officer was not persuaded that the applicant would leave Canada at the end of the period authorized for his stay, given the following three factors:

- a) *Reason for the visit;*
- b) *Limited job prospects in the country of residence; and*
- c) *The applicant's personal property and financial situation.*

[9] The applicant's financial situation was the factor that had the greatest influence on the officer's decision.

[10] The notes of two different officers, taken from the Global Case Management System (GCMS), are reproduced below. The first note analyzing the file is dated January 26, 2022:

*Application reviewed. Applicant is seeking study permit for college diploma at College Boreal in techniques in business administration. I note letter of intent. Proposed studies make sense given applicant's career goals. Funds to be covered by applicant's company, for whom applicant will continue teleworking, and cousin. These are third-party funds that could be removed at any time. The bank statement provided for cousin shows large fluctuations in balance and lump-sum deposits which do not show sufficient accumulation in funds. Applicant's company states it will pay applicant full salary, which is high (\$k EUROS) per month. These are third-party funds. Requesting bank statement for applicant.*

[11] The second and last note in the GCMS, dated May 30, 2022, states the following:

*I note the partial payment made and I note the balance in the account of the statement provided. I note the applicant is 32 and declares employment in France while residing in Togo. I note the paystubs which indicate the applicant is receiving below the minimum required salary in France. I note that the bank account does not show any transactions, nor does it show proof of regular salary deposits. Applicant wishes to pursue college level business course. It is unclear how this plan of studies is a reasonable expense given the applicant's academic and professional background. I give less weight to ties to home country in light of economic incentives to remain in Canada. I am not satisfied applicant would leave at the end of an authorized stay. Refused.*

[12] As indicated above, the first officer's concerns were about the issue of whether third parties could be relied upon to support the applicant financially over the course of his studies in Canada. That is why the applicant was asked to produce bank statements.

[13] The second note also refers to concerns about the applicant's financial situation and inconsistencies with respect to his employment (France/Togo). The second officer also

questioned the merits of the plan of study (given its costs) and considered how much weight to give to the applicant's ties with his country of origin, in light of his economic incentives to stay in Canada.

[14] The applicant is of the view that the officer's decision was unintelligible and unreasonable given the evidence in the file and submits that the officer failed to take into account the evidence in the file or failed to consider the evidence as a whole. The applicant also suggests that there are errors and inconsistencies in the officer's notes.

[15] The applicant therefore asks this Court to set aside the officer's decision and have his application reassessed by a different officer.

(2) **Relevant provisions**

[16] In this case, the relevant provisions are subsections 11(1), 30(1) and 30(1.1) of IRPA and subsection 216(1) and section 220 of the IRPR. They are reproduced below:

***Immigration and Refugee  
Protection Act, SC 2001, c 27***

**Application before entering  
Canada**

**11 (1)** A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not

**Loi sur l'immigration et la  
protection des réfugiés, LC 2001,  
c 27**

**Visa et documents**

**11 (1)** L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas

inadmissible and meets the requirements of this Act.

interdit de territoire et se conforme à la présente loi.

...

...

### **Work and study in Canada**

### **Études et emploi**

**30 (1)** A foreign national may not work or study in Canada unless authorized to do so under this Act.

**30 (1)** L'étranger ne peut exercer un emploi au Canada ou y étudier que sous le régime de la présente loi.

### **Authorization**

### **Autorisation**

**(1.1)** An officer may, on application, authorize a foreign national to work or study in Canada if the foreign national meets the conditions set out in the regulations.

**(1.1)** L'agent peut, sur demande, autoriser l'étranger qui satisfait aux conditions réglementaires à exercer un emploi au Canada ou à y étudier.

...

...

### ***Immigration and Refugee Protection Regulations, SOR/2002-227***

### ***Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227***

### **Study permits**

### **Permis d'études**

**216 (1)** Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national

**216 (1)** Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

**(a)** applied for it in accordance with this Part;

**a)** l'étranger a demandé un permis d'études conformément à la présente partie;

**(b)** will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

**b)** il quittera le Canada à la fin de la période de séjour qui lui est

applicable au titre de la section 2 de la partie 9;

(c) meets the requirements of this Part;

e) il remplit les exigences prévues à la présente partie;

(d) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and

d) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);

(e) has been accepted to undertake a program of study at a designated learning institution.

e) il a été admis à un programme d'études par un établissement d'enseignement désigné.

...

...

#### **Financial resources**

#### **Ressources financières**

**220.** An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to

**220** À l'exception des personnes visées aux sous-alinéas 215(1)d) ou e), l'agent ne délivre pas de permis d'études à l'étranger à moins que celui-ci ne dispose, sans qu'il lui soit nécessaire d'exercer un emploi au Canada, de ressources financières suffisantes pour :

(a) pay the tuition fees for the course or program of studies that they intend to pursue;

a) acquitter les frais de scolarité des cours qu'il a l'intention de suivre;

(b) maintain themselves and any family members who are accompanying them during their proposed period of study; and

b) subvenir à ses propres besoins et à ceux des membres de sa famille qui l'accompagnent durant ses études;

(c) pay the costs of transporting themselves and the family members

c) acquitter les frais de transport pour lui-même et les membres de



referred to in paragraph (b) to and from Canada.

sa famille visés à l’alinéa b) pour venir au Canada et en repartir.

(3) **Standard of review**

[17] Because this is an application for judicial review of the merits of an administrative decision, the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23. None of the exceptions to the presumption of reasonableness review apply in the circumstances (*Vavilov* at paras 25 and 17). The Court must therefore consider the immigration officer’s rationale and the outcome to determine whether the decision is “based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85).

[18] To set an impugned decision aside, a reviewing court “must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws and or shortcomings must be more than merely superficial or peripheral to the merits of the decision” (*Vavilov* at para 100). Finally, the Court must be “satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable” (*ibid.*).

**III. Issues**

[19] This application for judicial review asks us to consider whether the officer's decision was reasonable in the circumstances and raises the following issues:

- a) *Do the officer's notes contain errors and inconsistencies that make the decision unreasonable?*
- b) *Did the officer properly consider all the evidence in the file when the decision was made to refuse the study permit?*

#### IV. Analysis

*Issue 1 Do the officer's notes contain errors and inconsistencies that make the decision unreasonable?*

[20] The applicant submits that the officer's decision was unreasonable because of errors and inconsistencies in the reasons with respect to the logic of the plan of study and the salary. For the reasons that follow, the Court is of the view that there is no real error and that any inconsistency is minimal and does not go to the heart of the decision; what was important to the officer was the lack of financial means to pay for the applicant's studies in Canada.

[21] There is no real incongruity between the notes of the first officer, who found the plan of study relevant to the applicant's career goals, and those of the second officer, who found it unclear how the plan of study constituted a reasonable expense given the applicant's academic and professional history. The first officer analyzed the plan of study with respect to the applicant's career goals; the applicant had not completed any postsecondary education, and the

choice of community college business training was logical, given its bilingual component (with English immersion), the program's reputation, and the applicant's current employment and career ambitions. The second officer focused instead on analyzing the financial costs of the program of study and the shortfall in available financing.

[22] The first officer took into account the applicant's salary with regard to the standards for a typical salary in Togo, while the second officer based his analysis on the minimum wage in France, which was entirely reasonable. The applicant states that he is employed in Togo, not France, and that Togolese employment standards should therefore be applicable in this case. However, the applicant provided no evidence to support this. On the contrary, apart from the section stating that the place of employment is Lomé, Togo, the contract clearly appears to have been drawn up in accordance with French law: (1) The salary is listed in Euros rather than CFA francs, the Togolese currency; and (2) no address is provided for the Togo satellite office. In all, given the evidence on the record, it was open to the second officer to find that this was a French employment contract and to declare that the pay stubs indicated that the applicant was being paid a salary that was below the French minimum wage.

[23] In addition, the divergent findings of the two officers with respect to the applicant's employment arrangements in no way affect the reasonableness of the decision. *Vavilov* teaches us that to be reasonable, a decision must be based on reasoning that is both rational and logical, and that judicial review on a standard of reasonableness is not "a line-by-line treasure hunt for error" (*Vavilov* at para 102).

*Issue 2 Did the officer fail to take into account evidence on the record, thereby rendering his decision unreasonable?*

[24] The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker (*Barot v Canada (Citizenship and Immigration)*, 2023 FC 284 at para 13). All of the applicant's arguments are based on the claim that the officer ignored or failed to take into account evidence on the record. However, a decision maker is presumed to have considered all the evidence before him or her (*Noulengbe v Canada (Citizenship and Immigration)*, 2021 FC 1116 at para 15). Failure to explain one's entire reasoning does not automatically make a decision unreasonable. This presumption applies in this case to the officer's reasons with respect to the financial resources of the applicant and of the cousin who has agreed to sponsor him.

[25] Considering that the full amount required for the first year of study would be about CAN\$24,500, there was nothing unreasonable about the officer's assessment that the applicant lacked sufficient evidence to establish that he had the financial resources to pay for his studies as required by section 220 of the IRPR. It was therefore open to the officer to conclude, on the basis of the information provided, that the cost of the applicant's studies was neither reasonable nor affordable in light of his own socio-economic circumstances and those of his sponsoring cousin (as shown in paragraphs 29 and 30 below). Recall that the applicant had only the equivalent of CAN\$8,447.48 in his bank account, representing barely one third of the amount required to meet his needs during the first year of his studies.

[26] The respondent also submits that the applicant did not provide the documents to which he refers in his affidavit and his memorandum, in particular the bank statements and the other documents submitted with his application. The Court agrees. For example, despite the fact that Collège Boréal required a deposit of CAN\$2,211 to confirm the applicant's intent to accept the offer of admission, the record contains no evidence indicating that this amount has been paid. The onus was on the applicant to provide to the officer the relevant documents in support of his application, and this was not done.

[27] The Court is also of the view that it was not unreasonable for the officer to question the reliability of the financial commitment offered by the applicant's employer, Assima International. First, he provided an employment contract stipulating that his monthly salary of €1,004.48 would continue to be paid to him; however, there was no evidence demonstrating that such a salary had *ever* been paid to him. The applicant's explanation was that his salary was paid to him in cash in an envelope (according to the applicant, this is customary in Togo) rather than deposited into a bank account. If a company headquartered in France were paying an employee who resided in Togo, it appears obvious to the Court that there would easily be electronic evidence of such payment or, at the very least, a paper receipt attesting to the fact that the pay had been received. Even if he had been paid in cash, that money would have eventually been deposited into a bank account; however, the applicant states that he closed his bank account in Togo when he opened one in Canada and so no longer has access to his bank statements. These explanations merely sow doubt in the Court's mind.

[28] The onus was on the applicant to provide evidence that he was more than just an employee [TRANSLATION] “on paper” and that he was indeed receiving a salary from Assima International, and he has failed to do so. It was therefore reasonable for the second officer to question this and to indicate in his notes, “I give less weight to ties to home country in light of economic incentives to remain in Canada”. I note that the applicant has the burden of showing that the officer’s decision was unreasonable in this respect (*Vavilov*, at para 100).

[29] The officer also noted that three deposits, totalling CAN\$8,060.92, were made by Assima International into a Canadian account for the applicant. However, if the applicant were continuing to receive his pay, as he suggests, there should have been monthly deposits of €1,004.48 or approximately CAN\$1,450 into the account, rather than simply three deposits of CAN\$59.95, CAN\$7,500 and CAN\$500.97. It was therefore reasonable for the second officer to state the following: “I note the partial payment made and I note the balance in the account of the statement provided. . . . I note that the bank account does not show any transactions, nor does it show proof of regular salary deposits” [emphasis added]. That said, even with the deposit of CAN\$8,060.92 made by Assima International, there would still be a shortfall of about CAN\$8,000 to meet the needs of the first year of study in Canada.

[30] Recent case law from this Court recognizes that it is reasonable for immigration officers to consider the source of funds in assessing criteria under section 216 of the IRPR (see *Bidassa v Canada (Citizenship and Immigration)*, 2022 FC 242 at para 21, citing *Kita v Canada (Citizenship and Immigration)*, 2020 FC 1084 at para 20). Therefore, the financial commitment made by the applicant’s cousin—Afoh Gado Katakiti, a lawyer—to support him financially and

cover all the costs associated with his stay in Canada was insufficient in light of the large fluctuations in his own bank account. The Court notes that on several occasions, the cousin's bank account was even overdrawn, and that the officer had pointed out that the large fluctuations in the sponsoring cousin's account were problematic. According to the bank statement from Orabank in Togo, the balance in the cousin's account during the period from June 19, 2021, to October 19, 2021, varied from an overdraft of 7,737,586 CFA francs (September 14, 2021, approximately CAN\$17,169) to a positive balance of 67,012,414 CFA francs (September 23, 2021, approximately CAN\$148,767). It was therefore reasonable for the officer to conclude that the cousin's financial support could be provisional and could not be relied upon in the context of the study permit application.

[31] In all, the officer simply did not commit any significant or reviewable errors with respect to the applicant's financial means. On the contrary, his decision was based on an internally coherent and rational chain of analysis, and it was justified in relation to the facts and law that constrain the officer; it therefore possessed all the hallmarks of reasonableness (*Vavilov* at para 85). It is recognized in law that when the standard of review is that of reasonableness, the Court must give deference to the decision of the administrative decision maker (*ibid.*). I must therefore defer to the officer's findings of fact.

## **V. Conclusion**

[32] There is a legal presumption that a foreign national seeking to enter Canada is an immigrant, and it is up to him or her to rebut this presumption (*Roodsari v Canada (Citizenship and Immigration)*, 2023 FC 970 at para 10, citing *Rahman v Canada (Citizenship and*

*Immigration*), 2016 FC 793 at para 16, and *Obeng v Canada (Citizenship and Immigration)*, 2008 FC 754 at para 20). The onus was therefore on the applicant to prove to the officer that he was not an immigrant and that he would leave Canada at the end of his period of study. The Court is of the view that he has not met this requirement, which means that the impugned decision by the officer was reasonable in this case, in light of the evidence before him when he reached his decision. The officer performed an appropriate balancing exercise and provided adequate reasons for the refusal. At the heart of the decision was the issue of the financial means available to the applicant to support his studies; the applicant did not meet his burden in this respect.

[33] We must always bear in mind that the role of the Court on judicial review is not to reweigh the evidence or substitute its own assessment of the evidence. It is sufficient for this Court to determine whether the officer's decision was reasonable in the circumstances. In this respect, the officer's reasoning was based on the evidence submitted to him and was justified with regard to the applicable law as well as the points that remained unexplained. In all, the decision bore all the hallmarks of reasonableness in the circumstances and did not meet the threshold of "serious shortcomings" regarding its merits, as articulated in *Vavilov*.

[34] For these reasons, the Court dismisses the application for judicial review.



**JUDGMENT in IMM-7226-22**

**THIS COURT'S JUDGMENT is as follows:**

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

“Ekaterina Tsimberis”

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Judge

Certified true translation  
Francie Gow

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

**DOCKET:** IMM-7226-22

**STYLE OF CAUSE:** AKOMOLA ATIKPATI ASMA v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** JUNE 7, 2023

**REASONS FOR JUDGMENT  
AND JUDGMENT:** TSIMBERIS J

**DATED:** AUGUST 1, 2023

**APPEARANCES:**

Akomola Atikpati Asma

THE APPLICANT  
REPRESENTING HIMSELF

John Provart

FOR THE RESPONDENT

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