

Federal Court



Cour fédérale

**Date: 20230825**

**Docket: IMM-5578-22**

**Citation: 2023 FC 1152**

**Ottawa, Ontario, August 25, 2023**

**PRESENT: Mr. Justice Pentney**

**BETWEEN:**

**SARAH JANE BARRIL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**(Delivered from the Bench at Toronto, Ontario on August 24, 2023)**

[1] Sarah Jane Barril (the Applicant) wants a study permit to come to Canada. She was accepted into a diploma program in Tourism Services Management at Seneca College. Her visa application was rejected, for the second time. And for the second time, she seeks judicial review of the decision. For the reasons set out below, the application will be granted. At the conclusion

of the hearing, after a short break, I delivered judgment and reasons from the Bench, noting that the reasons would be edited for format and style.

[2] I will not exhaustively outline the Applicant's background, personal history or the details of her previous application. These are set out in the decision of Justice Aylen: *Barril v Canada (Citizenship and Immigration)*, 2022 FC 400 [*Barril I*]. In summary, a visa officer [Officer] refused the Applicant's study permit based on the purpose of her visit (which relates to her course of study and career aspirations), her family ties in Canada (an aunt) and the Philippines (she is a citizen of that country and her father, step-mother, two half-brothers and a half-sister all continue to reside there), and questions about her funding. That decision was overturned by Justice Aylen of this Court in a decision issued on March 23, 2022 (*Barril I*), and the matter was sent back for reconsideration.

[3] The Applicant submitted new material in support of her second application. The Officer refused it based on purpose and family ties. This is the decision under review. Financial considerations were not a factor in this decision, and so this aspect will not be discussed further.

[4] The legal and policy framework that applies to judicial review of study permit cases has been discussed in a multitude of recent decisions of this Court. I have provided a summary of the relevant principles in *Nesarzadeh v. Canada (Citizenship and Immigration)*, 2023 FC 568 at paras 5-9. I adopt this summary here, and there is no need to recite it again.

[5] An additional feature of this particular case is that the decision under review is a reconsideration following a successful judicial review. In this circumstance, the Officer was required to follow the “outcomes, factual determinations or evidentiary assessments that are expressly set out as directions in the judgment...” (*Garcia Balarezo v. Canada (Citizenship and Immigration)*, 2020 FC 841 at para 42). Put another way, the decision in that case was found to be unreasonable because the Officer failed to advert to factors that were specifically discussed as key elements in the previous decision. The question whether the Officer made the same error in the case before me is an additional element of reasonableness review.

[6] In this case, the Officer’s decisions is based on the purpose of the visit and family ties. Both issues were discussed in the previous decision of Justice Aylen. While the Officer has explained the analysis of family ties in a more robust manner than the previous decision, I find that – once again – the explanation of the reasoning on the purpose of the visit falls short. Among other problems, the Officer failed to grapple with a point expressly made by Justice Aylen regarding the Applicant’s explanation for her decision to apply to the Seneca College program.

[7] Because I find one of the two pillars on which the decision rests to be unreasonable, the whole decision must fall, in accordance with the legal framework that governs judicial review in these cases: see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 100.

[8] On the purpose question, the Officer's decision focused on two elements: the Applicant's explanation for her decision to seek employment in the tourism industry despite not doing so when she obtained her Bachelor's degree (i.e. her career path); and her rationale for doing so during a downturn in the industry associated with the COVID-19 pandemic (i.e. her timing).

[9] The Officer notes that the Applicant has a Bachelor's degree in Tourism from a university in the Philippines, but she did not pursue a career in that field when she graduated. The Officer also mentions that the Applicant indicated in her statement of purpose that the program offered at Seneca College is different than her previous degree because it focuses on a different area of the tourism industry, with more attention to the business side of the industry. The key passage of the Officer's reasons on this point state: "It is unclear...why the applicant seeks to strengthen her skills now in an industry which she recognizes has suffered greatly due to the COVID-19 pandemic and one that she has not sought to enter before despite already holding a recognized qualification in that field." This shows the degree of overlap between these two elements in the Officer's analysis, namely her career path and the timing of her return to studies.

[10] There are two major problems with this reasoning: first, it is incomplete; second, it failed to address one key feature of the Seneca College program that was specifically identified by the Applicant in both of her letters, and also identified by Justice Ayles as a significant flaw in the prior decision.

[11] In her application, the Applicant emphasized the differences between her prior degree and the program at Seneca College. In particular, she stated that the Seneca certificate focused

more on the business side of the industry (as noted by the Officer) and also that it would permit her to learn about entirely new areas of the industry, such as the cruise ship business. Second, and equally important, she underlined the mandatory co-op placements that were part of the Seneca program, and that these opportunities would give her the practical experience in the industry that she lacked. She underlined the importance of the co-op element in both of her letters setting out her purpose for choosing this program.

[12] Justice Aylesworth reversed the previous decision, in part, because the Officer failed to address these differences, noting in particular the significance of the co-op program (see *Barril I* at para 26). In the decision under review, I find the Officer's description of the Applicant's rationale for pursuing further education in the tourism field to be inadequate.

[13] The Officer states that it was "unclear" why she wanted to do this at a time when the tourism sector had "suffered greatly" due to COVID-19. However, the Officer does not mention the Applicant's specific and clear rationale for doing exactly that – namely, that she would use the time to further her professional qualifications so that she would be better prepared to launch her career in tourism at the very time when the industry would be rebounding from the pandemic. It was open to the Officer to explain why they did not find the Applicant's explanation to be convincing. It was not open to the Officer to fail to grapple with it.

[14] For these reasons, I find the decision to be unreasonable. While there may well be some valid concerns regarding the Officer's analysis of the family ties aspect, these are not necessary to discuss because the inadequacies of the analysis of purpose render the decision unreasonable.

[15] The Officer's decision will be quashed and referred back for reconsideration, with a specific direction that the next Officer shall consider these reasons, as well as the decision of Justice Aylen in *Barril I*.

[16] There is no question of general importance for certification.

**JUDGMENT in IMM-5578-22**

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

1. The application for judicial review is granted.
2. The matter is remitted back for reconsideration by a different Visa Officer, with a specific direction that the Officer shall consider these reasons, as well as the decision of Justice Aylen in *Barril I*.
3. There is no question of general importance for certification.

"William F. Pentney"

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Judge

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

**DOCKET:** IMM-5578-22

**STYLE OF CAUSE:** SARAH JANE BARRIL v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** ST. JOHN'S, NEWFOUNDLAND AND LABRADOR  
(VIA VIDEOCONFERENCE)

**DATE OF HEARING:** AUGUST 24, 2023

**JUDGMENT AND REASONS:** PENTNEY J.

**DATED:** AUGUST 25, 2023

**APPEARANCES:**

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