

Federal Court



Cour fédérale

Date: 20240510

Docket: IMM-2264-23

Citation: 2024 FC 524

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Ottawa, Ontario, May 10, 2024

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

MOHAMAD SAER EL RIFAI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. El Rifai applied for a study permit. In reviewing his application, a visa officer concluded that a bank letter purporting to demonstrate his financial resources was likely fraudulent. The officer informed Mr. El Rifai of his concerns and gave him an opportunity to explain. In response, Mr. El Rifai stated that the letter was genuine and provided a second letter from the same bank. The officer then concluded that Mr. El Rifai was inadmissible for

misrepresentation under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] Mr. El Rifai is now seeking judicial review of the officer's decision. I am dismissing his application. The determinative issue is procedural fairness. It is well established that applications for study permits are subject to a minimal requirement of procedural fairness. However, when officers are considering a finding of inadmissibility for misrepresentation, they must advise the applicant and provide an opportunity to respond: see, for example, *Vargas Villanueva v Canada (Citizenship and Immigration)*, 2023 FC 66 at paragraphs 18 and 19 [*Vargas Villanueva*].

[3] In the notice sent to Mr. El Rifai, the officer states the following: [TRANSLATION] "Following verification of the documents submitted in support of your financial capacity, the bank statements you submitted were found to be fraudulent." I am of the view that the notice provided sufficient information to Mr. El Rifai. The officer was not required to describe the specific methods used to conclude that the document was fraudulent. Similarly worded notices were found to be sufficient in *Kong v Canada (Citizenship and Immigration)*, 2017 FC 1183 at paragraph 26 [*Kong*]; *Suri v Canada (Citizenship and Immigration)*, 2020 FC 86 at paragraph 20; *Mhlanga v Canada (Citizenship and Immigration)*, 2021 FC 957 at paragraphs 28–36; *Sharma v Canada (Citizenship and Immigration)*, 2023 FC 1190 at paragraph 5.

[4] Moreover, the fact that the officer relied on verifications with the bank and considered the fact that other fraudulent documents had similar characteristics does not constitute extrinsic evidence that had to be disclosed to Mr. El Rifai: *Kong* at paragraph 28. It is true that some

decisions of this Court state that a visa officer who intends to rely on extrinsic evidence must give the applicant an opportunity to provide submissions in this regard: *Kniazeva v Canada (Citizenship and Immigration)*, 2006 FC 268 at paragraph 21; *Youssef v Canada (Citizenship and Immigration)*, 2011 FC 399 at paragraph 12; *Sharma v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 779 at paragraph 28. In such situations, however, procedural fairness does not require that all documents in the officer's possession be provided to the applicant: *Maghraoui v Canada (Citizenship and Immigration)*, 2013 FC 883 at paragraph 22; *Jemmo v Canada (Citizenship and Immigration)*, 2021 FC 1381 at paragraph 33. Rather, procedural fairness "does demand that the Applicant be given an adequate understanding of the gist of the concerns": *Geng v Canada (Citizenship and Immigration)*, 2023 FC 773 at paragraph 74. The scope of this requirement must be assessed on the basis of the circumstances of each case.

[5] In this respect, Mr. El Rifai suggests in his affidavit that he did not understand the nature of the concerns expressed by the officer. However, that suggestion is contradicted by his response to the officer that the document in question was genuine. That shows that Mr. El Rifai fully understood what the concern about the fraudulent nature of the document meant. In the circumstances of this case, it was not difficult to understand the meaning of the epithet "fraudulent".

[6] Therefore, the officer met the requirements of procedural fairness in the circumstances.

[7] This finding is sufficient to dispose of the application. Indeed, once Mr. El Rifai is inadmissible for misrepresentation, it is impossible to grant him a study permit: see

paragraph 179(e) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. It is therefore unnecessary to argue that the evidence on the record would have been sufficient to justify granting such a permit or that the officer should have granted an interview to Mr. El Rifai. Mr. El Rifai relies on *Kong* in this regard. In that case, however, the Court held that there was no breach of procedural fairness but deemed the finding of misrepresentation to be substantively unreasonable. The Court did not state that the study permit application should continue to be reviewed despite the applicant's inadmissibility.

[8] Mr. El Rifai does not directly challenge the reasonableness of the finding of misrepresentation. The officer's notes contain sufficient information to support that finding, thus distinguishing this case from *Vargas Villanueva* and *Kong*. Specifically, the officer noted that the logo on the letter differed from the logo usually found on documents issued by the bank. He added that the bank confirmed that the individuals who signed the letter do not exist. Although Mr. El Rifai submitted a second letter from the bank, that letter does not refer to the first letter and does not attest to its genuineness. Finally, the officer noted that the bank letter was similar to other fraudulent documents submitted by other applicants. The officer's finding is therefore reasonable.

[9] For these reasons, the application for judicial review is dismissed.

JUDGMENT in IMM-2264-23

THIS COURT'S JUDGMENT is as follows:

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

“Sébastien Grammond”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2264-23

STYLE OF CAUSE: MOHAMAD SAER EL RIFAI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: APRIL 3, 2024

JUDGMENT AND REASONS: GRAMMOND J

DATED: MAY 10, 2024

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