Federal Court Cour fédérale

Date: 20240607

Docket: IMM-3721-23

Citation: 2024 FC 875

Ottawa, Ontario, June 7, 2024

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

POLYCARP ESEZOBOR IZOKUN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Polycarp Esezobor Izokun [Applicant] seeks judicial review of a March 9, 2023 decision [Decision] of a visa officer [Officer] refusing to grant the Applicant a study permit. The Officer was not satisfied that the Applicant would leave Canada at the end of his stay as required by paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[2] The Applicant submits that the Decision is unreasonable and that the Officer breached the Applicant's right to procedural fairness in rendering the Decision.

[3] I am not persuaded that the Officer made such errors. The application for judicial review is dismissed.

II. Facts

[4] The Applicant is a 40-year-old Nigerian national who applied for a study permit to attend a program at the Red River College Polytechnic [RRC] in Winnipeg, Manitoba. The tuition cost for the one-year program is $19,128. The Applicant intended to have his wife and two children accompany him.

III. Decision

[5] The Officer was not satisfied that the Applicant would leave Canada at the end of his stay. The Officer determined that the Applicant's assets and financial situation were insufficient to support the Applicant's stated purpose of travel. The Global Case Management System notes are reproduced below:

> I have reviewed the application. I have considered the following factors in my decision. Banking transactions history provided. Detailed bank statements show overall low funds. Financial information is not supported with evidence of income tax paid nor pay slips, for the bank statement balances on file. No certificate of deposit from university provided with stated tuition payment. Deposits shown in banking transaction history is not commensurate with the stated income (pay slips or stated salary from employer). Limited evidence pertaining to the source on stated funds. In the absence of satisfactory documentation showing

> the source of these funds, I am not satisfied the applicant has sufficient funds for the intended international study. Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

IV. Preliminary Issue – Affidavit of Ms. Odion

[6] The Applicant did not provide his own affidavit but included an affidavit from his sister residing in Canada, Ms. Odion.

[7] The Respondent submits that the Court should summarily dismiss the application for its failure to comply with the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [*Rules*], since the affiant does not have personal knowledge of the immigration process that led to the decision under review (*Rules*, r 10(2)(a)(v), 12(1); *Dhillon v Canada (Citizenship and Immigration)*, 2009 FC 614 at paras 4-10). Alternatively, the Court should find that most of the affidavit (except for paragraphs 1-2 and 11-14) is inadmissible as hearsay. The Court should also ignore exhibits A, B, F, and I, as they were not before the Officer and are not contained in the Certified Tribunal Record [CTR].

[8] The Respondent is correct that the Court can dismiss this matter summarily or alternatively, give no weight to Ms. Odion's affidavit (*Ismail v Canada (Citizenship and Immigration)*, 2016 FC 446 at para 21). I am giving no weight to Ms. Odion's affidavit and am of the view that the CTR is sufficient to determine the application on its merits (*Singh v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 455 at paras 18-19).

V. Issues and Standard of Review

[9] After considering the parties' submissions, this matter raises the following issues:

1. Was the Decision reasonable?
2. Was the Decision procedurally fair?

[10] The parties agree that the merits of the Decision are reviewable on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). I agree. This case does not engage any of the exceptions set out by the Supreme Court of Canada in *Vavilov*. Therefore, the presumption of reasonableness is not rebutted (*Vavilov* at paras 16-17).

[11] On the issue of procedural fairness, I agree with the Respondent that such issues are reviewed on a standard akin to correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]). In undertaking this assessment, the Court will determine whether the process followed was fair having regard to all the circumstances (*Canadian Pacific* at para 54).

VI. Analysis

A. *Was the Decision reasonable?*

(1) Applicant's Position

[12] First, the Officer ignored relevant evidence in making the determination that the Applicant did not have the financial resources to support himself and accompanying family members and pay the costs of travel. The financial requirement is found within section 220 of the *IRPR.* In interpreting this requirement, the Immigration, Refugees and Citizenship Canada's [IRCC] Operational Manual provides that students are required to demonstrate financial sufficiency for only the first year of studies and that evidence of financial resources can be "verbal or written statements, which can be confirmed, that satisfy an officer that sufficient financial support from friends and/or family is available and has been arranged to adequately cover all reasonable expenses to be incurred during the stay in Canada". The IRCC also lists on their website that bank statements or deposit books of an applicant that show accumulated savings is one possible document to submit as evidence of an applicant's ability to support their visit.

[13] The Applicant submitted the following documents to meet the financial requirement: a savings bank statement with a balance of USD $35,000 equivalent to $47,112.37; a salary bank account statement with a balance of ₦572, equivalent to $1.67; a deed of land evaluated at ₦3,600,000, equivalent to $10,522.80; and an admission letter stating that the RRC received a deposit. Together, the estimated value is $57,636.84. The total cost for the one-year program is $39,128.

[14] Second, the Officer erroneously found that the Applicant's financial information was not supported with evidence of income tax paid or pay slips for the bank statements. However, the bank statement showed that the Applicant's employer made regular deposits of his monthly

salary of ₦115,941.38 to ₦181,176.88 (equivalent to $526.68) into his account. Furthermore, the Officer was uncertain of the Applicant's source of funds but the information on file identified that a family member had gifted the Applicant a sum of USD $35,000.

[15] Third, there was no reasonable and rationale evidence before the Officer to determine that the Applicant would not leave Canada after the completion of his studies. The Officer's reliance on the Applicant's proof of funds for a refusal is a significant and reviewable error as it is neither intelligible nor justified.

(2) Respondent's Position

[16] Paragraph 216(1)(b) of the *IRPR* imposes a requirement that a foreign national must establish that they will leave Canada by the end of their authorized stay. There is a presumption that an applicant intends to stay in Canada permanently which the applicant must rebut (*Obeng v Canada (Citizenship and Immigration)*, 2008 FC 754 at para 20). An applicant's financial situation is relevant to the assessment of whether the applicant is a *bona fide* student who will leave Canada at the end of their studies (*Bestar v Canada (Citizenship and Immigration)*, 2022 FC 483 at para 20; *Roodsari v Canada (Citizenship and Immigration)*, 2023 FC 970 at para 33 [*Roodsari*]. However, an officer's analysis is not limited to the amount of funds as the officer must also consider the source, nature, stability, and availability of funds (*Sayyar v Canada (Citizenship and Immigration)*, 2023 FC 494 at para 12). Failure to satisfy an officer as to these aspects can justify refusal (*Roodsari* at para 33).

[17] The Officer was reasonably left unsatisfied that the Applicant possessed sufficient financial resources. First, the record justifies the Officer's conclusion that there was insufficient documentation in relation to the source of the Applicant's funds. The IRCC instructs that applicants must provide six months' worth of bank statements for accounts from which they propose to draw funds. The Applicant did not provide six months' worth of bank statements for the bank account containing the USD $35,000 deposit, despite this being virtually all of the Applicant's funds. Without this information, the Officer could not properly assess the source of the majority of Applicant's funds, the stability and availability of the funds, or whether this was an accurate reflection of the Applicant's financial means. Instead, the Applicant only provided a one-page bank document labelling the USD $35,000 deposit as "RELATED PARTY/GIFTED FAMILY". The Applicant failed to anticipate questions about the reliability of these funds, such as the identity and financial means of the contributors or an explanation of the circumstances of the deposit into this account.

[18] Second, the Applicant's other bank account, to which he provides bank statements, was devoid of funds. This account provided the clearest picture of the Applicant's financial status, as it was the account he regularly used and where his salary was deposited.

[19] Third, the other financial evidence that the Applicant provided was irrelevant or inadmissible. It is reasonable to exclude non-liquid assets, such as the deed of the land assignment, from the calculation as the assets are not readily accessible as cash (*Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at paras 44-45).

(3) Conclusion

[20] The Decision was reasonable.

[21] Pursuant to section 220 of the *IRPR*, the Applicant was required to have sufficient and available financial resources to pay the tuition fee for the program; maintain himself, his wife, and two children in Canada during the one-year program; and pay the costs of transporting himself and his accompanying family members to and from Canada. The Applicant's tuition fee is $19,128. In assessing the ability for applicants to support themselves, the IRCC also recommends a minimum of $10,000 to support the applicant, $4,000 for the spouse, and $3,000 per dependent child. As a result, the Applicant was required to demonstrate that he had access to a minimum of $39,128, plus the costs of flights to and from Canada for the Applicant and his three accompanying family members.

[22] In support of his financial resources, the Applicant submitted proof of a bank account with a balance of ₦572 or $1.67, a savings bank account with a balance of USD $35,000 or approximately $47,112.37, and a deed of land evaluated at ₦3,600,000 or $10,522.80.

[23] The Officer's primary reason for refusal was the lack of evidence regarding the Applicant's funds, specifically the banking transaction history for the account containing $1.67 and the source of funds for the account with USD $35,000. An officer may conduct a more detailed and fulsome analysis about the source, origin, nature, and stability of funds when assessing an applicant's financial resources (*Aghvamiamoli v. Canada (Citizenship and Immigration)*, 2023 FC 1613 at para 29). First, the Officer's concerns about low balance in the

bank account containing $1.67 were reasonable. The Officer also identified that the deposits were not commensurate with the Applicant's stated income and he did not provide additional evidence of income tax paid or pay slips to support the bank statement balances on file. It was reasonable for the Officer to assess the origin, nature, and stability of these funds.

[24] Second, it was reasonable for the Officer to identify that there was limited evidence, which was only one bank statement, pertaining to the source of the funds for the other account containing a lump sum deposit of USD $35,000. The only other reference in the Applicant's application was in his personal statement in which he stated that: "I plan to finance my education at Red River College Polytechnic Winnipeg through my personal savings and from financial gifts and support I received from my parents and other family members." As the majority of the Applicant's funds were from this account, it was reasonable for the Officer to want to assess the source of the funds but find that there was limited objective evidence. It is unclear who deposited the money. It was reasonable for the Officer to require further information.

[25] As the Officer was not satisfied that the Applicant had sufficient financial resources, it is a relevant consideration as to whether the Applicant would leave Canada at the end of his stay (*Bestar* at para 20).

B. *Was the Decision procedurally fair?*

(1) Applicant's Position

[26] This case called for a personal interview of the Applicant prior to the Decision. The IRCC Operational Manual provides that it may be necessary in certain circumstances for an Officer to interview an applicant if they have any concerns. Immigration guidelines are not law, but they have been held as great assistance to the Courts (*Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC); *Menon v Canada (Citizenship and Immigration)*, 2005 FC 1273). The Applicant acknowledges that a personal interview is not necessary in every case but submits that the factual circumstances here warranted an interview. The Applicant had complied strictly with all the requirements for the issuance of a study permit. However, the Officer made a veiled credibility finding which the Applicant could have clarified by a phone call or a letter.

(2) Respondent's Position

[27] The onus is on an applicant to satisfy an officer that the applicant meets the requirements for a study permit (*Hassan v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 9142 (FC) at para 13). An applicant is obligated to put their "best foot forward" and the officer is under no obligation to fill in blanks, request further documentation or allow further submissions (*Hosseini v Canada (Citizenship and Immigration)*, 2013 FC 766 at para 27; *Singh v Canada (Citizenship and Immigration)*, 2012 FC 526 [*Singh 2012*] at paras 53-55).

[28] An applicant is only entitled to an interview when an officer has relied on extrinsic evidence that the applicant could not have known about or the officer has credibility concerns (*Adekoya v Canada (Citizenship and Immigration)*, 2016 FC 1234 at para 7). Neither of these situations apply in this case. It cannot be assumed that an officer doubted the credibility of an

applicant simply because the evidence did not lead the officer to the conclusion that the applicant wanted (*Lv v Canada (Citizenship and Immigration)*, 2018 FC 935 at paras 40-43).

[29] The Officer did not need to communicate concerns to the Applicant about whether he met the requirements before making the Decision (*Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 26; *Singh 2012* at para 54; *Bidassa v Canada (Citizenship and Immigration)*, 2022 FC 242 at para 11; *Ibekwe v Canada (Citizenship and Immigration)*, 2022 FC 728 at para 18). Here, the Officer's findings all related to the sufficiency of evidence submitted with the application and whether the Applicant met the legislative requirements for a study permit.

(3) Conclusion

[30] The Decision was procedurally fair.

[31] The level of procedural fairness owed to study permit applicants is at the low end of the spectrum (*Nourani v Canada (Citizenship and Immigration)*, 2023 FC 732 at para 50). Generally, an officer is required to give an applicant the opportunity to respond when the officer identifies evidence giving rise to credibility concerns; evidence of a possible misrepresentation by the applicant; or new, salient internal information or extrinsic evidence not available to the applicant (*Garcia Diaz v Canada (Citizenship and Immigration)*, 2021 FC 321 at para 80). There is no evidence that these circumstances apply to the facts here. Importantly, an adverse finding of credibility is different from a finding of insufficient evidence (*Ibabu v Canada (Citizenship and Immigration)*, 2015 FC 1068 at para 35).

[32] When an officer has doubts regarding the sufficiency of evidence, the officer is not required to inform a study permit applicant of those doubts (*Zeinali v Canada (Citizenship and Immigration)*, 2022 FC 1539 at para 24). It is the Applicant's duty to put their best foot forward in the application to meet the requirements and the Officer's duty to determine whether the Applicant has in fact met the requirements.

VII. Conclusions

[33] The application for judicial review is dismissed for the above reasons.

[34] The parties do not propose a question for certification and I agree that none arises.

JUDGMENT in IMM-3721-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3721-23
STYLE OF CAUSE:	POLYCARP ESEZOBOR IZOKUN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JANUARY 17, 2024
JUDGMENT AND REASONS:	FAVEL J.
DATED:	JUNE 7, 2024

APPEARANCES:

ADEOTI CAMPBELL	FOR THE APPLICANT
KEITH MCCULLOUGH	FOR THE RESPONDENT

SOLICITORS OF RECORD:

A.L. CAMPBELL LAW OFFICE WINNIPEG, MANITOBA	FOR THE APPLICANT
ATTORNEY GENERAL OF CANADA WINNIPEG, MANITOBA	FOR THE RESPONDENT