

Federal Court



Cour fédérale

Date: 20200117

Docket: IMM-3646-19

Citation: 2020 FC 71

Toronto, Ontario, January 17, 2020

PRESENT: Mr. Justice Diner

BETWEEN:

FIDAN HAJIYEVA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Hajiyeva applied for a study permit, which was refused by an officer [Officer] at the Canadian Embassy in Ankara, Turkey, for failure to satisfy the statutory requirements. I made my decision from the bench, explaining why the Officer's findings were both reasonable and fair, promising reasons to follow. These are my reasons.

II. Background

[2] Ms. Hajiyeva is a married, 29-year-old citizen of Azerbaijan, who has two young children. She studied law in Azerbaijan, and has been a homemaker since 2011, raising her children for most of this period. In 2018, Ms. Hajiyeva was accepted into Seneca College's Human Resources Management Program. She applied for a study permit, but her application was refused in December 2018. Ms. Hajiyeva reapplied to Seneca and was again accepted the following year. However, her second study permit was also refused in April 2019 [Decision], which is the Decision under review.

[3] The Officer was not satisfied that Ms. Hajiyeva would leave Canada at the end of her stay, based on family ties, and economic motives to remain in Canada which could outweigh her ties to her home country. The Officer also noted that her reasons for undertaking the proposed employment (presumably referring to her husband's plans) were vague and poorly documented. As a result, the Officer refused the application under subsection 216(1) of the *Immigration Refugee Protection Regulation*, SOR/2002-227. The Officer concluded by stating that "you are welcome to reapply if you feel that you can respond to these concerns and can demonstrate that your situation meets the requirements."

[4] Ms. Hajiyeva claims that the Decision was unfair, inadequate and erroneous. Matters of procedural unfairness continue to attract a correctness standard of review (*Garces Caceres v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 4, at paras 23). Reviewing the factual assessment of a student permit attracts the deferential standard of reasonableness

(*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at para 10 [Vavilov]; *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080, at para 11, citing *Kavugho-Mission c Canada (Citoyenneté et Immigration)*, 2018 FC 597, at para 8). I will begin the analysis on this point.

III. Analysis

A. *The Decision was reasonable*

[5] Ms. Hajiyeveva argues that the Officer ignored evidence, and failed to provide adequate reasons relying on *Omijie v Canada (Citizenship and Immigration)*, 2018 FC 878, at para 26 [Omijie]. I find, however, that this case differs from *Omijie*. First, while the Applicant's parents and brother would remain in Azerbaijan, her immediate family (husband and children) would join her in Canada; she indicated her husband would obtain a work permit and gain international work experience, and her children would attend school and be exposed to Canadian values. The Officer's finding regarding her incentives to remain in Canada were reasonable. Here, the finding that her evidence and supporting documentation fell short of demonstrating that she would leave Canada at the end of her study period was open to the Officer.

[6] Regarding the argument that the reasons were inadequate, one can understand in the context of visa office decisions, where multiple decisions must be made daily, that reasons will ordinarily be brief (see for instance *Peiro v Canada (Citizenship and Immigration)*, 2019 FC 1146, at para 15). *Vavilov* explains that reasons must be read in light of the context in

which they were rendered (at para 94). I find that the reasons regarding the study permit were both sufficient and justified, and thus reasonable.

B. *No breach of procedural fairness occurred*

[7] Ms. Hajiyeva claims that the Officer relied on extrinsic evidence. There is no basis for this claim as the Officer based the Decision on the application materials submitted.

[8] Ms. Hajiyeva also argues that she should have been given an opportunity to respond to evidence, as these were veiled credibility findings. The findings arose from the evidence placed before the Officer. Where an officer's concern "arises directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns" (*Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283, at para 24). Such duty arises only where credibility is impugned, which did not occur here, despite Ms. Hajiyeva's claims.

[9] Ultimately, a student permit seeker must satisfy all requirements; the officer is not required to inform the applicant of concerns regarding the sufficiency of the materials in support of the application (*Al Aridi v Canada (Citizenship and Immigration)*, 2019 FC 381, at para 20). Ms. Hajiyeva did not satisfy all requirements, and thus, the Officer was under no duty to inform her of the weaknesses in her application.

[10] Finally, the correct Respondent to this application is the Minister of Citizenship and Immigration (*Federal Courts Citizenship, Immigration and Refugee Protection Rules*,

SOR/93-22, subsection 5(2), and *Immigration and Refugee Protection Act*, SC 2001, c 27, subsection 4(1)). The style of cause will be amended accordingly.

IV. Conclusion

[11] Ms. Hajiyeva has failed to demonstrate that the Decision was unreasonable, or that she suffered a breach of procedural fairness. Her application will accordingly be dismissed.

[12] By way of a postscript, as the Officer aptly stated, Ms. Hajiyeva is free to reapply. Counsel for the Minister reiterated this at the hearing. I note that Ms. Hajiyeva is highly educated and both writes and speaks impressively, based on both her written pleadings to the Court, and her oral arguments (she represented herself, participating by phone from Azerbaijan). She may certainly wish to reapply, addressing the weakness in her application.

JUDGMENT in IMM-3646-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No questions for certification were argued, and I agree none arise.
3. There is no award as to costs.
4. The style of cause is amended to reflect the Respondent as the Minister of
Citizenship and Immigration.

“Alan S. Diner”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3646-19

STYLE OF CAUSE: FIDAN HAJIYEVA V THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 16, 2020

JUDGMENT AND REASONS: DINER J.

DATED: JANUARY 17, 2020

APPEARANCES:

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FOR THE APPLICANT
ON HER OWN BEHALF

Judy Michaely

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada

FOR THE RESPONDENT