

Federal Court



Cour fédérale

**Date: 20200121**

**Docket: IMM-2198-19**

**Citation: 2020 FC 86**

**Ottawa, Ontario, January 21, 2020**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**SRISHTI SURI**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application for judicial review of a visa officer's [the Officer] decision refusing the Applicant, Srishti Suri's application for a study permit. The Officer found the Applicant inadmissible to Canada pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for directly or indirectly misrepresenting a material fact that would have induced an error in administering the IRPA.

## II. Background

[2] The Applicant is a citizen of India. On November 2, 2018, she submitted an application for a study permit to complete a Post Graduate Business Certificate at the Algoma University School of Business and Economics in Sault Ste. Marie.

[3] As part of her application, the Applicant submitted a Guaranteed Investment Certificate [GIC] from Scotiabank as proof that she had sufficient available resources to finance her studies in Canada.

[4] On January 30, 2019, an officer at Immigration, Refugees and Citizenship Canada [IRCC] sent the Applicant a procedural fairness outlining concerns that the Applicant may be inadmissible for misrepresentation. The letter states that the GIC submitted by the Applicant was verified and confirmed fraudulent.

[5] On February 4, 2019, the Applicant's father responded to the procedural fairness letter. He explained that the Applicant did not prepare the financial documents herself, but paid a travel agent in India to do so. The family gave the travel agent cash. In return he provided them with the GIC, claiming to have deposited the cash with the bank in Canada. The Applicant then submitted the GIC as part of her study permit application. After finding out the GIC was fraudulent, the Applicant's father tried to contact the travel agent, but was unable to reach him.

III. Decision Under Review

[6] In a letter dated March 7, 2019, the Officer refused the Applicant's study permit application. The letter states that the Applicant was found inadmissible to Canada pursuant to paragraph 40(1)(a) of the IRPA for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of the IRPA. The letter further states that the Applicant will remain inadmissible to Canada for five years from the date of the letter, pursuant to paragraph 40(2)(a) of the IRPA.

[7] The Global Case Management System [GCMS] notes for the file state that the GIC submitted by the Applicant was verified and confirmed fraudulent/non-genuine. The reviewing officer expressed concern that had the GIC been assessed as genuine, it could have led the officer to conclude that the Applicant had the financial resources to pay for her studies and accommodation in Canada, thus satisfying section 220 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. The reviewing officer noted that the response to the procedural fairness letter was thoroughly and carefully considered, but they were not satisfied that IRCC's misrepresentation concerns were satisfactorily disabused. The reviewing officer forwarded the file to a delegated decision maker for review.

[8] The final, conclusory GCMS entry is brief, and reads as follows:

Based on the notes of the reviewing officer and available information, on a balance of probabilities, I am satisfied that subject has made a misrepresentation in the application, which would have induced an error in the administration of the Act, as explained by the reviewing officer. Subject was advised of our concerns and has failed to credibly disabuse them. As such, based

on all available information, I am satisfied that the applicant is inadmissible for misrepresentation under subsection 40(1)(a) of the Act.

IV. Issues

[9] The issues are:

- (1) Did the Officer breach the duty of procedural fairness in processing the Applicant's study permit application?
- (2) Was the Officer's decision reasonable?

V. Standard of Review

[10] The parties filed their memoranda prior to issuance of the Supreme Court of Canada's decisions in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] and *Bell Canada v Canada (Attorney General)*, 2019 SCC 66.

[11] The Applicant made no submissions on the standard of review. The Respondent submitted that discretionary decisions of visa officers are reviewable on the reasonableness standard (*Odutola v Canada (Citizenship and Immigration)*, 2008 FC 1352 at para 9).

[12] The Court sent a direction to the parties giving them the opportunity to submit additional written representations on the standard of review and application of that standard. The Respondent and Applicant made representations by letter dated January 10, 2020.

[13] Pursuant to *Vavilov*, when a court is reviewing the merits of an administrative decision, the presumptive standard of review is reasonableness (*Vavilov*, above at para 23). The Supreme Court identified two types of situations where this presumption can be rebutted (*Vavilov* at para 32). In the present case, the presumption is not rebutted, and I see no reason on the facts to deviate from the appropriate standard or the application of that standard. The standard of review for the Officer's decision is reasonableness.

[14] The standard of review for issues of procedural fairness remains unchanged (*Vavilov* at para 23). When reviewing whether the Officer complied with the duty of procedural fairness, the standard is correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79).

#### VI. Relevant Provisions

[15] Pursuant to paragraph 40(1)(a) of the IRPA, a permanent resident or a foreign national is inadmissible for misrepresentation for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of the IRPA.

[16] If a permanent resident or foreign national is determined to be inadmissible for misrepresentation outside Canada, they continue to be inadmissible for misrepresentation for a period of five years following the final determination of inadmissibility under subsection 40(1) (IRPA, s 40(2)(a)).

[17] Pursuant to section 220 of the IRPR:

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

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

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

(c) pay the costs of transporting themselves and the family members referred to in paragraph (b) to and from Canada.

## VII. Analysis

### A. *Did the Officer breach the duty of procedural fairness?*

[18] The Applicant submits that the Officer did not inform the Applicant how the GIC was verified, or who verified the GIC as fraudulent. Further, the Officer did not ask the Applicant to produce additional documentation to show that she had sufficient financial resources to study in Canada. The Applicant submits that the duty of procedural fairness required the Officer to give the Applicant effective notice and an opportunity to respond to the Officer's specific concerns.

[19] The Respondent submits that it is unclear how the Applicant's ability to respond to the fairness letter was compromised by the Officer not stating in the procedural fairness letter that Scotiabank had confirmed that the GIC was invalid.

[20] I agree with the Respondent. There is no breach of procedural fairness where the applicant is given a reasonable opportunity to respond to the case against her, particularly where the applicant takes advantage of this opportunity (*Liu v Canada (Citizenship and Immigration)*, 2016 FC 440 at para 12). In this case, the Officer informed the Applicant that the GIC was confirmed to be fraudulent. This was the only detail of the study permit application the Officer was concerned about, and the Applicant was given an opportunity to respond. The Applicant took this opportunity, responding by way of a letter drafted by her father to explain that she received the GIC documentation from a travel agent. However, the Applicant did not address the fraudulent nature of the GIC.

[21] While the procedural fairness letter did not ask the Applicant to provide further documentation establishing that she had sufficient financial resources to study in Canada, this was not necessary. The letter gave the Applicant the opportunity to “make any representations” in response to the letter. Had the Applicant wished to submit further documentation, she could have done so.

B. *Was the Officer’s decision reasonable?*

[22] To determine whether the decision was reasonable, this Court must ask whether the Officer’s decision “bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99). The Applicant bears the burden of satisfying the Court that there are significant shortcomings sufficiently central to the decision to render it unreasonable (*Vavilov* at para 100).

[23] The Applicant submits that the GCMS notes simply state that the Officer reviewed and considered the Applicant's response to the procedural fairness letter, but do not state exactly why the Officer was not satisfied with the Applicant's response. The Applicant argues that the Officer should have considered the Applicant's response in light of her strong educational background and statement of purpose explaining her desire to study in Canada.

[24] The Officer had an obligation to review the record in its entirety (*Shao v Canada (Citizenship and Immigration)*, 2018 FC 610 at para 37). However, the Officer's focus on the fraudulent GIC document is warranted given the requirement in section 220 of the IRPR that an officer shall not issue a study permit unless the applicant establishes that they have sufficient financial resources to carry out their studies. Regardless of whether the Applicant satisfied the other requirements of the IRPA and the IRPR, absent satisfaction of section 220 of the IRPR, the Officer could not issue a study permit. Furthermore, the GCMS notes specifically state that the Officer made their decision "based on all available information."

[25] Finally, the Applicant argues that there was sufficient documentation before the Officer to conclude that the Applicant was a *bona fide* student and that there was a reasonable explanation for the fraudulent GIC. As noted above, documentation supporting the Applicant's student status was considered by the Officer, but was not relevant to the Officer's determination that the Applicant was inadmissible for misrepresentation pursuant to paragraph 40(1)(a) of the IRPA.



[26] While the Applicant explained that the fraudulent GIC was provided by her travel agent, the Applicant is ultimately responsible for all materials in her study permit application. An error or misrepresentation made by her travel agent does not bar the application of paragraph 40(1)(a) of the IRPA (*Cao v Canada (Citizenship and Immigration)*, 2010 FC 450 at para 31).

[27] It is unfortunate that the consequence of this misrepresentation is a five year ban on admissibility, but the Applicant failed in her duty of candour. The Officer's decision was reasonable.

**JUDGMENT in IMM-2198-19**

**THIS COURT'S JUDGMENT is that**

1. The application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

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Judge

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

**DOCKET:** IMM-2198-19

**STYLE OF CAUSE:** SRISHTI SURI v MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 16, 2020

**JUDGMENT AND REASONS:** MANSON J.

**DATED:** JANUARY 21, 2020

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