Federal Court  Cour fédérale

Date: 20200303

Docket: IMM-2807-19

Citation: 2020 FC 324

Ottawa, Ontario, March 3, 2020

PRESENT: The Honourable Madam Justice Fuhrer

BETWEEN:

AZEEZ ADEWUYI IYIOLA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Azeez Adewuyi Iyiola, is a citizen of Nigeria. He holds a Bachelor of Science degree [BSc] in computer science from Obafemi Awolowo University [May 2014]. Mr. Iyiola was employed as a teacher and computer instructor at Zabib College in Kaduna, Nigeria as part of the compulsory National Youth Services Corps program from April 27, 2016

to April 26, 2017. Since this time, he has remained unemployed. He continued his studies, however, and obtained a Certificate in Management from the Nigerian Institute of Management (Chartered) [September 2017].

[1] Mr. Iyiola now seeks a Canadian study permit to attend the 3-year Business Administration – Project Management program at George Brown College [GBC] in Toronto, Ontario. He has applied twice for, and failed to secure, a study permit for this program. His second attempt was returned and redetermined on consent, as it was unclear whether Mr. Iyiola's submissions had been considered or given any weight. He therefore was permitted to file updated documentation prior to the redetermination to address the visa officer's concerns. The updated application was before the visa officer for consideration which resulted in the decision under review in this proceeding.

[2] In the detailed Statement of Purpose submitted with his updated study permit application, Mr. Iyiola describes his former e-commerce project in the online food delivery business ended as he lacked adequate managerial knowledge and project management skills. This experience prompted him to seek better managerial skills. He explains he chose GBC because it offers a compulsory co-op placement, which would help him to gain practical experience to bolster class education. In addition, GBC "works with industry leaders to ensure that the skills students learn in class are the ones they would need on the job." He identifies the specific courses he is interested in taking, and explains how these courses will assist his future professional endeavours. He also emphasizes GBC is registered with the Project Management Institute [PMI], a regulatory body overseeing the project management profession across the world; and that a

degree from GBC would allow him to apply for PMI's Project Management Professional certification. He further explains that demand for project management skills in Nigeria exceeds available local expertise; the professional structure is underdeveloped; there are a lack of mentorship opportunities; and that his undergraduate years were marred by academic and non-academic strikes. He also wants international experience, a perceived advantage in competing with foreign practitioners across national boundaries. Finally, Mr. Iyiola notes successful completion of the advanced diploma program, together with his BSc [which alone is insufficient], would qualify him to obtain a Master's degree. He looks forward to returning to Nigeria at the end of the program to "create a professional hub where professionals unite to share knowledge and work templates. [He] also look[s] forward to contributing to the proper integration of the profession into the Nigerian academic system, at preliminary and advanced levels, alongside relevant authorities and professional bodies [… and] to creating an avenue where professionals are easily accessible to young practitioners for mentorship purposes."

[3] In addition, Mr. Iyiola's evidence is that during his time as a student in Canada, his older brother will support him financially and fully. The brother, Dr. Akinyele Akeem Iyiola, lives in Alberta and is employed full time as a psychiatrist at a local hospital. Dr. Iyiola provided financial records detailing his finances as part of Mr. Iyiola's study permit application, and a signed statutory declaration in which he undertook to be fully responsible financially for Mr. Iyiola while he is in Canada for his program of study.

[4] On February 1, 2019, the High Commission of Canada in Nairobi, Kenya [High Commission] refused Mr. Iyiola's updated study permit application. As a consequence,

Mr. Iyiola then brought this application for judicial review of the refusal, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[5] For the reasons that follow, I grant this judicial review application, set aside the February 1, 2019 decision of the High Commission, and remit the matter for redetermination by a different visa officer.

II. Impugned Decision

[6] The High Commission rejected Mr. Iyiola's application, pursuant to section 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], on the basis he would not leave Canada at the end of his stay because of:

(a) his travel history;

(b) his family ties in Canada and in his country of residence;

(c) the purpose of his visit;

(d) his current employment situation.

[7] In the Global Case Management System [GCMS] notes, while the visa officer acknowledged the updated funding information provided by Dr. Iyiola, it also was noted that Mr. Iyiola was single, had no dependents, had provided no evidence of prior travel of any kind, and had been unemployed since 2017. Further, despite Mr. Iyiola having a BSc in computer science and having worked as a computer teacher, the visa officer determined he has not had any employment related to his studies. With this in mind, including Mr. Iyiola's own financial situation, the visa officer was not satisfied Mr. Iyiola "is a genuine student who will pursue

studies in Canada" in that the "stated benefits of [his] intended studies [did] not seem to warrant the cost and difficulty of undertaking foreign education," and that Mr. Iyiola's "[r]ationale of cost and effect on employment potential in [Nigeria] [did] not appear solid."

III. Issues

[8] Two issues arise in this judicial review application:

A. *Did the visa officer breach the duty of fairness by failing to offer Mr. Iyiola an opportunity to respond to concerns prior to the High Commission's final decision?*

B. *Was the High Commission's decision reasonable?*

IV. Relevant Provisions

[9] The relevant provisions are reproduced in Annex A.

V. Standard of Review

[10] The parties agree that a visa officer's denial of a study permit is reviewable on the reasonableness standard: *Akomolafe v Canada (Citizenship and Immigration)*, 2016 FC 472 at para 9; *My Hong v Canada (Citizenship and Immigration)*, 2011 FC 463 at paras 12-13; *Hakimi v Canada (Citizenship and Immigration)*, 2015 FC 657 [*Hakimi*] at paras 12, 20. The parties' written submissions, however, were received before, and their oral submissions were made the same day as, the Supreme Court of Canada released its decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Following *Vavilov*, there is a

rebuttable presumption that all administrative decisions are reviewable on a reasonableness standard: *Vavilov*, above at paras 9-10. I find none of the situations which rebut this presumption [summarized in *Vavilov*, above at paras 17 and 69] are present in the instant proceeding.

[11] This Court should intervene only when truly necessary to safeguard the legality, rationality, and fairness of the administrative process: *Vavilov*, above at paras 13, 75, and 100. When reviewing an administrative decision under the reasonableness standard, "…a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified": *Vavilov*, above at para 15. The SCC defined a reasonable decision owed deference as "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Vavilov*, above at para 85. The SCC found "it is not enough for the outcome of a decision to be justifiable …[,] …the decision must also be *justified* …": *Vavilov*, above at para 86 [emphasis in original]. In sum, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility – and it must be justified in relation to the factual and legal constraints applicable in the circumstances: *Vavilov*, above at para 99. The party challenging the decision has the onus of demonstrating that it is unreasonable: *Vavilov*, above at para 100.

[12] Meanwhile, breaches of procedural fairness in administrative contexts have been considered reviewable on a correctness standard or subject to a "reviewing exercise … 'best reflected in the correctness standard' even though strictly speaking no standard of review is being applied": *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69

[*CP Railway*] at para 54 [citing *Eagles Nest Youth Ranch Inc v Corman Park (Rural Municipality #344)*, 2016 SKCA 20 at para 20]; see also *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43 [citing *Dunsmuir v New Brunswick*, 2008 SCC 9; *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Punia v Canada (Citizenship and Immigration)*, 2017 FC 184 at para 19. In reviewing allegations of procedural fairness breaches, a reviewing court ultimately has been, and in my view continues to be, concerned with assessing whether the process was fair. As further noted in *CP Railway*, at paras 54-55:

> [54] A court assessing a procedural fairness argument is required to ask whether the procedure was fair having regard to all the circumstances, including the *Baker* factors [*Baker v Canada (Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*] at paras 21-28]. …it asks, with a sharp focus on the nature of the substantive rights involved the consequences for an individual, whether a fair and just process was followed. …
>
> [55] Attempting to shoehorn the question of procedural fairness into a standard of review is also, at the end of the day, an unprofitable exercise. Procedural review and substantive review serve different objectives in administrative law. While there is overlap, …certain procedural matters do not lend themselves to a standard of review analysis at all, such as when bias is alleged. …the distinction between substantive and procedural review and the ability of a court to tailor remedies appropriate to each is a useful tool in the judicial toolbox, and, …there are no compelling reasons why is should be jettisoned.

[13] The SCC decision in *Vavilov* has not displaced the overarching principle of ensuring a fair process, nor the factors to be considered in assessing whether a fair process was followed: *Vavilov*, above at paras 23, 76-81. Confirming the duty of procedural fairness "is 'eminently variable', inherently flexible and context-specific", *Vavilov* instructs that where a duty of procedural fairness arises, the procedural requirements imposed by the duty are to be determined with reference to all the circumstances, including the *Baker* factors: *Vavilov*, above at para 77.

VI. Analysis

A. *Did the visa officer breach the duty of fairness by failing to offer Mr. Iyiola an opportunity to respond to concerns prior to the High Commission's final decision?*

[14] As I understand it, procedural fairness is relaxed in the context of study permit applications because their processing generally is not judicial or even quasi-judicial in nature; applicants may apply to judicially review negative decisions or they simply may submit a new application. There is no statutory right to a particular process, and immigration officers are viewed as having considerable processing expertise: *Li v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 791 at paras 45-50. Moreover, an applicant bears the onus of providing sufficient evidence to demonstrate they meet the statutory requirements for their study permit; visa officers do not have a duty to provide an applicant with an opportunity to address concerns which arise from an applicant's failure to demonstrate they meet the applicable legislative requirements: *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 [*Hassani*] at para 24; *Huang v Canada (Citizenship and Immigration)*, 2012 FC 145 at para 7.

[15] That said, this Court has recognized that a duty to permit an applicant to respond to an officer's concerns prior to receiving a final determination may arise in limited, fact-specific circumstances. An interview may be appropriate for example, and I agree, where a visa officer relies on extrinsic evidence [of which an applicant is unaware] or, as in this case, doubts the genuineness or credibility of submitted documents [*i.e.* regarding the visa officer's finding that Mr. Iyiola is not a genuine student]: *Hassani*, above at para 24; *Hakimi*, above at paras 22-23. In my view, such circumstances enhance the obligation on visa officers to provide an internally

coherent and rational chain of analysis for study permit rejections; among other things, one might expect an applicant may use the rejection as guidance on how to strengthen their application if they choose to reapply.

[16] Having regard to the further discussion below regarding the reasonableness of the High Commission's decision, I am of the view Mr. Iyiola should have been provided an opportunity to address the visa officer's concerns, such as the findings that : (i) he "[has] not had any employment related to studies[,]" when his evidence is that he was employed as a teacher and computer instructor for about one year and no question was put to Mr. Iyiola of the relationship of this employment, if any, to his BSc in computer science; and (ii) "[t]he stated benefits of their intended studies do not seem to warrant the cost and difficulty of undertaking foreign education[,]" when Mr. Iyola's brother, an employed psychiatrist, has supplied an undertaking to provide financially for Mr. Iyiola for his entire period of study in Canada. As this matter will be redetermined by a new decision maker who may not make the same findings, I find it unnecessary at this time to issue a direction requiring an interview.

B. *Was the High Commission's decision reasonable?*

[17] As this Court often emphasizes, reasonableness requires justification, transparency, and intelligibility within the decision making process; *Vavilov* has not changed these hallmarks of reasonableness. Instead of falling within a range of acceptable outcomes, however, an administrative decision must be justified. While a visa officer's notes may be sparse, they nonetheless must shed insight [in other words, an internally coherent and rational chain of analysis within applicable factual and legal constraints] as to why an application was refused:

Obeng v Canada (Citizenship and Immigration), 2008 FC 754 at paras 38-39; *Ogunfowora v Canada (Citizenship and Immigration)*, 2007 FC 471 [*Ogunfowora*] at para 60; *Peiro v Canada (Citizenship and Immigration)*, 2019 FC 1146 at para 15. Except in the clearest of cases where the evidence only supports one reasonable outcome, conclusions without analysis may be found arbitrary or unintelligible.

[18] In my view, the visa officer in this case did not articulate intelligibly nor reasonably why Mr. Iyiola was not considered a genuine student. The offered reasons include: Mr. Iyiola's intentions and plans do "not appear solid"; the "stated benefits … do not seem to warrant the cost and difficulty…" of international education; and Mr. Iyiola's intended program of study does not correspond to his previous degree or employment [I already have addressed shortcomings of the latter two points]. I believe these conclusions are not justified and hence not reasonable without explicit consideration of certain specific evidence on record, which was not undertaken: *Fakharian v Canada (Citizenship and Immigration)*, 2009 FC 440 [*Fakharian*] at para 13; *Patel v Canada (Citizenship and Immigration)*, 2009 FC 602 at para 34; *Raymundo v Canada (Citizenship and Immigration)*, 2018 FC 759 [*Raymundo*] at para 12. For example, despite acknowledging the funding information from Mr. Iyiola's brother, the visa officer unintelligibly focuses solely on Mr. Iyiola's own financial situation without any explanation as to why the brother's undertaking to be fully responsible financially for Mr. Iyiola was not taken into account or was insufficient: *Onyeka v Canada (Citizenship and Immigration)*, 2009 FC 336 [*Onyeka*] at para 53. Further, an economic incentive to stay is not in itself sufficient evidence that an applicant will remain without authorization to do so: *Li v Canada (Citizenship and Immigration)*, 2008 FC 1284 at para 29. The visa officer also makes no mention that Mr. Iyiola had been

accepted at GBC and had paid his first semester tuition: *Fakharian*, above at para 12. In my view, these latter factors are reasonably indicative of a genuine intention to study and support Mr. Iyiola's application but, on the face of the High Commission's decision and the GCMS notes, they inexplicably were not considered nor even mentioned. Similarly, the visa officer does not explain why Mr. Iyiola's very detailed and researched statement of purpose, including his rationale for his change of career paths [from computer science to project management commenced already in Nigeria], was unconvincing overall. Nor did the visa officer consider Mr. Iyiola's stated long-term goals. While the Officer was not required to accept Mr. Iyiola's purpose, he was required to explain why it was insufficient: *Raymundo*, above at para 12.

[19] As noted above, the High Commission's decision indicates concern that Mr. Iyiola may not leave Canada at the end of his authorized period of stay; Mr. Iyiola bore the onus of satisfying the visa officer in this regard: IRPA s 20(1)(b). Regarding Mr. Iyiola's family ties in Canada and in Nigeria, he has five other family members in Nigeria, including his parents with whom he lives with, none of which was mentioned in the GCMS notes; given this, it would have been unreasonable without further analysis to presume an older brother in Canada would be a more significant pull factor: *Obot v Canada (Citizenship and Immigration)*, 2012 FC 208 [*Obot*] at para 20. Accordingly, I find it unintelligible that there was no explanation whatsoever by the High Commission, nor by the visa officer in the GCMS notes, about the family ties in Nigeria and how these were assessed in the context of Mr. Iyiola's family ties in Canada. Moreover, I agree with Justices Russell and Mosley that an applicant's lack of a dependent spouse or children, without any further analysis [as in this case], should not be considered a negative factor on a study permit application; otherwise, this would preclude many students from being eligible:

Onyeka, above at para 48; *Obot*, above at para 20. Finally, it is unintelligible in my view to construe a lack documented travel abroad in itself [and without something else, such as a negative travel history] as an indication that an individual will overstay their authorized time in Canada: *Onyeka*, above at para 48; *Ogunfowora*, above at para 42.

VII. Conclusion

[20] For all the above reasons, judicial review application is granted. The High Commission's February 1, 2019 decision, including the GCMS notes, did not articulate intelligibly, with justification and transparency, on what grounds Mr. Iyiola was considered not a "genuine" student, nor was Mr. Iyiola's evidence regarding his intention to return to Nigeria treated reasonably. The impugned decision therefore is set aside and the matter is remitted to a different visa officer for redetermination, including a possible interview of Mr. Iyiola if, for example, whether he is a genuine student remains a live issue. No serious question of general importance was raised by the parties and I find there is none for certification.

JUDGMENT in IMM-2807-19

THIS COURT'S JUDGMENT is that:

1. The judicial review application is granted;
2. The High Commission's February 1, 2019 decision is set aside;
3. The matter is remitted to a different visa officer for redetermination, including a possible interview of Mr. Iyiola; and
4. There is no question for certification.

"Janet M. Fuhrer"
Judge

Annex A: Relevant Provisions

(1) Foreign nationals wishing to enter Canada to study must apply for and receive a study permit prior to arriving in Canada: IRPA ss 11(1) and 20(1)(a).

11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	**11 (1)** L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
…	…
20 (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,	**20 (1)** L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :
(a) to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence; and	**a)** pour devenir un résident permanent, qu'il détient les visa ou autres documents réglementaires et vient s'y établir en permanence;

(2) All temporary residents, including those on a study permit, must establish they will leave Canada at the end of their authorized period of stay: IRPA s 20(1)(b), IRPR s 179(b).

20 (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,	**20 (1)** L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :
…	…
(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will	**b)** pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura

leave Canada by the end of the period authorized for their stay.	quitté le Canada à la fin de la période de séjour autorisée.
…	…
179 An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national	**179** L'enquêteur a alors les attributions d'une juridiction supérieure; il peut notamment :
…	…
(b) will leave Canada by the end of the period authorized for their stay under Division 2;	**b)** faire prêter serment et interroger sous serment.

(3) A study permit will be granted if the applicant satisfies the Office they meet certain conditions: IRPR ss 216(1) and 220.

216 (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national	**216 (1)** Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
(a) applied for it in accordance with this Part;	**a)** l'étranger a demandé un permis d'études conformément à la présente partie;
(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	**b)** il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;
(c) meets the requirements of this Part;	**c)** il remplit les exigences prévues à la présente partie;
(d) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and	**d)** s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);
(e) has been accepted to undertake a program of study at a designated learning	**e)** il a été admis à un programme d'études par un établissement d'enseignement

institution.	désigné.
…	…
220 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	**220** À l'exception des personnes visées aux sous-alinéas 215(1)d) ou e), l'agent ne délivre pas de permis d'études à l'étranger à moins que celui-ci ne dispose, sans qu'il lui soit nécessaire d'exercer un emploi au Canada, de ressources financières suffisantes pour :
(a) pay the tuition fees for the course or program of studies that they intend to pursue;	**a)** acquitter les frais de scolarité des cours qu'il a l'intention de suivre;
(b) maintain themself and any family members who are accompanying them during their proposed period of study; and	**b)** subvenir à ses propres besoins et à ceux des membres de sa famille qui l'accompagnent durant ses études;
(c) pay the costs of transporting themself and the family members referred to in paragraph (b) to and from Canada.	**c)** acquitter les frais de transport pour lui-même et les membres de sa famille visés à l'alinéa b) pour venir au Canada et en repartir.

FEDERAL COURT

SOLICITORS OF RECORD

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