Federal Court  Cour fédérale

Date: 20201123

Docket: IMM-6213-19

Citation: 2020 FC 1083

Ottawa, Ontario, November 23, 2020

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

HENRY CHIBUZO OBISON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Mr. Obison [Applicant] applied for a study permit to attend Cambrian College of Applied Arts and Technology in the IT Business Analysis Graduate Certificate program in 2018 and again in 2019. On September 11, 2019, an officer of the High Commission of Canada, visa section [Officer], denied his application [Decision].

[2] The Applicant applies for judicial review of the Officer's Decision pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act,* SC 2001, c 27 [*IRPA*]. He requests that the Court quash the Decision and remit it for re-determination by a different officer.

[3] For the following reasons the application for judicial review is allowed.

II. Background and Decision Under Review

[4] The Applicant is a citizen of Nigeria. He has lived in Denmark on a Green Card residence permit since 2015. The Applicant obtained a degree in Electrical and Electronic Engineering in 2004. The Applicant now wishes to obtain a Graduate Certificate in the IT Business Analysis Certificate Program but submits that the Officer erred in his assessment and understanding of the facts in his study permit application.

[5] The Officer was not satisfied that Mr. Obison would leave Canada at the end of the period authorized for his stay as per s 216 (1) of *Immigration and Refugee Protection Regulations,* SOR/2002-227 [Regulation]. The *Regulation* states:

Immigration and Refugee Protection Regulations (S.O.R./2002-227)	**Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227)**
Study permits	**Permis d'études**
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	**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 :

established that the foreign national	
[…]	[…]
(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[.]

[6] The Officer notes indicate that the Decision is based on the following findings:

- There were large gaps in the Applicant's personal history on his application form (no activities listed prior to 2015 or between 2015 to 2018);
- Mr. Obison had recently began working for his current employer;
- A period of 15 years had lapsed since Mr. Obison had studied;
- The proposed study plan was illogical and it was unclear as to how it would help Mr. Obison's career prospects;
- Mr. Obison had no immediate family ties to Denmark;
- Mr. Obison's immigration status was time limited; and
- There was insufficient evidence that Mr. Obison will be motivated to leave Canada.

III. Issues and Standard of Review

[7] While the Applicant submits numerous grounds of review on his Application, his subsequent materials speak only to an error of mixed fact and law in that the Officer based the Decision on an unreasonable and erroneous finding of fact.

[8] The issue in dispute is whether the Officer reasonably assessed the evidence, specifically the Applicant's employment and educational experience. The issue attracts a reasonableness standard of review which is now the presumptive standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]). Both parties agree that the applicable standard of review is reasonableness.

IV. The Parties' Positions

A. *Was the Decision Reasonable?*

[9] The Applicant asserts that the evidence he provided, which consisted of the application form and curriculum vitae, if assessed in its entirety, was sufficient for the Officer to conclude that he had a genuine interest in study and would have approved his study permit. The Applicant submits that the Officer completely omitted some of that information in its analysis, resulting in an incomplete assessment of his application and a reviewable error.

[10] The Respondent submits that its Decision is reasonable as the Officer reviewed and weighed the evidence properly in denying the application. In concluding that there was a risk that the Applicant would not leave Canada, the Officer provided the following reasons:

- The Applicant did not list any personal activities prior to April 2015 or from November 2015 to February 2018;
- The Officer did not find that the Applicant had presented a persuasive rationale as to why he would take this course given that he held an engineering degree and worked in management with an aircraft parts company in Denmark;

- The Applicant had recently started with his new employer;
- There was no evidence provided as to how this program would improve the Applicant's career prospects especially to the extent that it would offset the considerable expense of studying in Canada versus pursuing a similar program in country of residence; and
- The Officer had found similar programs available in Denmark and Nigeria that would have been less expensive.

V. Analysis

A. *Was the Decision Reasonable?*

[11] I agree with the Respondent that decisions of visa officers are highly discretionary and, absent any error, their decisions are entitled to considerable deference. In this particular case, however, I find that the Officer's determination in relation to the Applicant's employment and educational history was completely at odds with the evidentiary record. The Decision is therefore unreasonable, as it was not justified by a consideration of all of the facts (*Vavilov* at para 126).

[12] While the Applicant acknowledges that there are gaps in his personal history in his application form, he points out that the evidence of both his education and employment were indeed before the Officer in the form of his curriculum vitae in his application package. The curriculum vitae showed continuous employment experience that directly contradicts the Officer's finding that there were "large gaps".

[13] The Respondent submits that the onus fell on the Applicant to compile his application convincingly while anticipating possible adverse inferences in the evidence and addressing them (*Singh v Canada*, 2012 FC 526 at para 52). The Respondent further submits that an Officer's decision must be viewed in light of all the evidence available and that one cannot point to isolated facts or factors which favor an Applicant to argue that an Officer's decision was unreasonable (*Babu v Canada*, 2013 FC 690 at para 20-21).

[14] The Officer's finding that there had been a period of 15 years since the Applicant had last studied was also not based on the evidence. The Applicant's curriculum vitae clearly sets out two training and educational endeavours that he had pursued in 2011 and 2012. He additionally included certificates as proof of completion of these courses.

[15] I find that the Decision is unreasonable because of the omissions related to his employment and educational history. The Decision lacks responsiveness to the evidence. Justice Diner dealt with the responsiveness of reasons given for refusing a study permit application in *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77:

> [15] …I appreciate that the context of a visa office, with immense pressures to produce a large volume of decisions every day, do not allow for extensive reasons. The brevity of the Decision, however, is not what makes this Decision unreasonable. Rather, it is its lack of responsiveness to the evidence. *Vavilov*, at paragraphs 127-128, describes the concept of responsiveness as follows:
>
> > The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of

> procedural fairness and is rooted in the right to be heard: Baker, at para. 28. The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually *listened* to the parties.
>
> […]
>
> [Underlining added; italics in original]

[…]

> [17] Again, while the reality of visa offices and the context in which its officers work include significant operational pressures and resource constraints created by huge volumes of applications, this cannot exempt their decisions from being responsive to the factual matrix put before them. Failing to ask for basic responsiveness to the evidence would deprive reasonableness review of the robust quality that *Vavilov* requires at paras 13, 67 and 72. "Reasonableness" is not synonymous with "voluminous reasons": simple, concise justification will do.
>
> [Emphasis added].

[16] In light of the two omissions in considering the evidence, there is no need to go further and assess the remaining issues.

VI. Conclusion

[17] The Applicant has demonstrated an error in the Officer's assessment of the evidence concerning the Applicant's employment and educational experience. The Decision is therefore unreasonable. The application for judicial review is allowed and the matter is remitted for re-determination.

[18] Neither party raised a question for certification and none arises.

JUDGMENT in IMM-6213-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter is remitted for re-determination by a different officer.
2. There is no order for costs.
3. There is no question for certification.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6213-19
STYLE OF CAUSE:	HENRY CHIBUZO OBISON
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE BETWEEN TORONTO, ONTARIO AND OTTAWA, ONTARIO
DATE OF HEARING:	SEPTEMBER 1, 2020
JUDGMENT AND REASONS:	FAVEL J.
DATED:	NOVEMBER 23, 2020

APPEARANCES:

Aminder Kaur Mangat	FOR THE APPLICANT
Michael Butterfield	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Aminder Kaur Mangat Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT