Federal Court  Cour fédérale

**Date: 20211006**

**Docket: IMM-5136-19**

**Citation: 2021 FC 1043**

**Ottawa, Ontario, October 6, 2021**

**PRESENT: Madam Justice Pallotta**

**BETWEEN:**

**NADA FOUAD DAWOOD OUDAH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] Ms. Oudah is a citizen of Iraq living in the United Arab Emirates (UAE). She was accepted into an Early Childhood Education (ECE) program at the George Brown College of Applied Arts and Technology (George Brown College) in Toronto, but her application for a study permit to enter Canada was refused. Ms. Oudah sought reconsideration and her application was reopened. She now seeks judicial review of the decision maintaining the refusal on the basis

that the immigration officer (Officer) was not satisfied Ms. Oudah would leave Canada by the end of the period authorized for her stay: subsection 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[2] The Officer was not satisfied that Ms. Oudah would leave Canada based on the purpose of her visit, her limited prospects of employment in the UAE, her current employment situation, and her personal assets and financial status. In making these findings, Ms. Oudah submits that the Officer failed to meaningfully engage with the evidence and did not address contradictory evidence, rendering the decision unreasonable. Also, she submits that the Officer's reasons are inadequate in that they do not justify the Officer's conclusions, and the reasoning is not transparent or intelligible.

[3] This application for judicial review is allowed. I find Ms. Oudah has established that the Officer's decision is unreasonable.

## II. **Standard of Review**

[4] The sole issue on this application for judicial review, whether the Officer's decision is reasonable, is determined according to the guidance set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Reasonableness is a deferential but robust form of review: *Vavilov* at paras 12-13, 75 and 85. In applying the reasonableness standard, the reviewing court must not assess the decision maker's reasons against a standard of perfection, but must ask whether the decision under review 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 paras 91, 99. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

## III. **Analysis**

[5] Ms. Oudah submits there was ample evidence before the Officer that she is a *bona fide* student who will return to the UAE at the end of her authorized stay. She argues the Officer's decision is unreasonable as it fails to address or meaningfully engage with that evidence: *Pradhan v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1500 at para 14, citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425, 1998 CanLII 8667 (FCTD) [*Cepeda-Gutierrez*] at paras 14-17 (see also *Prekaj v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1047 at para 29; *Aghaalikhani v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1080 [*Aghaalikhani*] at para 24; *Mahida v Canada (Minister of Citizenship and Immigration)*, 2019 FC 423 at paras 23-26 [*Mahida*]).

[6] The Officer's refusal letter (and the initial refusal letter) stated four grounds for refusing Ms. Oudah's application under subsection 216(1)(b) of the *IRPR*. The Officer was not satisfied Ms. Oudah would leave Canada at the end of her stay based on: (i) the purpose of her visit; (ii) the limited employment prospects in her country of residence; (iii) her current employment situation; and (iv) her personal assets and financial status.

[7] Ms. Oudah submits that her study permit application included a study plan detailing why she wants to attend the ECE program offered at George Brown College. She argues the Officer

did not engage with the evidence that she was pursuing an academic opportunity consistent with her professional background and career goals.

[8] According to Ms. Oudah, her study permit application explains that she is an English language teacher with the Applied Technology High School in Abu Dhabi, teaching grades 9-12. She explained her plan to open a childcare centre in the UAE, in order to take advantage of the UAE government's plans to redesign its ECE framework. While Ms. Oudah has 16 years of experience teaching primary and secondary school students, she does not have practical experience in the ECE field. She explained that she would bridge this gap with an appropriate program. In the application, Ms. Oudah also explained the scope and importance of the ECE program offered at George Brown College, particularly its practical component, and that such a program is not available in the UAE.

[9] Ms. Oudah argues the Officer focused unreasonably on the availability of online Masters degree programs in the UAE, without engaging with her evidence about the suitability of the ECE program in Canada—including that it offers practical experience that the online programs do not. Ms. Oudah submits the Officer also drew unreasonable negative inferences from a perceived lack of clarity in the evidence, stating in the Global Case Management System (GCMS) notes that it was "not clear what ages she currently teaches" when her application clearly indicated she was teaching high school, and that it was "unclear why the applicant's 16 years of practical teaching experience is insufficient, if supplemented with online programs" when her application clearly indicated that her 16 years of practical teaching experience was at the primary and secondary school levels, she wanted to attend an ECE program with a practical

component in view of her career plans, and the online programs do not have a practical component.

[10] Ms. Oudah submits that her case is similar to *Mahida* at paragraphs 23-26 where the Court found the applicant had provided a "full and entirely coherent explanation" as to why she wanted to pursue another MBA degree in Canada, and the Officer did not explain why it was inadequate.

[11] The application also explained Ms. Oudah's family obligations in the UAE, where she lives with her elderly parents. Ms. Oudah argues that the GCMS notes do not indicate the Officer weighed this factor, and the Officer failed to engage with evidence of her caregiving obligations to her parents and her father's poor health as ties to the UAE: *Vavilov* at para 85; *Mahida* at para 26; *Oladihinde v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1246 at para 16. Ms. Oudah has no family ties in Canada and has visited before, returning to her parents. She submits the Officer did not explain why she would not leave Canada and return to her parents at the end of her authorized stay.

[12] In addition, Ms. Oudah submits that the Officer gave ambiguous and unintelligible reasons that do not justify the refusal. Ms. Oudah states it is "a mystery" why the Officer had concerns about her current employment situation, when she has a history of steady and lengthy employment in the UAE that should reflect positively on her future employment prospects there. Furthermore, despite acknowledging that Ms. Oudah intends to open her own childcare facility in the UAE, the Officer relied on a failure to demonstrate strong employment prospects with her

current employer. Similarly, the Officer stated that "the impact of high-level government policy objectives on concrete employment is uncertain"; however, it is a common entrepreneurial practice to make business plans that respond to government policy. Ms. Oudah submits the Officer erred by setting an arbitrarily high threshold, requiring her to present an airtight employment arrangement with her current employer or a concrete relationship between the UAE government policies and her business plan.

[13] Ms. Oudah argues an officer's reasons must make it possible for the reviewing court to understand the reasons for a decision and determine whether the decision is reasonable: *LeBon v Canada (Attorney General)*, 2012 FCA 132 at para 18. She argues a reviewing court should not show "blind reverence" to a decision maker's interpretation and assessment of the evidence; where parts of the evidence are not considered or are misapprehended, where the findings do not flow from the evidence and where the outcome is not defensible, a decision will not withstand a probing examination: *Aghaalikhani* at paras 16-17.

[14] I agree with Ms. Oudah that the Officer failed to meaningfully engage with her submissions and detailed study plan, which described why she was pursuing the particular academic opportunity at George Brown College and how it was consistent with her professional background and career goals. While the Officer does mention the study plan and Ms. Oudah's professional background and career goals in the GCMS notes, I agree with Ms. Oudah that the mention of these points was insufficient to discharge the Officer's duty to meaningfully engage with the evidence and explain why Ms. Oudah had not established that she is a *bona fide* student.

It is not apparent why the Officer considered her reasons for pursuing the academic opportunity at George Brown College to be inadequate.

[15] I acknowledge, as the respondent correctly points out, that officers' decisions to approve or deny study permit applications are entitled to considerable deference. It is not a reviewing court's role to reweigh the evidence that was before the decision maker: *Akomolafe v Canada (Minister of Citizenship and Immigration)*, 2016 FC 472 at para 12; *Ali v Canada (Minister of Immigration, Refugees and Citizenship)*, 2018 FC 702 at para 9; *Tabari v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1046 at para 19. However, I disagree with the respondent that Ms. Oudah's arguments amount to a disagreement with how much weight the Officer gave to her evidence.

[16] The Officer's notes stating it is unclear what ages Ms. Oudah teaches and unclear why 16 years of practical teaching experience supplemented with online programs would be insufficient suggest that the Officer missed key information in the application, and failed to appreciate what was, according to Ms. Oudah's submissions, the main reason why she chose a foreign ECE program having a practical component. The Officer erred by ignoring or failing to engage with relevant evidence that contradicted their conclusions: *Cepeda-Gutierrez* at para 17; *Penez v Canada (Minister of Citizenship and Immigration)*, 2017 FC 1001 at para 25.

[17] The respondent argues that the Officer reasonably found the practical component of the ECE program at George Brown College to be an insufficient reason for undertaking a costly and difficult foreign education. I disagree. The Officer found that Ms. Oudah does not require a

program with a practical component because her 16 years of practical experience should be sufficient if supplemented with an online program, and that this is "especially true when considering the expense and difficulty of undertaking a foreign education". However, as noted above, the Officer failed to address Ms. Oudah's submissions that she that does not have practical ECE experience, she had specifically sought out a program with a practical component to "bridge this gap", and that such a program was not available in the UAE, and thus she requires a foreign education.

[18] Furthermore, I agree that the Officer did not meaningfully engage with the evidence of Ms. Oudah's family obligations in the UAE. The GCMS notes do not address the fact that Ms. Oudah lives with her elderly parents in UAE and she has no family in Canada. The GCMS notes point out that Ms. Oudah manages her father's rental properties due to his ailing health, but the Officer gave this little weight because the property belongs to the father, arrangements will have to be made to manage the property while Ms. Oudah is away, and there is "little evidence" to indicate why those arrangements cannot continue over the long term. However, there is nothing in Ms. Oudah's submissions to indicate that she would delegate her responsibilities to a third party during her time in Canada, let alone for the long term.

[19] Also, in my view, the Officer's reasons for not being satisfied that Ms. Oudah would return to the UAE based on her "current employment situation" and "the limited employment prospects in [her] country of residence" lack transparency and intelligibility. These factors were assigned "moderate weight" as ties outside of Canada, but they were nevertheless treated as negative factors (not moderately positive or even neutral factors) in the Officer's overall

balancing of positive and negative factors, and they constituted two of the grounds for concluding that Ms. Oudah will not leave Canada.

[20] It seems that the essence of the Officer's concern was, as described by the respondent, that Ms. Oudah's ties to the UAE are weak and therefore negative factors because "it is not clear whether a position is being held or planned for her" at the current school where she teaches, "her past employment speaks to her employability and she does not intend to rely on that employability upon her return", and "the impact of high-level government policy objectives on concrete employment is uncertain." However, I agree with Ms. Oudah that it is unclear why her history of steady and lengthy employment in the UAE would reflect negatively on her future employment prospects there, particularly since she intends to remain in the field of education. Furthermore, the Officer seemed unduly focused on: (i) the absence of an employment arrangement when Ms. Oudah's stated plan is to open her own childcare facility, and (ii) the job prospects at Ms. Oudah's current high school when her stated intention is a shift to ECE.

[21] Overall, the cumulative effect of these errors renders the decision unreasonable.

## IV. **Conclusion**

[22] Ms. Oudah has established that the Officer's decision is unreasonable. The Officer's decision is set aside and the matter shall be referred to another officer for redetermination.

[23] Neither party proposes a question for certification, and in my view, there is no question to certify.

**JUDGMENT in IMM-5136-19**

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is allowed and the matter shall be referred to another officer for redetermination.
2. There is no question for certification.

"Christine M. Pallotta"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-5136-19 |
| **STYLE OF CAUSE:** | NADA FOUAD DAWOOD OUDAH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD BY WAY OF VIDEO CONFERENCE |
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| **JUDGMENT AND REASONS:** | PALLOTTA J. |
| **DATED:** | OCTOBER 6, 2021 |

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