Federal Court  Cour fédérale

Date: 20220222

Docket: IMM-1831-21

Citation: 2022 FC 242

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 22, 2022

PRESENT: Madam Justice Walker

BETWEEN:

BIDASSA, ESSO-SOLAM KEVIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Kevin Esso-Solam Bidassa, the applicant, is a citizen of Togo. He is seeking judicial review of a decision dated January 29, 2021, by an officer ("the officer") at the Canadian embassy in Guangzhou, China, refusing his study permit application for a second time.

I. Background

[2] The applicant holds a business law degree completed in 2018. In late 2019, the applicant submitted his first application for a study permit with the intention of beginning a bachelor's program in business and management at the Université du Québec à Montréal. The application was refused on January 27, 2020.

[3] On November 30, 2020, the applicant submitted a new application for a study permit so that he could begin a bachelor's program in sociology with a specialization in criminology at the Université de Moncton, in New Brunswick. This second application stated that the applicant's father would cover the costs of his son's study period in Canada.

[4] The officer stated in his refusal letter that he was not satisfied that the applicant would leave Canada at the end of the period authorized for the stay, as set out under subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (*Regulations*), given the reason for the applicant's visit, his personal property and his financial situation.

[5] The notes in the Global Case Management System, which form part of the decision, state the following:

> [TRANSLATION]
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> - The evidence presented in support of the applicant's financial situation does not establish that the funds available for the study plan would be sufficient;
> - The expenses associated with the program of study are to be assumed by the applicant's parents, but there are concerns about the source and availability of these funds; in particular, the officer is concerned that the funds are merely hypothetical and does not believe that the proposed studies would be a reasonable expense to assume;

- The study plan does not seem reasonable given the applicant's work history and education; and

- The study plan and the arguments of the applicant's representative fail to address the officer's reservations regarding the application for a study permit.

II. Issues

[6] This application for judicial review raises the following issues:

A. Did the officer breach procedural fairness by

(1) failing to inform the applicant of his concerns about the source of the funding from the applicant's guarantor before refusing the application for a study permit?

(2) providing almost identical reasons in two separate applications? Is there therefore a reasonable apprehension of bias?

B. Is the officer's decision to refuse the study permit application reasonable?

III. Analysis

A. Did the officer breach his duty of procedural fairness?

Standard of review

[7] The Federal Court of Appeal stated in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraph 54, that "[a] court assessing a procedural fairness argument is required to ask whether the procedure was fair having regard to all of the circumstances", including the five non-exhaustive contextual factors identified in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at pages 837 to 841. If procedural fairness has not been respected, the Court must intervene.

Opportunity to explain

[8] The applicant submits that the officer breached his duty of procedural fairness by doubting the source of certain deposits in his father's bank account without giving the applicant an opportunity to address this doubt. The applicant states that there were no grounds for concern about whether the funds were sufficient; rather, it was a matter of credibility. He maintains that the officer should have given him an opportunity to address the concern before refusing his application (*Nsiegbe v Canada (Citizenship and Immigration*), 2018 FC 1262 at para 13). The applicant submits that this breach of natural justice alone warrants the Court's intervention.

[9] I disagree with the applicant. A visa officer is required to inform the applicant of concerns about the credibility of the evidence or the authenticity of documents and to give the applicant an opportunity to respond orally or in writing (*Noulengbe v Canada (Citizenship and Immigration*), 2021 FC 1116 at para 10 (*Noulengbe*)). However, the officer is not required to provide the applicant with opportunities to further explain the application. The onus remains on the applicant to present all the information necessary to support a convincing application (*Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at paras 35, 37). Moreover, applicants are deemed to be aware of the content of their own documents.

[10] In this case, the officer noted that the applicant provided bank statements showing multiple recent cash deposits that were not commensurate with his father's reported income. The officer expressed concern about the source and availability of these funds and was concerned that the funds were being reported merely hypothetically.

[11] The officer did not question the credibility of the applicant or the reliability of the applicant's documents. Rather, he raised concerns about the recent nature of some large bank deposits that were to form the bulk of the funds available to cover the applicant's tuition and living expenses in Canada. Given the evidence, I believe the onus was on the applicant to anticipate these adverse concerns. Accordingly, I conclude that the officer was not required to provide the applicant with opportunities to address his concerns. Procedural fairness does not arise whenever an officer has concerns that the applicant could not reasonably have anticipated (*Singh v Canada (Citizenship and Immigration)*, 2012 FC 526 at para 52).

Reasonable apprehension of bias

[12] The applicant alleges that there is a reasonable apprehension of bias because of the similarities between the officer's reasons in this case and the same officer's reasons in relation to a study permit application by another person from Togo. He argues that the marked similarities between the officer's two decisions raise the question of whether he rendered them without having considered the content of the applications before him.

[13] I disagree with the applicant. The burden of proof rests on the party alleging a reasonable apprehension of bias (whether actual or perceived) to show that a reasonable and informed person, viewing the matter realistically and practically, and having thought the matter through, would conclude that it is more likely than not that the decision maker, whether consciously or unconsciously, would not decide the matter fairly (*Zhou v Canada (Citizenship and Immigration*), 2020 FC 633 at para 39). An allegation of bias cannot rest on mere impressions or suspicions of the applicant. It is a serious allegation that challenges the integrity of the officer

and must be supported by material evidence (*Arthur v Canada (Attorney General)*, 2001 FCA 223 at para 8).

[14] In my opinion, the applicant has made an allegation of bias but done nothing more. Although some passages in the two decisions are similar, the decisions differ significantly. The differences strongly suggest that a nuanced analysis of the evidence was carried out in each case. The use of similar language does not necessarily imply that the officer is biased (*Fraser v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 821 at para 115). Therefore, the applicant has failed to meet his burden of providing material evidence.

[15] The Court's intervention is not required in this case.

B. Is the decision reasonable?

[16] The standard of review applicable to a visa officer's decision to refuse a study permit application is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Chantale v Canada (Citizenship and Immigration)*, 2021 FC 544 at para 5). The decision of the officer is "an administrative decision made in the exercise of a discretionary power" (*My Hong v Canada (Citizenship and Immigration)*, 2011 FC 463 at para 10).

[17] The applicant begins by noting that sections 179, 216 and 220 of the *Regulations* state that permits are issued "following an examination". He submits that the requirement for an examination calls for increased scrutiny of the evidence and that the word "establish" suggests

that the onus on the applicant is assessed objectively, not by virtue of the officer's discretionary and subjective satisfaction or belief.

[18] This argument of the applicant's is not persuasive. The objective test the applicant advocates is inconsistent with the fact that the issuance of study permits is an exercise of a discretionary power. For this reason, considerable deference is required in view of the visa officer's special expertise and experience (*Solopova v Canada (Citizenship and Immigration),* 2016 FC 690 at para 12 (*Solopova*)).

[19] All the applicant's arguments share a common thread, namely that the officer ignored or disregarded the evidence in the record. However, decision makers are presumed to have considered all the evidence before them (*Noulengbe* at para 15). Failure to explain one's entire reasoning does not automatically make a decision unreasonable. This presumption applies in this case to the officer's reasoning regarding the financial resources of the applicant and his father, and regarding the officer's assessment of the applicant's study plan and his explanations of the course of study proposed in the study plan. The officer's detailed notes show that he considered the applicant's financial evidence and study plan, including the applicant's explanation of his choice of program.

[20] The applicant states that he objectively provided the evidence required to establish that he has the financial resources to support himself and pay his tuition in Canada. He notes that he provided a bank statement from his father's bank, statements of account for his father's bank

account from June to November 2020, a letter of employment stating that his father works as a magistrate, pay slips, and a notarized statement listing all his father's real and personal property.

[21] The officer refers to the statements of account of the applicant's father, which show multiple recent deposits in amounts that are not commensurate with his reported income. The officer's comments accurately reflect the information in the statements. His concerns relate to the source and availability of these funds. In *Kita v Canada (Citizenship and Immigration)*, 2020 FC 1084 (at para 20), Justice Pallotta states that it is reasonable for an officer to consider the source of funds in assessing the criteria under section 216 of the *Regulations*.

[22] The applicant stated that his parents would cover the expenses associated with the proposed studies. It was therefore open to the officer to consider the source of the large recent deposits in the bank account of the applicant's father. The officer stated that the deposits were disproportionate to the father's monthly income. His analysis is consistent and well founded. I conclude that it was reasonable for the officer to question the applicant's ability to pay the tuition for his program and to support himself during his studies in light of the evidence and the relevant legal constraints.

[23] The applicant also challenges the officer's conclusion that the applicant would not leave Canada, given the reason for his visit. The officer stated that the study plan did not seem reasonable in light of the applicant's work history and education. The officer noted that the applicant pursued a degree in business law from 2012 to 2018. This is normally a three-year program, but the applicant failed numerous courses during his post-secondary studies. The

applicant now wishes to pursue a bachelor's degree in sociology with a specialization in criminology. Moreover, the officer concluded that the studies the applicant wanted to pursue were not a logical continuation of his previous studies, which were at a similar academic level.

[24] The applicant states that he clearly explained how the proposed studies are a logical continuation of his previous studies and that the officer failed to indicate why he rejected the explanation. The applicant also points out that the officer noted he had applied for a study permit in Canada in 2019 to pursue a bachelor's degree in business management and that the officer seemed to be criticizing him for changing his mind on the second application. The applicant believes that this analysis is unreasonable.

[25] It is settled case law that officers may consider the academic history of applicants in assessing the reason for their visit (*Solopova* at para 25). The officer's notes show that he considered the applicant's study plan and the arguments of the applicant's representative regarding the logical continuation of the applicant's studies. In the study plan, the applicant states that he is intrigued by human behaviour and that he wants to understand the reasons that individuals commit crimes. However, his previous studies are not in criminology but in business management. Moreover, the proposed studies are at an academic level similar to that of the applicant's studies in Togo. As for the officer's comments on the applicant's slow academic progress, this Court's remarks in *Boni v Canada (Minister of Citizenship and Immigration)*, 2005 FC 31 (at para 23) are relevant: "the conclusions drawn by the officer regarding the courses the applicant failed and his high rate of absenteeism are not patently unreasonable, based on the information contained in the transcripts and other documents supplied by the applicant." I agree.

In the circumstances, it was open to the officer to conclude that the proposed program of study raised doubts about the reason for the applicant's visit and his intention to return to Togo at the end of his authorized stay.

[26] Lastly, the applicant submits that the officer, in determining that he was not satisfied that the applicant was intending to leave Canada at the end of the authorized stay, concluded the applicant would commit a criminal offence under paragraph 124(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[27] I do not find this argument to be persuasive. I agree with the respondent; the officer merely concluded that the applicant failed to show that he would leave Canada at the end of his authorized stay. All study permit applicants are assessed under the same criteria. This is not an assessment of their criminal potential.

[28] For all these reasons, the application for judicial review is dismissed. It was reasonable for the officer to refuse the applicant's application for a study permit given the law and the evidence before the officer. According to the standard of reasonableness, a reasonable decision is 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* at para 85). That is the case here. Moreover, the officer correctly processed the applicant's application, and there was no breach of procedural fairness.

[29] No question of general importance was submitted for certification, and the Court is of the opinion that this case does not raise any.

JUDGMENT in IMM-1831-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Elizabeth Walker"
Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1831-21
STYLE OF CAUSE:	BIDASSA, ESSO-SOLAM KEVIN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEO CONFERENCE
DATE OF HEARING:	OCTOBER 25, 2021
JUDGMENT AND REASONS BY:	WALKER J
DATED:	FEBRUARY 22, 2022

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