Federal Court  Cour fédérale

Date: 20220929

Docket: IMM-1343-22

Citation: 2022 FC 1343

Vancouver, British Columbia, September 29, 2022

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

ROMINA SOLTANINEJAD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a 16-year old high school student from Iran. She wanted to come to Canada to complete her high school education in the hopes that it would improve her chances of acceptance at a Canadian university (she wants to study Computer Science at the University of Toronto). Her application for a student visa was refused. The Applicant seeks judicial review to overturn that decision.

[2] For the reasons set out below, the application will be allowed. Although I do not accept several of the Applicant's arguments about the various deficiencies in the decision, I do agree

that the refusal decision is not reasonable because it is not responsive to her main explanation for wanting to come to Canada to finish high school.

I. Background

[3] The Applicant completed her Grade 11 studies in Iran, and she also completed four Grade 11 courses online at Green Road High School in Canada. She was then accepted into a Grade 12 program at Green Road High School, which required her to attend courses in person for the one-year program running from March 2022 to March 2023.

[4] The Applicant paid the full tuition for the year (CAD $11,000) as well as three months rent (CAD $6000), and then submitted an application for a study visa. On January 26, 2022, the Visa Officer (the Officer) refused the application, stating, “I am not satisfied that you will leave Canada at the end of your stay…” and citing subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The Officer’s notes in the Global Case Management System (GCMS) set out the rationale for the refusal:

> I have reviewed the application. Minor applicant to study at Green Road High School – grade 12. The purpose of the visit itself does not appear to be reasonable, in view of the fact that similar programs are available closer to the applicant's place of residence. Motivation to pursue studies in Canada does not seem reasonable given that a comparative course is offered in their home country for a fraction of the cost. The purpose of visit does not appear reasonable given the applicant’s socio-economic situation. Based on the documentation on file in support of the parent’s level of economic establishment and considering the purpose of the visit, I do not consider that the proposed studies in Canada is a reasonable or affordable expense. Weighing the factors in this application. I

> am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. Application refused.

[5] The Applicant asks the Court to overturn the decision, claiming a denial of procedural fairness and arguing that the decision is unreasonable. As explained below, I find the decision to be unreasonable and thus it is not necessary to address the procedural fairness argument, other than to note that I did not find the Applicant's procedural fairness argument to be persuasive in the circumstances of this case.

II. Issues and Standard of Review

[6] The determinative issue in this case is whether the decision is reasonable, within the framework of analysis set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[7] Under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at para 2). The burden is on the Applicant to satisfy the Court "that any shortcomings or flaws relied on… are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33). The *Vavilov* framework is intended to reinforce a "culture of justification" in public administration (see paras 2 and 14). In part it seeks

to accomplish this by requiring decision makers to be responsive to the main arguments brought forward by the parties (see para 125).

III. Analysis

[8] The Officer bases their refusal on four grounds: (a) the purpose of the visit and the study plan; (b) the "local options" available to the Applicant at a lower cost; (c) the family's socio-economic situation; and (d) the overall conclusion that the Applicant would not leave Canada at the end of her authorized stay.

[9] The Applicants challenge the Officer's findings on each of these grounds, claiming that the Officer: based the decision on unfounded generalizations not supported by the evidence, made unwarranted findings beyond the Officer's remit about how much value they place on education, and failed to meaningfully grapple with the positive aspects of the application. The Applicant asserts that these errors are central to the Officer's decision and therefore support overturning the decision. I will review the Applicant's primary arguments in turn, after a short discussion of the key elements of the legal framework that applies to student visa cases.

[10] The starting point for reasonableness review under *Vavilov* is the legal framework that governs the decision. A failure to apply key elements of that may be fatal to a decision. In this case, the Applicant was seeking a temporary resident visa for study purposes.

[11] "The most fundamental principle of immigration law is that non-citizens do not have an unqualified right to enter or remain in [Canada]" (*Canada (Minister of Employment and Immigration) v Chiarelli*, [1992] 1 SCR 711). The onus is on the Applicant to establish that she meets the requirements of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [*IRPA*] and the *Immigration and Refugee Protection Regulations*, SOR/2022-227 [the *Regulations*]. Pursuant to paragraph 216(1)(b) of the *Regulations*, an officer shall not issue a study permit to a foreign national if they are not satisfied that the foreign national will leave Canada by the end of the period authorized for their stay.

[12] In *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872, Justice Rennie stated:

> [14] The focus must, therefore, be on the strength of ties to the home country. Visa officers must assess the strength of the ties that bind or pull the applicant to their home country against the incentives, economic and otherwise, that might induce the foreign national to overstay. In this sense the relative economic advantage is a necessary component of the decision, but it is not the only part of the analysis. It is only through objective evidence of countervailing strong social and economic links to the home country that the onus to establish an intent to return be discharged.

[13] This passage was recently cited with approval by Justice Andrew Little in *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at para 23. It is an apt summary of how the legal framework that guides a visa officer is actually applied in practice. The question in this case is whether the Officer's reasons are reasonable insofar as they applied this legal framework to the key facts of this case, and to examine that question I turn to the submissions of the Applicant.

[14] Regarding the local options available to the Applicant at a lower cost, the Applicant asserts that it is unreasonable to rely on this as a determinative factor (*Zuo v Canada (Citizenship and Immigration)*, 2007 FC 88, and *Mandivenga v Canada (Citizenship and Immigration)*, 2019 FC 1631). In addition, the Applicant notes that there is no evidence in the record to support the Officer's finding, pointing to the case law that has found such a deficiency to be grounds for overturning the refusals of student visas (*Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at paras 21-22; *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 20; *Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596 at para 15).

[15] I am not persuaded that this is a reversible error in this case. The Applicant is a high school student. She completed Grade 11 in Iran, and did not assert that she would be unable to finish high school there. That is the basis for the Officer's conclusion on this point, and it is both logical and grounded in the evidence. Each case must be examined on its own facts, and this case is not akin to the cases cited by the Applicant. The Officer was not referring to an unknown university or college program said to be available to a claimant, nor was the Officer making a substantive comparison between different programs. Instead, the Officer based this conclusion on the evidence that the Applicant was able to complete Grade 11 in Iran, and she did not assert that Grade 12 was not available to her there. It is a reasonable finding based on the evidence.

[16] The Applicant also asserts that the Officer erred in their observations regarding the family's socio-economic circumstances, and finding that her proposed program of study was not a "reasonable or affordable expense." She points to the jurisprudence that has found that, "it is not the officer's role to determine the value of learning to an applicant." (*Lingepo v Canada*

(Citizenship and Immigration), 2021 FC 552 at para ~~17~~ 18, and the cases cited therein). The Applicant notes that the Respondent only requires an applicant to demonstrate funds for one academic year to meet the eligibility requirements, and in this case she had paid the full tuition and three months rent. She says that the Officer either fettered their discretion or relied on criteria not found in the law in refusing the application on this basis.

[17] I am not persuaded. The Applicant's reference to the eligibility requirements may be relevant but it is not persuasive, because the Officer did not turn down the application on this ground. Rather, the Officer noted that the family had relatively modest financial means, and this called into question their decision to expend a substantial sum for a Grade 12 education in Canada, rather than saving the money and having the Applicant complete her high school in Iran (presumably, at a public high school rather than a private institution). In the circumstances, this finding is not unreasonable.

[18] As I noted at the hearing, although the Applicant did provide financial records, there is no indication from her or her family that they are prepared to make significant financial sacrifices to enable their daughter to pursue her education. In this respect, the Officer's comment about their socio-economic situation did not involve a determination about the value of learning to the Applicant, but rather reflects the Officer's appreciation of the evidence on a relevant consideration – namely, that it seemed to be questionable that the family would spend so much money to allow the Applicant to complete high school in Canada. This is similar to the situation in *Farnia v Canada (Citizenship and Immigration)*, 2022 FC 511, where Justice Southcott found that it was not unreasonable for an officer to comment on the family's financial situation where

the evidence showed that almost half of their savings would be consumed paying for one year of high school education.

[19] In my view, the key flaw in the Officer's decision is the treatment of the Applicant's study plan and the assessment of the purpose of the visit. The key portion of the Officer's analysis on this point is the following passage from the GCMS notes: "Motivation to pursue studies in Canada does not seem reasonable given that a comparative course is offered in their home country for a fraction of the cost."

[20] The problem with this rationale is that it does not address the Applicant's explanation for her choice to come to Canada to finish high school. In a letter that accompanied her application, the Applicant set out her reasons in the following way:

> Now, with regard to the importance of the 12th grade, I have planned to study this grade in Canada which is obliged by the school to have me in person to get my Canadian Diploma. As you are aware, the essential principle to enter a proper university in Canada and build a phenomenal future is having a Canadian Diploma.
>
> …
>
> I sincerely hope to study in computer studies major at the Toronto University. This aim would require my neat analysis and a right decision making regarding what school to go to and the Green Road school came as the optimum choice with the positive feedback of graduates and the advice of some friends. Not mentioning the information, I gained through the Internet. The clear-cut fact is the obvious ease of Green Road school graduates at entering highly qualified universities.

[21] The Respondent argues that the Officer's findings on the study plan are reasonable, in light of the fact that many students enter Canadian universities without having completed any education in Canada. The difficulty with this is that it is not what the Officer's reasons say. Instead, the Officer's reasons address the "purpose" of the Applicant's trip and her "motivation" for coming here to finish high school. However, there is no mention of what the Applicant actually said on that subject, namely that she felt she would improve her chances of being accepted into a Canadian university by entering the Grade 12 program in Canada. The Officer may think the Applicant is making a mistake, but at a minimum, to meet the *Vavilov* standard of responsiveness, the Officer needed to address the Applicant's stated reasons for wanting to come to Canada.

[22] The Officer's decision is silent on this point, and I am persuaded that this makes the entire decision unreasonable. The reason for the refusal set out in the decision letter is that the Officer was not satisfied that the Applicant would leave Canada at the end of her stay, based on the purpose of her visit. The only purpose of her visit was to study in Canada. As the GCMS notes make clear, the Officer cast doubt over the genuineness of the Applicant's stated purpose, largely because the expense was not seen to be justified when a comparable program was available in Iran. The Applicant explained why she thought finishing high school in Canada was important, because it would bolster her chances of being admitted to a Canadian university. The Officer failed to engage with the Applicant's stated reason for her choice to finish high school in Canada.

[23] In addition, the Officer's analysis does not engage with the reality of this particular Applicant's circumstances. At the time of her application, she was 16 years old, coming to Canada to finish high school with the hopes of attending a Canadian university. Her family had paid her full tuition as well as three months rent. All of her family is established in Iran, and she has no immediate family in Canada. The Applicant explained that she wanted to finish high school in Canada because she believes that doing so will improve her chances of being accepted to a Canadian university. The Officer's analysis as reflected in the GCMS notes does not engage with these facts, other than by questioning the Applicant's choices.

[24] This Court has repeatedly stated that deference is owed to a Visa Officer's decisions, and in light of the volume of visa applications to be processed, an Officer's reasons do not need to be lengthy or detailed (*Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552 at para 13, cited with approval in *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at para 15). However, the reasons do need to set out the key elements of the Officer's line of analysis and be responsive to the core of the claimant's submissions on the most relevant points (*Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 17, cited with approval in *Motlagh v Canada (Citizenship and Immigration)*, 2022 FC 1098 at para 22). I find that the decision in this case falls short of that standard, and thus is not reasonable when measured against the *Vavilov* framework.

[25] For these reasons, the application for judicial review will be allowed. The matter is remitted for reconsideration by a different officer.

[26] There is no question of general importance for certification.

JUDGMENT in IMM-1343-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed, and the matter is remitted for reconsideration by another officer.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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