Federal Court  Cour fédérale

Date: 20221125

Docket: IMM-9645-21

Citation: 2022 FC 1622

[ENGLISH TRANSLATION]

Montréal, Quebec, November 25, 2022

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

RACHEL NDUKU ILAKA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Rachel Nduku Ilaka, is applying for judicial review of a decision by a visa officer [Officer] at the Canadian Embassy in France on November 2, 2021. The Officer refused her application for a study visa [Decision]. The Officer refused Ms. Ilaka's application because he was not satisfied that she would leave Canada at the end of her stay.

[2] Ms. Ilaka is asking that her application be referred to another visa officer for redetermination. She claims that the Decision refusing her a study visa is unfounded given all the evidence provided and infringes her right to procedural fairness.

[3] Having considered the evidence available to the Officer and the applicable law, I find no reason to set aside the Decision. The reasons provided by the Officer show that he considered the evidence on the record and that the resulting conclusion is justifiable in light of the facts and law. Ms. Ilaka did not show that the Decision contains any serious flaws that would make it unreasonable. I also find no infringement of the principles of procedural fairness. I must therefore dismiss the application for judicial review.

II. Background

A. *The facts*

[4] Ms. Ilaka was born on November 11, 1996, and is a citizen of the Democratic Republic of the Congo. She holds a [bachelor's-level] *graduat* diploma in veterinary medicine from the University of Lubumbashi and is currently completing a bachelor's degree [*licence*] in the same field at the University of Kinshasa.

[5] On June 15, 2021, Ms. Ilaka was accepted into the winter 2022 session of the bachelor of biology and ecology program at the University of Quebec at Trois-Rivières. The winter session began on January 12, 2022.

[6] On September 6, 2021, Immigration, Refugees and Citizenship Canada [IRCC] received Ms. Ilaka's application for a study permit, prepared in accordance with subsection 11(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Ms. Ilaka had completed the necessary administrative requirements, including submitting an undertaking from her guarantors to support her financially during her studies in Canada.

B. *The Decision*

[7] As is generally the case for study permits, the Officer's Decision is succinct. It is a standard IRCC letter in which visa officers check the relevant boxes. According to the Decision, Ms. Ilaka was refused a study permit under subsection 11(1) of the IRPA and subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2022-227 [IRPR], because the Officer was not satisfied that she would leave Canada when her studies ended. The Officer indicated that he was not satisfied that Ms. Ilaka would leave Canada for four main reasons: (i) the reason for Ms. Ilaka's visit; (ii) her prior travel; (iii) her family ties with Canada and the Democratic Republic of the Congo; and (iv) her limited job prospects in the Democratic Republic of the Congo.

[8] The Officer's notes in the Global Case Management System [GCMS], which are part of the Decision, supplement the grounds in support of the Officer's reasoning. In his notes, the Officer explained that he was not satisfied that Ms. Ilaka would leave Canada at the end of her stay because she is single, has no dependents and is not sufficiently established. The Officer added that Ms. Ilaka's study plan did not seem reasonable given her employment and education history and her career plan, as she already has a diploma at the same academic level. The Officer

then noted that there was not enough travel history for this to be considered a significant positive factor in his assessment. Finally, with respect to the limited job prospects in Ms. Ilaka's country of residence, the Officer noted that he placed less weight on her ties there. On the basis of that analysis, the Officer rejected Ms. Ilaka's application for a study permit.

C. *Standard of review*

[9] Ms. Ilaka and the Minister of Citizenship and Immigration [Minister] both agree that the standard of reasonableness applies to the judicial review of the Officer's Decision on the study permit, but that the standard of correctness applies to the issue of procedural fairness.

[10] It is well established that the standard of reasonableness applies to an officer's assessment of an application for a study permit when the officer is not satisfied that the applicant will leave Canada when the stay ends (*Abbas v Canada (Citizenship and Immigration)*, 2022 FC 378 [*Abbas*] at para 14; *Marcelin v Canada (Citizenship and Immigration)*, 2021 FC 761 [*Marcelin*] at para 7; *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 [*Penez*] at para 11; *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 [*Solopova*] at para 12). Moreover, since the Supreme Court of Canada decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the analysis begins with a presumption that reasonableness is the applicable standard whenever a court must consider the merits of an application for judicial review of an administrative decision.

[11] The reasonableness standard focuses on the decision by the administrative decision maker, which includes both the reasoning process and the outcome (*Vavilov* at paras 83, 87).

Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The reviewing court must therefore ask whether the "decision bears the hallmarks of reasonableness — justification, transparency and intelligibility" (*Vavilov* at para 99). However, the reviewing court must refrain from "reweighing and reassessing the evidence considered" by the decision maker (*Vavilov* at para 125). The court must instead adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13). It is important to remember that review according to the standard of reasonableness always finds its starting point in the principle of judicial restraint and must demonstrate respect for the distinct role conferred on administrative decision makers (*Vavilov* at paras 13, 75). The presumption of reasonableness review is based on "respect for the legislature's institutional design choice, according to which the authority to make a decision is vested in an administrative decision maker rather than in a court" (*Vavilov* at para 46).

[12] Moreover, the burden is on the party challenging the decision to prove that it is unreasonable. For the reviewing court to set aside an administrative decision, it must be satisfied that there are sufficiently serious shortcomings to render the decision unreasonable (*Vavilov* at para 100).

[13] With respect to the issue of procedural fairness, the approach has not changed since *Vavilov* (*Vavilov* at para 23). The Federal Court of Appeal has repeatedly found that procedural fairness does not really require the application of the usual standards of judicial review (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24–25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*CPR*] at para 54). Rather, it is a legal issue that must be assessed on the basis of the circumstances to determine whether or not the procedure followed by the administrative decision maker respected the standards of fairness and natural justice (*CPR* at para 56; *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paras 51–54). This principle also applies to visa officers' decisions on applications for study permits (*Marcelin* at para 10; *Penez* at para 13).

[14] Thus, when procedural fairness and alleged breaches of fundamental justice are the object of an application for judicial review, the reviewing court must, taking into account the particular context and circumstances at issue, determine whether the process followed by the administrative decision maker was fair and offered the affected parties a right to be heard as well as a full and fair chance to know and respond to the case against them. The reviewing court owes no deference to the decision maker when considering issues of procedural fairness.

III. Analysis

A. *Breach of procedural fairness*

[15] Ms. Ilaka submits that the Officer questioned her status as a student and thus relied on a negative impression of her credibility because, among other things, he refused her application [TRANSLATION] "because of the reason for her visit". According to Ms. Ilaka, she was entitled to a higher degree of procedural fairness and should have had the chance to respond to the Officer's concern. In support of her claims, Ms. Ilaka cites *Al Aridi v Canada (Citizenship and Immigration)*, 2019 FC 381 [*Al Aridi*].

[16] I do not agree with Ms. Ilaka's arguments.

[17] The degree of procedural fairness owed to applicants for study permits is at the low end of the spectrum. The requirement for procedural fairness in the context of a student visa application has been described as "relaxed" (*Duc Tran v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1377 at para 2). As a result, the visa officer is not required to inform the applicant of doubts regarding the sufficiency of the evidence submitted in support of an application (*Al Aridi* at para 20; *Solopova* at para 38). The nature and scope of the duty of procedural fairness are flexible and will vary depending on the attributes of the administrative tribunal and its enabling statute, the particular context and the various factual situations examined by the administrative body, as well as the nature of the cases to be decided (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 25–26; *Varadi v Canada (Attorney General)*, 2017 FC 155 at paras 51–52).

[18] In accordance with subsection 11(1) and paragraph 20(1)(b) of the IRPA, applicants for a study permit in Canada are responsible for showing that they meet the statutory requirements. In particular, applicants must satisfy the visa officer that they will leave Canada once their stay has ended, as set out in paragraph 216(1)(b) of the IRPR. The applicant's mere assertion that the applicant will leave is usually not sufficient. The evidence on the record must satisfy the visa officer that the applicant will actually leave the country (*Abbas* at para 20; *D'Almeida v Canada (Citizenship and Immigration)*, 2019 FC 308) [*D'Almeida*] at para 47; *Zhang v Canada (Citizenship and Immigration)*, 2014 FC 499 at para 8; *Huang v Canada (Citizenship and Immigration)*, 2012 FC 145 at paras 12–13).

[19] Ms. Ilaka was also responsible for showing that she met that requirement for her study permit application to be approved. In this case, the Officer simply determined that the submitted evidence was insufficient to establish that she would leave Canada when her studies ended. Indeed, the Officer noted several times in the GCMS notes that he was not [TRANSLATION] "satisfied" that Ms. Ilaka would leave Canada at the end of her stay. The mere fact that the Officer referred to the [TRANSLATION] "reason for her visit" does not amount to a determination about Ms. Ilaka's credibility or doubts about her true status as a student (*Abbas* at para 22–23; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 517 at para 14; *D'Almeida* at para 65; *Ibabu v Canada (Citizenship and Immigration)*, 2015 FC 1068 at para 35). It is well established that a visa officer has no legal obligation to seek to clarify a deficient application, to reach out and make the applicant's case, or to apprise the applicant of concerns relating to whether the requirements set out in the legislation have been met (*Solopova* at para 38). In short, the Officer had no obligation to inform Ms. Ilaka of any deficiencies in her application, specifically the

insufficiency of the evidence to justify her return to her country of origin at the end of her studies, as the Officer's concerns arose from the legislative requirements themselves.

[20] It should be noted that, contrary to the *Al Aridi* case cited by Ms. Ilaka in support of her application for judicial review, the Officer did give reasons to help understand why he weighed some evidence, such as Ms. Ilaka's ties with the Democratic Republic of the Congo, differently. The Officer did not ignore any evidence. The Decision is rather based on the insufficiency of the evidence submitted by Ms. Ilaka, the lack of an affidavit from her to support both her application for a study permit and her application for judicial review, and the awkward attempt by her counsel to address the factual discrepancies in her factum.

[21] In light of these facts, I am of the opinion that there is no issue of credibility here and that the Officer was not required to give Ms. Ilaka an additional opportunity to clarify her application. The Officer assessed the evidence available to ultimately find that it was not sufficient to establish that Ms. Ilaka would leave Canada at the end of her stay. There was no breach of procedural fairness, as "[t]his is not a circumstance where the Officer was calling into question the authenticity of documents or the credibility of an applicant based on inconsistencies" (*D'Almeida* at para 68). The Officer's determinations are instead based on Ms. Ilaka's failure to meet her positive obligation to provide sufficient evidence in accordance with the statutory requirements (*Abbas* at para 21).

B. ***Reasonableness of Decision***

[22] With respect to the reasonableness of the Decision, Ms. Ilaka submits that the Officer did not consider relevant evidence about the lack of prior travel and her ties with her country and Canada. Ms. Ilaka also contends that the Officer's findings regarding the prospects of a job in ecology in the Democratic Republic of the Congo are not based on any evidence.

[23] Again, I do not find Ms. Ilaka's arguments to be persuasive and sufficient to demonstrate that the Decision is unreasonable. Rather, it appears from the Decision that the Officer based his reasons on the little evidence available and provided an adequate explanation of his determinations.

[24] As revealed by the GCMS notes, the Officer only referred to Ms. Ilaka's lack of prior travel to indicate that this factor did not support her application because her travel history was insufficient. The GCMS notes show that the Officer considered this factor but determined that it did not play a significant role in the Decision. It was open to the Officer to reach this conclusion, and I do not see how such a conclusion would be unreasonable.

[25] The analysis of family ties to Canada and Ms. Ilaka's country of residence was also not unreasonable. Ms. Ilaka submits that her ties to her country of citizenship are [TRANSLATION] "significant enough to justify her return to her country" and that this factor was not considered by the Officer. But the Decision shows the opposite. In the GCMS notes, the Officer wrote that he gave less weight to Ms. Ilaka's ties with her country of residence because of her limited job

prospects in the Democratic Republic of the Congo. It is incorrect to claim that the Officer did not consider this factor when he clearly says he did in the Decision. Moreover, the Officer noted that Ms. Ilaka was single, mobile and without any ties or dependents in her country of citizenship.

[26] With respect to the last factor, her limited job prospects, Ms. Ilaka claims that the officer had no evidence to support his claims and that this finding was therefore hypothetical. As the Minister argued, I am of the view that the Officer's conclusion is in fact based on the little evidence Ms. Ilaka submitted about job prospects in her country. Ms. Ilaka did not submit any evidence of any potential employment she might secure in her country of residence as a result of her studies in Canada. The Officer only had Ms. Ilaka's letter of interest, which expressed her desire to use her Canadian studies to work on her parents' farm. But this letter provided by Ms. Ilaka only speaks generally of how her studies in Canada would benefit her in helping her parents accelerate the expansion of the family farm. Furthermore, as indicated by counsel for the Minister at the hearing, the evidence on the record was brief and inconclusive as far as the family business and the farm on which Ms. Ilaka is planning to work is concerned. In those circumstances, it was open to the Officer to conclude, on the basis of this general evidence, that Ms. Ilaka's had limited job prospects in the Democratic Republic of the Congo. Again, the onus was on Ms. Ilaka to show the importance of her studies in Canada for her career plan and the concrete job opportunities in her country of residence.

[27] Given the evidence available to the Officer, I am not satisfied that his determinations can be qualified as being unreasonable. Rather, Ms. Ilaka's arguments reflect her disagreement with

the Officer's determinations. Unfortunately, that is not enough to allow the Court to intervene. On judicial review against the reasonableness standard, the reviewing court's role is not to reweigh the evidence (*Vavilov* at para 125; *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55; *Abbas* at para 30; *Solopova* at para 22).

[28] The Decision does not demonstrate an analysis that was not transparent, intelligible and justified (*Vavilov* at para 15). The Officer did not omit any evidence that contradicted his conclusions, nor did Ms. Ilaka identify any (*Solopova* at para 28). On the contrary, the Decision is based on an internally coherent analysis and takes into consideration the relevant facts (*Vavilov* at para 105). It must be remembered that visa officers have a wide discretion in assessing the evidence submitted by an applicant (*D'Almeida* at para 71; *Zhang v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1493 at para 7). Ms. Ilaka did not submit any arguments identifying a significant flaw in the Officer's reasoning and that would cause me to lose confidence in his Decision.

IV. Conclusion

[29] For all the above reasons, Ms. Ilaka's application for judicial review is dismissed.

[30] Neither party has proposed a question of general importance for certification, and I agree that none arises.

JUDGMENT in IMM-9645-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed, without costs.

2. No question of general importance is certified.

"Denis Gascon"
Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

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