

Federal Court



Cour fédérale

Date: 20221205

Docket: IMM-8056-21

Citation: 2022 FC 1679

Ottawa, Ontario, December 5, 2022

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

PENGYUE ZHANG

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a citizen of China. He applied for and was accepted in a construction project management program offered by Canadore College in North Bay, Ontario. He submitted an Application for Study Permit Made Outside of Canada on October 3, 2021.

[2] By letter dated October 22, 2021, his application was refused as the visa officer [Officer] was not satisfied that the Applicant would leave Canada at the end of his stay, as required by s

216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRP Regulations*], based on the purpose of his visit. The Applicant seeks judicial review of that decision.

[3] The global case management system notes [GCMS Notes] form a part of the Officer's reasons. The only relevant entry in the GCMS Notes states as follows:

Refusal Note: I have reviewed the application. The study plan does not appear reasonable given the applicant's employment and education history. I note that: – Integrated search record noted – the client has previous studies at a higher academic level than the proposed studies in Canada – Given the applicant's previous education/employment history, I am not satisfied the motivation to pursue this particular program, at this point in time in Canada, is reasonable: See Client history – the applicant's plan of studies appears vague and poorly documented. 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. For the above reasons, I have refused this application.

Issues and Standard of Review

[4] The sole issue arising in this matter is whether the Officer's decision was reasonable.

[5] The parties submit and I agree that the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23, 25 [*Vavilov*]). On judicial review, the Court “asks whether the decision 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 para 99).

Analysis

[6] A visa officer must issue a study permit to a foreign national if the criteria set out in s 216(1) of the *IRP Regulations* are established. The study permit applicant bears the burden of satisfying the visa officer that they will not remain in Canada once the study permit expires (*IRP Regulations* s 216(1)(b); *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 10).

[7] The Applicant submits that the decision lacks transparency because at two points in the GCMS Notes the Officer refers to what appears to be internal information held by the Respondent. Specifically “Integrated search record noted” and “See client history”. The Applicant submits that it is not apparent what this information is, how it was considered by the Officer, and if it was even disclosed to the Applicant. Therefore, the decision lacks transparency.

[8] Although the deadline for filing any further affidavits was October 6, 2022, by letter of November 7, 2022, the Respondent sought to late file an affidavit of Ms. Janet Forbes, a paralegal with the Department of Justice “who was able to shed some light on the content of the Tribunal Record in this case”. The Respondent’s letter offered no explanation as to why this affidavit could not have been filed within the deadline. Having heard both counsel on the admissibility of the affidavit and having reviewed its content, I conclude that it is both inadmissible and unnecessary. It is unnecessary because, for the reasons below, the Officer’s decision is otherwise unreasonable as it is not justified or intelligible.

[9] In that regard, the Applicant submits that the Officer's reasons lack justification and demonstrate a lack of regard to the information found in the Applicant's application for a study permit. I agree.

[10] As to the Applicant's study plan, as the Applicant points out, it clearly explains that the Applicant had wanted to become a construction engineer but, due to his college entrance examination score, was not accepted in the construction engineering program. Instead, he ended up studying financial management, obtaining his bachelor's degree in 2004. Despite his family's strong objection, he then entered the construction industry and became a construction apprentice. In June 2010, he took a position as a Construction Technician with Daqing Leah Construction Co. Ltd [Leah Construction]. He learned on the job and, over the years, worked his way up, becoming an Assistant Project Manager and then a Construction Project Manager in May 2017.

[11] In 2020, Leah Construction's business shifted from civil, residential construction to commercial construction. The Applicant indicated in his study plan that, due to this shift, he faced a steep learning curve. Commercial construction projects are much more complicated and, therefore, project managers need strong and advanced skills in managing time, costs, and quality risks to ensure effective and efficient construction operations – specifically, mastery of some essential project management tools, such as the Gantt chart and Masterformat. The Applicant stated that because he did not have academic training with respect to these matters, he struggled through his first commercial project. He realized that he had to return to school to enhance his skills and knowledge of construction project management. In early 2021, the Applicant talked to his boss, who has been his mentor for more than a decade, about his professional development

plan. The Applicant's employer encouraged him to proceed and offered to keep his position during his studies.

[12] The Applicant stated in his study plan that his goal was to enhance his construction project management skills over a short period, minimizing the length of employment break. However, his research indicated that in China, undergraduate or graduate programs in construction project management are at least three years long. He therefore decided to study overseas.

[13] The Applicant also stated that the construction project management [CPM] program offered by Canadore College was a perfect fit for him, as it is a short but intense program covering broad topics and teaching in-depth use of project management tools throughout the project life cycle. He noted, for instance, that the course entitled CPM 110 Introduction to Construction Project Management 6 teaches students how to "create a generic Gantt chart showing the phasing of work tasks and interdependencies"; CPM 125 Project management Principles focuses on how to "apply the basic concepts of project Gantt chart and how to manage a construction schedule"; CMP205 Construction Job Site controls "discuss the Gantt chart, why they are required and, why they are tracked and revised throughout the life cycle of a typical construction project"; CMP215 Construction Planning and Applied Management explain "Gantt chart versus Preliminary Overview Schedules" and how to use Masterformat software; and CMP225 Human resources management teaches how to "draft a staffing schedule using a project schedule software or Microsoft Excel, in the form of a Gantt chart". In addition, many mandatory skills that the Applicant said he needed at work on a daily basis were covered in the program,

such as occupational health and safety, project financial viability control, human resources management, construction methods, and specs and codes related to commercial constructions.

[14] Finally, the Applicant noted that he has a secure job to return to, strong family and community ties in China as his wife and daughter would not be accompanying him to Canada, and substantial financial support in place, all of which he detailed.

[15] Yet the Officer states that the study plan does not appear reasonable given the Applicant's employment and education history, noting that his previous studies were at a higher level than his proposed course of study in Canada, and that his plan appears vague and poorly documented. As set out above, however, the study plan explained that the Applicant's undergraduate degree was in financial management but that he had never worked in that field and instead started in the construction industry right out of college. And, over the course of more than a decade, he had worked his way up through that industry but now found that he lacked technical training given the more complex construction project management he was undertaking. Given the information contained in the study plan, the basis for the Officer's finding as to the Applicant's employment and education history is unintelligible in the absence of any further reasons.

[16] Similarly, while the Officer finds that the study plan is vague, this finding is not justified given the content of the study plan and the failure of the Officer to specify how the plan is vague. Nor does the Officer explain how the application is poorly documented. The record demonstrates that not only does it contain the study plan, it also includes: his bachelor's degree; his CV

outlining his work experience with Leah Construction; a letter from the president of Leah Construction describing the Applicant's work over the years and stating that cultivating and retaining local talent is crucial, that he fully supports the Applicant's further education and is willing to reserve a position for him while the Applicant pursues his studies; as well as other information such as bank statements, the Applicant's marriage certificate and a letter of acceptance from Canadore College.

[17] I agree with the Applicant that the study plan presented a clear and logical progression of the Applicant's career and demonstrated the purpose and motivation for pursuing the construction project management course. The Applicant also addressed why he would be motivated to return to China at the end of his program, although the Officer's reasons to not address this.

[18] The Applicant acknowledges that the requirements of fairness and the need to give reasons are typically minimal in the context of a temporary resident visa decision. He submits, however, that the reasons "must be sufficient to understand the reasons an application was refused and allow the Court to find they provide the justification, transparency, and intelligibility required of a reasonable decision" (*Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596 at paras 9-10).

[19] Again, I agree. Here the reasons were neither justified nor intelligible when viewed in the context of the record before the Officer.

[20] I do not agree with the Respondent's submission that the Officer "need not have expressly grappled with the merits of the submissions". That was the Officer's job and they were required to provide reasons that were justified based on the record before them. That is what the Officer failed to do.

[21] The Respondent also embarks upon a microscopic analysis of the study plan and then, in effect, attributes that reasoning to the Officer. For example, the Respondent submits that while the study plan cited four classes on the Gantt chart and software, it was vague about the key issue of what else the Applicant needed from Canadore College that he did not already know. I note, first, that the Officer did not explain why the study plan is vague and this is not apparent from a review of that plan. Second, read in whole, the study plan clearly explains that the Applicant lacks technical CPM training that he needs to do his job.

[22] The Respondent also submits that the Applicant failed to explain how he came to distinguish Canada "from the 100 other countries with colleges", that "[t]he single, 9,000 km leap from China to North Bay is palpable" and, that the Applicant failed to explain how he "was able to distinguish Canadore from the 10s, 100s or 1,000s of overseas colleges and their respective programs" and that his plan was vague about "*how* he found this needle in a haystack, let alone *why* it was better than other colleges around the world that teach the Gantt chart and Masterformat software". Again, these were not concerns raised by the Officer. Nor am I persuaded that an applicant is required to explain why he chose this college over others. He did explain why Canadore was a good fit for him and it is not apparent to me in these circumstances

why this choice – over any others – is material to whether the Applicant would leave Canada once his requested study period expired.

[23] The Respondent goes on to state that the record supports the Officer's finding that the Applicant's study plan was poorly documented. The Respondent suggests, for example, that no documentation was provided "to substantiate the assertion in the study plan that China (the world's second largest economy) cannot teach PM tools in <3 years" and that no documentation was provided "to substantiate that Canadore's CPM was a perfect fit as stated in the plan". Again, however, this was not a reason offered by the Officer. The Respondent also submits that the Applicant "implies" that he should not be expected to corroborate the centrality of the project management tools to his job, as he is an expert after 14 years in the industry. The Respondent then states that "[t]hus, by his own admission, the Applicant has very little experience in commercial building projects and the Gantt chart & software needed to do the job right.... He cannot expect, therefore that the Officer would believe he knows what he is talking about in that field or to treat him as an expert". However, I see nothing in the Applicant's submissions that implies that he feels he should not have to corroborate the importance of project management tools to his job – in fact, his submissions are the opposite. As he points out, his study plan indicates that these tools are important to enable him to do his job. In my view, these, as well as various other submissions by the Respondent, appear to be more of a challenge to the Applicant's credibility – which was not a concern raised by the Officer – than an explanation of why the Officer's decision was reasonable.

[24] For the reasons above, I conclude that the Officer's decision does not meet the minimal standards required of such decisions to show justification, transparency, and intelligibility.

Accordingly, it was not reasonable.

Remedy

[25] The Applicant submits that despite substantially rewriting the decision and substituting its own reasons, the Respondent was still unable to provide reasons to support the decision which reasons would withstand judicial review. This suggests that not only was the decision unreasonable, but that the outcome cannot be justified. Accordingly, returning the matter to another decision maker would be pointless. The Applicant seeks an indirect substitution from this Court, relying on *Canada (Citizenship and Immigration) v Tennant*, 2019 FCA 206 at paragraphs 79, 82 and *Carrero v Canada (Citizenship and Immigration)*, 2021 FC 891.

[26] I am not persuaded that this is an exceptional circumstance that would justify the relief of indirect substitution. Further, as held in *Vavilov*, “where a decision reviewed by applying the reasonableness standard cannot be upheld, it will most often be appropriate to remit the matter to the decision maker to have it reconsider the decision, this time with the benefit of the court's reasons. In reconsidering its decision, the decision maker may arrive at the same, or a different, outcome” (para 141). And while “declining to remit a matter to the decision maker may be appropriate where it becomes evident to the court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose” (*Vavilov* at para 142), the outcome in this matter is not inevitable, although it may be likely.

JUDGMENT IN IMM-8056-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted;
2. The decision is set aside and the matter shall be remitted to another visa officer for redetermination taking these reasons into consideration;
3. There shall be no order as to costs; and
4. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8056-21

STYLE OF CAUSE: PENGYUE ZHANG v MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE USING ZOOM

DATE OF HEARING: NOVEMBER 30, 2022

JUDGMENT AND REASONS: STRICKLAND J.

DATED: DECEMBER 5, 2022

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