

Federal Court



Cour fédérale

Date: 20221215

Docket: IMM-8067-21

Citation: 2022 FC 1742

Ottawa, Ontario, December 15, 2022

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**AKLISYA GOITOM BERHANE
DARIK GOITOM BERHANE
(BY THEIR LITIGATION GUARDIAN GOITOM BERHANE KIDANEMARIAM)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of two decisions by the same visa officer at the Consulate General of Canada in Shanghai [Officer]. By these two decisions, each dated October 13, 2021, the Officer refused the Applicants' applications for study permits [the Decisions].

[2] As explained in greater detail below, this application is allowed, because the Decisions are unintelligible, and therefore unreasonable, in their treatment of the Applicants' financial situation.

II. **Background**

[3] The Applicants, who are citizens of Ethiopia, are now 17 and 11 years old. At the time of their study permit applications, they were grade 10 and 7 students at the British International School in Addis Ababa, Ethiopia. They applied to continue their studies at USCA Academy International School [USCA] in Mississauga, Ontario. Their applications were accepted by USCA, and the Applicants applied for study permits.

[4] In the October 13, 2021 Decisions that are under judicial review, the Officer refused the Applicants' study permit applications. The Decisions and the accompanying Global Case Management System [GCMS] notes, which form part of the reasons for a decision, are identical. Each of the Decisions states as follows:

Thank you for your interest in studying in Canada. After careful review of your study permit application and supporting documentation, I have determined that your application does not meet the requirements of the Immigration and Refugee Protection Act (IRPA) and Immigration and Refugee Protection Regulations (IRPR). I am refusing your application on the following grounds:

I am not satisfied that you will leave Canada at the end of your stay, as stipulated in subsection 216(1) of the IRPR, based on your personal assets and financial status.

I am not satisfied that you will leave Canada at the end of your stay, as stipulated in subsection 216(1) of the IRPR, based on your family ties in Canada and in your country of residence.

You are welcome to reapply if you feel that you can respond to these concerns and can demonstrate that your situation meets the requirements. All new applications must be accompanied by a new processing fee.

[5] The substantive portion of the GCMS notes, related to each of the Decisions, states as follows:

I have reviewed the application. Taking the applicant's plan of studies into account, the documentation provided in support of the applicant's financial situation does not demonstrate that funds would be sufficient or available. I am not satisfied that the proposed studies would be a reasonable expense. Financial support from parents noted. Financial documents provided in support of this application reflect moderate funds available to cover tuition and living costs for family of 4 while in Canada. Parents are self-employed and do not show good establishment in COR or in Ethiopia to support demonstrated funds and assets. The applicant provided limited supporting documents to explain the details of the parent's self-employment history. I am not satisfied that the applicant would leave Canada at the end of their stay as a temporary resident, I note that: - the client has strong family ties in Canada. Family of 4 are applying together to visit Canada. 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 reasons above, I have refused this application.

III. Issues

[6] The only substantive issue raised by this application is whether the Decisions are reasonable. As suggested by this articulation of the issue, the parties agree (and I concur) that the Decisions are reviewable on the reasonableness standard.

IV. Analysis

[7] As reflected in the GCMS notes set out above, the Officer concluded that the documentation provided in support of the Applicant's financial situation did not demonstrate that funds would be sufficient or available for their plan of studies. The GCMS notes also state the Officer's conclusion that financial documents provided in support of the visa application reflected moderate funds available to cover tuition and living costs for a family of four while in Canada.

[8] However, as the Applicants emphasize, the documentation provided in support of their application included a bank statement showing the equivalent of over CAD \$500,000 in their father's account. As they submit, there is simply no analysis in the Decision that allows the Court to understand either how the Officer concluded that \$500,000 was a moderate amount in the context of this application or why this amount would not be sufficient or available to fund the Applicants' plan of studies.

[9] The Respondent argues that the Officer arrived at the conclusions reflected in the GCMS notes because the bank statement reflected only one month of transactions and it was not possible for the Officer to know the source of the funds in the Applicants' father's account. For instance, the Respondent raises the possibility that the funds could be the result of a loan. The Respondent relies on *Bestar v Canada (Citizenship and Immigration)*, 2022 FC 483 [*Bestar*] at paragraph 19, as confirming the reasonableness of a similar analysis:

19. The Officer had concerns with the financial situation, and again I do not find them unreasonable. The largest account is the most important and has about \$99,000.00 Canadian in it. However, there is nothing to indicate where that money came from, or whether it was a short-term loan or repayable gift of some sort. There is nothing to indicate if it was made just for the purpose of

meeting the minimum requirements (\$10,000 plus tuition times 4 years) which it does, or whether it was an inheritance. Again, the onus is on the Applicant to make her case. In my view these questions should have been anticipated and addressed. The Officer legitimately pointed to an omission in this application.

[10] I agree with the Applicants' position that the difficulty with the Decisions in the case at hand is the absence of reasoning to support the Officer's conclusions. While the theory that the Respondent offers for the Officer's concerns represents a possible explanation, the Decision does not set out that explanation. As emphasized in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 15, reasonableness review is concerned with a decision maker's justification for their decision. *Bestar* is distinguishable, because the officer whose decision was under review in that case explained their concerns about the source of the applicant's funds, based on a rapidly rising account balance as well as a fixed deposit with no balance history and no indication how long it had been held (at para 18).

[11] The Officer's analysis of the Applicants' financial situation is sufficiently fundamental to the Decision that its unintelligibility undermines the reasonableness of the Decision. This application for judicial review will therefore be allowed, and it is not necessary for the Court to consider the Applicants' other arguments.

[12] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-8067-21

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, the Decisions are set aside, and the matter is returned to another decision-maker for redetermination. No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8067-21

STYLE OF CAUSE: AKLISYA GOITOM BERHANE
DARIK GOITOM BERHANE
(BY THEIR LITIGATION GUARDIAN GOITOM
BERHANE KIDANEMARIAM) V THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD VIA VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 14, 2022

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: DECEMBER 15, 2022

APPEARANCES:

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