Federal Court Cour fédérale

Date: 20230117

Docket: IMM-9715-21

Citation: 2023 FC 68

Toronto, Ontario, January 17, 2023

PRESENT: Madam Justice Go

BETWEEN:

MALAVIKA RAJASEKHARAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Malavika Rajasekharan [Applicant] is a 26-year-old citizen of India. In 2015, the Applicant began her studies in the United States [US] at Indiana University – Purdue University Indianapolis [IUPUI]. She obtained a Bachelor's degree in Biology in 2021, after delaying her studies at IUPUI by some time due to certain financial difficulties.

[2] In May 2020, the Applicant submitted her first study permit application to complete a one-year post-graduate certificate program in mental health and disability management at an Ontario-based college, expecting to graduate from IUPUI by August 2020. The reviewing officer was not satisfied that the expenses were commensurate with the benefits of her intended studies and that the Applicant would leave Canada at the end of her authorized stay, and therefore dismissed her application [First Refusal].

[3] In September 2021, the Applicant submitted her second study permit application [Second Application] based on an offer for a two-year post-graduate diploma in healthcare management at Cape Breton University [CBU] in Sydney, Nova Scotia.

[4] A visa officer [Officer] at the Case Processing Centre in Edmonton refused the Applicant's Second Application in a decision dated December 5, 2021 [Decision]. The Officer was not satisfied that the Applicant would leave Canada at the end of her stay, as required by subsection 216(1) of the *Immigration and Refugee Protection Regulations,* SOR/2002-227 [*IRPR*].

[5] For the reasons set out below, I find the Decision unreasonable and I grant the Applicant's application for judicial review.

II. Issues and Standard of Review

[6] The Applicant raises two issues: (1) the Officer breached procedural fairness by not providing the Applicant an opportunity to respond to negative credibility findings; and (2) the

Decision was unreasonable because the Officer ignored or misapprehended critical evidence in the decision-making process.

[7] The determinative issue, in my view, is the reasonableness of the Decision.

[8] The parties agree that this issue is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[9] 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. The onus is on the Applicant to demonstrate that the decision is unreasonable: *Vavilov* at para 100.

III. Analysis

[10] Under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], a foreign national "may not work or study in Canada unless authorized to do so under this Act", and an officer "may, on application, authorize a foreign national to work or study in Canada if the foreign national meets the conditions set out in the regulations": *IRPA,* subsections 30(1) and (1.1).

[11] The Decision concerned the following condition in paragraph 216(1)(b) of the *IRPR*:

Study permits	**Permis d'études**
216 (1) Subject to subsections (2) and (3), an officer shall issue a study	**216 (1)** Sous réserve des paragraphes (2) et (3), l'agent délivre un permis

permit to a foreign national if, following an examination, it is established that the foreign national	d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
…	…
(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9...	**b)** il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9…

[12] With her Second Application, the Applicant submitted a Statement of Intent detailing her study plan, which included her reasons for wanting to study in Canada, the relatively modest education cost, and the benefit of practical programs increasing employability. The Applicant indicated her goal to work in healthcare management and explained how her intended program of study would assist her in achieving this goal. The Applicant detailed her short and long-term career goals that she wishes to pursue in India upon graduating from the program in Canada.

[13] The Applicant also submitted a Letter of Explanation addressing the concerns raised in her First Refusal, such as why she preferred studying in Canada over the US, and the benefits she hopes to achieve from an education in consideration of the costs. The Applicant explained that she aims only to reside in India after her studies in Canada due to her responsibility towards her parents and grandparents.

[14] The Global Case Management System [GCMS] notes provide the Officer's reasons:

> On review of all information including PA's previous employment and educational history, their motivation to pursue studies in Canada at this point does not seem reasonable.
>
> Client has obtained a Bachelor of Science - Biology 2021. PA is requesting to take a Diploma in Health Care Management. PA has

> worked as a Research Assistant from 2016/08 to 2017/05, and 2018/11 to 2019/08.
>
> Applicant had initially applied to different programs/institutions and was refused. Has now applied to a different program and different institution. Their educational goals in Canada are not consistent from one application to another.
>
> Chosen program and course content at the college level at such expense appears illogical/ redundant in light of the PA's reported scholarly/work history, thus the proposed program does not adequately demonstrate a logical progression of studies, hence I am not satisfied that applicant would not have already achieved the benefits of this program.
>
> From the applicant's history it is evident that applicant is not consistent with the choice of institution for intended studies in Canada.
>
> Client has not satisfied me that the course of study is reasonable given the high cost of international study in Canada when weighed against the potential career/employment benefits.
>
> Based on the information available at the time of assessment, I am not satisfied that the applicant's proposed educational path makes sense and, as such, that pursuing studies in Canada reasonable at this time. Given the aforementioned, I am not satisfied, on balance, that the PA meets R216 (1) (b) of the IRPR. Application refused.

[15] I note the Respondent’s submission that visa officers are afforded a high level of deference on evidentiary issues when determining visa applications: *Mohammadzadeh v Canada (Citizenship and Immigration)*, 2022 FC 75 at paras 18-19. In this case, however, the reasons as contained in the GCMS notes lack the requisite transparency, intelligibility and justification of a reasonable decision; the Officer made findings that are unsupported by the evidence and overlooked relevant evidence.

[16] To start, the Officer erred by noting that the Applicant has chosen programs and courses "at the college level" when the letter of acceptance from CBU clearly indicated otherwise.

[17] The Respondent argues that it was of no consequence that the Officer referred to the program of study as a "college level" program, noting that the Applicant listed in her Second Application that the level of study was "College-Diploma." However, as the Applicant submits, she specifically addressed in her study plan why she chose this program, stating among other reasons that CBU "offers an exceptional post-baccalaureate diploma in healthcare management", which is yet another indication that the program at issue is beyond the college level.

[18] In the same study plan, the Applicant provided other explanations for choosing the program in question. She noted, for instance, that the optional internship to "employ the theoretical knowledge … inside of a corporate environment" offers her an advantage in finding employment in the field of healthcare administration in India, as she pursues her goal of becoming a leader in the field. The Officer did not refer to any of this evidence when they found "the proposed program does not adequately demonstrate a logical progression of studies", nor did the Officer explain why the Applicant's pursuit of a diploma in health care management is not a logical progression of her previous undergraduate degree in Biology.

[19] At the hearing, the Respondent argued that the Officer's findings were reasonable in light of the "limited evidence" of why the Applicant shifted from her goal of wanting to become a physician to working in healthcare management. The Respondent submitted that the Applicant's corporate experiences were limited to helping with her father's business in an unrelated field.

The Respondent also noted that the Applicant's first study permit application was to study in the area of mental health and disability, and it was reasonable for the Officer to find that her stated educational goal was inconsistent.

[20] With respect, other than the brief reference to the Applicant's previous application, none of the "reasons" now offered by the Respondent were mentioned, let alone analysed, by the Officer. The Respondent's submissions inappropriately seek to bolster the Decision.

[21] The Respondent also submitted at the hearing that it was simply "unreasonable" for the Applicant to set out such an ambitious goal for herself without providing any "third party" evidence to demonstrate that her goal is achievable. Once again, nothing in the GCMS notes indicate that these were the reasons underlying the Officer's refusal. Besides, as the Applicant rightly points out, visa officers should not assume the role of career counsellors, and those who do so may be engaging in an unreasonable review of the evidence: *Adom v Canada (Citizenship and Immigration)*, 2019 FC 26 [*Adom*] at para 16.

[22] The Applicant also relies on *Adom* to assert that the Officer completely ignored a specific portion of her study plan tying together her overarching goals in her career in healthcare management. In my view, the circumstances in *Adom* differ somewhat from the case at hand. There, the Court found the officer misapprehended the applicant's future career goal, which led the Court to conclude that the officer failed to consider the study plan: *Adom* at paras 16-19. In this case, the Officer never addressed the Applicant's stated goals in the study plan in the first place.

[23] Having said that, I agree with the Applicant that silence on evidence can point to an inference that contradictory evidence was overlooked: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration*), 1998 CanLII 8667 (FC), [1998] FCJ No 1425. The Decision made no mention of the Applicant's explanations in her study plan for choosing the program at CBU when it rejected her choice of program as unreasonable. This silence suggests that relevant evidence was overlooked by the Officer, which warrants an intervention from this Court.

[24] The same conclusion, in my view, can also be drawn with respect to the Officer's failure to consider evidence regarding the Applicant's ties to her country of citizenship.

[25] While the Applicant's study permit was denied as the Officer was not satisfied that the Applicant would leave Canada at the end of her study, the Decision was completely silent on the evidence of the Applicant's intent to return to India.

[26] The Applicant noted in her Letter of Explanation that her duties to her parents are her "single most priority." The Applicant stated that she aims to reside in India because as an only daughter, she must be present to "take care of them and their responsibilities in the future after their retirement." The Applicant also declared that her "primary responsibility" is to take care of her grandparents living in Bangalore "from a cultural standpoint and… moral obligations."

[27] The Applicant refers to various cases where the Court found that the reviewing officer failed to properly consider the applicant's ties to their country of origins including *Jalili v*

Canada (Citizenship and Immigration), 2018 FC 1267 [*Jalili*] at paras 11-13 and *Balepo v Canada (Citizenship and Immigration)*, 2016 FC 268 [*Balepo*] at para 17.

[28] The Respondent argues that the Applicant fails to raise a reviewable error and simply seeks to have the evidence reweighed: *Zamor v Canada (Citizenship and Immigration)*, 2021 FC 479 [*Zamor*] at para 20. With respect to the Applicant's specific evidentiary arguments, the Respondent submits that the Officer was not required to provide reasons reviewing each piece of evidence, as officers in the study permit context are not required to provide extensive reasons: *Zamor* at para 22; *Nimely v Canada (Citizenship and Immigration)*, 2020 FC 282 at para 7.

[29] However, as the Court noted in *Jalili*:

> [11] However, as submitted by Ms. Jalili, a request for a visa to permit a visit to close family members is not to be summarily dismissed and, **although reasons for the decision may be most succinct, they must nevertheless be transparent, intelligible and therefore reasonable** (see *Guillermo v Canada (Minister of Citizenship and Immigration)*, 2017 FC 61 at paras 8-10). While a visa officer is not required to refer to every piece of evidence in a decision on a visa application, silence on evidence pointing to the opposite of the officer's conclusion supports an inference that the contradictory evidence was overlooked (see *Balepo v Canada (Minister of Citizenship and Immigration)*, 2016 FC 268 at para 17, relying on *Cepeda-Gutierrez v Canada (Minister of Citizenship & Immigration)*, 1998 CanLII 8667 (FC), [1998] FCJ No 1425 (Fed TD)).
>
> [12] In my view, the Decision suffers from the difficulties addressed in that jurisprudence. The Decision turns significantly on the Officer's conclusion that Ms. Jalili has weak financial and personal ties to Afghanistan. However, in relation to her personal ties, Ms. Jalili emphasizes that she has lived in Afghanistan throughout her life and currently lives with her two daughters and three grandchildren, for whom she has had responsibility as a caregiver for close to a decade, those children now being ages eight, six and two. Ms. Jalili's role as her grandchildren's caregiver is supported by the letter from her daughters submitted with her TRV

> application. Against that backdrop, it is difficult to understand the basis for the Officer's conclusion that Ms. Jalili has weak personal ties to Afghanistan. This is not to say that the nature of her ties to Afghanistan mandated any particular result in her TRV application. However, as they point to a conclusion contrary to that of the Officer, **the absence in the Decision of any reference to, or analysis of, the nature of Ms. Jalili's family relationships and caregiver role in Afghanistan supports the inference that these details were overlooked.**
>
> [Emphasis added]

[30] Similarly, in *Balepo* at para 17, the Court stated:

> [17] The Officer's finding that the Principal Applicant has limited financial ties to Nigeria suffers from the same difficulty. The GCMS notes refer to the Principal Applicant's pay slips showing limited income and his bank statements showing limited funds. I find no fault with those particular conclusions. However, the Applicants point out that the decision demonstrates no consideration of the Principal Applicant's stock or real estate holdings. **The Respondent argues that the Officer is not required to refer to every piece of evidence. However, when a decision-maker is silent on evidence pointing to the opposite of its conclusion, this supports an inference that the contradictory evidence was overlooked** (see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration*), 1998 CanLII 8667 (FC), [1998] FCJ No 1425).
>
> [Emphasis added]

[31] Here, the Decision did not once refer to any evidence of the Applicant's ties to her country of citizenship. The absence of such reference supports the Applicant's position that the evidence was not considered by the Officer.

[32] Finally, the Officer cited the "high cost of international study in Canada" to conclude that the Applicant has not demonstrated that the course of study is reasonable. However, as the Applicant submits, and I agree, the reasons did not refer to the evidence showing the Applicant's

access to funds in excess of $135,000.00 CAD, as well as proof that the full tuition balance of $16,700 CAD was already paid. Once again, this silence on evidence contradicting the Officer's findings is an indication that this evidence was overlooked.

[33] Furthermore, in *Caianda v Canada (Citizenship and Immigration)*, 2019 FC 218, the Court found it unreasonable for the officer to raise suspicions on the reasonableness of an applicant's education path based on the high costs, noting that individuals may put "a high value on higher education" and pointing out that the applicant in that case demonstrated she could afford the course of study: at para 5.

[34] I find the same conclusion can be drawn in this case.

[35] As I find the Decision to be unreasonable based on the errors discussed above, I need not address the Applicant's procedural fairness argument.

IV. Conclusion

[36] The application for judicial review is granted.

[37] There is no question for certification.

JUDGMENT in IMM-9715-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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