Federal Court  Cour fédérale

Date: 20230424

Docket: IMM-6373-21

Citation: 2023 FC 480

Ottawa, Ontario, April 24, 2023

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

ABIEYUWA IDOWU OHUAREGBE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Abieyuwa Idowu Ohuaregbe [Applicant] seeks judicial review of a visa officer's [Officer] July 26, 2021 decision [Decision] refusing her application for a study permit. The Officer was not satisfied that the Applicant would leave Canada at the end of her stay pursuant to subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] based on her personal assets and financial status.

[2] The application for judicial review is dismissed.

II. Background Facts

[3] The Applicant is a 38-year-old citizen of Nigeria. In 2005, she obtained a Bachelor of Science in Political Science and Public Administration. In 2015, she obtained a Master of Public Administration. Both degrees were completed at the University of Benin.

[4] Since May 2018, the Applicant has been employed as a Business Management Consultant with SIAO, a professional services firm in Nigeria. On October 25, 2019, the Applicant incorporated a business management company, Yukalotus Nigeria Limited. The Applicant is also a board member of another Nigerian company, Itats Pharmacia Limited.

[5] On November 4, 2020, the Applicant was admitted to Thompson Rivers University to complete a two-year Post Baccalaureate Diploma in Business Administration. The estimated tuition fee for the first academic year was $15,080.00 CAD. At the time of acceptance, the Applicant paid a tuition deposit for her first semester in the amount of $8,349.81 CAD, as requested by the University.

[6] On or about November 24, 2020, the Applicant applied for a study permit.

III. The Decision

[7] On July 26, 2021, the Officer refused the Applicant's study permit application. The Officer was not satisfied that the Applicant would leave Canada at the end of her stay based on her personal assets and financial status.

[8] The Officer's Global Case Management System notes provide the following:

> I have reviewed the application. Taking the applicant's plan of studies into account, documents submitted show some funds seem available, but with lump sum deposits. Concerns that these funds would be sufficient and available for the whole course. I am not satisfied that the proposed studies would be a reasonable expense. Weighing the factors in this application. I am not satisfied that the applicant will adhere to the terms and conditions imposed as a temporary resident. For the reasons above, I have refused this application.

IV. Issues

[9] After reviewing the submissions of the parties, the issues are:

1. Was the Decision reasonable?
2. Was there a breach of procedural fairness?

V. Standard of Review

[10] Both parties submit that the appropriate standard of review for the merits of the Decision is reasonableness. I agree. None of the exceptions outlined in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] arise in the present matter (at paras 16-17).

[11] A reasonableness review requires a court to consider both the outcome of the decision and the underlying rationale to assess whether the decision, as a whole, bears the hallmarks of

reasonableness – justification, transparency and intelligibility (*Vavilov* at paras 15, 99). For a decision to be reasonable, a decision-maker must adequately account for the evidence before it and be responsive to the Applicant's submissions (*Vavilov* at paras 125-28). The Court will not interfere with a decision unless there are sufficiently serious flaws or shortcomings such that the decision "cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). The burden to demonstrate such unreasonableness rests with the party challenging the decision (*Vavilov* at para 100).

[12] The standard of review for procedural fairness is essentially correctness (*Canadian Pacific Railway Company v Canada (AG)*, 2018 FCA 69 at paras 49, 54 [*CP Railway*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). The Court has no margin of appreciation or deference on questions of procedural fairness. Rather, when evaluating whether there has been a breach of procedural fairness, a reviewing court must determine if the procedure followed by the decision-maker was fair, having regard to all the circumstances (*CP Railway* at para 54; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at 837-41 [*Baker*]).

VI. Analysis

A. *Was the Decision reasonable?*

(1) Applicant's Position

[13] The Officer committed three reviewable errors. First, the Officer failed to consider relevant evidence in concluding that the Applicant lacked sufficient funds to complete the

program (*Baker* at paras 17, 72-75; *Johal v Canada (Minister of Employment and Immigration)*, [1987] FCJ No 918, 7 ACWS (3d) 204). Section 7.7 of the Immigration, Refugees and Citizenship Canada [IRCC] Operations Manual 12 [OP-12 Guidelines] provides that students must only demonstrate sufficient funds for the first year of study, as well as a base amount of $10,000 CAD for maintenance. The Applicant satisfied this criteria by providing evidence that she paid a portion of the first-year tuition fees and had approximately $24,000 CAD of additional funds. The Applicant had a legitimate expectation that the OP-12 Guidelines would be followed.

[14] Second, the Officer provided no reasons for their dissatisfaction that the proposed studies would be a reasonable expense. The Applicant's motivation letter explained why she chose to undertake post-graduate education in Canada, including the University's advantages for professionals keen on acquiring specialty knowledge in business, as well as the benefits to her company and future career prospects in finance, economics, and business. While extensive reasons are not required, the Officer must explain how they arrived at their conclusion (*Vavilov* at para 81; *Samra v Canada (Citizenship and Immigration)*, 2020 FC 157 at paras 22-23; *Carin v Canada (Citizenship and Immigration)*, 2020 FC 740 at paras 8-9 [*Carin*]).

[15] Lastly, the Officer misconstrued the applicable legal test in concluding that the Applicant would not adhere to the terms and conditions imposed on temporary residents. The IRCC website sets out the following conditions on study permit applicants:

> a) Be enrolled at a designated learning institution, unless you're exempt;
>
> b) Show you're actively pursuing your studies, unless you're exempt, by:

i. Being enrolled full-time or part-time during each academic semester (excluding regularly scheduled breaks);

ii. Making progress towards completing your program's course; and

iii. Not taking authorized leaves longer than 150 days from your study program;

c) Tell us anytime you change post-secondary schools;

d) End your studies if you no longer meet the requirements of being a student; and

e) Leave Canada when your permit expires.

[16] The correct legal test asks whether an applicant is likely to return to their country of origin after their studies (*Guo v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1353 at para 11, citing *Zheng v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 110 at para 16, 103 ACWS (3d) 163). The Officer has wide discretion to assess the evidence and arrive at a conclusion; however, the decision must be based on reasonable findings of fact (*Zhang v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1493 at para 7).

[17] To satisfy this test, the Applicant provided evidence of the following (*Carin* at para 10):

- Her two children and common-law partner of four years live in Nigeria and would not accompany her to Canada;
- Her employment at SIAO in Nigeria;
- Her compliance with the conditions in previous visa or temporary residence applications;
- Her registered business management company in Nigeria;

- Her property ownership in Nigeria; and
- Her agreement with her elderly father to assume control over the family palm plantation business.

[18] The Applicant complied with the pre-arrival condition in (a) and demonstrated a motivation to comply with the post-arrival conditions in (b) to (d). Based on the foregoing, there is a strong inference that the Applicant will adhere to the condition in (e). The Decision fails to provide any reasons for inferring otherwise.

(2) Respondent's Position

[19] Visa officers have wide discretion in assessing study permits applications, and their decisions do not lend themselves to one specific result. The Officer's conclusion is transparent, justifiable, and intelligible, and falls within the range of possible acceptable outcomes (*Onyeka v Canada (Citizenship and Immigration)*, 2017 FC 1067 at para 10 [*Onyeka*]; *Ali v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 702 at para 9).

[20] The Applicant did not meet her evidentiary burden to prove to the Officer that she satisfied all of the legislative requirements for a study permit (*Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 at para 16). The onus cannot shift to the decision-maker where the Applicant fails to anticipate evidentiary concerns.

(3) Conclusion

[21] The Decision, when read holistically, was reasonable.

[22] I disagree with the Applicant's assertion that the Officer ignored evidence concerning her financial statements in concluding that the Applicant lacked sufficient funds to complete the program. An officer is presumed to have considered all of the evidence and their reasons need not be extensive.

[23] Section 220 of *IRPR* states that "an officer 'shall not' issue a study permit unless, without working, students have sufficient funds to pay their tuition, maintain themselves and family members [in Canada], and transport themselves and family members home from Canada" (*Adekoya v Canada (Citizenship and Immigration)*, 2016 FC 1234 at para 9 [*Adekoya*]). Where these requirements are not met, the Officer has no discretion and must deny the application (*Adekoya* at para 9).

[24] In the present matter, the Officer was not satisfied with the state of the Applicant's financial information as reflected in her bank statements. The Applicant did not explain the nature and extent of her other income sources in her application. For instance, the Applicant's Statement of Intent states only that "I equally have income from my registered Business Management Firm with monthly return on investment and a Board member of ITATS Pharmacia Limited, the benefit of being a member of the board comes with financial bonuses and profit sharing yearly." Accordingly, the Officer reasonably rejected the Applicant's study permit application due to "[c]oncerns that these funds would be sufficient and available for the whole course". The Officer had no discretion to conclude otherwise (*Adekoya* at para 9).

[25] This conclusion is sufficient to dismiss this application (*Adekoya* at para 10; *Ibekwe v Canada (Citizenship and Immigration)*, 2022 FC 728 at para 32 [*Ibekwe*]).

B. *Was there a breach of procedural fairness?*

(1) Applicant's Position

[26] The Officer breached the Applicant's right to procedural fairness by failing to seek clarifications or explanations regarding the source of the lump sum deposits. The Applicant's AB Microfinance Bank statement clearly illustrates that the lump sum deposits originated from the Applicant's other bank account. The originating transfers were prompted by a drop in the bank interest rates.

(2) Respondent's Position

[27] A visa officer's duty on a study permit application is relaxed. The Officer is not required to supplement the Applicant's evidence where it is lacking. Rather, the Applicant bears the onus to provide a complete and convincing application that satisfies the Officer at first instance that their study permit should be issued (*Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at paras 37, 41 [*Solopova*]). The Applicant failed to meet this threshold.

[28] Even if an obligation to confront an applicant with adverse conclusions exists, such obligation solely arises where the material is unknown to the Applicant (*Toor v Canada (Minister of Citizenship and Immigration)*, 2006 FC 573 at para 17 [*Toor*]). In the present matter,

the grounds of refusal emanated from the Applicant's own financial documentation. Therefore, the Officer was not under any obligation to seek clarification.

(3) Conclusion

[29] The Officer did not breach the Applicant's right to procedural fairness.

[30] I agree with the Respondent that the degree of procedural fairness is relatively low in the context of study permit applications. The Applicant bears the burden to submit a convincing application that anticipates concerns and satisfies the Officer that the permit should be granted (*Solopova* at paras 37, 41; *Ibekwe* at para 16; *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at paras 35, 37; *Singh v Canada (Citizenship and Immigration)*, 2012 FC 526 at para 52 [*Singh*]). Further, Applicants are deemed to be aware of the contents of their own documents (*Bidassa v Canada (Citizenship and Immigration)*, 2022 FC 242 at para 9 [*Bidassa*]).

[31] The Officer was not required to provide the Applicant with notice or an opportunity to respond to their concerns regarding the lump sum deposits. Procedural fairness does not arise whenever an officer has concerns about an applicant's application. Rather, a duty to provide an opportunity to respond arises in three circumstances (*Ibekwe* at para 17):

> Generally speaking, an applicant will not be entitled to an interview or notice of specific concerns unless the officer: "identifies evidence giving rise to credibility concerns"; "identifies evidence of a possible misrepresentation by the applicant, including when that misrepresentation may lead to inadmissibility"; and/or "identifies new, salient internal information or extrinsic evidence that is not available to the applicant" (*Garcia Diaz v Canada (MCI)*, 2021 FC 321 at para 80 [*Diaz*]). In the last situation, an obligation may not apply "if the

> documents are the applicant's own documents, at least in relation to a factor in (or directly related to) the provision being applied by the officer" (*Diaz* at para 80).

[32] Officers need not "provide applicants with notice or an opportunity to respond to concerns related to sufficiency of funds," as this requirement is directly provided for under *IRPR* (*Ibekwe* at para 18).

[33] In the present matter, the Officer did not question the Applicant's credibility or the authenticity of the documents, nor did the Officer identify new information not available to the Applicant. Rather, the Officer, having considered the Applicant's own financial statements in accordance with the legislative framework, raised concerns about nature of the lump sum deposits that were intended to cover the Applicant's tuition and living expenses in Canada (*Toor* at para 17; *Bidassa* at para 11; *Hakimi v Canada (Citizenship and Immigration)*, 2015 FC 657 at paras 22-23). It was open to the Officer to arrive at their conclusion based on these concerns. In this regard, the Applicant failed to discharge the onus placed on her to anticipate the Officer's concerns (*Bidassa* at para 11; *Singh* at para 35).

VII. Conclusion

[34] For the foregoing reasons, I dismiss the application for judicial review. The Officer reasonably concluded that the Applicant had insufficient funds to complete the two-year

program. The Officer also did not breach the Applicant's right to procedural fairness by not providing her an opportunity to explain the source of the lump sum deposits.

[35] The parties do not propose a question for certification and I agree that none arises.

JUDGMENT in IMM-6373-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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