

Federal Court



Cour fédérale

**Date: 20230609**

**Docket: IMM-6185-22**

**Citation: 2023 FC 817**

**Ottawa, Ontario, June 9, 2023**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**HIMESH DASHRATH KUMAR**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an application for judicial review of a decision by a visa Officer [Officer] with Immigration, Refugees and Citizenship Canada [IRCC], dated June 3, 2022, [the Decision], refusing the Applicant's study permit application.

[2] For the reasons that follow, I find the Decision is unreasonable and will allow this application for judicial review.

## II. **Background**

[3] The Applicant is a citizen of India.

[4] On December 31, 2021, the Applicant received a letter of acceptance to enter a full-time graduate program studying International Business Management at Niagara College in Toronto.

[5] With his letter of acceptance, in March 2022, the Applicant submitted a study permit and temporary residence permit application to IRCC.

[6] On June 3, 2022, the Applicant received a letter notifying him that his study permit application was refused.

[7] In the Decision under review the Officer stated:

...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 the purpose of your visit.

[8] The accompanying Global Case Management System [GCMS] notes, which form part of the reasons for the Decision, reveal the two grounds for refusal as low previous academic performance and inconsistent educational goals:

Transcripts submitted by client reflect low-to-low average prior scholastic history, therefore I am not satisfied that applicant has demonstrated the academic proficiency required to successfully complete the study program in Canada. Applicant had initially applied to Data Analytics for Business at St. Clair College and was refused. Has now applied to International Business Management at Niagara College. Their educational goals in Canada are not consistent from one application to another with no explanation provided.

Considering previous academic performance from 2012-2016 and relevance of the proposed course of study, I am not satisfied that the applicant would be a bona fide student in Canada and would depart Canada at the end of the period authorized for stay. Application refused as per R216 (1) (b).

[9] With respect to the Applicant's prior academic history, the Officer made the following specific findings:

Educational documentation presented in this application reflect low to low average prior academic history - more specifically the records in the transcripts from University of Mumbai (2012-2016) provided which I have placed more weight on core subjects of Accounting & Financial Management, Commerce, Business Economics, Business Communication, Environmental Studies, Mathematics & Statistical Techniques, Business Law, and Advertising, all presented low to low average grades of 40-59%. Transcripts submitted by client reflect low-to-low average prior scholastic history, therefore I am not satisfied that applicant has demonstrated the academic proficiency required to successfully complete the study program in Canada.

[10] With respect to the "inconsistency" of his educational goals, the Officer noted:

Applicant had initially applied to Data Analytics for Business at St. Clair College and was refused. Has now applied to International

Business Management at Niagara College. Their educational goals in Canada are not consistent from one application to another with no explanation provided.

### III. Issues and Standard of Review

[11] The only issue in this judicial review is whether the Officer's decision is reasonable.

[12] The parties agree, as do I, that the appropriate standard of review is reasonableness, as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[13] A reasonable decision is one that 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. The reasonableness standard requires a reviewing court defer to such a decision: *Vavilov* at para 85.

[14] To set a decision aside, a reviewing court must be satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision: *Vavilov* at para 100.

### IV. Analysis

[15] As noted above, one of the primary reasons the Officer cited for refusing the Applicant's study permit application was his poor previous academic performance while studying commerce at the University of Mumbai.

[16] The Applicant submits that the Officer's findings with respect to his previous academic performance lack justification and transparency.

[17] The Applicant cites this Court's decision in *Patel v Canada (Citizenship and Immigration)*, 2020 FC 517 [*Patel*] as being substantially similar to the case at bar. In *Patel*, Justice Norris cautioned that an applicant's prospect of academic success is something immigration officers must approach with care. Specifically, Justice Norris stated:

[23] The applicant was entitled to a study permit if he established that he met the requirements of paragraphs (a) through (e). Nowhere does section 216(1) state that he had to establish that he was likely to succeed in his proposed course of studies.

[24] In theory, an applicant's prospects for success could be relevant to paragraph (b). Wanting to undertake a course of studies in which one was unlikely to succeed could raise questions about whether an applicant is a *bona fide* student who will leave Canada by the end of the period authorized for their stay. This is, however, something immigration officers should approach with care. The connection between the two concepts would appear to be weak at best. There is no reason to presume that immigration officers have expertise in assessing individuals' prospects for success in a given academic program. One can complete a program successfully without necessarily excelling in it. And many of the factors that can determine academic success are dynamic, not static.

[emphasis added].

[18] The Respondent counters that academic proficiency cannot be presumed from acceptance into a program and the Officer's concerns about the Applicant's prior academic history were properly rooted in the evidentiary record.

[19] Having considered the arguments of both parties, I agree with the Applicant that the Officer's reasons lack sufficient justification and transparency.

[20] In terms of his prior academic performance, I do note that the Applicant received several poor grades in his Commerce degree, ranging from 40-59%. I agree with the Respondent that the jurisprudence is such that prior academic performance can be considered by an officer. However, I am not satisfied that in this instance, it was done with the care required as set out by Justice Norris in *Patel*.

[21] Specifically, the Officer failed to connect the dots between the Applicant's previous academic history and the likelihood of success in his intended program of study. Without more, this Court is not in a position to assume that low grades in environmental studies and statistical analysis for example, necessarily means that the Applicant cannot excel in or complete a college program in International Business Management. Justice Norris' insightful analysis on this point at paragraph 24 of *Patel* bears repeating: "one can complete a program successfully without necessarily excelling in it. And many of the factors that can determine academic success are dynamic, not static".

[22] While acceptance into a program may not presume academic proficiency, it certainly has some bearing in the overall analysis. The Applicant received an unconditional offer of acceptance from Niagara College which states:

Admission to Niagara College is very competitive and we take great care in evaluating each application for admission. Niagara College follows the practice of Applied Education, which enables students, faculty and industry to collaborate in providing a rich learning and practical academic environment for our students. You have been offered admission because we feel confident that you will be able to make an important contribution to the College and the International Business Management program in this Applied Education setting.

[emphasis added]

[23] Niagara College was clearly satisfied that the Applicant had the necessary qualifications to complete the program and to make “an important contribution” to the College. While it was open to the Officer to consider the Applicant’s prior academic performance, they were required to do so with care, and to explain how his past performance is linked to his likelihood of success in a new program. To do so, the Officer was required to demonstrate or explain their understanding of what was required to succeed in an International Business Management program which in this case, takes place in an applied educational setting, as explained in the acceptance letter.

[24] With respect to the consistency of the Applicant’s educational goals, I agree with the Applicant that the Officer failed to provide sufficient justification for this finding. The Officer failed to provide sufficient details concerning how a previous application to study Data Analytics for Business, meant that the Applicant’s educational goals were “inconsistent”. Both programs are related to business and the evidence before the Officer was that the Applicant has previously received a certificate in software engineering.

[25] The Applicant also provided a letter explaining his rationale for choosing the International Business Management program, which indicated that he had some interest in working in the tech industry after the completion of his studies. In this context, and without further justification from the Officer, it is unclear to this Court how the Officer decided that the two applications demonstrate “inconsistent” educational goals.

[26] A visa officer is not required to give extensive reasons but the reasons must be sufficient to explain the result: *Pacheco v Canada (Citizenship and Immigration)*, 2010 FC 347 at para 36; *Ogbuchi v Canada (Citizenship and Immigration)*, 2016 FC 764 at paras 10-13. In this case, the visa officer's reasons were not sufficient to explain the result.

V. **Conclusion**

[27] For the foregoing reasons, this application for judicial review is allowed.

[28] The parties have proposed no serious question of general importance for certification and I find that no such question arises from the facts of this case



**JUDGMENT in IMM-6185-22**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed.
2. The Decision is set aside and the matter is to be returned to a different decision maker for redetermination.
3. There is no serious question of general importance to certify.

"E. Susan Elliott"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6185-22

**STYLE OF CAUSE:** HIMESH DASHRATH KUMAR v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE

**DATE OF HEARING:** MAY 11, 2023

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** JUNE 9, 2023

**APPEARANCES:**

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