

Federal Court



Cour fédérale

Date: 20240131

Docket: IMM-8925-21

Citation: 2024 FC 155

Ottawa, Ontario, January 31, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

KARM PAKHAWALA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of India. He applied for a study permit to allow him to attend Canadore College and pursue a Graduate Certificate in Functional Genomics and Clinical Consultation. He has completed a Bachelor's and a Master's degree of Science and had previously applied for study permits in February and June 2021. Both applications were denied.

[2] The June 2021 Application was refused by a Visa Officer's [Officer] in a decision dated November 16, 2021. The reasons for the refusal are brief:

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 obtained in 2017; Master of Science obtained in 2020. PA is requesting to take a Functional Genomics and Clinical Consultation program. 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 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. 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. On balance, I am not satisfied that the applicant is a bona fide student who will depart Canada at the end of the period authorized for their stay. Application refused as per R216 (1) (b).

[3] The Applicant now seeks judicial review of the November 2021 decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. Two issues are raised:

- A. Is the decision unreasonable?
- B. Did the Officer err by not providing the Applicant a procedural fairness letter?

[4] Upon review of the Application, I am not persuaded that the Officer's decision was unreasonable. The Application is dismissed.

II. Standard of Review

[5] An officer's factual assessment and refusal of a study permit application is reviewable against the presumptive standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 [*Vavilov*]; *Hajiyeva v Canada (Citizenship and Immigration)*, 2020 FC 71 at para 4). To succeed on a reasonableness review, the party challenging the decision must satisfy the Court that the decision's shortcomings cause it to lack in the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral missteps; instead, a reviewing court must be satisfied the flaws relied on by the challenging party are sufficient to render the decision unreasonable (*Vavilov* at para 100).

[6] Questions of fairness are to be assessed with a focus on the nature of the substantive rights involved and by asking whether the procedure was fair having regard to all of the circumstances. While no standard of review applies *per se*, correctness best reflects the Court's approach (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54, citing *Eagle's Nest Youth Ranch Inc v Corman Park (Rural Municipality #344)*, 2016 SKCA 20 at para 20).

III. Analysis

A. *Is the Officer's decision unreasonable?*

[7] An applicant seeking a study permit has the burden of satisfying the decision-maker that they are admissible to Canada and will leave the country on the expiration of their visa (paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227; *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at para 9).

[8] In submitting the Officer's decision is unreasonable, the Applicant argues that the Officer's concerns – that the chosen program and course content were illogical/redundant and unreasonably expensive – were addressed by the Applicant. The Applicant argues the Officer either failed to read or did not understand the study plan, which addressed the connection between the Applicant's previous studies in science and the desired program of study. The study plan also set out the Applicant's intent to pursue a postgraduate work permit upon completion of his studies to provide the Applicant with experience that would contribute to his long-term goals upon return to India. The Applicant further submits the Officer unreasonably concluded the Applicant had failed to demonstrate he was a *bona fide* student.

[9] The Respondent relies on the Officer's wide discretion when considering applications for study permits to argue that the decision is reasonable and that there was no breach of procedural fairness.

[10] Having reviewed the Applicant's submissions and the record, I find that the Applicant has not met their onus in establishing that the decision fails to demonstrate the hallmarks of reasonableness – i.e., justification, intelligibility and transparency (*Vavilov* at para 99).

[11] The Officer found that the Applicant had demonstrated inconsistent educational goals. This after noting that the Applicant had unsuccessfully applied to different programs at different institutions. The Officer also noted the Applicant's prior completion of both a Bachelor's and a Master's degree of Science, and on this basis, questioned the value of the certificate program.

[12] The Applicant argues that the study plan before the Officer addresses these issues. I disagree. Under the heading "Why Study Functional Genomics and Clinical Consultation" the Applicant describes himself as being very passionate about the field. Faced with the Applicant's recent and unsuccessful applications to pursue studies in different programs, rejections that were justified by the Applicant on the grounds that he "was not guided and informed well", it was not unreasonable for the Officer to conclude otherwise. Nor does the Applicant address with any specificity how, in light of his prior education at the Master's level, the program he now seeks to pursue will advance his education and career goals. The Applicant's broad statement that he wants to move ahead in his career or that genomics is extensively employed across a range of fields does not invalidate the Officer's expressed concern that a college level program appears illogical/redundant in light of the Applicant's reported scholarly history. Under the heading "Future Plans", the Applicant does state that the healthcare field is transforming and that the program will allow him to work in a variety of different fields. But, these general statements do

not address why he is limited or prevented from pursuing work in these fields with his current level of education.

[13] The Officer reasonably relied on the Applicant's failure to provide sufficient evidence to demonstrate the proposed program of studies was consistent with the Applicant's scholarly history and would further his logical career goals. This analysis in turn provided the basis for the Officer to reasonably conclude the Applicant had failed to demonstrate he was a *bona fide* student who would depart Canada upon the expiration of a visa.

[14] The Applicant suggests the Officer was perhaps improperly influenced by the Applicant's stated intent to pursue a postgraduate work permit, and also failed to consider the Applicant's responsibilities toward his aging mother in assessing the Applicant's desire and intent to leave Canada. These submissions are not persuasive.

[15] The Officer's analysis focused on the Applicant's previous employment and educational history. The decision was rendered on these grounds. The suggestion that the Officer viewed the Applicant's intent to obtain a postgraduate work permit negatively is speculative. Similarly, I am not persuaded the Officer was required to address the pull factor of the Applicant's mother where the information the Applicant provided speaks solely in broad and general terms of a future obligation to provide care.

[16] The Applicant's submissions clearly reflect disagreement with the Officer's assessment but the Applicant has failed to demonstrate the decision suffers from a shortcoming or flaw that undermines either, the reasonableness of the analysis, or the outcome.

B. *Did the Officer err by not providing the Applicant a procedural fairness letter?*

[17] The Applicant submits that visa officers are required to give notice of their concerns to applicants and give applicants a chance to respond. A lack of notice and chance to respond can lead to a decision being set aside. In the present matter, the Applicant submits that the Officer erred in failing to send the Applicant a procedural fairness letter and not allowing the Applicant to respond.

[18] I take no issue with the principle that applicants in the visa context must be provided a fair process. However, the requirements of a fair process are contextually dependent. In the visa context, fairness obligations are at the lower end of the scale and do not impose an obligation on a decision-maker to give notice of concerns arising from the sufficiency of the supporting materials or evidence (*Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 10). In this instance, the Officer's concerns were related exclusively to the sufficiency of the information provided. These concerns did not trigger a requirement to provide the Applicant a procedural fairness letter. There was no breach of fairness.

[19] For the above reasons, the Application is dismissed. The parties have not identified a question of general importance and none arises.

JUDGMENT IN IMM-8925-21

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.
2. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8925-21

STYLE OF CAUSE: KARM PAKHAWALA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 5, 2023

JUDGMENT AND REASONS: GLEESON J.

DATED: JANUARY 31 2024

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