Federal Court Cour fédérale

Date: 20240318

Docket: IMM-2088-23

Citation: 2024 FC 434

Ottawa, Ontario, March 18, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

NICOLLE STEFANNY BOGOTA ESPINOSA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by an unnamed Officer [Officer] at Immigration, Refugees and Citizenship Canada [IRCC], denying the Applicant's application for a study permit and temporary resident permit. In their decision dated December 16, 2022 [the Decision], the Officer denied the Applicant's application on the grounds that she previously

neglected to comply with her Canadian immigration conditions and that the Officer was not satisfied that she would leave Canada at the end of her stay.

[2] Having considered the record before this Court, including the parties' written and oral submissions, as well as the applicable law, the Applicant has discharged their burden to demonstrate that the Officer's decision is unreasonable. For the reasons that follow, this application for judicial review is granted.

II. Facts

[3] The Applicant, Nicolle Stefanny Bogota Espinosa [Applicant] is a 21-year-old citizen of Colombia. She first entered Canada as a student in 2019 to pursue a language study program, which she completed the same year. She then decided to pursue a Diploma in Business Management at the Toronto School of Management, for which she sought and was granted a two-year study permit that expired on January 31, 2022. She completed this diploma in October 2021.

[4] Following her graduation, the Applicant was accepted into a Bachelor of Commerce program at the University of Canada West, and planned to start her studies there in January 2022. She consequently applied to extend her study permit in December 2021, but mistakenly submitted an application to extend her study permit within Canada while she was on vacation in Colombia, and should have submitted the extension application from outside Canada.

[5] When she entered Canada on January 5, 2022, the immigration officer at the port of entry [PoE] cancelled her current study permit application and issued her a new one that was only valid between January 5, 2022 and January 31, 2022.

[6] Unbeknownst to her, the Applicant studied and worked in Canada without status from January 2022 to September 2022. In September 2022, the Applicant received notice that her study permit application was not under process and that she was effectively out of status in Canada. Upon this realization, she left Canada for Colombia and reapplied for a study permit and a temporary resident permit in November 2022.

[7] The application was refused in December 2022, which is the Decision that is contested before this Court in this application for judicial review.

III. Decision under Review

[8] In the Decision, the Officer refused the Applicant's study permit and stated the following reasons:

> ● On a past visit to Canada you did not comply with all conditions outlined in R183 of the IRPR (https://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-227/section-183.html) or written on your previous Canadian Immigration document.
>
> ● I am not satisfied that you will leave Canada at the end of your stay as required by paragraph R216(1)(b) of the IRPR (https://laws-lois.justice.gc.ca/eng/regulations/sor-2002-227/section-216.html). I am refusing your application because you have not established that you will leave Canada, based on the following factors:

> ● The purpose of your visit to Canada is not consistent with a temporary stay given the details you have provided in your application.
>
> ●You do not have significant family ties outside Canada.
>
> ●In the past, you did not comply with all immigration conditions imposed in another country.

[9] The Global Case Management System [GCMS] contained the following entry :

> Submissions reviewed, along with GCMS history. PA initially entered Canada to pursue an ESL class, from Jan 2019 to Sept 2019. She then changed institution, entered the Toronto School of Mgt in Toronto, pursued a program which she completed in Oct 2021. Her SP expired in Jan 2022. Declares to have been working between Oct and Dec 2021. PA states she was accepted in a Bachelor degree at University of Canada west, from Jan 2022 to Dec 2023. I have read the representative's explanation about the fact that her SP was approved at PoE only until end of January. This matches the notes in GCMS -S304697531. However, given that the PA was given a SP valid for less than 30 days at PoE, there is limited explanation provided as to why PA only departed Canada in Sept 2022. PA's school records from U of Canada West shows she was registered to only 3 classes during 2 semesters Winter 2022, and Spring 2022. She also transferred credits from her previous program. Given the applicant's previous educational history, I am not satisfied that the applicant is a genuine student who is actively and seriously pursuing their studies in Canada with the intention of completing a program within a reasonable amount of time. PA declares that she has been working in Burnaby, BC between April and Aug 2022. Unclear how she managed to obtain work without a valid WP. Further noted that the PA declares having been cancelled her US visa in Aug 2021, as she overstayed in the US as well. Noted that the applicant is single, does not appear to be well established, and provides limited evidence of ties to home country. Not satisfied those ties would be sufficient to compel return. 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.

[10] The reasonableness of the Decision and the accompanying GCMS notes are at issue in this application for judicial review.

IV. Issue and standard of review

[11] The sole issue before this Court is whether the Officer's Decision to deny the study permit and temporary resident permit was reasonable.

[12] The standard of review in this case is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 39–44 [*Mason*]). To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99; *Mason* at para 59). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125–126; *Mason* at para 73). Reasonableness review is not a "rubber-stamping" exercise, it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

V. Analysis

A. *The Officer's decision is unreasonable*

[13] The Officer's first ground to deny the Applicant's study permit and temporary resident permit application is based on the Applicant's failure to comply with a previous Canadian immigration document. In the GCMS notes, the Officer states that: "[…] given that the PA was

given a SP valid for less than 30 days at PoE, there is limited explanation provided as to why PA only departed Canada in Sept 22" [emphasis added].

[14] In my view, this observation is not consistent with the evidence before the Officer. The Applicant's November 2022 study permit and temporary resident permit application was submitted with a detailed submission explaining, in sum, that she was not aware that the port of entry officer cancelled her study permit application when they issued her the temporary study permit that expired on January 31, 2022. The Applicant believed that her study permit application was still being processed, and once she came to realize that she did not have status in Canada, she immediately left to Colombia. Therefore, simply stating that there is "limited explanation" as to why the Applicant overstayed her study permit in 2022, while simultaneously dismissing the detailed explanation provided by the Applicant is, in my view, a demonstration of a lack of responsiveness to the evidence (*Patel v Canada*, 2020 FC 77 at para 15, citing *Vavilov* at paras 127–128). While the Officer did not have to believe the Applicant's explanation, they had to explain why, and they did not do so.

[15] Furthermore, the Officer also justifies their Decision to deny the Applicant's study permit and temporary resident permit application on the basis that they do not believe that she is a genuine student. According to the GCMS notes, the Officer questions whether she is seriously and actively pursuing her studies with the intention of completing a program within a reasonable amount of time, given the number of courses she took at the University of Canada West.

[16] The Officer's reasoning is incoherent in light of the evidence, which demonstrates that the Applicant has been a full-time student and actively pursuing her program of study. The Officer merely states that "Given the applicant's previous educational history," they are not satisfied that the Applicant is a genuine student who will complete her studies in a reasonable time, without explaining why and how they have reached such conclusion. This is, in my view, an unjustified reason, and leaves this Court with the obligation to guess or speculate on what the Officer was thinking in reaching this conclusion (*Vavilov* at para 97).

[17] Indeed, the Officer does not explain why the "previous educational history" could lead to a conclusion that the Applicant is not a genuine student. The only evidence in the record is that the Applicant has been in Canada for three years, and has always studied and successfully completed her courses. The Officer did not grapple with the contradictory evidence in the record, and did not explain why it had to be dismissed, and why it was insufficient to convince him that the Applicant was a genuine student (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 at para 17 (FC); *Vavilov* at paras 102, 106, 126, 128).

[18] Finally, the Officer refused the Applicant's study permit and temporary resident application on the basis that she does not have significant family ties outside of Canada. The GCMS notes state: "Noted that the applicant is single, does not appear to be well established, and provides limited evidence of ties to home country. Not satisfied those ties would be sufficient to compel return."

[19] The Officer's Decision regarding the family ties does not sufficiently grapple with the evidentiary record. The Decision merely states the facts and the Officer's conclusions, without any explanations as to how those conclusions were reached. Moreover, the Decision makes no mention of the fact that the Applicant's father and mother live in Colombia, that her half-brother lives in the United States, and that she has no family members in Canada. The Officer also failed to explain how those factors were considered and weighed in reaching a negative conclusion on the Applicant's family ties.

[20] The Respondent essentially submits that the outcome of the Decision is reasonable given the factual matrix of this case and the high degree of discretion granted to officers in temporary resident permit applications (*El Rahy v Canada (Citizenship and Immigration)*, 2020 FC 372 at para 59). While I recognize that officers have discretion and are ultimately entitled to review and weigh the evidence as they deem appropriate, they are still bound by the duty to justify their conclusions on the evidence, and not simply state the conclusion they reached without providing an explanation on their thought process. In other words, there must be a "coherent chain of analysis or explanation linking the information and documents submitted by the Applicant to the Officer's conclusion that [the Applicant] would not leave Canada at the end of [her] stay" (*Singh v Canada (Citizenship and Immigration)*, 2021 FC 790 at para 19). Such analysis is missing in the Officer's Decision.

[21] As a final point, while the conclusions regarding the Applicant's work history in Canada and the cancellation of her United States visa may be appropriate in some cases, there is no

discussion of the evidence on those issues and why these considerations are relevant or conclusive in this case.

[22] The Decision therefore contains sufficient omissions causing this Court to lose confidence in the outcome reached by the Officer (*Vavilov* at para 122). The Officer had a duty to engage meaningfully with the Applicant's central arguments at the very least, and, in my view, failed to do so. Therefore, the reasons provided in the Decision do not allow this Court to understand the Officer's reasoning process (*Motala v Canada (Citizenship and Immigration)*, 2020 FC 726 at para 18), and render this Decision unreasonable.

[23] In light of the foregoing, I am not satisfied that the Officer's Decision is reasonable in light of the legal and factual constraints imposed in this particular case (*Vavilov* at paras 86, 304).

VI. Conclusion

[24] The Officer's decision does not bear the hallmarks of a reasonableness. It is not transparent, intelligible and justified in light of the relevant legal and factual constraints (*Vavilov* at para 99; *Mason* at para 59).

[25] The Applicant's application for judicial review is granted.

[26] The parties have not proposed any question for certification and I agree that none arises in the circumstances.

JUDGMENT in IMM-2088-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. There is no question for certification.

"Guy Régimbald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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