Federal Court  Cour fédérale

Date: 20240424

Docket: IMM-12249-22

Citation: 2024 FC 623

Toronto, Ontario, April 24, 2024

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

K.C. WILLIAM LUK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE ATTORNEY GENERAL OF CANADA

Respondents

JUDGMENT AND REASONS

[1] The Applicant, a self-represented citizen of Hong Kong, China, seeks judicial review of the decision made by a visa officer [Officer] on October 6, 2022, refusing to issue a study permit to the Applicant to pursue a diploma in Baking and Pastry Arts Management at Centennial College.

[2] In his study permit application, the Applicant stated that his rationale for studying in Canada—and for pursuing the Baking and Pastry Arts Management program, in particular—was to qualify under Stream A of Canada's temporary public policy for Hong Kong residents who are currently in Canada to obtain permanent resident status.

[3] The Officer refused the Applicant's study permit application on the basis that the Officer was not satisfied the Applicant would leave Canada at the end of his stay as required by paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] based on the Officer's determination that the purpose of the Applicant's visit to Canada was not consistent with a temporary stay.

[4] This application raises two issues: (i) whether the Officer's decision was unreasonable; and (ii) whether the Applicant's right to procedural fairness was breached by, as asserted by the Applicant, the use of an algorithm to select who should be granted or denied a study permit (as opposed to the decision being made by the Officer) and/or by the malicious or insubordinate actions of the Officer.

[5] Turning to the first issue, the presumptive standard of review for assessing the merits of the Officer's decision is reasonableness. No exceptions to that presumption have been raised nor apply [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25].

[6] The general framework for the judicial review of study permit refusals was recently addressed in *Nesarzadeh v Canada (Citizenship and Immigration)*, 2023 FC 568 at paragraphs 5-9, which identified several key principles:

> • A reasonable decision must explain the result, in view of the law and the key facts.
>
> • *Vavilov* seeks to reinforce a "culture of justification" requiring the decision-maker to provide a logical explanation for the result and to be responsive to the parties' submissions, but it also requires the context for decision-making to be taken into account.
>
> • Visa Officers face a deluge of applications, and their reasons do not need to be lengthy or detailed. However, their reasons do need to set out the key elements of the Officer's line of analysis and be responsive to the core of the claimant's submissions on the most relevant points.
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> • The onus is on the Applicant to satisfy the Officer that they meet the requirements of the law that applies to consideration of student visas, including that they will leave at the end of their authorized stay.
>
> • Visa Officers must consider the "push" and "pull" factors that could lead an Applicant to overstay their visa and stay in Canada, or that would encourage them to return to their home country.

[7] The Applicant bore the burden of satisfying the Officer that he would leave Canada at the end of his authorized stay [see *Hashem v Canada (Citizenship and Immigration)*, 2020 FC 41 at para 31; *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 10]. However, the Applicant has not directed this Court to evidence in the record that was before the Officer that contradicts the Officer's conclusion that he would not leave Canada at the end of his authorized stay [see e.g. *Ehigiator v Canada (Citizenship and Immigration)*, 2023 FC 308 at para 50]. To the contrary, on the issue of leaving Canada at the end of his authorized stay, the Applicant explicitly states in his study plan that:

> In my case, instead of leaving Canada immediately upon graduation, I will apply for a 3-year [post-graduation work permit] as stipulated in Section 5.24 of OP12, and my legal stay will be extended with another set of conditions. Most importantly, requiring me to leave Canada upon graduation is against the eligibility requirements of Stream A, which requires an applicant to be physically present in Canada when an application for PR under this public policy is made and at the time of granting of permanent residence.
>
> [Emphasis added.]

[8] A reviewing court should not interfere with an administrative decision if it can discern from the record why the decision was made and the decision is otherwise reasonable [see *Saghaei Moghaddam Foumani v Canada (Citizenship and Immigration)*, 2024 FC 574 at para 15]. Given the evidence, particularly the Applicant's study plan, I find that it was reasonable for the Officer to conclude that they were not satisfied the Applicant would leave Canada at the end of his authorized stay.

[9] The Applicant asserts that subsection 22(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] overrides the requirement in paragraph 216(1)(b) of the *IRPR* that he leave at the end of his authorized stay. Subsection 22(2) of the *IRPA* provides:

Temporary resident	**Résident temporaire**
22 (1) A foreign national becomes a temporary resident if an officer is satisfied that the foreign national has applied for that status, has met the obligations set out in paragraph 20(1)(b), is not inadmissible and is not the subject of a declaration made under subsection 22.1(1).	**22 (1)** Devient résident temporaire l'étranger dont l'agent constate qu'il a demandé ce statut, s'est déchargé des obligations prévues à l'alinéa 20(1)b), n'est pas interdit de territoire et ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1).
Dual intent	**Double intention**

(2) An intention by a foreign national to become a permanent resident does not preclude them from becoming a temporary resident if the officer is satisfied that they will leave Canada by the end of the period authorized for their stay.	**(2)** L'intention qu'il a de s'établir au Canada n'empêche pas l'étranger de devenir résident temporaire sur preuve qu'il aura quitté le Canada à la fin de la période de séjour autorisée.

[10] The Applicant submits that the requirement to leave at the end of his authorized stay includes any subsequent extensions of this authorized period, such as through a successful application under Stream A. The Applicant thusly asserts that the Officer misinterpreted or misapplied subsection 22(2). However, the Officer notes in the decision that:

> [The Applicant] appears to argue that this dual intent under A22(2) "nullifies" certain eligibility requirements of a study permit, specifically that an officer must be satisfied that the applicant is a bona fide temporary resident. I do not agree as A22(2) states that a PR intention does not preclude an applicant from TR and expressly states that there is a requirement that an officer be satisfied that the applicant would leave by the end of their authorized stay.

[11] The question the Officer was required to ask was whether the Applicant would stay illegally in Canada if he is not successful under the program [see *Singh v Canada (Citizenship and Immigration)*, 2020 FC 840 at para 21]. In other words, given the Applicant's dual intention to obtain permanent resident status under Stream A, the Officer did not have to be satisfied that the Applicant had a temporary purpose in coming to Canada but rather that the Applicant would not remain illegally in Canada if, for example, his application under Stream A was rejected or he was unable to complete his studies [see *Bondoc v Canada (Citizenship and Immigration)*, 2008 FC 842 at para 29; *Palogan v Canada (Citizenship and Immigration)*, 2013 FC 889 at para 14]. This is further supported by the plain wording of subsection 22(2) of the *IRPA*, which clearly states that

applicants are required to satisfy the Officer that they will "leave Canada by the end of the period authorized for their stay." Accordingly, I am not satisfied that the Officer erred in their interpretation of "dual intent" in subsection 22(2) of the *IRPA*. While the Applicant's authorized stay could very well have been extended under Stream A, the Applicant still bore the onus of establishing that he would leave if he is no longer authorized to remain in Canada, but he failed to do so.

[12] While the Applicant has raised a number of additional grounds upon which he asserts that the Officer's decision was unreasonable, none of these grounds have any merit.

[13] Turning to the second issue, the standard of review for issues relating to procedural fairness is best reflected by the correctness standard even though, strictly speaking, no standard of review is being applied [see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35, 54–55]. The Court must ask whether the procedure was fair, having regard to all the circumstances, and the ultimate question is "whether the applicant knew the case to meet and had a full and fair chance to respond" [see *Canadian Pacific Railway Company v Canada (Attorney General), supra* at paras 54, 56; *Maltais v Canada (Attorney General)*, 2022 FC 817 at para 19].

[14] The Applicant asserts that that his right to procedural fairness was breached by the use of artificial intelligence, or an algorithm, in refusing his study permit application. In that regard, the Applicant submits that the decision was rendered by an "inanimate object," which may be a computer inside a computer, and that there is no evidence establishing that "KL" (the identifier

recorded in the GCMS notes for the Officer) is an authorized officer and "not just an administrative assistant filling in for the computer."

[15] However, there is no evidence before the Court that artificial intelligence or an algorithm was used in rendering a decision on the Applicant's study permit application. The evidence before the Court is that the decision was made by an Officer and the Officer has provided reasons for their decision. Even if there was evidence that the decision had been made with the assistance of artificial intelligence or an algorithm, I am not satisfied that any such assistance, on its own, constitutes a breach of procedural fairness. Whether or not there has been a breach of procedural fairness will turn on the particular facts of the case, with reference to the procedure that was followed and the reasons for decision [see *Haghshenas v Canada (Citizenship and Immigration)*, 2023 FC 464 at para 24]. When those factors are considered, I find that the Applicant has failed to demonstrate any breach of his procedural fairness rights.

[16] The Applicant also accused the Officer of misconduct and inappropriate actions at various points throughout his submissions. However, I find that such accusations are unsupported by the evidence in the record.

[17] As the Applicant has failed to demonstrate that the decision was unreasonable, or that his procedural fairness rights were breached, the application shall be dismissed.

[18] No question for certification was raised and I agree that none arises.

JUDGMENT in IMM-12249-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The parties proposed no question for certification and none arises.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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