Federal Court Cour fédérale

Date: 20240530

Docket: IMM-3826-23

Citation: 2024 FC 821

[ENGLISH TRANSLATION]

Montreal, Quebec, May 30, 2024

PRESENT: Mr. Justice Gascon

BETWEEN:

GLODI LUBEMBO KAPENDA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Glodi Lubembo Kapenda, is a citizen of the Democratic Republic of Congo [DRC]. He is seeking judicial review of a decision dated February 10, 2023 [Decision], in which an immigration officer of the Visa Service of the Canadian Embassy in Paris [Officer] refused his application for a temporary resident permit to study in Canada [Application]. The

Officer concluded that Mr. Kapenda's application failed to meet the requirements set out in subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], and that he was not a *bona fide* visitor to Canada. The Officer was not convinced that Mr. Kapenda would leave Canada and return to the DRC upon completing his studies because of his financial situation and the fact that the reason for his visit was not consistent with a temporary stay.

[2] Mr. Kapenda argues that the Decision was unreasonable given that the Officer erred in his analysis of the evidence with respect to his return to the DRC at the end of his stay and his ability to finance his studies. In addition, Mr. Kapenda argues that the reasons for the Decision are incomprehensible. In this regard, he finds it impossible to see which documents supported the Officer's conclusions, as those conclusions lacked sufficient reasons.

[3] Mr. Kapenda's application raises only one issue: was the decision to refuse his application for a study permit unreasonable?

[4] For the reasons that follow, Mr. Kapenda's application for judicial review is allowed. On the basis of the record submitted to the Officer, I find that the Decision was unreasonable, as the Officer did not meaningfully address the essential evidence that directly contradicted his conclusions. Furthermore, read in conjunction with the case, the Officer's conclusions do not allow for the reasoning and logic of the decision maker to be understood. In the circumstances, this is sufficient to justify the Court's intervention.

II. Background

A. *Facts*

[5] Mr. Kapenda has previously completed post-secondary studies in France and Morocco. In 2018, he earned a bachelor's degree in economic and social administration from the Université Jean-Monnet-Saint-Étienne located in Saint-Étienne, France. He also has an undergraduate degree in business administration from the International University of Agadir in Morocco.

[6] In July 2022, Mr. Kapenda was accepted into the college-level Techniques en administration des affaires program at the La Cité College in Ottawa. He was to begin his two-year program in the 2023 winter semester. According to Mr. Kapenda, his goal in pursuing this program was to broaden and enhance his skills in business administration. He also hoped to further his studies by studying in a bilingual country. Mr. Kapenda maintained that learning English would be an asset that would enable him to be well positioned on the labour market when he returned to the DRC.

[7] In his application submitted on December 27, 2022, Mr. Kapenda explained that he wished to study in Canada to increase his job prospects once back in the DRC. He also noted that he would be able to support himself for the entire two-year program during his stay in Canada thanks to the financial support of his father, Serge Seya Lubembo. The applicant's father confirmed that he would assume the cost of his son's studies and time in Canada. To that end, Mr. Kapenda attached to his application evidence that his father has a bank account with the "Equity BCDC" bank in the DRC, showing a balance of more than US$35,000 on December 13, 2022. His father also provided a certificate of employment dated May 11, 2022, confirming that he worked as a computer analyst in the office of the DRC's Minister of Finance, with a monthly salary of US$5,500. Evidence of real estate ownership was also submitted.

[8] Mr. Kapenda also adduced evidence showing that his father was already supporting two of his brothers pursuing post-secondary studies in Canada. Mr. Kapenda's father stated that he had never failed in his obligation to financially support his two other sons, and undertook to do likewise with Mr. Kapenda. Lastly, Mr. Kapenda noted in his application that he currently resided with his parents in the DRC and that they would not be accompanying him to Canada.

B. *Decision*

[9] The Officer refused Mr. Kapenda's application on February 10, 2023. This was the second time Mr. Kapenda had been refused a study permit.

[10] The Officer's Decision was brief. It consisted of a standard letter from Immigration, Refugees and Citizenship Canada stating that [TRANSLATION] "in making a decision on an application, a number of factors are considered". The Officer stated that he was not convinced that Mr. Kapenda would leave Canada at the end of his stay, for two main reasons: (1) his assets and financial situation were insufficient to support the reason for his trip; and (2) the reason for his visit to Canada was inconsistent with a temporary stay.

[11] In the Global Case Management System [GCMS], notes from the Officer dated February 10, 2023, (which form part of the Decision) reiterate those reasons without shedding any further light on the reasons for the refusal, other than mentioning that the documents submitted were similar to those in the earlier application. Those notes were limited to a dozen lines.

C. *Standard of review*

[12] There is no doubt that the standard of review for an evidence-based review of a study permit application and a visa officer's conclusion about whether an applicant will leave Canada at the end of his or her stay is reasonableness (*Kavugho-Mission v Canada (Citizenship and Immigration)*, 2018 FC 597 at para 8 [*Kavugho-Mission*]; *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 12; *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at paras 12–13).

[13] Moreover, the framework for judicial review of the merits of an administrative decision is now that established by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [*Mason*]). This framework is based on the presumption that the standard of reasonableness is now the applicable standard in all cases.

[14] When the applicable standard of review is reasonableness, the role of a reviewing Court is to examine the reasons given by the administrative decision maker and to determine whether the decision was 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" (*Mason* at para 64; *Vavilov* at para 85). To make this determination, the reviewing court asks "whether the decision bears the hallmarks of reasonableness justification, transparency and intelligibility" (*Vavilov* at para 99, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74).

[15] It is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision "must also be *justified*, by way of those reasons, by the

decision maker to those to whom the decision applies" [italics in original] (*Vavilov* at para 86). Thus, review on a standard of reasonableness is concerned with both the outcome of the decision and the reasoning process that led to that outcome (*Vavilov* at para 87). Review on a standard of reasonableness must involve a robust assessment of administrative decisions. However, in analyzing the reasonableness of a decision, a "reviewing court must therefore take a 'reasons first' approach examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusions" (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing Court must adopt an attitude of restraint, intervening only "where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13). The standard of reasonableness, I would point out, finds its starting point in the principle of judicial restraint and deference, and requires reviewing courts to demonstrate a respect for the distinct role of administrative decision makers arising from the legislature's institutional design choice, according to which the authority to make decisions is vested in administrative decision makers rather than in the courts (*Mason* at para 57; *Vavilov* at paras 13, 46, 75).

[16] The burden is on the party challenging a decision to show that it is unreasonable. In order to set aside an administrative decision, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision so as to render it unreasonable (*Vavilov* at para 100).

III. Analysis

[17] The respondent, the Minister of Citizenship and Immigration [Minister], submits that Mr. Kapenda failed to provide documents establishing that he would leave Canada at the end of his authorized stay and that he did not meet his burden of proof. In addition, the Minister argues that Mr. Kapenda failed to provide the evidence required to demonstrate that his guarantor had sufficient financial means to support Mr. Kapenda during his temporary stay in Canada, in addition to supporting Mr. Kapenda's two brothers who were already studying in Canada.

[18] With respect, and despite the skilful submissions by the Minister's counsel at the hearing, I disagree with the Minister, and I do not share his reading of the evidence on the record and of the Decision.

[19] Even under the deferential standard of reasonableness, the fact remains that the reasons for a decision must allow the Court to understand why it was made and to determine whether the conclusion was justified and justifiable. When read as a whole, the reasons must therefore be sufficiently supported and eloquent to allow the Court to find that they provide the justification, transparency and intelligibility required for a reasonable decision. Of course, a party's counsel may assist the Court in understanding the decision, but the administrative decision maker's reasons must still allow the Court to conclude that the analysis performed was inherently coherent and rational.

[20] Here, the Decision was unreasonable, given that the Officer failed to consider the evidence concerning Mr. Kapenda's return to the DRC at the end of his stay and his ability to finance his studies. In addition, the reasons for the Decision in the GCMS notes merely reiterated

the criteria set out in the Minister's standard letter, without any reference to Mr. Kapenda's own evidence, and are therefore utterly incomprehensible.

[21] The Officer concluded that Mr. Kapenda's study plan was not consistent with a temporary stay, but failed to clarify or explain what factors or evidence had enabled him to come to such a conclusion, merely stating that he had reviewed all of the evidence.

[22] Yet a letter supporting Mr. Kapenda's application indicates that he [TRANSLATION] "would, while continuing in the same field, like to enhance his profile with a Canadian diploma which would crown his academic achievements. That is why he decided to enroll at Collège [L]a Cité to complete a complementary business administration program. As a bilingual country, Canada was the perfect place for him to fulfill his desire to perfect his higher education and this would be an asset to him when he returned to his country, the Democratic Republic of Congo". The use of the words [TRANSLATION] "and would be an asset to him when he returned to his country, the Democratic Republic of Congo" expressly indicates that Mr. Kapenda intended to come to Canada temporarily and return to the DRC upon completing his studies.

[23] A reading of the Decision and the evidence on the record therefore does not enable the Court to understand how the Officer could have determined (as he did) that Mr. Kapenda would not return to the DRC upon completing his studies. In a judicial review of an administrative decision, the reviewing court "must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable" (*Vavilov* at para 99). The Officer's decision under review must therefore be "transparent, intelligible and justified" (*Vavilov* at para 15).

[24] In this vein, the Court noted in *Kavugho-Mission* that while an officer need not spell out each of the details and facets of an issue when making his or her decision, an officer cannot act without regard to the evidence:

> [23] It is well known that a decision-maker does not have to explicitly spell out each of the details and facets of an issue when making his/her decision. A decision-maker is presumed to have weighed and considered all the evidence presented to him/her unless it is determined otherwise (*Newfoundland Nurses* at para. 16; *Florea v. Canada (Minister of Employment and Immigration)* [1993] FCJ No. 598 (FCA) (QL) at para. 1). However, it is also recognized that conflicting evidence should not be overlooked. This is especially true when it comes to key elements that the decision-maker relies on for reaching his/her conclusions. Although the reasons must not be scrutinized by the Court, a decision-maker cannot act "without regard to the evidence" (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration),* [1998] FCJ no. 1425 (QL) [*Cepeda-Gutierrez*] at paras. 16-17). Thus, a blanket statement that a decision-maker has considered all the evidence will not suffice when the evidence omitted from the discussion in his/her reasons appears to squarely contradict his/her finding (*Cepeda-Gutierrez* at para. 17). When a tribunal overlooks evidence that clearly contradicts its findings, the Court can intervene and infer that the tribunal did not examine the contradictory evidence when arriving at its factual finding.
>
> [Emphasis added.]

[25] In this case, the Officer's justification was not based on any of the evidence submitted. On the contrary, the Decision completely overlooked Mr. Kapenda's previous behaviour and the fact that he had returned to the DRC after his studies in France and Morocco, as well as the explicit statement that his academic training in Canada [TRANSLATION] "would be an asset to him when he returned to his country".

[26] The case law is clear: "[i]n view of the statements specifying that [an applicant for a study permit] would leave at the end of [his or] her stay, and the lack of evidence to the contrary,

the Officer could not reasonably conclude that [this person] was not going to leave Canada at the end of [his or] her studies without mentioning and discussing the conflicting evidence on the record" (*Kavugho-Mission* at para 24). In particular, "[the Officer] was required to provide an analysis explaining why he preferred to put his own conclusions before the evidence before him. He did not do so, and that is sufficient to justify the Court's intervention. Even though a visa officer can rely on common sense and reason in the exercise of his/her discretionary power, that does not in any way allow him/her to remain blind to the uncontradicted evidence submitted" (*Kavugho-Mission* at para 24; see also *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at paras 21–24).

[27] Moreover, in *Asong Alem v Canada (Citizenship and Immigration)*, 2010 FC 148 [*Alem*], Justice Tremblay-Lamer noted the following:

> [14] While I am mindful of the time constraints under which visa officers operate, they must nevertheless provide applicants whose applications they reject with an explanation of the elements that weighed against their applications, rather than with a litany of factors, but no explanation for why they supported the rejection.
>
> [Emphasis added.]

[28] To be sure, at the hearing, the Minister's counsel did outline the analysis that the Officer might or could have followed. But unfortunately, this is not what emerges from the Decision, which does not contain any form of analysis or consideration of the evidence submitted by Mr. Kapenda.

[29] The Minister further argues that Mr. Kapenda had failed to provide any evidence that his guarantor's financial resources were sufficient to support Mr. Kapenda's temporary stay in Canada, in addition to those of his two brothers already studying in Canada. In that regard, the

Minister submits that Mr. Kapenda did not discharge his burden of proving that he had sufficient financial resources to support himself during his temporary stay in Canada.

[30] Once again, those comments do not stand up to analysis and the evidence before the Officer. In support of his application, Mr. Kapenda provided proof of financial support from his father, proof of employment confirming the position held by his father, copies of bank statements for the months of April to October 2022 showing a balance in excess of the tuition and living expenses for the first year of study at La Cité, pay statements confirming a considerable monthly income, evidence that his father was already paying for the educational expenses of two of his other children, and evidence that he owns real estate.

[31] Moreover, in support of his application, Mr. Kapenda also adduced additional evidence that was not required in the document checklists, but which was relevant in this case. Indeed, he submitted evidence that his father was already financially supporting two of his brothers studying in Canada and evidence of fund transfers proving that his father's commitment was sincere and that his father was in a position to shoulder this financial burden.

[32] The only requirement for proof of funds for DRC residents applying for a study permit is that the applicant or their financial guarantor must provide evidence that they have sufficient funds to cover the costs of a year's study in Canada. In this case, Mr. Kapenda demonstrated through his father that he had more than $46,000 CAD in liquid assets to support himself and pay his tuition fees for his first year of study. This is well above the estimated tuition fees for the first year at La Cité, namely $15,225 CAD.

[33] Here again, the Officer not only disregarded the evidence submitted, but also made an adverse finding. In view of the negative decision and the contradictory evidence, the Officer had a duty to justify why he preferred to put his own conclusions before the evidence before him, which he did not do (*Barrill v Canada (Citizenship and Immigration)*, 2022 FC 400 at para 17; *Kavugho-Mission* at paras 23–24; *Alem* at para 14).

[34] In sum, the Officer's conclusions with respect to the reason for the visit and Mr. Kapenda's financial resources, when read in conjunction with the record, do not enable the Court to understand the Officer's reasoning, thus rendering the Officer's reasons non-transparent, unintelligible and unjustifiable.

IV. Conclusion

[35] For the foregoing reasons, the Officer's refusal to issue a study permit to Mr. Kapenda does not constitute a reasonable outcome in light of the applicable law and the evidence on the record. Under the standard of reasonableness, the Court must intervene if the decision being reviewed does not fall within a range of possible, acceptable outcomes in respect of the facts and law, and is not understandable. This is the case here. Accordingly, I must allow the application for judicial review and return Mr. Kapenda's application for a study permit for redetermination by a different visa officer.

[36] Neither party has proposed a question of general importance to certify. I agree that none arises in this case.

JUDGMENT in IMM-3826-23

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed without costs.

2. The visa officer's decision dated February 10, 2023, refusing Mr. Kapenda's application for a study permit is set aside.

3. The matter is referred back to Immigration, Refugees and Citizenship Canada for redetermination by a different visa officer.

4. No question of general importance is certified.

"Denis Gascon"
Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT

SOLICITORS OF RECORD

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