

Federal Court



Cour fédérale

Date: 20130930

Docket: T-1785-11

Citation: 2013 FC 1000

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, September 30, 2013

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

GRACE SIMELIN MADINGOU KISSIDI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Grace Madingou Kissidi is seeking judicial review of a decision by the Canadian International Development Agency (CIDA) dated October 17, 2011, refusing to issue an attestation that he had complied with the Agreement with respect to training in Canada entered into with the Government of Canada as part of the Canadian Francophonie Scholarship Program (CFSP). He also seeks judicial review of CIDA's refusal to grant him an exception to the agreement.

[2] Although he is asking the Court to make an order directing CIDA to grant him an attestation or exception, he realizes that on this judicial review this Court can only, at best, remit the case to another CIDA officer.

[3] The Agreement is part of the CFSP. Through this program, CIDA awards scholarships for studies in Canada to nationals from developing countries of La Francophonie. The goal of the program is to contribute to the sustainable development of recipient countries by training individuals from those countries. It is managed by an executing agency, the Association of Universities and Colleges of Canada.

FACTS

[4] In May 2005, Madingou Kissidi, a native of the Democratic Republic of Congo, was selected as a CIDA scholarship student to begin undergraduate university studies in electrical engineering at the University of Moncton in New Brunswick. He signed the Agreement.

[5] *Inter alia*, he committed to leaving Canada at the end of the program and also stated:

Moreover, I understand that if I return to Canada as a permanent resident before a time at least equal to the double of the amount of time spent in Canada during the tenure of the financial assistance, repayment to the Government of Canada of the entire financial assistance may be required.

[6] He successfully completed his training program and obtained his Bachelor's degree in engineering then returned to his country of origin, the Democratic Republic of Congo, in April 2010 where employment awaited him.

[7] However, his employer gave him his blessing to return to Canada after a month. Madingou Kissidi came back with his temporary visa—a temporary study permit valid until the end of May. He was accepted by the Community College of New Brunswick in the computer technology, programming and analysis field of study for the autumn 2010 session. He submitted an application to renew his study permit. These permits are issued by Citizenship and Immigration Canada (CIC), which obviously in these circumstances consulted CIDA. CIDA found that Madingou Kissidi had completed his course, and therefore the study permit in question could not be renewed. However, he was free to apply to CIC for a new study permit without the involvement of CIDA or the CFSP.

[8] Following an exchange of letters between Madingou Kissidi, his counsel and CIDA, the latter sent a letter addressed to Madingou Kissidi dated October 17, 2011, to his counsel and to CIC. The letter confirmed that he had completed his training program at the end of the CFSP and had obtained his Bachelor's degree in engineering in May 2010. The contentious issue is as follows:

[TRANSLATION]

According to the information in our file, your client returned to his country and came back to Canada with the study permit obtained as part of the CFSP to continue studies other than the CFSP studies. In light of these facts, we believe that the conditions of the CIDA scholarship and the study permit issued to that effect were not met. Accordingly, and consistent with the objectives of the CFSP, no exception to this rule will be granted. This decision confirms the final position that you previously provided to CIDA.

Although a breach of contract was taken into consideration, no steps were taken to that effect.

ISSUES

[9] According to the applicant, without an attestation that he complied with the terms of the Agreement, CIC will not provide him with a new study permit, although the proposed studies have no connection to CIDA or the CFSP. He alleges that a student from the Côte d'Ivoire obtained such an attestation when he was in the same situation—he was able to return to Canada. Nothing in the Agreement prevented Madingou Kissidi from returning to Canada, other than as a permanent resident. He returned with his employer's blessing. He intends to return to the Democratic Republic of Congo after completing his second degree. Madingou Kissidi alleges that the decision is incorrect and discriminatory.

[10] The Attorney General of Canada, on behalf of CIDA, submits that the October 2011 letter is not, per se, a decision that gives rise to judicial review. There is no requirement to issue an attestation. There is nothing preventing the applicant from applying to CIC for a new temporary visa, that is, a study permit. It is up to CIC, not CIDA, to decide whether it has to take into account the fact that he left Canada at the end of his studies, that he returned here because his permit was still valid and that he worked for only one or two weeks in the Democratic Republic of Congo. That issue is not before me.

[11] In addition, CIDA interpreted and applied its own programs. As such, this is simply a question of a decision-making body applying its own statute, and therefore the standard of review is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, and *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 SCR 160).

[12] From this perspective, the decision was reasonable. The primary purpose of this program is to contribute to the sustainable development of recipient countries. A return for a few weeks is not a contribution.

[13] The file is far from being complete with respect to the student from the Côte d'Ivoire. Even if I accept that he obtained an attestation, that can also be a reasonable interpretation of the program. Under the reasonableness standard, there can be more than one reasonable response. There was certainly no discrimination.

[14] I agree with the respondent's decision. Madingou Kissidi's concerns are speculative and premature. In any event, the standard of review is reasonableness, and the decision is reasonable.

ORDER

FOR THESE REASONS,

THE COURT ORDERS that the application for judicial review is dismissed, with costs.

“Sean Harrington”

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1785-11
STYLE OF CAUSE: MADINGOU KISSIDI v AGC

PLACE OF HEARING: MONTRÉAL, QUEBEC
DATE OF HEARING: SEPTEMBER 25, 2013

**REASONS FOR ORDER AND
ORDER:** HARRINGTON J.

DATED: SEPTEMBER 30, 2013

APPEARANCES:

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