

Federal Court



Cour fédérale

**Date: 20190214**

**Docket: IMM-3715-18**

**Citation: 2019 FC 188**

**Toronto, Ontario, February 14, 2019**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**MARKO PISAREVIC**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**(Delivered orally from the Bench on February 13, 2019)**

**I. PROCEEDING**

[1] This application is for judicial review of a decision of a visa officer [the Officer], dated June 18, 2018, in which he or she refused the Applicant's application for a student visa [the Decision]. This application was brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

II. **BACKGROUND**

[2] The Applicant is a thirty-eight year old citizen of Bosnia and Herzegovina and of Croatia.

He is an experienced lawyer with his own practice in Brcko, Bosnia and Herzegovina.

[3] The Applicant has twice applied for a study permit to attend a paralegal program in Alberta. The negative Decision on the second application is the subject of this judicial review.

[4] A visa officer refused the Applicant's first application. The Applicant's letter of submission for his second application [the Letter] was received online on May 30, 2018. It recites the reasons he was given for the refusal of his first application, including the fact that the proposed studies were not reasonable in light of his past qualifications, previous studies, and employment. As well, the Officer was not satisfied that the Applicant had sufficient funds or that he would leave Canada after graduation.

[5] The Letter included the following statements which, in my view, express dual intent.

I have every intention of staying in Canada permanently but only, and I can't stress this enough, if the Canadian authorities allow me to stay.

...

I have no intention of leaving Canada after graduating but only and for as long as Canada allows me to stay. I plan to do my best to finish school, work hard while I'm in school to maintain myself, apply for the PGWP, find a good job in the legal field and during that time to find a legal way to stay in Canada.

[6] With regard to his financial status during his period of study, the Applicant stated “we will definitely have more funds at our disposal by the time we (hopefully) leave for Canada (for example, I will sell my office).”

### III. **DECISION**

[7] In the Decision refusing the second application, the Officer did not accept the Applicant’s expression of dual intent and provided the following reasons:

I am not satisfied that you will leave Canada at the end of your stay, as stipulated in subsection 216(1) of the IRPR, based on the purpose of your visit.

...

-study program chosen – you are an intended immigrant. I am not satisfied that dual intent exists.

[8] The Officer’s GCMS note dated June 18, 2018 provides further information. It reads:

Applicant is 37yrs old, graduate law program in 2010 and has many yrs of experience as lawyer. He now applies to do paralegal training. I note that applicant has four attempts to express entry. While the study program chosen is in same field as applicant’s previous studies and work, it is a step back – not coherent with career development. Given the applicant’s interest in immigration, the study program is meant only to secure entry to CDA and not obtain better employment/promotion in home country. In view of past applications history, study program chosen, I am not satisfied that dual intent exists. I am not satisfied that applicant is interested in returning in country of residence and will have incentives to leave CDA at end of authorized period of stay.

IV. **SUBMISSIONS**

[9] The Applicant submits that the Officer erred by ignoring evidence about his ties to his home country. He notes that he provided proof of savings and ownership of a condominium and his business. As well, he states that his Croatian citizenship allowed him to enter Canada without a visitor visa. He also says that although he has travelled extensively, including to the United States, he has never overstayed a visa. Finally, he has no ties to Canada.

[10] The Applicant argues that the Officer failed to explain why he preferred his negative conclusion over this evidence. He does not even mention or consider the factors that favour a positive decision.

[11] The Applicant submits that he clearly and honestly stated his dual intention in his application. A stated intention to become a permanent resident is not a bar to obtaining a student visa. The Applicant relies on Madam Justice Strickland's statement in *Ali v. Canada (Immigration, Refugees and Citizenship)*, 2018 FC 702, that "a person may have the dual intent of immigrating and of abiding by the immigration law respecting temporary entry."

[12] The Respondent, on the other hand, submits that the Applicant had registered for a paralegal study program that would not advance his career in Bosnia and Herzegovina. Therefore, it was open to the Officer to conclude that the Applicant's actions were indicative of a single intention to immigrate to Canada.

[13] The Respondent notes that in the case *Ali*, relied on by the Applicant, the Court goes on to say that “the burden lies on the applicant to first demonstrate that he or she will leave at the end of their study period.” In light of the Applicant’s plan to live in Canada permanently and his statement that he would sell his law office, it was entirely reasonable for the Officer to find that the Applicant had not demonstrated dual intent.

V. **DISCUSSION**

[14] I am entitled to review the record to make sense of the Officer’s Decision. In my view, although it is not referred to in the reasons, the fact that the Applicant proposed to finance his studies by selling his law office was reasonably treated by the Officer as a powerful determining factor. It gives the impression, in the absence of an explanation to the contrary, that he is winding down his practice and has no professional reason to return to Bosnia and Herzegovina.

[15] Further, the Applicant did not explain to the Officer how studying as a paralegal advanced his career as an established lawyer in Bosnia and Herzegovina. In these circumstances, it was reasonable for the Officer to conclude that his proposed studies did not suggest an intention to return.

[16] In my view, the Applicant’s lack of ties to Canada and previous travels to other jurisdictions did not require mention in view of the determinative facts. The Applicant was prepared to sell his office and was taking a course which appeared to be wholly unsuited to his status and career to date. In these circumstances, the Decision was reasonable.

[17] For all these reasons, the application will be dismissed.

VI. **CERTIFICATION**

[18] The Applicant submits that he not pay a fee for his second application for a study permit and that, for this reason, the second application was, in fact, an application for a reconsideration of the first refusal decision.

[19] However, there is no evidence to show that a fee was not paid and the Applicant's Letter describes his purpose as "applying for a Study Permit in Canada for a second time."

[20] In these circumstances, I have concluded that the Decision in this case was made on a fresh second application and not following a reconsideration.

[21] The Applicant asks me to certify the following question:

Whether a second application made without a fee and shortly after an initial refusal should be treated as a fresh application or as a request for a reconsideration?

[22] This question will not be certified because in my view, its outcome cannot be dispositive of this application.

**JUDGMENT in IMM-3715-18**

**THIS COURT'S JUDGMENT is that** the application for judicial review is hereby dismissed.

“Sandra J. Simpson”

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3715-18

**STYLE OF CAUSE:** MARKO PISAREVIC v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 13, 2019

**JUDGMENT AND REASONS:** SIMPSON J.

**DATED:** FEBRUARY 14, 2019

**APPEARANCES:**

Milan Tomasevic FOR THE APPLICANT

Nadine Silverman FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Milan Tomasevic FOR THE APPLICANT  
Barrister and Solicitor  
Mississauga, Ontario

Attorney General of Canada FOR THE RESPONDENT