Federal Court  Cour fédérale

Date: 20190313

Docket: IMM-3788-17

Citation: 2019 FC 308

Ottawa, Ontario, March 13, 2019

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

SVETLANA MARIA ANGELA D'ALMEIDA

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review by Svetlana Maria Angela D'Almeida [the Applicant] pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], of a decision made by a visa officer [the Officer] at the Canadian Embassy in the United Arab Emirates [UAE]. The Applicant sought a study permit to attend the journalism program at Seneca College and the Officer refused to grant this permit as they were not satisfied

that the Applicant would leave at the end of her stay. To that end, the Officer was not satisfied that the Applicant's primary purpose was to study or that she would actively pursue the program of study [the Decision].

[2] For the reasons that follow, I am dismissing this application. The Officer's determination, based on the evidence in the record, falls within the range of possible, reasonable outcomes. The process followed was not unfair to the Applicant who did not meet her burden of providing sufficient evidence to support her application for a study permit.

II. **Preliminary Issue**

[3] As part of this application, the Applicant filed an affidavit dated October 19, 2017. In the affidavit, she purported to address and rebut various findings made in the Decision by providing additional details not otherwise on the record before the Officer.

[4] The general rule is that evidence that was not before a decision-maker and that goes to the matter that was before the decision-maker is not admissible in an application for judicial review: *Love v Canada (Privacy Commissioner)*, 2015 FCA 198 at para 17 Broadly speaking, the reason for this rule is to maintain the distinction between the differing roles of the fact-finding, merit-deciding administrative tribunal and this Court as a judicial review court: *Association of Universities and Colleges of Canada v Access Copyright*, 2012 FCA 22 at paras 19 and 23.

[5] While there are recognized exceptions to this general rule, none of them apply in this matter. The affidavit, in part, repeats what the Applicant had already submitted to the Officer in

support of her application such as her work history and motivation for seeking to attend the journalism course. That evidence is already in the record; it is not necessary to repeat it.

[6] The affidavit also puts forward additional facts on the merits of the study permit application. Those facts, such as details of the strength of her relationship with her mother, were available at the time of the original application but were not presented to the decision-maker. They go to the very issue that was before the decision-maker. For that reason, as already stated, they are not now admissible.

[7] Having reviewed the affidavit, I am satisfied there is no principled basis upon which it can be admitted and considered on this judicial review.

III. **Factual background**

A. *Personal and Employment Background*

[8] The Applicant is a 36 year old woman who was born in Zimbabwe. She is also a citizen of South Africa, where she worked for a number of years. She currently works for Emirates Airline and resides in the UAE where she is a permanent resident. The Applicant does not possess an unrestricted right to reside there permanently. She is sponsored by her employer resulting in the possible loss of her current status if she moves to Canada to study.

[9] The Applicant's mother resides in Zimbabwe and her brother resides in Canada as a tennis instructor. Three other siblings (sister, half-sister, half-brother) reside in the United States of America. The Applicant's father, who is a Canadian citizen since 2010, is remarried and lives with his wife in Toronto where he is a building superintendent.

[10] The Applicant has a diverse work history. She began working at the age of 19 as a receptionist in Dubai and after a period returned to work for a year in Zimbabwe. She then received a work visa and became a receptionist at a law firm in the UK. When her work visa expired in 2006, she returned to Africa and found work as a personal assistant with Select Services Limitada—an import/export business—where as part of her work she moved around between Zimbabwe, Mozambique, and South Africa until she resigned in July of 2009. The Applicant applied to become a flight attendant with Emirates Airline and began working for them in December 2009. Based on the job title the Applicant currently lists, it appears that at some point in her almost eight years of working for Emirates she was promoted from cabin crew to cabin crew supervisor.

[11] During her various periods of employment, the Applicant applied for two visas that were both refused. The first refused visa was a 2005 Canadian visa application she made while working in the UK as she wished to visit her father and brother in Canada. The submissions of the Applicant's counsel state that this visa was refused due to concerns she would overstay given the conditions in Zimbabwe. The second visa refusal was her 2007 request to visit the UK on holiday which she says was also refused due to the concern she was at a high risk of overstaying given the conditions in Zimbabwe.

[12] As a flight attendant travelling as crew of an airplane, the Applicant has visited almost 50 countries. Submissions to the Officer pointed out that the Applicant has never overstayed in any of these countries of travel and has visited Canada as part of an air crew a number of times, again without overstaying. The affidavit of the Applicant's father, which was before the Officer, stated

that the Applicant tends to work flights to Canada about two times a year and each time has about a two day layover during which she visits him.

B. *Study Permit Application*

[13] In 2017, the Applicant applied to Seneca College for their two year Ontario College Diploma program in journalism. She was offered admission in April 2017 and was to have started classes in September 2017, had she received the necessary study permit. The Applicant planned on using her savings to fund her studies while her father offered to support her by having her live with him and his wife in Toronto. Tuition for the full two years would have been about $28,000 CAD. The Applicant predicted that after paying her first tuition deposit (approximately $7,000 CAD), she would have approximately $31,000 CAD in savings remaining to cover her expenses.

[14] Submissions to the Officer detailed that the Applicant has an aunt who is a journalist and has told her what the different areas of work in journalism entail. Her counsel also stated that career aptitude tests recommended a career in journalism for the Applicant and that she wants to write about human rights issues around the world.

[15] The Applicant in her statement to the Officer explains that she has always been inquisitive and has been told that she would be a good journalist by those she knows as they say she is good at telling stories. The Applicant also discusses one instance where she went to an elephant orphanage and learned that the stories visitors were told about how the parents of the orphaned elephants died were false and used to promote donations. She says that as a result of this, and other similar stories, she has a drive to expose the truth and educate the public.

[16] The Applicant indicated that after completing the journalism program she wants to move to the USA to live with her sister for a period of time, since the Applicant holds a visitor's visa for the USA. The Applicant then intends to return to the UAE to pursue a career in journalism.

IV. **Decision under review**

[17] The Decision was sent to the Applicant the day it was made – August 17, 2017. It is in the form of "a tick box" letter. Using the tick boxes, the letter specified two grounds for refusing the study permit.

[18] The first ground was that the Applicant had not satisfied the Officer she would leave Canada at the end of her stay. The Officer ticked boxes stating they considered the following factors: "immigration status in country of residence", "family ties in Canada and in country of residence", "purpose of visit", and "employment prospects in country of residence."

[19] The second ground was under the tick box "[o]ther reasons" with the Officer writing that "[u]pon complete review of the application and the reasonableness of undertaking the proposed studies in Canada, I am not satisfied you will actively pursue the proposed program of study under R220.1; [n]ot satisfied that your primary purpose is to study."

[20] In addition to the notification letter, the Applicant and this Court have been provided with the Global Case Management System [GCMS] notes which also form part of the Officer's reasons. The GCMS notes indicate that the Officer's reasoning was that:

- her previous studies and employment did not align with her proposed studies in Canada;

- her explanation for such a drastic career shift was unsatisfactory at her stage of life;
- she had no publications or published articles/blogs/vlogs on the internet or any other credible proof of her stated passion for journalism;
- she has strong family ties to Canada through her parents and a brother while three siblings live in the USA;
- she would have to give up her employment to come to Canada and would lose her immigration status in the UAE which would then diminish her employment prospects there;
- documentation provided did not show strong socio-economic ties to country of residence; and
- she has not lived in South Africa for a significant period of time and left it for better economic opportunities.

[21] In summary, the Officer concluded that they were satisfied, based on the documents and information provided, that the Applicant was seeking entry to Canada for purposes other than to study and was not satisfied she would leave Canada at the end of the period authorized for her stay. In arriving at that conclusion, the Officer stated that they had conducted a complete review of the application, previous academic history, employment and the reasonableness of undertaking the proposed studies in Canada.

V. **Issues**

[22] The Applicant raises two issues:

1) Was the Decision unreasonable?
2) Did the Officer beach procedural fairness by failing to provide her with the opportunity to respond to credibility concerns?

VI. **Standard of Review**

[23] The established standard of review of a study permit application is reasonableness: *Emesiobi v Canada (Citizenship and Immigration)*, 2018 FC 90 at para 11.

[24] When considering matters to which the reasonableness standard applies, this Court is to concern itself with whether the decision was justified, transparent and intelligible as well as within the range of possible acceptable outcomes defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*].

[25] In conducting a reasonableness review, the Court is not to substitute its own reasons for those of the tribunal. The Court may look to the record to assess the reasonableness of the outcome. A decision-maker though is not required to include all the arguments, statutory provisions, jurisprudence or other details provided that the reviewing court can understand why the decision-maker made the decision it did and can determine whether the conclusion is within the range of acceptable outcomes: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)* 2011 SCC 62 at paras 15 and 16 [*Nfld Nurses*].

[26] Issues of procedural fairness and natural justice involve a duty to act fairly. The reviewing Court is required to determine whether the process followed by the decision-maker achieved the level of fairness required by the circumstances of the matter and, whether it was the result of a fair process: *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 13.

[27] If the Decision was reasonable but it was arrived at in a procedurally unfair manner then, notwithstanding its reasonableness, it will be set aside.

VII. **Legislation**

[28] Attached at "Annex A" are excerpts of sections 11, 20, 22 and 30 of the *IRPA*. The sections establish that a visa is required before a foreign national may enter Canada and that an individual who wishes to become a temporary resident of Canada must: (1) satisfy a visa officer that they meet the requirements of the *IRPA*; and (2) prove that they will leave Canada by the end of the period authorized for their stay. The sections also confirm that a foreign national may not study in Canada unless authorized under the *IRPA*.

[29] Authorization to study is obtained by meeting the conditions set out in the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. For our purposes, the relevant sections here are 179 and 216: they establish the criteria that an applicant for a study permit is to meet in order to satisfy the visa officer they "will leave Canada by the end of the period authorized for their stay." Relevant parts of these sections are also found at "Annex A."

[30] In addition to satisfying the above requirements under the *IRPA* and the *IRPR*, an applicant for a study permit must hold a passport or other document to enter another country and not be inadmissible. If applicable, an applicant must submit to a medical examination and have been accepted into a program of study at a designated learning institution.

VIII. **Analysis**

[31] The Applicant met all the criteria for obtaining a study permit other than establishing to the satisfaction of the Officer that she would leave Canada at the end of the period authorized for her stay.

A. *The Submissions and Evidence Reviewed by the Officer*

[32] The Certified Tribunal Record [CTR] contains the submissions and evidence submitted by counsel on behalf of the Applicant. In addition to the Application for a Study Permit and the required documentation such as proof of means of her financial support, acceptance to Seneca College and proof of tuition payment for first semester, the Applicant submitted:

- the Family Information form;
- Police Clearance Certificates from Zimbabwe, the UK , and the UAE ;
- UAE Residency Card;
- expired Zimbabwean passport;
- expired (as of April 26, 2006) United Kingdom work visa;
- Visa refusal stamps by (1) Canada stamped in London in 2005 and (2) the UK stamped in Pretoria in 2007;
- additional Family Information Form with siblings included; and
- her father's affidavit confirming the Applicant will live with him as well as his certificate of Canadian citizenship.

[33] At a personal level, the Applicant included a letter outlining her employment and travel history. In it she stated why she wanted to be a journalist and provided an example of what motivated her to that end.

[34] Counsel for the Applicant uploaded to the CIC Portal a letter detailing the Applicant's employment history, mentioning that the Applicant had an extensive travel and immigration history but always followed the laws of the country in which she was visiting. This included returning to Zimbabwe when her UK work visa expired in 2006.

[35] Counsel outlined that the Applicant had complied with the requirements entitling her to the issuance of a study permit. She had been accepted to study at Seneca, had paid the tuition fees and shown that she had sufficient funds to provide for herself for the duration of her studies.

B. *The Law on Reasonableness Review and the Applicant's Position*

[36] In considering whether a decision is reasonable, a reviewing court is to show respect for the Officer's decision-making process and should not substitute its own reasons. The court may, however, look to the underlying record to assess the reasonableness of the outcome.

[37] In addition to displaying the hallmarks of justification, transparency and intelligibility, the reasons for decision must enable the reviewing court to understand both why the Officer made the Decision and enable it to determine whether the conclusion reached is within the range of acceptable outcomes. The fact that another interpretation could have been made does not mean a decision should be set aside if it is in the realm of reasonable outcomes: *Nfld Nurses*, at paras 15 – 17.

[38] Overall, the Applicant takes issue with the way the Officer weighed her evidence and alleges that some evidence was either overlooked or misconstrued. She also alleges that the Officer listed a series of factors and then came to a conclusion while failing to engage with the evidence found in her father's affidavit.

[39] The Applicant suggests that the Decision is not reasonable because the Officer failed to address the fact that she always observed the immigration laws of each country she visited. She

did so while travelling to Canada at least twice a year and to at least 50 other countries in the last seven and a half years.

[40] The Applicant takes particular issue with the Officer's finding that she would not be able to return to the UAE. She says that is not a relevant factor given that she complied with all other immigration situations when travelling.

[41] The Applicant observes that while the Officer says they looked at all the evidence the fact that her mother is in Zimbabwe and that her father swore an affidavit that she visits him was overlooked.

C. *Assessing the Applicant's Position*

[42] The Officer was not required to mention every piece of evidence and they are presumed to have considered all of the evidence received: *Boughus v Canada (Citizenship and Immigration)*, 2010 FC 210 at para 41.

[43] The Officer was only required to mention important evidence that would appear to squarely contradict the Officer's finding: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, (1998) 157 FTR 35 at paras 16 -17.

[44] I am satisfied, as discussed in the following paragraphs, that the Officer considered all the evidence and mentioned all the important evidence, including evidence that the Applicant says was not considered.

(1) The Applicant's Career Change

[45] The Applicant submits that the Officer cannot override the determination of Seneca College that she meets the requirements to change her career. The fact that Seneca College accepted the Applicant into its journalism course is not in dispute.

[46] When admitting a foreign national into a program of study, Seneca College is not required to consider whether the student will leave Canada at the end of the period authorized for his or her stay. That is the task of the Officer. A decision by the Officer not to issue a study permit does not alter or override Seneca College's separate admission decision.

[47] The Officer's role, pursuant to the legislation, was to determine whether the Applicant will leave Canada at the end of the period authorized for her stay. To that end, the Officer is required to consider the Applicant's reasons for undertaking the course of study and to consider, given all the factors put forward by the Applicant, whether she has met the onus she bears to establish that she will leave Canada by the end of the authorized period of her stay.

[48] What factors did the Applicant put forward for pursuing her career change? In her two-page typed statement, the Applicant said that she is inquisitive by nature and a lot of what she saw in her travels had intrigued her. She knew that these stories had to be told and also knew that deep within herself journalism is her calling. She is good at telling stories but could not capture by pen the essence of what she wants to express. A program in journalism would prepare her and help her to express those stories. After graduation from Seneca College, she said she would like to move to the USA to live with her sister in the USA. At an unstated time thereafter, she would like to return to the UAE to pursue a career in journalism.

[49] The Officer's reasons took into account the Applicant's current occupation with Emirates Airlines and her previous studies when she was eighteen. The studies were composed of a five-day training course in Zimbabwe to become a receptionist. After the course, she worked as a receptionist for eight years in a series of positions in various countries. In 2009 she became a flight attendant with Emirates Airlines where, at the time of her study permit application, she was employed as a Cabin Supervisor.

[50] Based on that evidence it was not unreasonable for the Officer to conclude that there was no satisfactory explanation by the Applicant for making such a drastic career change at the age of 35. The Officer provided examples of evidence that would have been helpful such as publications of articles, blogs, or vlogs on the internet.

[51] There is nothing in the record to substantiate the Applicant's stated desire to pursue a career in journalism. All the evidence the Officer had was the Applicant's bald assertion of her desire to be a journalist with a few sentences in support. More information could have been provided to the Officer by the Applicant. She fleshes out her reasons much more fully in the affidavit which she attempted to file in this application for judicial review. Regrettably, the right place for that information was in her study permit application to the Officer.

(2) The Applicant's ability to return to the UAE

[52] The Applicant says that her status in the UAE is not relevant to her study permit application. Her years of travel to other countries and always complying with their immigration laws is said by her to be the relevant evidence that she will comply with Canada's immigration laws.

[53] The Officer was concerned that by studying in Canada the Applicant would lose her permanent residency status in the UAE, thereby significantly diminishing her employment prospects there. That is relevant to the consideration of whether the Applicant would leave Canada at the end of the period authorized for her stay as her loss of status would significantly reduce or eliminate her ability to return to the UAE which is her country of residence.

[54] In addition, the Officer was not satisfied that the Applicant would return to her home country of South Africa as she had not lived there for a significant period of time. The Applicant's rejected affidavit contains statements about her closeness with her mother in South Africa. That evidence ought to have been, but was not, placed before the Officer.

(3) The Applicant's likelihood to return to South Africa

[55] The Applicant complains that the Officer failed to take into account that her mother lives in Zimbabwe The only evidence in the record to mention the Applicant's mother is the Family Information Form where her name was typed next to the relationship category of mother.

[56] The Officer was not required to mention the Applicant's mother. Neither the Applicant's statement nor her counsel's submissions to the Officer made any mention of her mother. There is also no evidence in the record that the Applicant has been to South Africa recently although she holds a South African passport.

[57] The Officer was not satisfied that the Applicant would return to her home country having left for better opportunities and not having lived there for a significant period of time. Given the lack of evidence in the record, this was a reasonable conclusion by the Officer.

(4) The Applicant's Compliance with Immigration Laws while Travelling for Work

[58] The Applicant stressed that her compliance with other immigration laws over seven and a half years of travel shows that she would leave Canada at the end of the period authorized for her stay.

[59] When the Applicant previously complied with the immigration laws of other countries, she had a country to which she could and did return, the UAE. Once the Officer reasonably found that if she studied in Canada the Applicant could not return to the UAE and separately reasonably found that she would not return to South Africa, her ability to continue to comply with the immigration laws of other countries was compromised.

[60] Coupled with the Applicant's inability to return to the UAE or to South Africa, the Officer considered the fact that her father and brother live in Canada while three siblings live in the USA.

[61] All of this could reasonably lead the Officer to conclude that the Applicant was using the study permit application to gain entry to Canada for purposes other than to study. I am satisfied that the Officer reasonably and thoroughly considered the evidence in the record. Based on the evidence in the record, the Decision is reasonable. The Officer's notes clearly set out what was considered and enable the Applicant and this Court to understand why the Decision was made and to determine that it falls within the range of acceptable outcomes on the facts and law.

D. *Did the Officer breach the Applicant's right to Procedural Fairness?*

[62] It has been held by this Court that the degree of procedural protection provided to an applicant in the context of a student visa application is "relaxed": *Tran v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1377 para 2 [*Tran*]; *Hakimi v Canada (Citizenship and Immigration)*, 2015 FC 657 at para 14. There is no clear requirement that an applicant be permitted to respond to an officer's concerns as they arise: *Tran*, at para 26.

[63] It was the Applicant's responsibility to provide the Officer with a thorough application establishing that she would leave Canada at the end of the period authorized for her stay. Failing to meet that evidentiary onus did not entitle the Applicant to an interview, which is not required under the legislation: *Huang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 145 at para 7.

[64] The Applicant argues that three clear credibility findings were made in the Decision because, when discussing the evidence, the Officer twice mentioned having "*bona fides*" concerns. As a result, it was procedurally unfair for the Officer to proceed without providing her with an opportunity to respond to those concerns.

[65] The reference to "*bona fides*" concerns was not a finding that the Applicant is not credible. The reference to "*bona fides*" is part of the lexicon used by the visa officers to generically refer to whether an applicant for a study permit has met the onus established in paragraph 216(1)(b) of the *IRPR* that he or she <u>will leave</u> Canada following completion of their studies. Further information on this is provided by the CIC on its webpage, an excerpt of which is attached at "Annex B". The Officer first mentioned *bona fides* concern with respect to an

analysis of the Applicant's purpose for pursuing a journalism course in Canada. As noted in the discussion of the reasonableness of the Decision, the Officer had several concerns arising from the consideration of the Applicant's evidence.

[66] The second mention by the Officer of *bona fides* concerns arose in connection with the analysis of the Applicant's likelihood to return either to her home country of South Africa or, to her country of residence, the UAE. As discussed earlier in these reasons for judgment, the Officer was not persuaded that the Applicant could return to the UAE. The Officer was not presented with any evidence that she had any remaining ties to South Africa which the Applicant left in 2009. The record contained only an expired Zimbabwean passport and the Family Information Form.

[67] The Officer was not required to advise the Applicant that her evidence was deficient. The onus is on the Applicant to submit satisfactory evidence to support her application. When the Officer found the evidence was not satisfactory, they were not required to provide the Applicant with a running tally indicating that more evidence was required: *Kaur v Minister of Citizenship and Immigration*, 2010 FC 442 at para 10. Nor were they required to interview the Applicant to determine whether there was additional evidence she should have provided.

[68] The Officer did not proceed in a way that was procedurally unfair to the Applicant. This is not a circumstance where the Officer was calling into question the authenticity of documents or the credibility of an applicant based on inconsistencies. Nor did the Officer consult external documents without allowing the Applicant an opportunity to comment on them. If that had been

the case then it would have been procedurally unfair to determine the outcome without providing the Applicant with an opportunity to respond.

[69] This is simply a case of insufficient evidence being submitted to support the application.

[70] In *Ibabu v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1068 at paragraph 35, Mr. Justice Gascon set out the difference between a finding of insufficient evidence and an adverse credibility finding:

> [35] An adverse finding of credibility is different from a finding of insufficient evidence or an applicant's failure to meet his or her burden of proof. As stated by the Court in *Gao v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 59 (CanLII), at para 32, and reaffirmed in *Herman v Canada (Minister of Citizenship and Immigration)*, 2010 FC 629 (CanLII) at para 17, "it cannot be assumed that in cases where an Officer finds that the evidence does not establish the applicant's claim, that the Officer has not believed the applicant." This was reiterated in a different way in *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067 (CanLII) at para 23, where Justice Zinn stated that while an applicant may meet the evidentiary burden because evidence of each essential fact has been presented, he may not meet the legal burden because the evidence presented does not prove the facts required on the balance of probabilities.
>
> [Emphasis added]

IX. **Conclusion**

[71] It must be remembered that a visa officer has a wide discretion in assessing the evidence and coming to a decision: *Zhang v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1493 at para 7. In considering the whole of the record before the Officer, I am satisfied that the Officer reasonably determined that the Applicant's evidence was insufficient and that she had

not met her legal burden to establish that she would leave Canada at the end of the period authorized for her stay.

[72] I also find, for the reasons given, that the Officer did not arrive at that determination in a manner that was procedurally unfair to the Applicant.

[73] The application is therefore dismissed.

[74] Neither party suggested a serious question of general importance for certification nor does one arise on these facts.

JUDGMENT in IMM-3788-17

THIS COURT'S JUDGMENT is that the application is dismissed. No serious question of general importance is certified.

"E. Susan Elliott"
Judge

ANNEX A

Immigration and Refugee Protection Act, S.C. 2001, c. 27
Loi sur l'immigration et la protection des réfugiés L.C. 2001, ch. 27

Application before entering Canada

11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

[. . .]

Obligation on entry

20 (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,

[. . . .]

(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.

Temporary resident

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

Visa et documents

11 (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

[. . .]

Obligation à l'entrée au Canada

20 (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :

[. . .]

b) pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.

Résident temporaire

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).

[. . .]

Études et employ

subject of a declaration made under subsection 22.1(1).

[. . .]

Work and study in Canada

30 (1) A foreign national may not work or study in Canada unless authorized to do so under this Act.

Authorization

(1.1) An officer may, on application, authorize a foreign national to work or study in Canada if the foreign national meets the conditions set out in the regulations.

30 (1) L'étranger ne peut exercer un emploi au Canada ou y étudier que sous le régime de la présente loi.

Autorisation

(1.1) L'agent peut, sur demande, autoriser l'étranger qui satisfait aux conditions réglementaires à exercer un emploi au Canada ou à y étudier.

Immigration and Refugee Protection Regulations, SOR/2002-227
Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227

Study permit

9 (1) A foreign national may not enter Canada to study without first obtaining a study permit.

Issuance

179 An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national

(a) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class;

(b) will leave Canada by the end of the period authorized for their stay under Division 2;

[. . .]

Permis d'études

9 (1) L'étranger ne peut entrer au Canada pour y étudier que s'il a préalablement obtenu un permis d'études.

Délivrance

179 L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

a) l'étranger en a fait, conformément au présent règlement, la demande au titre de la catégorie des visiteurs, des travailleurs ou des étudiants;

b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;

[. . .]

Study permits

216 (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national

(a) applied for it in accordance with this Part;

(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

Permis d'études

216 (1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

a) l'étranger a demandé un permis d'études conformément à la présente partie;

b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

ANNEX B

Government of Canada / Gouvernement du Canada

Home > Immigration, Refugees and Citizenship Canada > Corporate information > Publications and Manuals > Operational instructions and guidelines > Temporary Residents: Students

Study permits: Other considerations

This section contains policy, procedures and guidance used by Immigration, Refugees and Citizenship Canada staff. It is posted on the Department's website as a courtesy to stakeholders.

Bona fides

Bona fides of all foreign nationals applying for a study permit must be assessed on an individual basis; refusals of non-*bona fide* students may only withstand legal challenge when the refusal is based on the information related to the specific case before the officer. Therefore, while cultural context or historical migration patterns of a client group may be a contributing factor to the decision-making process, they alone are not valid or legally tenable grounds for refusal based on *bona fide*. If officers wish to take into account outside information, particularly where that information leads to concerns/doubts about the applicant's *bona fide*, the applicant must be made aware of the information taken into account and given an opportunity to address those concerns.

This interaction should be fully documented in the "Notes" section within the Global Case Management System. The onus, as always, remains on the applicant to establish that they are a *bona fide* temporary resident who will leave Canada following the completion of their studies pursuant to section R216(1)(*b*).

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3788-17
STYLE OF CAUSE:	SVETLANA MARIA ANGELA D'ALMEIDA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 20, 2018
JUDGMENT AND REASONS:	ELLIOTT J.
DATED:	MARCH 13, 2019

APPEARANCES:

Preevanda K. Sapru	FOR THE APPLICANT
Melissa Mathieu	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT