

Federal Court



Cour fédérale

**Date: 20200228**

**Docket: IMM-3076-19**

**Citation: 2020 FC 316**

**Ottawa, Ontario, February 28, 2020**

**PRESENT: The Honourable Mr. Justice Pamel**

**BETWEEN:**

**SHAHEER MUSADIQ**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Nature of the Matter**

[1] In this case, the Applicant is challenging the reasonableness of a decision to refuse his study permit application. The Applicant raises three main arguments. First, the Applicant submits that the visa officer mischaracterized his history of compliance with Canada's immigration policies. Second, the Applicant submits that the visa officer engaged in an *ultra vires* analysis of the Applicant's study plan. Third, the Applicant submits that the visa officer

overlooked evidence of the Applicant's establishment in Pakistan (i.e., his family in Pakistan, his many years living in Pakistan, his skills training in Pakistan, and his numerous returns to Pakistan).

[2] For the reasons that follow, I conclude that the Applicant has failed to show me how the visa officer's decision was not "justified in light of the facts" or neglected the "central issues" of the case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 125-127 [*Vavilov*]). As a result, I dismiss the application.

## II. Facts

[3] The Applicant is a 31-year-old citizen of Pakistan. He first entered Canada on a student visa in 2008 with the goal of obtaining a degree in petroleum systems engineering from the University of Regina. He did not seem to have much direction and subsequently changed programs twice; first, he changed his academic direction to a liberal arts certificate, and the second time, he switched to the computerized office professional program at INtouch Career College.

[4] In July 2014, his study permit expired while his renewal application was pending. The Applicant only received the notice of denial of his renewal application in early January 2015, at which time he sought the assistance of his local Member of Parliament [MP] with the view of having the denial reversed. He was unsuccessful, and the Applicant returned to Pakistan in September 2015.

[5] Since returning to Pakistan, the Applicant has been attempting to return to Canada to continue his studies in petroleum systems engineering. His application for a study permit in 2015 was refused, as was his application in 2016.

[6] In January 2019, he was accepted into the arts transition program at the University of Regina. The Applicant claims that this program would allow him to transfer his qualifications and he hopes to eventually re-enter the petroleum systems engineering program; however, there is no guarantee that he will be admitted.

[7] After his acceptance, the Applicant applied yet again for a study permit to come to Canada. In the application, the Applicant explained that, though he spent some time studying in Canada between 2008 and 2015, his life and family are still in Pakistan. The Applicant detailed his study plan to the effect that he wants to complete the petroleum systems engineering program at the University of Regina in order to improve his employment prospects in Pakistan, and he included an affidavit confirming his intention to leave Canada after his studies.

### III. Decision Under Review

[8] In the end, the visa officer was not satisfied that, amongst other things, the Applicant would leave Canada at the end of his study period. In making this determination, the visa officer focused on the Applicant's limited ties to Pakistan, his personal assets and financial status, and a perceived vagueness about his reasons to pursue the desired program.

IV. Issues

[9] This matter raises one issue: is the visa officer's decision reasonable?

V. Standard of Review

[10] The parties agree that the starting point is a presumption that a standard of reasonableness applies (*Vavilov* at para 23). There is nothing on the record to convince me that I should overturn the presumption of reasonableness review (*Vavilov* at para 33). As a result, the visa officer's decision is reviewable on a standard of reasonableness (*Vavilov* at paras 73-142).

VI. Analysis

1. Did the visa officer misconstrue the Applicant's evidence and history of compliance with Canada's immigration policies?

[11] The Applicant submits that the visa officer misapprehended and mischaracterized the Applicant's evidence and immigration history. The Applicant argues that several events recounted in the decision either lack context or are misdated. The Applicant argues that these mischaracterizations were determinative because they led to the refusal of the study permit application.

[12] In the decision, the visa officer described the Applicant's history of efforts to comply with Canada's immigration requirements (verbatim):

The applicant first entered Canada in 2010 to pursue a petroleum engineering course. He indicates that he changed programs to an arts program and then to a computerized office professional program. He indicates this is because he wasn't sure what direction

he wanted to take in education and he was not getting the results he had anticipated. Subsequent to this, the applicant indicates that he planned to return to university level studies in 2014. He he [sic] indicates he applied for a bachelor of human justice program. I note, however, he provided an LOA for the computerized office professional program he was already taking on two occasions. He indicates that the application he submitted for this was refused. He does not provide details of why or address why he provided the incorrect LOA; he simply indicates he was rushing. He indicates that the refusal letter was sent to the wrong address and so he did not get it until 2015/01/02 even though it was sent in 2015/12/14 [sic]. As a result, he had missed the restoration period. He provides evidence that he wrote a letter requesting more time to apply for restoration, however the letter is undated. He indicates he sought help from the MPs [sic] office on 2015/02/10 but he indicates that she did not contact IRCC until 2015/10. He doesn't indicate why or why he did not press her to intervene sooner. He indicates that the decision from IRCC was received 2015/08/28. Again, he does not specify by why he waited so long for a decision. He does indicate, however, that he left Canada as soon as he was told that restoration would not be possible [...] In combination with the number of different programs he has taken over the years and the key details he omitted [sic] from his account of his refusal to departure [sic] in 2015[...]

[Emphasis added.]

[13] The Applicant submits that the visa officer's notes contain a series of inaccurate or misconstrued details:

- i. The Applicant first entered Canada in 2008, not "2010";
- ii. The Applicant was rushing and failed to submit a form of payment, not a letter of acceptance, or "LOA";
- iii. The refusal letter received in January 2015 was not sent out to the Applicant in December 2014, but rather it was dated August 2014 and was not received until January 2015 because it was sent to the wrong address, by which time the Applicant was out of time to apply for restoration of his study permit;

- iv. The Applicant's local MP reached out to Immigration, Refugees and Citizenship Canada in June 2015, not "October 2015"; and
- v. The Applicant never refused to leave Canada, but rather was pursuing legitimate options in an attempt to have his restoration request reviewed. Having failed in his attempt, he left Canada voluntarily.

[14] So what does any of this have to do with the price of tea in China?

[15] The point that is being made by the Applicant is that these errors, standing alone, may not seem significant and determinative, however, together they are indicative of inattentiveness and sloppiness on the part of the visa officer in reviewing the evidence submitted by the Applicant. He argues that these errors colour the visa officer's assessment of the evidence and were used in rendering the final decision.

[16] I do not agree with the Applicant.

[17] I do accept that the visa officer's decision is somewhat marred by a series of inaccurate details. In a vacuum, these "misapprehen[sions]" *may* jeopardize the reasonableness of the whole decision (*Vavilov* at para 126). However, the Applicant has failed to show me that these inaccuracies are determinative of the issue to the point of justifying judicial review.

[18] On my reading of the decision, the Applicant's past immigration history did not play a decisive role in the outcome. Rather, the visa officer refused the application because of the Applicant's insufficient ties to Pakistan, his allegedly "vague" study plan, and a perception that he will not pursue his studies or leave Canada after graduation. The identified inaccuracies are

simply “minor misstep[s]” that did not seem to play a determinative role in the outcome of the decision (*Vavilov* at para 100).

[19] As a result, judicial intervention is unwarranted on this issue.

2. Did the visa officer engage in an *ultra vires* analysis of the Applicant’s study plan?

[20] The Applicant submits that the visa officer committed a serious error when he/she gave no weight to the Applicant’s study plan and determined that the Applicant’s chosen study path would not lead to significant employment prospects in Pakistan.

[21] Although he did not pursue this argument before me, in his written submissions, the Applicant’s counsel submitted that the visa officer’s analysis of the study plan was *ultra vires* the role and responsibilities of the visa officer. The Applicant relies on *Adom v Canada (Citizenship and Immigration)*, 2019 FC 26 [*Adom*] in support of this submission.

[22] The Applicant’s study plan stated his intention to use his training from the University of Regina in furtherance of his goal to work as a petroleum engineer in the Middle East:

I am thrilled that I have been accepted into University of Regina to study Arts Transition Program for one year. Once I complete this program, my goal is to enter the Petroleum Systems Engineering program at the University of Regina, thus fulfilling my goal of returning to my studies. I have always been fascinated with the procedure of drilling; I hope that this degree will allow me to achieve my goal of mastering the inner workings of the drilling rig and graduate as an engineer. When I have completed my studies, I hope to get a good job in the Middle East as a Petroleum Engineer in-charge of Well Completion & Reservoir Stimulation.

[23] Contrary to the Applicant's submissions, the visa officer did give some weight to the study plan (verbatim):

From the documentation submitted, the arts transfer program appears to [be] a probationary program for underperforming students; it does not explicitly state he will be allowed to take his desired program afterwards. He indicates he would like to return to petroleum engineering because since returning to Pakistan, he believes it will help him find a good job and he regrets not completing this degree. He does not explain what facts or observations lead to this conclusion. His stated reason for pursuing the education in Canada is that Canada has a good education system. Overall, the applicant's explanation for why he would like to study the program is generally vague. In combination with the number of different programs he has taken over the years and the key details he omitted [sic] from his account of his refusal to departure [sic] in 2015, I give little weight to his study plan. As a result, I am not satisfied that the applicant will enrol in a DLI [designated learning institution] and pursue his studies as required by R220.1 (1) or leave Canada at the end of the period authorized for their stay as required by R 216(1)(b).

[Emphasis added.]

[24] On my reading of the decision, the visa officer simply could not understand the Applicant's underlying motivation for choosing his intended career path (i.e., petroleum engineer). This is a relevant factor in considering the persuasiveness of the Applicant's stated intentions to pursue educational opportunities with the goal of advancing his employment prospects. I therefore do not believe that the visa officer either "ignored" the study plan (*Adom* at para 13) or gave "career counseling advice" (*Adom* at para 16). As a result, the present case is distinguishable from *Adom*.

[25] I see nothing unreasonable in the visa officer's analysis of the study plan.



[26] I do note, however, that the erroneous reference to the Applicant's "refusal" to leave Canada in 2015 is mentioned as part of the visa officer's explanation as to why he/she was giving the study plan little weight. However, whether the Applicant refused to leave or voluntarily left Canada does not play into the visa officer's decision.

[27] Rather, the visa officer made his/her decision to refuse the study permit because of the vagueness of the Applicant's explanation for wanting to study in the petroleum engineering program, combined with his study history and the number of different programs he has taken over the years, as well as with the fact that key details were omitted from the Applicant's account of his eventual departure from Canada in 2015.

[28] Giving little weight to the Applicant's study plan does not seem to me to be unreasonable. As a result, judicial intervention is unwarranted here as well.

3. Did the visa officer overlook evidence of the Applicant's establishment in Pakistan?

[29] The Applicant submits that the visa officer simply wrote off the Applicant's establishment in Pakistan without any meaningful analysis. The Applicant argues that he provided several indications of establishment in Pakistan (i.e., the fact that he has lived in Pakistan for 23-years, the substantial assets at his disposal, his large family in Pakistan, his repeated returns to Pakistan after trips). Citing a series of cases, the Applicant submits that the visa officer's failure to provide reasons in support of his/her finding of lack of establishment is a reviewable error (*Momi v Canada (Citizenship and Immigration)*, 2013 FC 162 [*Momi*]; *Kavugho-Mission v Canada (Citizenship and Immigration)*, 2018 FC 597 [*Kavugho-Mission*];

*Canada (Citizenship and Immigration) v Jeizan*, 2010 FC 323 [*Jeizan*]; *Zhang v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1493 [*Zhang*]).

[30] In the decision, the visa officer mentioned several factors in support of the determination that the Applicant has insufficient ties to compel his return to Pakistan:

The applicant declares he has been unemployed for 6 months, before which he completed 1 month of IELTS [International English Language Testing System] training. Since his return to Pakistan, he has done one year of work as a general manager of an organization called Technology Trade Services. It isn't clear from the applicant's submissions why he has been unemployed or why he no longer works at that company. Overall, the applicant's declared professional history and evidence for it do not constitute a significant tie to their home country. In addition, given the nature of the applicant's professional history, I am not satisfied that they have significant employment prospects to compel their return from Canada at the end of their studies. The client has demonstrated limited assets or property to tie them to home country. Though the applicant lists many family members in Pakistan including his parents and extended family, I give them limited weight as ties given he already spent over 4 years in Canada and made significant efforts to remain in Canada and apart from them. After examining the applicant's family, financial, and professional ties, I'm not satisfied that those related to the client's country of residence are sufficient to compel their return at the end of the period authorized for their stay in Canada as required by R 216(b).

[Emphasis added.]

[31] The Applicant argues that it seems that the visa officer, early on in his/her decision, portrayed the Applicant as lazy and as someone who was not actively staying on top of his immigration status in 2014/2015, but then, when it came to his establishment assessment, the visa officer portrayed the Applicant as tenacious and as someone who was actively trying to return to and stay in Canada, and by extension stay away from his family.

[32] I must admit that I do not follow the Applicant's argument and do not agree with this characterization of the visa officer's findings. There is nothing inconsistent in the visa officer suggesting that the Applicant showed more tenacity in respect of staying away from his family than he showed in respect of staying on top of his immigration status, even assuming that that is what the visa officer was in fact suggesting, which is not clear to me.

[33] On my reading of the reasons, the visa officer did not omit to consider the key factors in the case, namely, the Applicant's financial resources, his family in Pakistan, his employment history in Pakistan, and his repeated efforts to remain in Canada (*Vavilov* at paras 127-128). In fact, the visa officer specifically noted that since the Applicant's return to Pakistan in 2015, he has worked for only one year and has been unemployed for the last six months.

[34] In contrast to *Momi* (at para 23), *Kavugho-Mission* (at para 13), *Jeizan* (at paras 20-22), and *Zhang* (at para 22), this case involves a decision by a visa officer who engaged with the evidence on the record and refrained from making merely speculative assessments of the Applicant's ties to his home country.

[35] The Applicant also argues that the visa officer did not need to speculate about whether the Applicant will return to Pakistan after his stay given his immigration history, which shows that he did in fact return to Pakistan in 2015. However, I must say that the fact that he returned in 2015 under the circumstances at the time is no guarantee that he will do so again; at least I cannot see this as being a reason for finding that the visa officer's decision on this issue was unreasonable.

[36] The Applicant makes reference to Mr. Justice Gascon's decision in *Penez v Canada (Minister of Citizenship and Immigration)*, 2017 FC 1001, for the proposition that decisions made in an arbitrary manner, even in the context of an application for a study permit, cannot be allowed to stand. I agree, but the decision in the case before me was not arbitrary.

[37] The Applicant's final argument is that the visa officer did not give adequate reasons for coming to the conclusion that he/she was not satisfied that the Applicant would leave Canada at the end of his stay. Keeping in mind that the burden was on the Applicant to convince the visa officer that he would leave at the end of the stay, it seems to me that the visa officer provided sufficient reasons on the evidence submitted, without speculation or arbitrariness, so as to allow me to understand why the decision to refuse the study permit was made (*Vavilov* at para 102).

[38] The deference we are to give visa officers in the context of temporary student visas is very high. I am simply being asked to reweigh the evidence, which is something I will not do (*Vavilov* at para 125).

[39] Under the circumstances, I see no reason to intervene in the visa officer's assessment of the matter and decision. Accordingly, I dismiss the application for judicial review.

**JUDGMENT in IMM-3076-19**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Peter G. Pamel"

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Judge

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

**DOCKET:** IMM-3076-19

**STYLE OF CAUSE:** SHAHEER MUSADIQ v MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 16, 2020

**JUDGMENT AND REASONS:** PAMEL J.

**DATED:** FEBRUARY 28, 2020

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