Federal Court Cour fédérale

Date: 20210611

Docket: IMM-3132-20

Citation: 2021 FC 596

Ottawa, Ontario, June 11, 2021

PRESENT: Mr. Justice McHaffie

BETWEEN:

CARLSON TACHOT MENKEM AFUAH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Canada's embassies, high commissions, and consulates receive a high volume of visa and permit applications and must deal with them quickly and efficiently in the interests of both applicants and the visa office. As a result, this Court has recognized that visa officers have only a minimal duty to give reasons to justify the refusal of a visa or permit. The rejection of Carlson Menkem-Afuah's application for a study permit by a visa officer at the Embassy of

Canada in Paris did not meet this low threshold of justification. One simply cannot determine from the decision, even read generously and in the context of the record, the reasons the visa officer reached their conclusions and refused the permit.

[2] I therefore find that the refusal of Mr. Menkem-Afuah's application was unreasonable. The application for judicial review is granted, and Mr. Menkem-Afuah's application for a study permit is returned for redetermination by another officer.

II. Issue and Standard of Review

[3] The sole issue in this application is whether the refusal of Mr. Menkem-Afuah's application for a study permit was reasonable. While Mr. Menkem-Afuah raised a number of grounds in his application for judicial review challenging the reasonableness of the decision, I conclude that the determinative question is whether the visa officer gave reasons that justified their decision.

[4] The parties agree that the visa officer's decision is reviewable on the standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Akomolafe v Canada (Citizenship and Immigration)*, 2016 FC 472 at paras 9, 12; *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at para 8.

[5] In *Vavilov*, the majority of the Supreme Court of Canada noted that principles of fairness dictate when an administrative tribunal will have an obligation to give reasons: *Vavilov* at paras 76–77; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at

paras 21–27, 43. However, when reasons are required and given, review of those reasons should fall within the framework of reasonableness review: *Vavilov* at paras 78–81, 136. A reasonable decision is transparent, intelligible, justified in relation to the facts and law, based on an internally coherent and rational chain of analysis, and responsive to the submissions of the parties: *Vavilov* at paras 15, 85, 95, 127–128. The reasonableness of a decision is to be assessed in context, and with sensitivity to the administrative setting in which it is made: *Vavilov* at paras 67, 89–96.

III. Analysis

A. *The permit application and refusal*

[6] Carlson Menkem-Afuah applied in June 2020 for a study permit to pursue a two-year Hospitality - Hotel and Restaurant Services Management program at Seneca College in Toronto. Although educated in Cameroon in law, political science, and international trade, his stated plan is to be an entrepreneur in the hotel-restaurant management area, ultimately developing land that he owns in Cameroon to build a hotel. Mr. Menkem-Afuah considers that both the substance of the education and the academic credentials of a western education would give him a business advantage in Cameroon he could not obtain from a Cameroonian hospitality program.

[7] Having been previously rejected for a study permit in February 2020, when he was unrepresented, Mr. Menkem-Afuah submitted a more detailed application with the assistance of counsel in June 2020. It included a narrative study plan, a letter from the hotel at which he was doing a brief internship, and a letter from a Canadian family that was supporting his education. It

also included a letter from his uncle, a Professor of Corporate Strategy and International Business at the University of Michigan, who owned apartment properties in Cameroon where Mr. Menkem-Afuah was acting as property manager. Professor Afuah gave his view that a western education was valuable in Cameroon because of its higher quality, and that western education credentials were an important competitive advantage.

[8] A visa officer in Paris rejected Mr. Menkem-Afuah's application as they were not satisfied he would leave Canada at the end of his stay, as required by paragraph 216(1)(*b*) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. The visa officer's rejection letter, dated July 9, 2020, gave a series of bulleted points stating they were not satisfied Mr. Menkem-Afuah would leave at the end of his stay "based on your travel history"; "based on your family ties in Canada and in your country of residence"; "based on the purpose of your visit"; and "based on the limited employment prospects in your country of residence." It included an additional paragraph indicating that the officer was "not satisfied that your proposed program of study is reasonable in relation to your prior studies and your employment history, and in relation to other local educational opportunities" [my translation]. The officer's Global Case Management System (GCMS) notes, which the parties agree form part of the officer's decision, consist in their entirety of the following paragraph:

> I have reviewed all the documentation on file and the applicant's proposed plan of study. I have reviewed the applicant's previous study and work experiences, and [am] not satisfied that the applicant's plan of study is reasonable in relation to these experiences as well as to locally available alternatives. Given overall reasonableness of PA's plan of study and limited economic opportunities in country of residence, not satisfied PA is bona fide student to Cda. Refused.

B. *Approach to review of visa officer decisions*

[9] This Court and the Federal Court of Appeal have recognized on multiple occasions the high volume of visa and permit applications that must be processed in the visa offices of Canada's missions: see, *e.g.*, *Canada (Minister of Citizenship and Immigration) v Khan*, 2001 FCA 345 at para 32; *Wang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1298 at para 20; *Singh v Canada (Citizenship and Immigration)*, 2011 FC 956 at para 10; *Yuzer* at para 15; *Ekpenyong v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1245 at para 22; *Sbayti v Canada (Citizenship and Immigration)*, 2019 FC 1296 at para 71; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at paras 15, 17. Because of this administrative context and the nature of a visa application and refusal, the Court has recognized that the requirements of fairness, and the need to give reasons, are typically minimal: *Khan* at para 32; *Wang* at paras 20–22; *Yuzer* at paras 16, 20; *Touré v Canada (Citizenship and Immigration)*, 2020 FC 932 at para 11.

[10] Reasons for visa decisions may include the use of templates, check boxes, form letters, and the like, provided that the visa officer undertakes "the necessary modification or render[s] reasons that would indicate their thought process in an intelligible manner, and address evidence that may contradict important findings of fact": *Ekpenyong* at para 23; *Sbayti* at para 71; *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 6. Reasons need not be lengthy, and even brief reasons may adequately set out the visa officer's thought process: *Akomolafe* at paras 4–5, 19; *Cayanga v Canada (Citizenship and Immigration)*, 2017 FC 1046 at paras 4, 14; *Patel* at para 17. However, they must be sufficient to understand the reasons an

application was refused and allow the Court to find they provide the justification, transparency, and intelligibility required of a reasonable decision: *Aghaalikhani* at para 16; *Ekpenyong* at para 13.

C. *The visa officer's decision is unreasonable*

[11] I conclude that the visa officer's decision does not meet the minimal standards required of such decisions to show justification, transparency, and intelligibility.

[12] Mr. Menkem-Afuah's primary submission in support of his application was that he did not want to pursue the law but instead wanted to pursue business opportunities in hotel-restaurant management, and that foreign education credentials would assist him. The visa officer's entire response to this submission, and the evidence provided in support of it, was that the study plan was not "reasonable in relation to" his previous study and work experiences "as well as to locally available alternatives." I am unable to ascertain from this why the visa officer considered the study plan unreasonable. While Mr. Menkem-Afuah's earlier studies were in a different area, there is no explanation why the officer found pursuing a different career unreasonable, particularly after he had worked as a property manager for three years and completed an (admittedly brief) internship at a hotel. As Mr. Menkem-Afuah submits, "[s]imply restating that it is not reasonable does not make it so."

[13] There is also no indication what "locally available alternatives" are being referred to. I acknowledge that there have been differing decisions of this Court in respect of such a statement. In *Yuzer*, Justice Norris found a similar statement that "[s]imilar programs [and] courses are

readily available in the region and for much lower costs" to be a bald statement that left the Court unable to determine its reasonableness: *Yuzer* at para 21. In *Aghaalikhani*, Justice Gascon found a more detailed statement that "similar programs are available closer to the applicant's place of residence for more competitive tuition fees and the benefits to the applicant of taking the program do not appear to outweigh the costs" was unsupported by any evidence on the record and failed to address the given reasons for pursuing studies in Canada: *Aghaalikhani* at paras 8, 20. Conversely, in *Cayanga*, Justice Boswell found a statement that it was "[u]nclear why PA is taking program at this time or why a similar program would not have been pursued until this time locally or regionally at less cost and higher convenience given the costs" was sufficient and reasonable: *Cayanga* at paras 4, 13. In *Ali*, Justice Strickland found an apparently more detailed conclusion about the costs and availability of local programs to be sufficient to understand why a study permit was refused: *Ali v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 702 at paras 5, 19, 21.

[14] In my view, these different outcomes must be considered attributable to the Court's appreciation of the particular reasons given by the visa officer, in the context of the particular submissions and evidence put forward by the applicant. The more central an argument and the more important the evidence put forward on an issue, the greater the requirement for a visa officer to address that argument and evidence in their reasons: *Vavilov* at paras 125–128. Given the minimal requirement for reasons, and the need to review them in the context of the record, the difference between sufficient reasons and insufficient reasons may be subtle. In all cases, the question remains the same, namely whether the reasons show that the visa officer has

considered the application in its entirety, and presents a justified, intelligible, and transparent basis for the refusal.

[15] In this case, Mr. Menkem-Afuah put forward both explanations and supporting evidence regarding why he was pursuing a Canadian program rather than a Cameroonian one. In the circumstances, I conclude the visa officer's summary rejection of his education plan as unreasonable, with reference only to unidentified "locally available alternatives" was insufficient to meet the requirements of reasonableness. In this regard, I do not agree with the Minister that this amounts to reversing the onus and placing an onus on the visa officer to establish that there are locally comparable programs. It was the visa officer who relied on the existence of locally available alternatives as grounds that it was unreasonable for Mr. Menkem-Afuah to study at Seneca College. With nothing further in either the reasons or the record to explain the reference, the Court is unable to assess the reasonableness of that assertion.

[16] I have similar difficulties in understanding why the visa officer had concerns about Mr. Menkem-Afuah's "travel history" and his "family ties in Canada and in your country of residence." These general statements were made in the visa officer's rejection letter, but are not explained or even mentioned in the GCMS notes. Nor is there anything in the record that would explain why either of these items would lead the visa officer to conclude Mr. Menkem-Afuah would not return to Cameroon at the end of his stay.

[17] With respect to the former, travel history may be a relevant consideration in assessing an applicant's intention to leave. A prior history of leaving and returning to the country of residence

may be a positive factor; other circumstances may be a neutral or negative factor: *Donkor v Canada (Citizenship and Immigration)*, 2011 FC 141 at para 9. In the present case, there is no explanation as to whether Mr. Menkem-Afuah's travel history, or lack thereof, was considered a neutral or negative factor, or on what basis. While I accept that, as in *Donkor*, the travel history may not have been a significant factor, I have some concern with the Minister's submission that one should not read too much into the "checked boxes" in a form letter. The letter received by a visa or permit applicant is the only basis they are given to explain why they have been refused the ability to travel to Canada. While efficiencies are gained in high-volume decision-making through form letters and check-boxes, this does not mean that those letters and boxes can be ignored as a result. They remain the reasons given for the decision, and if they are not justified, transparent, and intelligible, they are not reasonable. As the majority held in *Vavilov*, it is important that reasons not simply be *justifiable*; they must be *justified*: *Vavilov* at paras 86, 96. Even where the obligation to give reasons is minimal, the Court cannot be left to speculate as to the reasons for a decision, or attempt to fill in those reasons on behalf of a decision-maker where they are not clear from the decision read in light of the record.

[18] With respect to the latter, Mr. Menkem-Afuah has no family in Canada and all of his immediate family resides in Cameroon. To quote Justice Gascon, there is a "deafening silence of the record" on Mr. Menkem-Afuah's ties to Canada that could explain or justify the visa officer's stated concern on this ground: *Aghaalikhani* at para 19.

[19] I therefore conclude the visa officer's decision does not meet the requirements of reasonableness, even taking into account the administrative setting and the minimal obligation to

give reasons. In the words of *Vavilov*, “[w]here a decision maker’s rationale for an essential element of the decision is not addressed in the reasons and cannot be inferred from the record, the decision will generally fail to meet the requisite standard of justification, transparency and intelligibility”: *Vavilov* at para 98. The decision must be set aside and Mr. Menkem-Afuah’s application for a study permit must be redetermined.

IV. Conclusion

[20] The application for judicial review is granted. Neither party proposed a question for certification and I agree that none arises.

JUDGMENT IN IMM-3132-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed. The July 9, 2020 rejection of Mr. Carlson Menkem-Afuah's application for a study permit by the Visa Section of the Embassy of Canada in Paris, France, is set aside and Mr. Menkem-Afuah's application is remitted for reconsideration by a different officer.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3132-20
STYLE OF CAUSE:	CARLSON TACHOT MENKEM AFUAH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

HEARING HELD BY VIDEOCONFERENCE ON MAY 19, 2021 FROM OTTAWA, ONTARIO (COURT) AND TORONTO, ONTARIO (PARTIES)

JUDGMENT AND REASONS:	MCHAFFIE J.
DATED:	JUNE 11, 2021

APPEARANCES:

Peter Salerno	FOR THE APPLICANT
Maria Burgos	FOR THE RESPONDENT

SOLICITORS OF RECORD:

x Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT