Federal Court  Cour fédérale

Date: 20210719

Docket: IMM-1744-20

Citation: 2021 FC 764

Ottawa, Ontario, July 19, 2021

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

ABEER QITA

Applicant

and

IMMIGRATION CONSULTANTS OF CANADA REGULATORY COUNCIL

Respondent

JUDGMENT AND REASONS

I. Overview

[1] At the height of the Syrian refugee crisis, when the world saw a humanitarian catastrophe, Ms. Abeer Qita, a former immigration consultant, saw an economic opportunity.

[2] Ms. Qita retained approximately 210 clients during the temporary relaxation of eligibility criteria under the private sponsorship of refugees program (the "Sponsorship Program"), which

were established in response to the Syrian civil war and related conflicts. In doing so, she misrepresented the rules and requirements of the Sponsorship Program to convince refugees to pay their own settlement funds and various fees that were prohibited. The majority of Ms. Qita's clients had their applications rejected, and Ms. Qita refused to refund the money that her clients were entitled to unless they signed a waiver releasing her from liability. For this conduct, and more, the Discipline Committee (the "Committee") of the Immigration Consultants of Canada Regulatory Council (the "ICCRC") found that Ms. Qita violated the ICCRC's *Code of Professional Ethics* (the "*Code*") and revoked her licence.

[3] Ms. Qita now seeks judicial review of the Committee's decision. She submits the Committee erred by failing to justify its decision in relation to the relevant jurisprudence, holding her accountable for actions for which she was not responsible, and imposing a disproportionate sanction, among other things.

[4] For the reasons that follow, I find the Committee's decision is reasonable. The Committee determined that Ms. Qita breached the *Code* and decided to revoke her ICCRC membership in a manner that is internally coherent and justified in relation to the relevant facts and law. I therefore dismiss this application for judicial review.

II. Facts

A. *The ICCRC*

[5] My colleague Justice Fuhrer aptly described the purpose and powers of the ICCRC in *Immigration Consultants of Canada Regulatory Council v Rahman*, 2020 FC 832 ("*Rahman*"):

> [6] The ICCRC is the national regulatory body designated by the federal government to oversee licensed immigration professionals in the public interest. Its mandate is to protect consumers of immigration services and maintain the integrity of Canada's immigration and citizenship system through effective regulation of immigration consultants. The ICCRC achieves its mandate by enforcing professional and ethical standards among its members.
>
> [citations omitted]

B. *The Sponsorship Program*

[6] Under the Sponsorship Program, a foreign national outside Canada may be sponsored by an individual, group, or corporation in Canada pursuant to subsection 13(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "*IRPA*"):

Sponsorship of foreign nationals	**Parrainage de l'étranger**
13 (1) A Canadian citizen or permanent resident, or a group of Canadian citizens or permanent residents, a corporation incorporated under a law of Canada or of a province or an unincorporated	13 (1) Tout citoyen canadien, résident permanent ou groupe de citoyens canadiens ou de résidents permanents ou toute personne morale ou association de régime fédéral ou provincial — ou tout groupe de telles de

organization or association under federal or provincial law — or any combination of them — may sponsor a foreign national, subject to the regulations.	ces personnes ou associations — peut, sous réserve des règlements, parrainer un étranger.

[7] The laws and regulations governing the Sponsorship Program (the "Sponsorship Rules") are not codified in their entirety under the *IRPA* or the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "*IRPR*"); rather, one must also look to the various programs, policies, and guides issued by Immigration, Refugees and Citizenship Canada ("IRCC").

[8] In determining whether Ms. Qita breached the *Code*, the Committee accepted testimony from immigration law experts to understand the scope of the Sponsorship Rules. Those experts testified that the following principles are fundamental to the Sponsorship Program:

(a) Sponsors must provide financial support to refugees in the form of "settlement funds."

(b) Refugees do not have to pay sponsors or otherwise contribute to settlement funds. Although a refugee may assume some or all of his settlement costs once landed in Canada, that payment must not be made directly to the sponsor.

(c) Sponsors must not profit from the sponsorship.

(d) Refugees must not pay any fee or donation directly to sponsors, even if the fees are permitted.

[9] On September 19, 2015, The Minister of Citizenship and Immigration introduced the *Temporary public policy to facilitate the sponsorship of Syrian and Iraqi refugees by Groups of Five and Community Sponsors* (the "Temporary Policy") to facilitate the resettlement of foreign nationals of Syria and Iraq fleeing the conflict in their countries of origin. The Temporary Policy was renewed on September 20, 2016, and again on December 19, 2016 for an additional year (*Ibid v Canada (Immigration, Refugees and Citizenship),* 2019 FC 359 ("*Ibid*") at para 5).

[10] Pursuant to the Minister's powers under section 25.2 of the *IRPA*, the Temporary Policy exempted foreign nationals of Syria and Iraq who had left their country of nationality or habitual residence from certain requirements that are standard under the Sponsorship Rules. These exemptions included the requirement to have a document certifying that they have refugee status from the United Nations High Commissioner for Refugees or a foreign state under subsection 153(1)(b) of the *IRPR*, and to pay a processing fee under section 307 of the *IRPR* (*Ibid* at para 7).

C. *The Applicant*

[11] Ms. Qita became a licensed immigration consultant on January 17, 2012. She practiced through the firm Fast to Canada ("FTC") until her employment was terminated on June 10, 2019. Ms. Qita was the only licensed immigration consultant at FTC until her ex-husband and the co-owner of FTC, Mr. Osama Ebid, became a licensed immigration consultant in October 2018.

[12] On January 28, 2016, FTC partnered with the Canada Newcomers and Immigration Association ("CNIA") to sponsor refugees under the Sponsorship Program. Through FTC, Ms. Qita then contracted with approximately 210 clients seeking to enter Canada under the

Temporary Policy. Ms. Qita specifically promoted her services to nationals of Syria and Iraq living outside their country of origin and who had sufficient means to support themselves after arriving in Canada.

[13] On April 19, 2016, the Canadian Broadcasting Corporation ("CBC") released a news article claiming that FTC was requiring refugee claimants to pay their own settlement funds, which violated the Sponsorship Rules.

[14] Following the CBC article, the ICCRC investigated Ms. Qita for breaches of the *Code*. On April 11, 2017, the ICCRC referred its allegations of Ms. Qita's breaches to the Committee for adjudication.

D. *Decision Under Review*

[15] In a nearly 30-page decision dated January 20, 2020, the Committee found Ms. Qita committed numerous breaches of the *Code*, including the duty to act with honesty and with candour, the duty to act in good faith, and the duty to communicate with clients in a timely and effective manner. The Committee found Ms. Qita breached the *Code* by committing the following acts, among other things:

(a) Requiring clients to pay their own settlement funds. This requirement was understood to be prohibited in the immigration law community.

(b) Claiming that only prospective clients with "financial capability" should apply to the Sponsorship Program. Financial capability is not a factor in considering a refugee application under the Sponsorship Rules.

(c) Collecting donations and fees on behalf of CNIA, which some clients believed were mandatory payments. Sponsors were not to solicit donations from refugees under the Sponsorship Rules. Although "modest" administrative fees were permitted, refugees were not to pay the fees themselves.

(d) Requiring clients to pay a $678 fee for the disbursement of settlement funds. For the approximately 175 clients whose applications were refused and thus did not receive their settlement funds, this fee amounted to over $110,000 in unearned payments collected by FTC on behalf of CNIA. Sponsors were prohibited from profiting from refugees under the Sponsorship Rules.

(e) Refusing to refund payments that some clients were entitled to until those clients signed a waiver releasing Ms. Qita from liability.

(f) Misrepresenting the Temporary Policy by advising clients there was no possibility of rejection unless the client had significant medical or security issues or gave false information in their application.

(g) Failing to inform or misrepresenting the reasons for why clients' applications were rejected.

[16] In a decision dated April 17, 2020, the Committee revoked Ms. Qita's ICCRC membership due to her misconduct and ordered Ms. Qita to pay $50,000 in costs, among other things. Ms. Qita now seeks judicial review of that decision, including the Committee's underlying January 20, 2020 decision.

III. Preliminary Issue: Admissibility of Ms. Qita's Affidavit

[17] The Respondent submits that Ms. Qita's affidavits, affirmed on July 23, 2020 and on March 31, 2021, are inadmissible because they seek to adduce evidence that was not before the Committee when it made its decision.

[18] Evidence that was not before the decision-maker is generally inadmissible upon judicial review (*Brink's Canada Limitée v Unifor*, 2020 FCA 56 at para 13; *Delios v Canada (Attorney General)*, 2015 FCA 117 ("*Delios*") at para 42; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 ("*Access Copyright*") at para 19). The rationale behind this rule is that reviewing courts are to review administrative decisions, not determine questions anew that were absent or inadequately placed before the decision-maker (*Bernard v Canada (Revenue Agency)*, 2015 FCA 263 ("*Bernard*") at para 17, citing *Access Copyright* at para 19).

[19] There are three recognized exceptions to the above rule: (i) evidence that provides background information not going to the merits of the decision; (ii) evidence that displays an unsupported finding of fact; and (iii) evidence relevant to an issue of natural justice, procedural

fairness, improper purpose or fraud that could not have been placed before the decision-maker (*Bernard* at paras 20-28; *Access Copyright* at para 20).

[20] I agree with the Respondent that numerous statements in Ms. Qita's affidavits and exhibits contained therein are inadmissible because they were not before the Committee. I shall therefore disregard Ms. Qita's evidence that is not also contained in the Certified Tribunal Record and does not provide background information.

IV. Issue and Standard of Review

[21] The sole issue upon this application for judicial review is whether the Committee's decision is reasonable, and in particular:

A. *Is the Committee's decision justified in relation to Ibid?*

B. *Did the Committee err in finding that Ms. Qita was responsible for the acts of FTC's agents?*

C. *Did the Committee err in finding that Ms. Qita committed misconduct by retaining funds intended for CNIA?*

D. *Is the Committee's sanction proportionate?*

[22] I agree with the Respondent that reasonableness is the applicable standard of review for the Committee's decision (*Rahman* at paras 9-13, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*")).

[23] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[24] For a decision to be unreasonable, an applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing the evidence that was before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

V. Analysis

A. *Is the Committee's decision justified in relation to Ibid?*

[25] *Ibid* concerned the refusal of 22 applications made by foreign nationals of Syria under the Sponsorship Program, all of which were handled by FTC (*Ibid* at paras 1-9). Having learned from the April 17, 2016 CBC article claiming that FTC required clients to pay their own settlement funds, an IRCC Officer dismissed the applications because she was not satisfied the clients' sponsor had the sufficient "financial resources" required under subsection 154(1)(a) of the *IRPR* (*Ibid* at para 28).

[26] Of particular relevance to the case at hand, Justice Brown held in *Ibid* that refugee claimants were not prohibited from paying their own settlement funds under the "Financial Guidelines" of the Private Sponsorship of Refugees Application Guide (the "*Financial Guidelines*"), which form part of the Sponsorship Rules. The *Financial Guidelines* were amended in 2019 to explicitly prohibit refugee claimants from paying their own settlement funds, thus bolstering Justice Brown's conclusion that the previous iteration of that policy did not contain such a prohibition (*Ibid* at paras 57-61).

[27] In this case, the Committee did not dispute that refugees were prohibited from paying their own settlement funds under the Sponsorship Rules, as was held in *Ibid*. Rather, the Committee found Ms. Qita breached the *Code* by requiring her clients to pay their own settlement funds. The Committee thus held that Justice Brown's "technical interpretation" of the Sponsorship Rules was not determinative of the conduct required of Ms. Qita under the *Code*:

> The question in this hearing is not whether a particular guideline, regulation or statute was followed or not. The issue for the panel to decide is whether the applicable *Code* was violated. While these two issues may overlap, they are distinct considerations. As the ICCRC noted in its submissions, if the *Code* only mirrored the law then there would only need to be one provision – "Obey the law". The *Code* sets out a different, arguably higher, standard of expected conduct. A relevant consideration in applying the *Code* is the generally accepted understanding of the Sponsorship Rules and their application within the immigration consultant community.
>
> [emphasis added]

[28] The Committee held that the general understanding of the Sponsorship Rules within the immigration consultant profession was that sponsors were not to accept settlement funds directly

from refugees. Both expert witnesses at the Committee's hearing testified to this effect, including Ms. Qita's own witness.

[29] As Ms. Qita was found to have contravened accepted industry standards by requiring clients to pay their own settlement funds, the Committee found Ms. Qita contravened the *Code*. In addition, the Committee found that Ms. Qita likely knew her actions contravened standard practice, as Ms. Qita requested that clients remit payments through third parties and withheld refunds from clients until she obtained releases from liability.

[30] Ms. Qita asserts it was unreasonable for the Committee to find she breached the *Code* in light of the finding in *Ibid* that her actions were not expressly prohibited under the Sponsorship Rules. Ms. Qita frames herself as a "pioneer" in an "evolving immigration policy" who presaged the principle in *Ibid* that refugees may pay their own settlement funds.

[31] I disagree. The notion that one may do something is qualitatively different from the notion that one must. The Committee held that *Ibid* did not prohibit refugees from contributing to their own settlement funds under the *Financial Guidelines* of the Sponsorship Rules, but this ruling did not permit Ms. Qita to require her clients to make such payments. In particular, the Committee stated:

> The Court in *Ibid* did not suggest that refugees could be required to contribute to their own settlement funds, merely that they were not prohibited from doing so under the former financial assistance guidelines. In this case, FTC made multiple representations about the [Temporary Policy] that would have led a reasonable person to conclude that prepayment of the settlement fund by Ms. Qita was a required part of the program.

[32] I find the Committee's determination that Ms. Qita committed misconduct is internally coherent and justified in relation to the *Code* (*Vavilov* at para 85). The Committee clearly stated it was to measure Ms. Qita's conduct according to the *Code*, not ancillary laws or regulations. The Committee noted that Ms. Qita was required under the *Code* to discharge her responsibilities in good faith. The Committee found Ms. Qita breached this duty by misrepresenting material elements of the Sponsorship Rules, such as by structuring and soliciting sponsorship arrangements in a manner that she knew went against industry standards, among other things.

[33] In arguing to the contrary, Ms. Qita attempts to circumvent her obligations as a consultant by relying on Justice Brown's technical interpretation of the *Financial Guidelines*. Even if *Ibid* found that Ms. Qita's acts were permissible (which it did not), this does not change the fact that, according to the Committee, Ms. Qita acted in a manner that she knew was unethical. The experts before the Committee unanimously held that refugees cannot be required to pay their own settlement funds under industry standards, yet this practice is precisely what Ms. Qita required her clients to do, only to hold those funds ransom in return for waivers of liability.

B. *Did the Committee err in finding that Ms. Qita was responsible for the acts of FTC's agents?*

[34] Ms. Qita submits the Committee erred in finding she was responsible for the acts and omissions of FTC's agents and employees, including Mr. Ebid. I note that Mr. Ebid was the applicant in *Ibid*, despite the difference in spelling of his last name.

[35] Ms. Qita was the only licensed immigration consultant at FTC until October 2018, after the Temporary Policy expired, and was thus the sole licensed signatory on each retainer agreement until that time. Several witnesses testified that they believed Mr. Ebid was an immigration consultant, as Ms. Qita referred Mr. Ebid to those witnesses for answers and information about their applications. Ms. Qita did not testify before the Committee to contradict this evidence or provide a justification for her misrepresentation.

[36] In my view, the Committee examined Ms. Qita's role in relation to FTC and determined her actions breached the *Code* in a manner that is justified, transparent, and intelligible (*Vavilov* at para 99). The Committee held that Ms. Qita was responsible under the *Code* for ensuring the ethical conduct of FTC and its employees, including Mr. Ebid. In addition, the Committee held that permitting Mr. Ebid to act as an immigration consultant without a license constituted a further breach of the *Code*.

[37] Ms. Qita asserts she is not liable for Mr. Ebid's actions. The Committee, however, was not concerned with a principal and agent relationship in the context of civil liability; it was concerned with Ms. Qita's misconduct. Given the numerous instances of misconduct that occurred at FTC under the supervision of Ms. Qita, I find it was reasonable for the Committee to determine that Ms. Qita breached the *Code*.

C. *Did the Committee err in finding that Ms. Qita committed misconduct by retaining funds intended for CNIA?*

[38] Ms. Qita submits it was unreasonable for the Committee to find she breached the *Code* by receiving settlement funds and administrative fees from clients on behalf of CNIA, as Ms. Qita did not personally benefit from those transactions.

[39] I disagree. The Committee did not find Ms. Qita herself benefitted from the money clients remitted to FTC; rather, the Committee found Ms. Qita actively received and facilitated those unsanctioned transactions. For example, in considering how Ms. Qita breached the *Code* by requiring clients to pay their own settlement funds, the Committee held:

> The next two bullet points in this section [of the retainer agreement used by Ms. Qita] refer to the clients depositing their settlement funds with FTC and FTC depositing those funds with CNIA. The panel has heard persuasive evidence that it was generally understood within the immigration consulting community that refugees were not to pay their own settlement funds to their sponsor. By inserting itself into the transaction as an agent of CNIA for collecting and depositing these funds, FTC, and by extension, Ms. Qita, violated this common industry understanding.
>
> [emphasis added]

[40] The Committee found Ms. Qita's retainer agreement required clients to pay various fees and donations to FTC on behalf of CNIA, yet the agreement did not clearly disclose how refunds were to be paid or the purpose of the fees (and hence whether the fees were used to off-set costs or were retained as profits). The Committee noted such payments went against the general understanding within the immigration consultant profession that sponsors were not to collect fees

from refugees, refugees were not to contribute towards their settlement funds, and sponsors were not to profit from sponsoring.

[41] In other words, whether Ms. Qita herself benefitted from the above fees was not determinative of the Committee's finding that Ms. Qita breached the *Code*. Rather, the Committee found Ms. Qita engaged in misconduct by facilitating payments that were against industry standards, misrepresenting these payments as necessary, and using these payments as leverage to obtain releases from liability. I find no reviewable error in the Committee's determination.

D. *Is the Committee's sanction proportionate?*

[42] Ms. Qita submits the Committee's decision to revoke her ICCRC membership was disproportionate in relation to her misconduct. Ms. Qita asserts her misconduct was not intentional but rather due to a lack of care, as she accidentally used procedures that breached industry standards when FTC's business accelerated under the Temporary Policy. Ms. Qita further claims her sanctions are unreasonable in light of the fact she has not previously received a disciplinary offence.

[43] The Respondent notes that the Committee has previously revoked ICCRC memberships for consultants with no significant disciplinary history (*ICCRC v Judge*, 2019 ICCRC 1; *ICCRC v Manhas*, 2019 ICCRC 2).

[44] In my view, the Committee's decision to revoke Ms. Qita's ICCRC membership falls within a range of acceptable outcomes given the severity of Ms. Qita's misconduct (*Vavilov* at para 86). While Ms. Qita claims she only intended to help refugees and her misconduct was the result of honest mistakes, I find it was reasonable for the Committee to determine otherwise. The Committee held that Ms. Qita knew her conduct contravened industry standards, noting Ms. Qita's request that clients remit payments through third parties to make it appear as if her clients were not paying their own sponsorship funds, and Ms. Qita's withholding of refunds from clients to obtain releases from liability.

[45] Ms. Qita's own expert witness, Mr. Mooney, also emphasized that Ms. Qita's actions were unethical. During the Committee's hearing, he stated that the rule was clear that "refugees could not contribute to their own settlement cost fund the first year," and that immigration consultants "have to follow the rules." Additionally, he discussed how consultants were obligated to inform individuals seeking to come to Canada under the Temporary Policy that such individuals could not pay their own settlement funds:

> I certainly had and — and were told many times by our members that there were a lot of individuals in the UAE who were offering to provide their own settlement fees and who had conversations with those people over and over again to say, "You can't. You know, you have to find someone in Canada". Those people wouldn't know anyone, you know, and I had people call me with the moral — if you will, a moral question saying, you know, "Should I let them pay their own settlement fees and then just not report it?" And, of course, the answer is, "No, you can't do that". In — and then, down the road, if this happens, there would be serious trouble.

[46] Not only did Ms. Qita diverge from her own expert's advice, she did so in a manner that took advantage of the individuals described by Mr. Mooney and their vulnerabilities. I therefore do not accept Ms. Qita's argument that the Committee's sanction is unreasonable in light of the fact that she has not previously received a disciplinary offence. The Committee considered all of the aggravating factors arising from Ms. Qita's misconduct, including that she likely knew the unethical nature of her actions, and weighed them against any mitigating factors, including that she had not previously received disciplinary measures. This Court must refrain from reweighing the evidence before the Committee absent a reviewable error (*Vavilov* at para 125).

VI. Conclusion

[47] I note that Ms. Qita represented herself in this application for judicial review. I therefore recognize that her submissions may not provide the type of legal analysis normally provided by counsel, and I have done my best to accommodate her in this regard. I also thank the Respondent's counsel for their exercise of patience and respect during oral arguments.

[48] This case concerns the Committee's interpretation and application of the *Code*, including a consultant's duties to act with honesty, candour, and in good faith. The Committee found Ms. Qita vitiated each of those duties and sanctioned her accordingly, providing transparent, intelligible and justified reasons in doing so. Ms. Qita's position as a self-represented litigant does not reduce the gravity of those findings.

[49] The *Code*'s ethical obligations are not empty words that can be disregarded without consequence. They are the fundamental responsibilities of consultants, and vulnerable

individuals may suffer when they are not followed. In this case, those individuals are Ms. Qita's former clients, and some of them likely did suffer. Some of those individuals were refused refugee protection because of deficiencies in their applications, and for some of those individuals it was too late for them to re-qualify with a different sponsor by the time they learned of their refusal.

[50] In light of the above, I find the Committee's detailed decision is internally coherent and justified in relation to the relevant facts and law. I therefore dismiss this application for judicial review.

[51] The parties do not propose a question for certification, and I agree that none arises.

JUDGMENT IN IMM-1744-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question for certification.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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