Federal Court  Cour fédérale

Date: 20210719

Docket: IMM-2663-20

Citation: 2021 FC 761

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 19, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

DARLY SHAWN CRITES MARCELIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is citizen of Haiti. She is currently residing in the United States, where she studied biology from 2014 to 2018, and has been working in nursing since 2015. She has had temporary protected status in the United States since 2010 as her father works for the United Nations and was able to send his children to study in the United States following the earthquakes in Haiti in 2010.

[2] On December 5, 2019, the applicant was accepted in the Honours Bachelor of Food and Nutrition Sciences program at the University of Ottawa. She applied for a study permit that was refused on April 2, 2020.

[3] The applicant applied for a new study permit through an immigration representative the following month. This was refused on May 15, 2020. The officer indicated in his refusal letter that he was not satisfied that the applicant would leave Canada at the end of her stay, considering the reason for her visit to Canada.

[4] The Global Case Management System [GCMS] notes, which form part of the reasons for the Decision, state, *inter alia*, as follows:

- The applicant studied biology from 2014 to 2018 and has been working in nursing in the United States since 2015;
- Her study plan is vague and does not make it possible to pinpoint a specific career path for which the study program would be an asset;
- There is little indication that this program is a logical progression of the applicant's previous studies;
- The applicant could pursue the same type of program in the United States; and
- The cover letter states that the applicant received an informal offer of employment, but she did not submit any evidence to support that allegation.

[5] The applicant is seeking judicial review of this refusal. She submits that the officer's decision is unreasonable and that the officer breached procedural fairness. She alleges she

submitted sufficient evidence for the officer to conclude that the reason for her visit to Canada is the next logical step following her previous studies and employment. She notes that she completed her studies in biology and believes that her cover letter and submissions clearly demonstrate why she chose these university studies and that her goal was to become a dietitian nutritionist. She also criticizes the officer for failing to justify his reasons and to take into account other evidence that supports the conclusion that she will leave Canada at the end of her studies. Finally, she argues that the officer should have allowed her to respond to his concerns before refusing her application, thereby breaching procedural fairness.

[6] The Court cannot agree with the applicant's arguments.

[7] The applicable standard of review in the consideration by a visa officer of an application for a study permit is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16-17 [*Vavilov*]; *Nimely v Canada (Citizenship and Immigration)*, 2020 FC 282 at para 5; *Akomolafe v Canada (Citizenship and Immigration)*, 2016 FC 472 at para 9). Contrary to what the applicant alleges, adequacy of reasons is not a question of procedural fairness except where there is a total absence of reasons (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14-16 [*Newfoundland Nurses*]).

[8] When the reasonableness standard applies, the Court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. It must ask itself whether the decision bears the hallmarks of reasonableness—

justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at para 99). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

[9] In the context of decisions made by visa officers, it is important to recall that it is not necessary to have exhaustive reasons for the decision to be reasonable (*Vavilov* at paras 91, 128; *Hajiyeva v Canada (Citizenship and Immigration)*, 2020 FC 71 at para 6).

[10] With respect to the alleged breach of procedural fairness, the role of this Court is to determine whether the process followed by the decision maker was just, having regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54-56; *Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[11] The Court agrees with the applicant that the food and nutrition sciences university program may constitute the next logical step for a student who previously studied biological sciences insofar as both programs are related to the health field. However, that is not always the case. Biological sciences encompass several other aspects, such as plants and animals.

[12] In this case, the applicant does not articulate this next logical step in her cover letter or in her submissions to the officer. She only states that she obtained a degree in biology and that she wishes to pursue her studies in the Honours Bachelor of Food and Nutrition Sciences program. The applicant does not provide any details about the two programs and does not indicate that this

is indeed a natural progression of her studies. Nor does she mention her work in the nursing field. She simply states that she wants to study in Canada because of its high academic standards and the reputation of the University of Ottawa's professors in this field. She does not elaborate on this reputation and does not say whether the desired program is offered in the United States and how it compares to that of the University of Ottawa.

[13] She adds that after her studies, she plans to return to Haiti with her new knowledge in the food and nutrition field to educate her community on the importance of nutrition. She does not specify how or in what capacity. She then goes on to say that she received an informal offer of employment in Haiti and that the employment prospects in this field are high in Haiti. However, she does not provide any evidence of the offer of employment or employment prospects. Although a copy of the letter was produced as Exhibit A-5 in her application record before this Court, the applicant acknowledged at the hearing that it was not before the officer when the decision was made. The same is true for Exhibits A-3 and A-8. The applicant did not demonstrate that the new documents attached to her affidavit fell under one of the exceptions set out in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22. For this reason, the Court cannot take the documents into account.

[14] The Court also notes that the letter of submissions written by the applicant's representative provides even less detail on the applicant's motivations, her choice of education program and her long-term career goals. It only states that the program chosen is in line with the

offers that the applicant received. However, the record before the officer did not contain any evidence to that effect.

[15] In the circumstances, the Court finds that it was entirely reasonable for the officer to determine that the study plan submitted by the applicant was vague and did not make it possible to identify a specific career plan for which the education program would be an asset or a logical progression of the applicant's previous studies and employment. The Court is also of the view that it was open to the officer to ask why the applicant could not take the same program in the United States. She has been in the United States for several years and completed part of her secondary and post-secondary education there. She plans to take the program at the University of Ottawa in English and she did not demonstrate that such a program is not offered in the United States.

[16] With regard to the applicant's arguments concerning the other evidence, which, in her view, demonstrated that she would return to Haiti at the end of her stay, it is important to note that the officer is presumed to have assessed and considered all the evidence before him unless there is evidence to the contrary (*Newfoundland Nurses* at para 16; *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) at para 1).

[17] The applicant did not demonstrate that the officer failed to consider certain elements in this case. On the contrary, according to the GCMS notes, it is clear from the statement "Funds Ok" that the officer took into account the applicant's financial situation and concluded that it was not an issue. As for the statement by the applicant's father that she would return to Haiti at the

end of her studies, this element is not sufficient to establish that the applicant would leave Canada at the end of her authorized stay.

[18] As for the argument raised by the applicant at the hearing that the officer should have allowed her to respond to his concerns, this argument is without merit. This obligation is incumbent only where the visa officer raises doubts about the credibility, truthfulness or authenticity of the information submitted in support of an application. In this case, the officer's decision is based on the sufficiency of the evidence presented by the applicant and her failure to meet the legislative requirements (*Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at paras 36-38). The officer was not required to provide the applicant with an opportunity to present additional evidence or to inform the applicant of his concerns. The applicant has not satisfactorily demonstrated a breach of procedural fairness.

[19] To conclude, the onus was on the applicant to prove that she would leave Canada at the end of her stay. Based on the documentation filed by the applicant, the officer could reasonably conclude that the applicant had not met her burden and refuse her application for a study permit. While the applicant disagrees with the officer's conclusion, it is not for this Court to reconsider and reweigh the evidence to reach a different conclusion (*Vavilov* at para 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59). Moreover, the applicant failed to demonstrate a breach of procedural fairness.

[20] For these reasons, the application for judicial review is dismissed. No question of general importance was submitted for certification, and the Court is of the opinion that this case does not raise any.

JUDGMENT in IMM-2663-20

THE COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
this 26th day of July 2021.
Elizabeth Tan, Revisor

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2663-20
STYLE OF CAUSE:	DARLY SHAWN CRITES MARCELIN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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