Federal Court Cour fédérale

Date: 20211029

Docket: IMM-3175-20

Citation: 2021 FC 1160

Ottawa, Ontario, October 29, 2021

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

THASHIL ETWAROO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Thashil Etwaroo, seeks judicial review of the decision of an immigration officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC") to refuse his application for a study permit (the "Application") pursuant to section 220 and subsection 216(1) of the *Immigration and Refugee Protection Regulations,* SOR/2002-227 ("*IRPR*").

[2] The Applicant submits that the Officer's decision is unreasonable on the grounds that the Officer failed to adequately consider the evidence provided by the Applicant and erroneously concluded that the Applicant had insufficient funds to support his studies. The Applicant further submits that his rights to procedural fairness were breached when the Officer failed to request further information related to the Applicant's ability to finance his studies.

[3] For the reasons that follow, I find that the Officer's decision is unreasonable. This application for judicial review is therefore allowed.

II. **Facts**

A. *The Applicant*

[4] The Applicant is a 26-year-old citizen of Mauritius. On October 1, 2019, the Applicant was accepted to a two-year Computer Systems Technician diploma program at Fanshawe College, in London, Ontario.

[5] On November 11, 2019, the Applicant applied for a study permit. This application was refused by IRCC on December 30, 2019 (the "First Decision") on the grounds that the officer was not satisfied that the Applicant would leave Canada at the end of his stay, pursuant to subsection 216(1) of the *IRPR*. The reasons for refusal in the First Decision were as follows:

> […] Taking the applicant 's plan of studies into account, the applicant does not appear to be[sic] sufficiently well established that the proposed studies would be a reasonable expense. Given

> family ties or economic motives to remain in Canada, the applicant's incentives to remain in Canada may outweigh their ties to their home country. The applicant 's plan of studies appears vague and poorly documented Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

[6] The Applicant applied to this Court for leave and judicial review of the First Decision. Upon agreement of the parties, the Applicant filed a Notice of Discontinuance and the decision was set aside to be re-determined by another officer once the Applicant had a further opportunity to provide updated documentation, which the Applicant submitted on June 15, 2020.

B. *Decision Under Review*

[7] By letter dated July 7, 2020, the Officer refused the Application on the grounds that they were not satisfied that the Applicant will leave Canada at the end of his stay based on his personal assets and financial status, pursuant to subsection 216(1) of the *IRPR*. The Officer was also not satisfied that the Applicant has sufficient and available financial resources to pay the tuition fees for his program of studies, to maintain himself during the period of study, and to pay for the cost of transport to and from Canada, pursuant to section 220 of the *IRPR*.

III. **Issues and Standard of Review**

[8] The Applicant raises the following issues:

A. *Whether the Officer’s decision to refuse the Application was reasonable.*

B. *Whether there was a breach of procedural fairness.*

[9] It is common ground between the parties that the first issue is reviewed upon the reasonableness standard. I agree (*Zhang v Canada (Citizenship and Immigration)*, 2019 FC 764 at para 12). I find that this conclusion accords with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paras 16-17.

[10] The second issue is reviewed upon what is best reflected in the correctness standard, as it concerns whether the Officer complied with the principles of procedural fairness (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[11] 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).

[12] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must

refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

[13] Correctness, in contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 ("*Baker*") at paras 21-28; (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

IV. **Analysis**

A. *Whether the Officer's decision to refuse the Application was reasonable.*

[14] The Officer's decision is largely contained in their Global Case Management System ("GCMS") notes, which form part of the reasons for the decision.

[15] In their reasons, the Officer acknowledged that the updated information sent by the Applicant included financial documentation of the funds made available to him by his uncle. The Officer found the funds from the uncle to be sufficient, yet determined that these were third-party funds that can be withdrawn at any given time and therefore gave them less weight:

> The PA's uncle intends to finance his studies along with the PA's parents. I note funds initially submitted in name of parents (mother 2400 $CAD approx. in Nov 2019 and father approx. 1800 $CAD in Nov 2019). PA requires approx. 28000CAD.

> The funds are insufficient to cover tuition, living expenses for one year and transportation. Most if [sic] the PA's funding comes from uncle. I note sufficient funds from Afrasia account dated Nov 2019. However, third part funds can be withdrawn at any given time and unclear what other financial obligations sponsor has. As such I put less weight on the PA and parents economic establishment in CoR and available funds. In updated submissions, the representative sent updated financial documents for uncle with sufficient balance.
>
> Updated bank statements for PA's parents indicate similar balance for mother, but only approx. 600CAD for father. 1700CAD in cash to the PA, which appears on his bank statement and makes almost the whole balance. I also note updated LOA for September start. I reviewed all the information. However, I am not satisfied this applicant is a bona fide student.

[16] The Applicant submits that he provided extensive financial documentation to demonstrate that he has sufficient funds to support his studies and time in Canada, including funds from his parents and his uncle, as well as his own savings.

[17] The Respondent relies on this Court's decision in *Touré v Canada (Citizenship and Immigration),* 2020 FC 932 ("*Touré*") to argue that the Applicant was required to demonstrate sufficient financial resources to support his studies (at para 10) and that it was reasonable for the Officer to discount the uncle's financial support. In *Touré,* the Court agreed with the officer's finding that the evidence submitted as part of the study permit application, which primarily included evidence to establish the family relationship between the applicant and his potential guarantor, was insufficient (at paras 13-15).

[18] I find the case at hand is distinguishable from *Touré,* as the Officer's reasons for the decision did not suggest that there was insufficient evidence to establish the relationship between

the Applicant and his uncle, but rather challenged the availability of the uncle’s financial support.

[19] Included in the documentation submitted to IRCC by the Applicant was a signed and notarized declaration from the Applicant’s uncle, Mr. Kamal Etwaroo, stating that he is financially stable and willing to support his nephew’s studies in Canada. The uncle’s statement was accompanied by documents related to this support, such as Mr. Kamal Etwaroo’s identification and bank statements. The declaration in part reads:

> I hereby certify that I am financially stable and afford to undertake to support my nephew, Thashil, in his study at Fanshawe College in Ontario, Canada, in his tuition fees and all other expenses such as medical insurance and any other miscellaneous expenses.

[20] In the case of *Iyiola v Canada (Citizenship and Immigration),* 2020 FC 324 (“*Iyiola*”), Justice Fuhrer found that the officer’s conclusions were not justified and therefore unreasonable because they failed to explicitly consider specific evidence in the record. In *Iyiola,* at paragraph 19, Justice Fuhrer writes that while the applicant’s brother undertook to financially support the applicant, the officer focused solely on the applicant’s own financial situation:

> […] despite acknowledging the funding information from Mr. Iyiola’s brother, the visa officer unintelligibly focuses solely on Mr. Iyiola’s own financial situation without any explanation as to why the brother’s undertaking to be fully responsible financially for Mr. Iyiola was not taken into account or was insufficient […]
>
> [citation omitted]

[21] In my view, the Officer's finding that the Applicant had insufficient funds to support his studies is not justified in light of the uncle's signed declaration and evidence indicating his financial stability and willingness to support the Applicant, including his commitment to offer the Applicant employment once he completes his studies.

[22] I also agree with the Applicant's submission that the Officer's reasoning that his uncle's funds could be withdrawn at any time is speculative and that the Officer arrived at this conclusion without providing a rationale. This is a ground for setting aside the decision (*Huot v Canada (Citizenship and Immigration)* 2011 FC 180, at para 26).

[23] Furthermore, as stipulated by this Court at paragraph 27 of *Lakhanpal v Canada (Citizenship and Immigration),* 2021 FC 694, an officer must explain how the evidence before them does not meet the eligibility requirements:

> While it is no doubt true that it is the Applicant's onus to provide the sufficient evidence to meet the eligibility requirements (see for example *Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264, at para 22), it remains the Officer's task to evaluate the evidence before them and explain how it does not fulfill the eligibility requirement for which they are refusing the application.

[24] I find that the Applicant met his burden of proof that he had sufficient funds to support his studies, and that Officer's finding of the contrary are not transparent, intelligible and justified (*Vavilov* at para 15).

[25] I further note that at the hearing, the Respondent's counsel submitted that in addition to finding that the Applicant had insufficient funds to finance his studies; the Officer also determined that the Applicant was not sufficiently established in his country of residence. The Respondent's counsel noted that the Applicant has no children or family, has not attained a certain level of education, and is not economically established, nor did he have a steady job in Mauritius. The Respondent also argued that the Applicant's study plan is poorly documented, and that he has not explicitly said that he would return to Mauritius.

[26] In their reply, the Applicant's counsel rightly asserted that the Respondent's submissions addressed many of the reasons provided in the First Decision, and not the Officer's decision presently under review. I agree with the Applicant's assertion that the Respondent's submissions during the hearing were clouded by the history of this file. The Officer's reasons in the decision under review primarily focused on the Applicant's economic situation, including his ability to finance his studies, as well as the Applicant's previous course of study.

[27] I also disagree with the Respondent's argument that it was reasonable for the Officer to find that there is little incentive for the Applicant to return to Mauritius after his studies. As the Applicant's counsel argued during the hearing, the Applicant has provided elaborate reasons about his intention and ability to study in Canada. The Applicant has also been transparent that he is not wealthy, but has taken steps to secure the financial assistance of his uncle.

[28] As the Applicant's counsel rightly noted, the Applicant is fortunate to have an uncle who is willing to fund his studies in Canada so that he may obtain credentials that are highly valued in

Mauritius. It is uncontroversial that many students often rely on family members to help fund their post-secondary studies. Here, the Respondent attempts to assert otherwise, seemingly on the grounds that the Applicant comes from a less affluent background. This reasoning is absurd and perpetuates stereotypes about those who consistently face barriers to accessing higher education. The Applicant has clearly demonstrated that he has secured the funds to finance his studies. The fact that he comes from a lower-income background should not preclude him from seeking out and accessing educational opportunities.

[29] I find that the Officer failed to take into account the totality of the evidence before them and came to an unreasonable conclusion.

[30] In view of my conclusion in this matter, it is unnecessary to consider the second issue raised by the Applicant.

V. **Conclusion**

[31] I find that the Officer's failure to provide adequate reasons for the finding that the Applicant was unable to finance his studies in Canada, despite evidence to the contrary, renders the decision unreasonable. I therefore allow this application for judicial review.

[32] No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-3175-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed. The decision under review is set aside and the matter is referred back for redetermination by another visa officer, in accordance with these reasons.

2. No question is certified.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3175-20
STYLE OF CAUSE:	THASHIL ETWAROO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 21, 2021
JUDGMENT AND REASONS:	AHMED J.
DATED:	OCTOBER 29, 2021

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