Federal Court  Cour fédérale

Date: 20211122

Docket: IMM-7573-19

Citation: 2021 FC 1276

Ottawa, Ontario, November 22, 2021

PRESENT: Mr. Justice McHaffie

BETWEEN:

CHIEDU JOSEPHINE IRIEKPEN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] To support her application for a study permit, Chiedu Josephine Iriekpen provided evidence of her husband's assets in the form of bank statements. A visa officer raised unspecified concerns that the documents were fraudulent, and asked for "MyBank Statements" for a one-year period, saying no other response would be accepted. Ms. Iriekpen provided a year of bank statements together with confirmation letters from her husband's banks, but not the requested

MyBank statements. A different visa officer examining the application found she had not complied with her obligations under section 16 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] to produce "all relevant evidence and documents that the officer reasonably requires" and therefore had not been truthful in her application. The study permit application was refused by letter dated September 3, 2019.

[2] The examining visa officer could apparently not determine the basis for the original concern about fraud. Nonetheless, the examining officer did not assess the documents submitted and gave no reasons why their submission indicated Ms. Iriekpen was untruthful.

[3] I agree with Ms. Iriekpen that the visa officer's decision was unreasonable. I am unable in the context of the reasons and record to assess the reasonableness of the request for the MyBank statements. It is also not possible to understand from the examining visa officer's reasoning whether they considered the MyBank statements necessary, whether they had concerns about the documents provided, or why not providing the documents requested indicated Ms. Iriekpen was untruthful.

[4] The application for judicial review is therefore granted and Ms. Iriekpen's application for a study permit is returned for redetermination by a different officer.

II. Issue and Standard of Review

[5] Ms. Iriekpen's application for judicial review raises a single issue, namely whether the visa officer's refusal of her application for a study permit was unreasonable.

[6] There is no dispute that the visa officer's decision to refuse a study permit is reviewable on the standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at para 8. 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.

[7] The "administrative setting" of the visa officer's decision includes the high volume of visa and permit applications that must be processed in the visa offices of Canada's missions: *Canada (Minister of Citizenship and Immigration) v Khan*, 2001 FCA 345 at para 32; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at paras 15, 17. Given this 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 paras 31–32; *Yuzer* at paras 16, 20; *Touré v Canada (Citizenship and Immigration)*, 2020 FC 932 at para 11.

[8] Although reasons for visa decisions may be brief, they must explain why the application was rejected: *Yuzer* at para 9; *Patel* at paras 15–17; *Ekpenyong v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1245 at para 13. A visa officer may use tools such as templates, check boxes, or form letters, but must still undertake "the necessary modifications or render 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.

[9] Ms. Iriekpen's written submissions also raised allegations of bias on the part of the visa officer. However, these arguments amounted to no more than unsubstantiated assertions that the visa officer's decision was "beclouded by bias" and that the officer was "clearly biased." The bias argument was not pursued at the hearing. The record discloses no evidence to support a conclusion of bias, or even an allegation of bias, on the part of the officer.

III. Analysis

A. *The study permit application and the procedural fairness letter*

[10] Ms. Iriekpen, a Nigerian national, was accepted into Sheridan College's Social Service Worker program in August 2018. Her studies were supposed to begin in January 2019. Ms. Iriekpen first applied for a Canadian study permit on September 26, 2018, but that application was refused on October 15, 2018. Ms. Iriekpen filed an application for judicial review of the refusal, which was discontinued in January 2019 when the Minister consented to a redetermination of the application.

[11] In support of her application on the redetermination, Ms. Iriekpen submitted documents showing her acceptance into the Sheridan College program, her educational background, her travel history, her financial and family ties to Canada and Nigeria, and her reasons for wanting to pursue the social work program. In respect of her financial status, she filed a receipt for payment of her school fees, a letter of sponsorship from her husband, and bank statements from her husband's bank accounts with Guaranty Trust Bank plc and Access Bank, together with a reference letter issued by the GT Bank in favour of her husband.

[12] On February 21, 2019, a visa officer with the High Commission of Canada to Kenya in Nairobi sent Ms. Iriekpen a "procedural fairness letter," raising concerns with her application and giving her an opportunity to respond. The fairness letter stated in material part the following:

> Specifically, I have reason to believe that the bank statements (GT Bank and Access Bank) submitted with your application are fraudulent. In order to address these concerns you must provide MyBank Statements. No other response will be accepted. You can visit your bank branch or use your online banking account to request a "MyBank Statement Ticket" specifying the "Canadian Embassy". The date range should specify the last one year from the date of this request.
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> […]
>
> You must reply to this request by email within 7 days providing a PDF copy of your "MyBank Statement Ticket" containing the ticket ID and passcode. If completed online you can send the original PDF file. If done at your branch you will need to scan the paper copy of your "MyBank Statement Ticket" into a PDF file. Please remember to include your file number in your reply message.
>
> [Emphasis added.]

[13] Ms. Iriekpen responded promptly providing bank statements covering a one-year period signed by a bank officer, together with reference letters from the banks issuing the statements. She also provided a letter from Mr. Iriekpen expressing his shock and dismay at the allegation of fraud, referring to his senior editorial position at Nigeria's foremost newspaper publishing company, and inviting the officer to confirm the genuineness of the statements via verification with the bank. Ms. Iriekpen did not explain why the statements were being provided in this format and not via a MyBank Statement. While Ms. Iriekpen filed a further affidavit before this Court with an explanation, this information was not before the visa officer and cannot be considered in assessing the reasonableness of the decision on judicial review: *Association of*

Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright), 2012 FCA 22 at paras 18–20.

[14] I pause here to note that neither party filed evidence as to what a "MyBank Statement" is. Nor is there any information in the certified tribunal record that would explain it or its use by visa offices. Based on the reference to it in the procedural fairness letter and counsel's statements, the Court can glean that it is a form of electronic data confirmation system through which account statements are passed from a bank to the visa office.

B. *The refusal decision*

[15] On March 5, 2019, an officer reviewed Ms. Iriekpen's submissions in response to the procedural fairness letter and made the following note in the Global Case Management System (GCMS):

> Applicant has responded to PF letter, states that his bank statements are not fraudulent and requests for a thorough verification. Applicant has submitted bank statements and reference letters from the Bank instead of MyBank statement ticket. File to officer for review

[16] For several months, Ms. Iriekpen heard nothing. She followed up in May and was told her application was still under review. On August 27 and September 3, 2019, she received letters about her biometric information. Meanwhile, however, her application had been assessed on August 6, 2019 and a refusal letter was sent on September 3, 2019. Ms. Iriekpen did not receive this letter until follow up communications from her counsel in October through December 2019 resulted in the September decision letter being sent to counsel on December 16, 2019.

[17] The September 3, 2019 decision letter set out the grounds for the refusal using a *pro forma* check-box letter. The letter refers generally to the factors considered by an officer in assessing an application for a temporary resident visa. It then contains various boxes with possible reasons for a refusal. The only boxes checked in Ms. Iriekpen's case had the following text:

> You have not satisfied me that you would leave Canada at the end of your stay as a temporary resident. In reaching this decision, I have considered several factors, including:
>
> Your personal assets and financial status
>
> That you have a legitimate business purpose in Canada

[18] The GCMS notes entered on August 6, 2019 provide more information as to the reasons for the refusal. They state as follows:

> PA has not provide[d] MyBank details as requested by VO. VO did not make explicit what indicators on the bank statement [led] him to believe that the document was fraudulent. I am therefore not satisfied that the PA misrepresented themselves. At the same time, the PA is required to provide the information that the VO requested and has not done so. I am not satisfied that the PA has been truthful in her application. Refused.
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> [Emphasis added.]

[19] Although the "you have a legitimate business purpose in Canada" box was checked in the decision letter, Ms. Iriekpen's application was not for a business purpose, and the notes show no concern about her education purpose. Counsel for the Minister fairly conceded that they did not know why the box was checked. While this raises a concern about the transparency of the decision, the ultimate issue in my view is whether the concern about Ms. Iriekpen's "personal

assets and financial status," and in particular her truthfulness, based on the absence of MyBank statements was reasonable.

C. *The refusal decision was unreasonable*

[20] Subsection 16(1) of the *IRPA* reads as follows:

Obligation — answer truthfully	**Obligation du demandeur**
16 (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.	**16 (1)** L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.
[Emphasis added.]	[Je souligne.]

[21] The obligation in section 16 pertains to "relevant" documents that the officer "reasonably requires," a restriction on the formerly unfettered discretion to demand documents: *Zhou v Canada (Citizenship and Immigration)*, 2010 FC 1230 at para 9. This Court has been called upon in a number of cases to assess whether a request for documents is relevant and reasonable: *Lan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 770 at paras 12–15; *Zhou* at paras 15–22; *Canada (Citizenship and Immigration) v Ndayinase*, 2016 FC 694 at paras 27–28; *Paddayuman v Canada (Citizenship and Immigration)*, 2019 FC 287 at paras 28–32; *San Juan v Canada (Citizenship and Immigration)*, 2020 FC 434 at paras 10–17.

[22] In the present case, given the lack of evidence and the visa officer's limited reasons, it is difficult to assess the reasonableness of the first officer's request for MyBank statements and their refusal to accept any other response. There is no information regarding the nature of the officer's concerns that the original statements were fraudulent. Indeed, the examining visa officer apparently did not know what those concerns were, noting only that the earlier "VO did not make explicit what indicators on the bank statement [led] him to believe that the document was fraudulent." Nor is there any information in the record regarding MyBank statements, including anything about the nature of such statements or any policy on the part of the visa office to require such statements to the exclusion of other evidence.

[23] The examining visa officer did not express any concerns about the documents that were provided, other than to note they were not MyBank statements.

[24] The Minister argues that the requirement in section 16 to provide requested documents is mandatory, such that if the requested documents are not provided, a visa officer has no discretion to consider documents that *are* provided to determine whether they establish an applicant's eligibility for a visa or satisfy any concerns that have been raised. I cannot accept this contention. Although section 16 says that an applicant must produce "all relevant evidence and documents that the officer reasonably requires," it does not purport to remove an examining officer's discretion to consider the evidence before them. Indeed, this Court has referred to section 16 as a "discretionary provision": *Mescallado v Canada (Citizenship and Immigration)*, 2011 FC 462 at para 22; *Muthui v Canada (Citizenship and Immigration)*, 2014 FC 105 at para 32.

[25] In *Paddayuman*, the officer requested a variety of documents related to criminal charges against the applicant in the Philippines, including testimonies, affidavits, court orders, and settlement documents. The applicant filed some information, including clearance certificates, but did not produce all of the documents requested. The officer expressly considered whether the provided information was sufficient, concluding it was not: *Paddayuman* at paras 8–10. Justice Manson concluded that even though the request for documents was reasonable at the time it was made, it was unreasonable for the officer to have refused the application on the basis that the applicant did not provide the requested documents:

> The Officer erred by refusing the Application on the basis that the Applicant had failed to produce relevant evidence. While the Officer was reasonable to request the documents listed at bullet points five and six of the May 17, 2018 letter, upon receipt of the Applicant's evidence, the Officer unreasonably failed to proceed and assess the Application on the basis of the evidence submitted. There is a failure here to reasonably consider the evidence provided in a contextual manner.
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> […]
>
> While the Applicant failed to produce the court orders dismissing each charge, as was requested by the Officer, the Applicant did produce the 2018 Clearance Certificate, as well as the two earlier clearance certificates, which list the date of the court orders, the judge who made each order, and an excerpt of text from the dispositive section of the 1993 court order.
>
> The Officer did not question the authenticity of the documents submitted by the Applicant. If the Officer accepted Mr. Paddayuman's evidence as he or she appears to have done, there is only one reasonable conclusion – that Mr. Paddayuman did not commit actions that would render him inadmissible from Canada on grounds of criminality within the meaning of paragraphs 36(1)(c) and 36(2)(c) of the IRPA.
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> [Emphasis added; *Paddayuman* at paras 28–32.]

[26] The officer reviewing Ms. Iriekpen's application similarly gave no assessment of the documents submitted even though they apparently did not question their authenticity.

[27] The Minister relies on *Zhou*, in which Justice Zinn upheld the rejection of an application citing subsection 16(1) of the *IRPA*. However, in *Zhou* the officer's refusal was not simply because the requested documents were not provided. Rather, the officer found the failure to provide the requested documents made it impossible for them to properly assess the applicant's admissibility: *Zhou* at para 5. Justice Zinn found the applicant's challenge amounted to a disagreement with the assessment of the weight given to the information provided, holding that the officer's decision was reasonable given the little information the applicant provided: *Zhou* at para 22.

[28] In the present case, the visa officer gave no reasons for the refusal other than the fact that the MyBank statements were requested and not provided. Contrary to the Minister's submissions, I cannot read the visa officer's reasons as being that the evidence submitted was insufficient. No assessment was made of the sufficiency or authenticity of the bank statements provided or the letters of confirmation from the banks. Nor is there any explanation for the conclusion that providing the bank statements and letters of confirmation rather than the MyBank statements would affect the assessment of Ms. Iriekpen's truthfulness.

[29] This is not a case like *Zhou* where the applicant was effectively "asking the officer to accept his word": *Zhou* at para 22. Ms. Iriekpen provided information stated to be from the banks, on bank letterhead, with individuals' names, titles, and contact numbers, and invited

verification by the officer. I agree with the Minister that there is no obligation on the part of an officer to undertake independent verification. However, as Justice Russell noted in *Paxi*, these indicators on the face of the document "are not the signs of an inauthentic document": *Paxi v Canada (Citizenship and Immigration)*, 2016 FC 905 at para 52. Here, the officer made no determination with respect to the authenticity of statements and conducted no assessment of them in the context of the application.

[30] This is not to suggest that it is necessarily unreasonable for an officer to request MyBank statements to the exclusion of any other evidence, nor that an officer making such a request need necessarily explain the specifics of their concerns about fraud. It is simply that there is no evidence in the record before the Court in this matter that allows the Court to determine the reason for the request by the first officer or its reasonableness. Nor was there any assessment by the examining officer either of the documents that were provided or of the need for a MyBank statement. This absence of information also makes it difficult to assess or accept Ms. Iriekpen's argument that a MyBank statement is not in fact a different document but rather the same document conveyed by a different medium.

[31] I certainly have some concern that Ms. Iriekpen did not explain in her response to the fairness letter why she did not provide the MyBank documents the first officer requested and insisted upon. Such an explanation for why documents were not provided was given in *Zhou* and was particularly central to the Court's decision in *San Juan*: *Zhou* at paras 18, 22; *San Juan* at paras 15–17. However, while the absence of an explanation from Ms. Iriekpen might reasonably

be relevant to the visa officer's assessment of the documents filed, in my view it does not obviate the need to undertake such an assessment.

[32] Even in light of the minimal obligation to give reasons, I conclude the visa officer's decision does not meet the requirements of transparency, intelligibility, and justification expected of a reasonable decision.

IV. Conclusion

[33] The application for judicial review is therefore allowed and Ms. Iriekpen's application for a study permit is remitted for redetermination by another officer.

[34] Neither party proposed a question for certification. I agree that none arises in the matter.

JUDGMENT IN IMM-7573-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed. The September 3, 2019 refusal of Chiedu Josephine Iriekpen's application for a study permit is set aside and her application is remitted for redetermination by a different officer.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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