

Federal Court



Cour fédérale

Date: 20220323

Docket: IMM-3513-21

Citation: 2022 FC 400

Ottawa, Ontario, March 23, 2022

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

SARAH JANE BARRIL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of the decision of an immigration officer [Officer] of the Visa Section of the Embassy of Canada in Abu Dhabi refusing her application for a study permit pursuant to section 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[2] The Applicant asserts that the Officer's decision was unreasonable in relation to all three bases upon which the Officer concluded that the Officer was not satisfied that the Applicant would leave Canada at the end of her stay.

[3] For the reasons that follow, I find that the Officer's decision is unreasonable and as a result, the application for judicial review shall be granted.

I. Background and Decision at Issue

[4] The Applicant is a 28-year-old citizen of the Philippines. Her father, step-mother, two half-brothers and a half-sister all continue to reside in the Philippines, where the Applicant also owns land.

[5] The Applicant graduated with a Bachelor of Science in Tourism from Abra Valley College in Bangeud, Philippines in 2014 and since that time, she has worked in various non-tourism jobs in the Philippines and Dubai.

[6] In February 2021, the Applicant was accepted into a two-year diploma program at Seneca College in Toronto, Ontario in Tourism – Services Management – Travel Services Specialization, with total tuition fees estimated to be approximately \$32,000.00.

[7] In March 2021, the Applicant submitted an application for a study permit. Included with her application was a Statement of Purpose, in which the Applicant explained her rationale for

enrolling in the diploma program at Seneca College, as well as numerous letters of support and other supporting documentation.

[8] By letter dated May 20, 2021, the Officer advised the Applicant that her study permit application was refused as the Officer was not satisfied that she would leave Canada at the end of her stay based on: (a) her personal assets and financial status; (b) her family ties in Canada and in her country of residence; and (c) the purpose of her visit.

II. Issue and Standard of Review

[9] The sole issue raised on this application is whether the Officer's decision was reasonable.

[10] The parties submit, and I agree, that the presumptive standard of review is reasonableness. No exceptions to that presumption have been raised nor apply [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25].

[11] According to the standard of reasonableness, a reviewing Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. 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 [see *Vavilov, supra* at paras 15, 85].

[12] In the case of a study permit application, this Court has recognized that decisions of an officer need not be comprehensive and an officer may provide brief or even limited reasons.

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 [see *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 16; *Ekpenyong v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1245 at para 13; *Peiro v Canada (Citizenship and Immigration)*, 2019 FC 1146 at para 15].

III. Analysis

[13] The Officer's decision is largely contained in their Global Case Management System [GCMS] notes, which form part of the reasons for decision. The GCMS notes particularize the Officer's rationale for their three bases for concluding that the Officer was not satisfied that the Applicant would leave Canada at the end of her stay. I will deal with each basis in turn.

A. Applicant's Personal Assets and Financial Status

[14] The Officer's GCMS notes regarding their assessment of the Applicant's personal assets and financial status provide as follows:

Taking the applicant's plan of studies into account, the documentation provided in support of the applicant's financial situation does not demonstrate that funds would be sufficient or available. I am not satisfied that the proposed studies would be a reasonable expense. An offer of assistance has been provided by the applicant's relative however, while relative show [sic] some funds, there is no indication of size of family being supported by this income nor information on employment/income.

[15] However, included in the documentation submitted by the Applicant in support of her study permit was proof of payment of \$8,013.46 to Seneca College towards her tuition and a letter from

her aunt and uncle's lawyer confirming that he was holding an additional \$16,078.18 in trust for the payment of further tuition. This represented proof of secured funds for the payment of almost the entirety of her two-year tuition and more than simply proof of financial support for the first year of her studies as required by the document checklist provided by IRCC.

[16] Moreover, the Applicant submitted a letter of support from her aunt and uncle confirming that they would support her during her studies and provide her with room and board. The Applicant also submitted a letter from the aunt and uncle's financial planner (with whom they had been working for over a decade) who manages the uncle's RRIF and who builds and updates their financial plan. The financial planner confirmed that the aunt and uncle have the necessary resources to financially support the Applicant during her studies at Seneca College. A further letter was provided from the aunt and uncle's accountant, who has been providing them with accounting services for 14 and 25 years respectively. The accountant also certified that the aunt and uncle have sufficient funds available to support the Applicant during her studies at Seneca College. Multiple bank account statements for the aunt and uncle over a period of many months showing total balances in excess of \$15,000.00 were also provided.

[17] A decision-maker is required to address relevant evidence if such evidence goes directly to contradict their findings. The Court may infer that a decision-maker has made an erroneous finding of fact without regard to the evidence from a failure to mention in the reasons evidence that is relevant to the finding and which points to a different conclusion [see *Kaur v Canada (Citizenship and Immigration)*, 2020 FC 934 at para 40; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at para 15]. There is no mention in the Officer's reasons

of the evidence confirming that the Applicant's tuition has been paid, that further tuition funds are held in trust for her and that her room and board costs are covered, nor is there any reference to the third-party letters from the various professionals confirming the aunt and uncle's ability to cover her expenses. There was clear evidence that contradicted the Officer's finding that she had not demonstrated that "funds would be sufficient or available", which the Officer failed to address. I find that this renders the Officer's financial analysis unreasonable.

B. Family Ties in Canada and the Applicant's Country of Residence

[18] The Officer's GCMS notes regarding the Applicant's family ties provide as follows:

The documents provided do not show that the applicant or her family is well established in COR or home country. I am not satisfied that the applicant would leave Canada at the end of their stay as a temporary resident, I note that: - the client has strong family ties in Canada (aunt) -the client is single, mobile, is not well established and has no dependents -Currently employed in the UAE since 2019 as Sales, salary and personal funds/assets unknown. Weak professional and economic ties.

[19] The Applicant indicated in her application that her ties to the Philippines were strong given that her father, step-mother and siblings reside in the Philippines and she owns a large parcel of land in the Philippines that she hopes to develop in the future. In that regard, she included a Declaration of Real Property indicating that she is the sole owner of a parcel of land with an adjusted market value of P 13,588.38. She also indicated that her studies would provide her with an important opportunity to spend time with her aunt and uncle in Canada, who would provide her not only with financial support but also emotional support.

[20] I find that the Officer's reasons with respect to the Applicant's ties provide no reasonable basis for their determination. This Court has repeatedly recognized that an applicant's lack of a dependent spouse or children, without any further analysis, should not be considered a negative factor on a study permit application. Otherwise, this would preclude many students from being eligible [see *Onyeka v Canada (Citizenship and Immigration)*, 2009 FC 336 at para 48; *Obot v Canada (Citizenship and Immigration)*, 2012 FC 208 at para 20; *Iyiola v Canada (Citizenship and Immigration)*, 2020 FC 324 at para 20]. Moreover, this Court has also held that an officer should not draw negative inferences from an applicant's family ties in Canada. If anything, an officer should consider the financial support of an applicant's family as being a positive factor. At the very least, an officer must justify their reasoning and it is unreasonable to infer that an applicant will remain in the country illegally simply because an applicant has strong family ties in Canada [see *Bteich v Canada (Citizenship and Immigration)*, 2019 FC 1230 at para 34]. In this case, the Officer has improperly done all of these things.

[21] Further, I agree with the Applicant that the Officer also fails to explain how the presence of her aunt and uncle in Canada outweighs her ties to the Philippines, where her father and other family resides and she owns land.

C. Purpose of Her Visit

[22] The Officer's GCMS notes regarding the Applicant's study plan provide as follows:

The study plan does not appear reasonable given the applicant's employment and education history. I note that: -the client has previous studies at a higher academic level than the proposed studies in Canada (bachelor's tourism) -the client's proposed studies are not reasonable given their career path. States she would like to upgrade

her skills however her career plans are vague. Given applicant's previous educational and employment history, their motivation to pursue studies in Canada at this point does not seem reasonable. Study plan submitted does not outline a clear career path for which such educational program would be of benefit.

[23] The Applicant asserts that the Officer failed to come to grips with the Applicant's reasons for taking the Seneca College program, which were clearly outlined in her Statement of Purpose. Specifically, her Statement of Purpose confirmed that the Seneca College program was not a repeat of her bachelor's degree program. Rather, the Seneca College program focuses on an entirely different area of the tourism industry and would provide her with skills and knowledge not yet acquired. By way of example, she noted that the Seneca College program has a course in hospitality and tourism that will focus much more on the business side of the industry, including sales, marketing, customer relations, event planning, conventions and conferences. By way of further example, she noted that the Seneca College program will permit her to learn a lot more about sectors of the tourism industry in which she has limited knowledge, such as the cruise ship industry.

[24] The Applicant also noted that the co-op placement was of particular interest as it would give her real-life hands-on experience in her field. In that regard, the letter of acceptance from Seneca College confirmed that the co-op work placement is an essential and integral component of the program.

[25] In terms of her future career plans, the Applicant stated that she is hopeful that the tourism industry will have recovered from the global pandemic by the time she completes her Seneca College program and that she would then be able to seek employment in a new setting, probably

in the Philippines or in an international setting, such as with an airline, cruise ship or hotel organization.

[26] I agree with the Applicant that the Officer's failure to address the differences between the Seneca College program and the Applicant's bachelor's program as well as the significance of the co-op program (both of which point to a different conclusion than that reached by the Officer) render this portion of the Officer's determination unreasonable.

IV. Conclusion

[27] I find that the Officer's reasons fail to demonstrate that the Officer considered the application in its entirety and fail to present a justified, intelligible and transparent basis for the refusal. Accordingly, the application for judicial review will be granted and the study permit application will be remitted back to another decision-maker for redetermination.

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

JUDGMENT in IMM-3513-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The May 20, 2021 rejection of the Applicant's application for a study permit by the Visa Section of the Embassy of Canada in Abu Dhabi is set aside and the application is hereby remitted for redetermination by another officer.
3. The parties proposed no questions for certification and none arise.

"Mandy Ayles"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3513-21

STYLE OF CAUSE: SARAH JANE BARRIL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 17, 2022

JUDGMENT AND REASONS: AYLEN J.

DATED: MARCH 23, 2022

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