Federal Court  Cour fédérale

Date: 20220907

Docket: IMM-4690-21

Citation: 2022 FC 1263

Ottawa, Ontario, September 7, 2022

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

AYESHA SIDDIQUA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by an Officer at the High Commission of Canada in Singapore, dated May 17, 2021 [Decision]. The Officer refused the Applicant's application for a study permit and determined she did not meet the requirements under subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

II. Facts

[2] The Applicant is a 24-year-old citizen of Bangladesh and no other country. She has over the course of her life dealt with serious health issues, including significant cardiac health problems. Following a second heart surgery in November 2018, the Applicant was bedridden. During her recovery, she undertook English language courses from the British Council, and successfully passed the intermediate level. She additionally took the International English Language Testing System [IELTS] test twice, scoring 4.0 overall. On February 25, 2021, the Applicant was cleared by her doctor and deemed fit to resume full-time studies.

[3] She has previously been refused a study permit in Canada on three other occasions:

- First refusal: August 28, 2020
- Second refusal: November 24, 2020
- Third refusal: April 14, 2021

[4] The Applicant applied for a fourth time on April 21, 2021, in order to attend a three-month business academic English course, which if successful, would allow her to enter an admin/accounting program at St. Clair College in Windsor, Ontario. This was to be the first step in her study plan, which thereafter includes a B. Comm. degree.

[5] The Officer was not satisfied that that the Applicant would leave Canada at the end of her stay based on her travel history, family ties in Canada and Bangladesh, purpose of her visit, current employment situation and financial status, and was not satisfied with her proposed studies in Canada.

[6] The Officer noted that the Applicant completed high school in 2016 with poor grades, and has completed no formal education since. Her IELTS scores in reading and writing were low, scoring 3.5 in both.

[7] According to information from the IELTS filed by the Respondent, this score corresponds to someone described as an extremely limited or limited English user, with frequent problems understanding and expressing, and not able to use complex language.

[8] The Officer also acknowledged the Applicants health issues, which resulted in a study gap. Nothing suggests this was counted against the Applicant.

[9] Considering the combination of the Applicant's poor academic results and limited English ability, the Officer was not satisfied that the Applicant would be able to complete her proposed English language studies in a reasonable time to advance to the diploma program. The Officer further noted that locally available ESL and business programs are accessible at a much lower cost in Bangladesh.

[10] Given this and the other concerns, the Officer was not satisfied that the Applicant's motivation to study in Canada was reasonable and that her primary purpose was to study. Additionally, the Officer was not satisfied that the level of establishment outside Canada would motivate her departure nor would she respect the conditions of entry and depart at the end of the period authorised for stay.

III. Issues

[11] The only issue is whether the Immigration Officer's decision was reasonable.

IV. Standard of Review

[12] The parties agree as do I that in a student visa case the standard of review is reasonableness. With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Vavilov*, the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] 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). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "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, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).

> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
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> [Emphasis added]

[13] Furthermore, *Vavilov* makes it abundantly clear the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances". The Supreme Court of Canada instructs:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
>
> [Emphasis added]

[14] The Federal Court of Appeal recently held in *Doyle v Canada (Attorney General),* 2021 FCA 237 that the role of this Court is not to reweigh and reassess the evidence:

> [3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be drawn, and makes a decision. In conducting reasonableness review of the Director's decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability

> of the decision. Reweighing and second-guessing the evidence is no part of its role. Sticking to its role, the Federal Court did not find any fundamental errors.
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> [4] On appeal, in essence, the appellant invites us in his written and oral submissions to reweigh and second-guess the evidence. We decline the invitation.

[15] *Vavilov* also requires the reviewing court to assess whether the decision subject to judicial review meaningfully grapples with the key issues:

> [128] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.

[16] Reasons such as these are not to be assessed against a standard of perfection. That the reasons "do not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" is not on its own a basis to set aside the decision: see *Vavilov* at paras 91 and 128, and *Canada Post* at paras 30 and 52. In addition, reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion": *Vavilov*, paras 91 and 128 again, and *Newfoundland and*

Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board), 2011 SCC 62, [2011] 3 SCR 708, at paras 16 and 25.

[17] All applicants have the onus to establish his or her case to the satisfaction of the issuing officer. It is also the case that because visa applications do not raise substantive rights — foreign nationals have no unqualified right to enter Canada — the level of procedural fairness is low, and generally does not require that applicants be granted an opportunity to address the officer's concerns: see for examples *Bautista v Canada (MCI)*, 2018 FC 669 at para 17; *Kaur v Canada (MCI)*, 2017 FC 782 at para 9 and *Sulce v Canada (MCI)*, 2015 FC 1132 at para 10.

[18] Finally, by way of the legal framework, the shorter term visa administrative setting is important. Every year, Canada receives upwards if not in excess of one million (1,000, 000) applications for various types of permission to spend time in Canada, of which some 400,000 are granted annually. That leaves some 600,000 applicants who receive decisions stating they are not successful each year. Each decision must be supported by reasons on its face, or in many cases such as this, more usually in association with the underlying record. Given this huge volume, the law has developed as noted above, such that the need to give reasons is "typically minimal."

[19] In *Iriekpen v Canada (Citizenship and Immigration)*, 2021 FC 1276 Justice McHaffie said, and I fully agree:

> [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; and *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.
>
> [Emphasis added]

[20] An example of these principles at work is *Hashem v Canada (Citizenship and Immigration)*, 2020 FC 41:

> [27] It is not for the Court to reweigh the evidence before the visa section. I agree with the respondent that Mrs. Hashem is essentially asking the Court to reweigh the evidence and to substitute its view for that of the visa section officers.
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> [28] A decision-maker is not obliged to refer explicitly to all the evidence. It is presumed that the decision-maker considered all the evidence in making the decision unless the contrary can be established (*Hassan v Canada (Minister of Employment & Immigration)*, [1992] FCJ No 946 at para 3; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] 157 FCJ No 1425 at para 16).
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> [29] Mrs. Hashem's failure to show that the visa section officers ignored evidence amounts to a mere disagreement with the factors they found to be determinative *(Boughus v Canada (Minister of Citizenship and Immigration)*, 2010 FC 210 at paras 56 and 57). There is no reason to intervene and set the decision aside.

[21] Finally, as this Court noted in *Alaje v Canada (Citizenship and Immigration)*, 2017 FC 949, at para 14, this Court owes great deference to the Officer's assessment, and I would add, to the Officer's weighing of the evidence: "… the Court owes great deference to the officer's assessment of the evidence."

V. Analysis

A. *Departure at end of authorized stay*

[22] The Applicant submits that the Officer erred in their assessment of whether the Applicant would leave at the end of the period authorized, submitting no reasons are provided whatsoever. In the Applicants' view, the Officer appears to "ignore or failed to engage with" evidence of her establishment and stable life in Bangladesh. With respect, I disagree.

[23] The Applicant received a letter from the Officer expressly identifying 5 separate reasons why they were not satisfied she would leave Canada. In addition, the GCMS notes provide supplementary information in narrative form outlining why the study visa was refused. It is clear the Applicant disagrees with the Decision, but the issue before the Court is reasonableness.

[24] In my respectful view, the Decision may not be faulted for lack of justification, transparency nor intelligibility based on the governing jurisprudence set out above. The reasoning of the Officer is clear: her IELTS scores in reading and writing were low, scoring 3.5 in both. As the Respondent submitted, this score corresponds to someone described as an extremely limited or limited English user, with frequent problems understanding and expressing, and not able to use complex language.

[25] It is clearly reasonable for the Applicant to wish to improve her English language skills – which is clearly required in this case as her application for such a course effectively concedes - if she wishes to pursue an advanced business administration diploma at an English language

institution (such as St. Clair College). That said, I am unable to find any material information provided by the Applicant explaining why she does not do so in Bangladesh where such courses are not only available but at lower cost.

[26] I appreciate her submission that an advanced *diploma* from a Canadian college such as the one chosen might be valued more highly in Bangladesh than a local diploma, which was her submission, however this does not answer why she would want to pursue needed ESL *studies* in Canada as opposed to Bangladesh. The onus was on the Applicant to do so, and on this record the Officer reasonably determined insufficient evidence was supplied.

[27] I also note financial information she supplied concerning her father and brother are of no assistance in answering this core question. Nor do the Applicant's submissions asserting her intention to return home to her parents if she successfully completes the advanced English program, and thereafter the business administration diploma.

[28] I will add that there are many cases involving student visas from this Court. I rely on those cited above which in my view reflect the preponderance of Court's jurisprudence.

[29] As I have said previously, the onus was on the Applicant to prove her intentions on the evidence, and the Officer was not satisfied that the purpose of her visit was purely for education. I am not prepared to reassess or reweigh the evidence in this respect. Significant jurisprudence requires this Court to give great deference to theses Officers, or to generally defer to the Officer in weighing and assessing the evidence, given their experience in visa applications (See e.g.

Yaghoubian v. Canada (Minister of Citizenship and Immigration), 2003 FC 615, at para 26, and *Yin v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 661).

[30] The reasons offered by the Officer directly cite to objective evidence, namely the IELTS scores and the Applicant's limited academic background, in determining whether she had a genuine temporary intent. In my view, it is not incumbent upon decision makers in this type of forum to offer more detailed and drawn-out than those given here. In all, I find the Decision reasonable.

VI. Conclusion

[31] In my respectful view, the Applicant has not shown the decision of the Officer is unreasonable. In my view, the Decision is transparent, intelligible and justified based on the evidence presented and constraining law. Therefore, judicial review must be dismissed.

VII. Certified Question

[32] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-4690-21

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed, no question of general importance is certified, and there is no Order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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