Federal Court  Cour fédérale

**Date: 20230331**

**Docket: IMM-2312-22**

**Citation: 2023 FC 460**

**Toronto, Ontario, March 31, 2023**

**PRESENT: Madam Justice Go**

**BETWEEN:**

**LUIS STEPHANO NORIEGA NORIEGA**
**ABDULLAH ALNATOUR**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] Mr. Luis Stephano Noriega Noriega [“Principal Applicant”, or “PA”] is a 31-year old citizen of Ecuador who has resided and worked in the United Arab Emirates [UAE] since 2015.

[2] The Principal Applicant applied for a study permit in February 2022 after he was accepted into the Master's of Management in Human Resources program [Master's Program] at the University of Windsor. His partner, a Syrian citizen, applied for a work permit at the same time as an accompanying spouse. Together, I will refer to the PA and his spouse as the Applicants.

[3] In a decision dated February 22, 2022, a visa officer [Officer] at the Embassy of Canada in Abu Dhabi, UAE refused the PA's application for a study permit [Decision]. The Officer was not satisfied that the PA would leave Canada at the end of his stay, as required by subsection 216(1) of the *Immigration and Refugee Protection Regulations,* SOR/2002-227 [*IRPR*], based on multiple factors including the PA's family ties in Canada and his country of residence; his purpose of visit; his current employment situation; and his immigration status. As a result, the Officer also rejected the work permit application of the PA's spouse.

[4] I find the Decision unreasonable because the Officer's reasons lacked the requisite justification and intelligibility to meaningfully account for the evidence before them. As such I grant the application.

## II. Issues and Standard of Review

[5] The main issue on judicial review is whether the Decision is reasonable.

[6] The parties agree that this issue is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65 [*Vavilov*].

[7] 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. The onus is on the Applicants to demonstrate that the decision is unreasonable: *Vavilov* at para 100.

## III. Analysis

[8] According to the Officer's Global Case Management System [GCMS] notes, the Officer acknowledged that the Principal Applicant is married and has close family ties in his home country, but found that the PA is "not sufficiently established." The Officer continued to state in the GCMS notes:

> After examining the applicant's family, financial, and professional ties in light of their decision to leave them for the duration of their poorly justified studies, I'm not satisfied that those related to their country of residence are sufficient to compel their return at the end of the period authorized for their stay in Canada. After considering the applicant's academic and professional history, their financial situation, as well as their planned studies and explanation provided for it, I am not satisfied the applicant is a genuine student who will pursue studies in Canada. The stated benefits of their intended studies do not seem to warrant the cost and difficulty of undertaking foreign…Taking the applicant's current employment situation into consideration, the employment does not demonstrate that the applicant is sufficiently well established that the applicant would leave Canada at the end of a period of authorized stay…

[9] The Applicants raise several arguments to challenge the Decision. I need not address all of them, as I find the Officer made reviewable errors with respect to their assessment of the PA's genuineness as a student, the PA's establishment in his country of residence, and the Applicants' financial situation.

A. *The Officer's unreasonable assessment of the PA's intent to study*

[10] The Applicants argue that the Officer erred in finding that the PA is not a genuine student and that his proposed studies are "poorly justified" without addressing the evidence clearly explaining his intention to study.

[11] First, the Applicants note that in the reasons, the Officer referred to the PA's proposed program as an MBA, rather than the Master's Program that he was admitted to. The Applicants submit that these are two very different programs and that this error signals a lack of attentiveness and suggests the Officer's assessment was based on a different program.

[12] Second, the Applicants argue that the Officer failed to consider all the materials submitted related to the PA's interest in human resources and description of how the Master's Program would build on his prior experiences. The Applicants assert that the Officer's failure to meaningfully account for the evidence is unreasonable: *Vavilov* at para 126.

[13] Standing on its own, it may well be, as the Respondent submits, that the Officer's reference to an MBA program in the GCMS notes was just a poor choice of acronym. However, when viewed in the context of the remainder of the Decision, I find this "poor choice of acronym" to be part and parcel of unintelligible reasons.

[14] As the Applicants point out, the Decision did not refer to the information contained in the study permit showing why the PA would be interested in pursuing the Master's Program at

the University of Windsor. As stated in his letter of explanation, the PA's Bachelor's degree was in commerce and finance, and he has worked in the field of human resources since graduation. His current employment is also in the field of human resources. The Principal Applicant provided his reason for choosing the University of Windsor, and the benefits he wishes to gain from the Master's Program.

[15] The Applicants submit, and I agree, that the Officer provided no justification for their conclusion that the PA's studies were poorly justified, given the Decision's lack of consideration of how the Master's Program builds on the PA's prior experience. Viewed in that light, the Officer's erroneous reference to the intended program of study as an MBA program became more than just a misnomer.

[16] The Respondent argues that the Officer reasonably found that the Applicant's proposed course of studies is "poorly justified" based on his study plan, which the Respondent contends was framed in "generic terms", likening the case at bar to *Akomolafe v Canada (Citizenship and Immigration)*, 2016 FC 472 [*Akomolafe*].

[17] I am not persuaded by this argument. As the Applicants submit, the Officer never found the PA's study plan generic, as opposed to the officer's reasons in *Akomolafe*, which explicitly state that the explanation for pursuing international studies was "vague" and that "specific benefits to be accrued [were] not sufficiently articulated": at para 5. Besides, the PA in this case did provide specific explanations on how the Master's Program would build on his work experience, which was not addressed in the Decision.

[18] Similarly, I reject the Respondent's assertion that the Principal Applicant's intent on returning to his current employer was equivocal in the first place, based on his expressed interest in opening a management consultancy firm in Ecuador with his partner. The Officer made no mention of the PA's intent on returning to his current employer or his expressed interest in staring a new business in Ecuador, or why these factors would put the genuineness of the PA's intent to study into question.

[19] Further, the Applicants submit, and I agree, that the possibility of returning to Ecuador instead of UAE also does not justify the refusal. Whether the Applicants intend to return to their country of residence or country of citizenship is not relevant. What is relevant, according to the requirement enumerated in paragraph 216(1)(b) of the *IRPR*, is whether they will leave Canada at the end of their authorized period of stay.

B. *The Officer's finding that the Principal Applicant's employment does not demonstrate he was sufficiently established was unreasonable*

[20] The Applicants also argue that the Officer's conclusion that the PA would not leave Canada at the end of his stay based on his current employment situation was unreasonable. The Applicants highlight the letter from the PA's current employer [employer's letter] demonstrating their enthusiasm for his intended studies and planned return upon completion of the program, which the Officer did not consider.

[21] The Applicant analogizes the case at bar to *Barril v Canada (Citizenship and Immigration)*, 2022 FC 400 [*Barril*], where the Court found that the officer's failure to consider evidence clearly contradictory to their findings was unreasonable, stating at para 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 […]

[22] The Applicants assert that the same error was made here, as the evidence clearly countered the Officer's concern regarding the Principal Applicant's current employment situation not being sufficiently established.

[23] The Applicants further contend that the Officer committed an error akin to that found in *Azizulla v Canada (Citizenship and Immigration)*, 2021 FC 1226, where the Court found that an officer failed to provide any explanation based on the evidence to ground their finding, rendering the reasons "not really 'reasons' at all": at para 21. The Applicants submit that the Officer was obliged to explain why they preferred their own conclusion over the evidence from the PA's current employer guaranteeing him a job upon the completion of his studies, or the PA's potential plan to open a consultancy firm in Ecuador with his partner – both of which support his intention to leave Canada after his authorized period of stay.

[24] The Respondent maintains that the reasons clearly indicate that the Officer did consider the Principal Applicant's "current employment situation", and that the Officer reasonably found that this employment was insufficient to demonstrate that he would leave Canada after his

studies. The Respondent points out the other reasons that factored into the Officer's conclusion, such as the Applicant's temporary status in the UAE, which the Applicants did not submit would be maintained or extended beyond January 2023. The Respondent submits that temporary status in a country of residence creates an "uncertainty inherent in this process [that] may incentivize foreign nationals to remain in Canada", which the Court has upheld as a reasonable consideration: *Ahmed v Canada (Citizenship and Immigration),* 2023 FC 50 [*Ahmed*] at para 8.

[25] The Respondent also relies on the principle that officers are presumed to have considered all the evidence on the record, and argues that the Officer was not required to mention the employer's letter, as the evidence was not directly contrary to the conclusions drawn: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16.

[26] I agree that the Officer is entitled to weigh various factors, including, in this case, the Applicants' temporary status in UAE. I also agree that an officer is presumed to have considered all the evidence. However, as the Applicants submit, this presumption can be rebutted when evidence that runs contrary to an officer's conclusion was not mentioned in the decision: *Barril* at para 17.

[27] The employer's letter confirmed that the employer was aware that the PA has been admitted by the University of Windsor. The employer's letter also confirmed that they would hire a temporary substitute in the PA's absence, and that the PA's position would be waiting for him upon his return after completing his studies.

[28] In view of this evidence, it was unclear how and why the Officer concluded that the PA's employment does not demonstrate that he is sufficiently well established. I agree with the Applicants that the Officer's failure to mention the employer's letter, which contradicted the Officer's conclusion, rendered the Officer's analysis on this issue unreasonable.

[29] While it was open to the Officer to weigh the employer's letter against other factors, including the Applicants' status in UAE, the Officer in this case did not mention the employer's letter at all, making it difficult to understand the Officer's reasoning. As confirmed in *Barril* at para 12, while an officer's reasons may be brief, they must still be sufficient to understand the reasons an application was refused.

[30] I also find the cases cited by the Respondent distinguishable on the facts. In *Ahmed*, the applicants had family ties in Canada, and their establishment in the UAE was found to be recent and limited. In *Bestar v Canada (Citizenship and Immigration)*, 2022 FC 483, the applicant expressed no desire to return to her country of citizenship and the letter from her employer was not "a binding offer of re-employment": at para 15. Here, the Applicants have no family ties in Canada, the PA has a job to return to in UAE, where he has lived since 2015, and they have an alternative plan to return to Ecuador.

C. *The Officer's assessment of the Applicants' financial situation was unreasonable*

[31] Finally, the Applicants assert that the GCMS notes implicitly treated their "financial situation" as a negative factor, as it was listed as a reason for the Officer's conclusion that the Principal Applicant is not a genuine student. However, the Applicants submit that this reference

to “financial situation” is neither supported nor justified. Notably, the Principal Applicant points to the evidence demonstrating that his tuition at the University of Windsor will total $37,500, and his bank statements that indicated $65,412 of available funds as of February 1, 2022. The Applicants argue that this finding was made without regard to the evidence and is unreasonable: *Vavilov* at para 126.

[32] I agree with the Applicants that the Officer’s reference to their financial situation was not justified in light of the evidence they have provided about their finances, including evidence showing that their funds available were expected to rise above $121,000 by July 31, 2022.

[33] The Respondent argues that it was open for the Officer to consider the Applicants’ financial situation in the context of assessing the reasonableness of the study plan. The Respondent points out that in addition to the tuition, the University of Windsor estimated that the Applicants’ living expenses will be $28,000 for the two-year duration. The Respondent acknowledges that the Applicants had a cumulative $65,412 of available funds as of February 1, 2022, but notes that no further ownership of real property or other assets in the UAE, Ecuador, or Syria, were demonstrated.

[34] The Respondent also points to the Principal Applicant’s “bare assertion” in dismissing potential studies in the UAE by stating “most of these did not satisfy my interest and ambition.” The Respondent maintains that it was within the Officer’s expertise to consider the PA’s financial situation and arrive at a conclusion that differs from the PA’s purported reason for choosing Canada over the UAE: *Solopova v Canada (Citizenship and Immigration),* 2016 FC

690 at para 25. As such, the Respondent submits that the Officer reasonably found that the potential total costs of the PA's course of studies would impact the couple's savings, without clear demonstration of how the program would benefit the PA.

[35] In my view, the Respondent seeks to bolster the Officer's reasons. Assuming that the Respondent's submissions were in fact included in the Officer's reasons, the Decision would still be unreasonable since I have already concluded that the Officer erred in finding the PA's proposed course of studies "poorly justified." It thus follows that the Officer's finding that the costs of the intended studies are not warranted also constitutes a reviewable error.

[36] On a final note, the Respondent relies on *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 [*Ocran*] at para 35 to counter the Applicant's argument that the Respondent is bootstrapping the Officer's reasons. Justice Little's comment in *Ocran* confirmed that an officer's reasons need not be perfect and that a decision will only be set aside if an error is sufficiently important or central to the decision; it did not give permission to a party to supplement the reasons for an impugned decision.

## IV. Conclusion

[37] The application for judicial review is granted.

[38] There is no question for certification.

**JUDGMENT in IMM-2312-22**

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-2312-22 |
| **STYLE OF CAUSE:** | LUIS STEPHANO NORIEGA NORIEGA, ABDULLAH ALNATOUR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
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