Federal Court  Cour fédérale

Date: 20230330

Docket: IMM-3627-22

Citation: 2023 FC 454

Toronto, Ontario, March 30, 2023

PRESENT: Madam Justice Go

BETWEEN:

JOSEPH OSARETIN AGBON-EDOBOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Joseph Osaretin Agbon-Edobor, is a 25-year-old citizen of Nigeria.

[2] On May 3, 2021, the Applicant was admitted to study in the Business – Supply Chain and Operations (Co-op) program at Fanshawe College for the January 2022 to April 2024 term.

[3] In November 2021, the Applicant applied for a study permit based on his acceptance from Fanshawe College. Due to his young age and limited personal financial resources, the Applicant provided a letter of sponsorship from his cousin, Dr. Idehen, an emergency physician living in Nova Scotia. Dr. Idehen indicated his willingness to fully sponsor the Applicant's expenses for his period of study.

[4] In a refusal letter dated March 3, 2022, a visa officer [Officer] at the High Commission of Canada in Nairobi, Kenya determined that the Applicant did not meet the statutory requirements for a study permit. Specifically, the Officer was not satisfied that the Applicant 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 his personal assets and financial status [Decision].

[5] The Applicant seeks judicial review of the Decision. For the reasons set out below, I find the Decision unreasonable and I grant the Applicant's application for judicial review.

II. Preliminary Issue

[6] The Respondent requested at the hearing that the Style of Cause be amended to reflect the Minister of Citizenship and Immigration as the proper Respondent. I so order.

III. Issues and Standard of Review

[7] The main issue on judicial review is whether the Decision is reasonable. The Applicant also argues that the Officer's inadequate reasons failed to observe procedural fairness.

[8] The determinative issue, in my view, is the reasonableness of the Decision.

[9] The parties agree that the merits of the Decision are reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. 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 Applicant to demonstrate that the Decision is unreasonable: *Vavilov* at para 100.

IV. Analysis

[10] The Applicant argues overall that the Officer erred in finding that his proposed program is an unreasonable expense by completely disregarding the documentation submitted in support of his application. The Applicant notes that he submitted a detailed statement of intent and a letter from his then counsel, sufficient proof of financial support, a letter of sponsorship from Dr. Idehen, proof of tuition payment and other supporting documents.

[11] The Applicant reiterates his young age and cites *Obot v Canada (Citizenship and Immigration)*, 2012 FC 208 [*Obot*] to submit that it was unintelligible for the Officer to expect

him, as a 25-year-old, to have more personal assets to satisfy the paragraph 216(1)(b) condition: at para 20. The Applicant also relies on *Obot* to argue that the Officer's failure to consider his personal ties to Nigeria, such as his widowed mother, was unintelligible: at para 20.

[12] The Applicant submits that the Officer did not provide an adequate explanation or rationale as to why they did not believe that the Applicant would leave Canada at the end of his studies, as there was evidence that directly contradicted this conclusion.

[13] While I am not persuaded by all the arguments advanced by the Applicant, I agree that the Decision lacks the requisite intelligibility and justification required by *Vavilov*. Specifically I find the following two reviewable errors.

[14] First, the Applicant confirmed in his statement of intent that he currently works as an Administrative/Supply Chain Officer for Bluelight Emergency Medical Care, and wants to pursue a diploma program in Supply Chain and Operations to hone his management skills. The Applicant explained why he chose to pursue his studies in Canada and specifically why he picked Fanshawe College, such as the articulation agreements with Supply Chain Canada, which provide advanced standing in the Supply Chain Management Professional [CSMP] designation program. While I note that the Applicant did not mention his widowed mother in his statement of intent, he did state that he intends to return to Nigeria after the program to use his acquired knowledge.

[15] The Applicant's then legal representative also provided written submissions highlighting the Applicant's background, the purpose of visit, his personal assets, travel history, and ties to his home country, including family ties.

[16] The Officer's reasons, as provided through the Global Case Management System [GCMS] notes, read as follows:

> I have reviewed the application. Taking the applicant's plan of studies into account, documents submitted show some funds seem available, but there are concerns that third party funds would be sufficient and available for the whole course. I am not satisfied that the proposed studies would be a reasonable expense. 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.

[17] The Decision made no mention of the Applicant's explanations as to why he chose the program in Canada and his intent to return to Nigeria. In so doing, I agree with the Applicant that the Officer failed to provide adequate reasons for concluding that the Applicant would not leave Canada at the end of his studies.

[18] Second, with respect to the Officer's concern that third party funds would not be "sufficient and available for the whole course", the Applicant highlights the financial support that Dr. Idehen committed to, as demonstrated through his financial slips, letter of sponsorship, and the tuition payment for the Applicant's first semester. The Applicant relies on *Gauthier v Canada (Citizenship and Immigration)*, 2019 FC 1211, where the Court found an officer's finding of insufficient financial resources unreasonable: at para 23. The Applicant argues that he

similarly provided evidence to reasonably satisfy the burden of demonstrating that he has access to sufficient financial resources by virtue of his cousin's sponsorship.

[19] I note Dr. Idehen indicated in his sponsorship letter that he works full time as an emergency physician and will take full financial responsibility for the tuition and all other living expenses that would be incurred during the Applicant's time at Fanshawe College. Dr. Idehen also explained that he lives with his wife, who works as Information Technology consultant, and their two children. Having no other dependents, Dr. Idehen affirmed that they have enough disposable income to support the Applicant's period of study in Canada. The written submissions from the Applicant's then counsel also reiterated Dr. Idehen's willingness and ability to sponsor the Applicant's study abroad.

[20] The Respondent relies on the well-established principle that officers are presumed to have considered all the evidence before them, and submits that the Decision is not unreasonable merely because the Officer failed to refer to Dr. Idehen's sponsorship letter: *Hashem v Canada (Citizenship and Immigration)*, 2020 FC 41 at para 28. The Respondent submits that the Decision can only be set aside where the "non-mentioned evidence is critical [and] contradicts the decision": *Khir v Canada (Citizenship and Immigration)*, 2021 FC 160 at para 49.

[21] The Respondent submits that it was not unreasonable for the Officer to have concerns as to whether these third party funds would be sufficient and available, given that the cost of the Applicant's program alone is over $33,500, while Dr. Idehen's bank statement in Nova Scotia showed a balance of less than $29,000.

[22] Assuming that was the basis for the Officer's concern – which was not stated in the reasons – I note that the Applicant has already paid $8,381.16 of his tuition to Fanshawe College. I also note Dr. Idehen's pay slips showing a bi-weekly after-tax salary of over $8,000, which amounts to an annual net income of over $200,000. In view of Dr. Idehen's high income, it is unclear from the reasons why the Officer would find his financial support insufficient or unavailable. Further, as the Applicant points out, the GCMS notes indicate that the Officer calculated $65,000 of funds available to the Applicant based on the evidence, which is more than enough to cover the entire amount of tuition, cost of living and other expenses.

[23] The Respondent further cites *Pasco Pal v Canada (Citizenship and Immigration)*, 2012 FC 560, where the Court found it reasonable for an officer to require proof of transferable and available funds, unencumbered by debts or other obligations, equal to half the minimum necessary income [MNI] applicable for the skilled worker and their family pursuant to subparagraph 76(1)(b)(i) of the *IRPR*: at para 25. I note however that the Officer in this case did not base their finding on the MNI requirement, and that Dr. Idehen's income appears to well exceed the MNI for a large family.

[24] I agree with the Respondent that the Court should defer to an officer's weighing of evidence, and that a decision is not unreasonable just because alternative inferences may be drawn from the evidence. However, I disagree that the evidence of Dr. Idehen's financial support, given his demonstrated level of income, is not critical evidence that contradicts the Officer's concerns.

[25] The Applicant cites *Runnath v Canada (Citizenship and Immigration)*, 2014 FC 606, where the Court noted at para 16 that "stating that the person is not well established in her country of origin where she lives and works on the basis that she 'has no proof of her personal fund' does not meet the reasonability requirements under *Dunsmuir*."

[26] I note further that more recently in *Thavaratnam v Canada (Citizenship and Immigration)*, 2022 FC 967, Justice Furlanetto confirmed that "an officer is not obliged to refer to all of the evidence in making their decision and is generally presumed to have considered all the evidence", however, "an officer's decision must still be justified in light of the evidence before the Officer" and the failure to engage with the evidence is a reviewable error: at para 18.

[27] In this case, the Officer's failure to engage with several pieces of relevant evidence, including the Applicant's letter of intent and Dr. Idehen's sponsorship letter, which on their face appear to contradict the bases for refusing the application, rendered the Decision unreasonable.

V. Conclusion

[28] The application for judicial review is granted.

[29] There is no question for certification.

JUDGMENT in IMM-3627-22

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. The Style of Cause is amended to name the Respondent as the Minister of Citizenship and Immigration.
3. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3627-22
STYLE OF CAUSE:	JOSEPH OSARETIN AGBON-EDOBOR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE
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