Federal Court Cour fédérale

Date: 20230301

Docket: IMM-2054-22

Citation: 2023 FC 284

Vancouver, British Columbia, March 1, 2023

PRESENT: Justice Andrew D. Little

BETWEEN:

HITANSHU HITESH BAROT

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>JUDGMENT AND REASONS</u>

[1] The applicant is a 23-year old citizen of India. He applied for judicial review of a decision by a visa officer dated February 22, 2022, refusing his application for a study permit (the "Decision") under subsection 216(1) of the *Immigration and Refugee Protection Regulations,* SOR/2002-227 (the *"IRPR"*).

[2] The applicant asks the Court to set aside the decision as unreasonable, applying the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65, [2019] 4 SCR 563.

[3] For the reasons that follow, the application will be dismissed. The applicant has not persuaded me that the officer made a reviewable error.

I. Facts and Events leading to this Application

[4] The applicant received a Bachelor's Degree in Management Studies from the University of Mumbai in 2020. From February to July 2021, the applicant was employed as a Financial Advisor in India. Since then, he has been pursuing the "OCGC entrepreneurship management PG program" from his home in India, remotely, as offered by Canadore College in North Bay, Ontario. It is a designated learning institute under the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*"IRPA"*).

[5] On November 9, 2021, the applicant applied for a study permit in order to pursue the post-graduate certificate in entrepreneurship management at Canadore College.

[6] With his study permit application, the applicant filed the letter of acceptance into the proposed program at Canadore College. The applicant included his transcripts from the University of Mumbai and a letter of support from his employer.

[7] The applicant prepaid the required tuition of approximately $15,000 and received a scholarship in the amount of $1,000 from Canadore College. He also invested $10,000 in a guaranteed investment certificate at a Canadian bank.

II. The Decision under Review

[8] By letter dated February 22, 2022, an officer refused the applicant's application for a study permit. The officer was not satisfied that the applicant would leave Canada at the end of his stay, as required by subsection 216(2) of the *IRPR*, based on the purpose of his visit.

[9] The Global Case Management System ("GCMS") contained the following entry on February 22, 2022:

> Review of all information before me, including client's previous employment and educational history. Client has passed the B.M.S Examination in 2020. Client is requesting SP in Entrepreneurship Management in Canadore College; See LOA
>
> Given the applicant's previous education and employment history, I am not satisfied the motivation to pursue this particular program, at this point in time in Canada, is reasonable; See LOA. I am not satisfied client demonstrates the academic proficiency necessary to complete studies in Canada.
>
> Client submitted transcripts in order to substantiate academic proficiency. Transcripts indicate low average marks, and specifically low marks in core subjects. I am not satisfied client demonstrates the academic proficiency necessary to complete studies in Canada. PA has failed to satisfy me that pursuing the selected program of study is reasonable given the high cost of international study in Canada when weighed against the potential career/employment benefits after completion, and the local options available for similar studies. See LOA.
>
> Based on the above balance, I am not satisfied that this applicant is a bona fide student. Weighing the information on hand in this specific case, the applicant has failed to establish that they are a

> bona fide temporary resident who will leave Canada following the completion of their studies pursuant to section R216.
>
> x1 Previous refusals.
>
> Application Refused.

III. Legal Principles

[10] The applicant submitted that the Court should apply a correctness standard of review to "questions of law, including questions of procedural fairness and the scope of a decision-maker's authority", but reasonableness for "palpable and overriding error of fact or mixed fact and law".

[11] On a judicial review application, reasonableness is the applicable standard of review concerning the substance of the officer's decision on a study permit application: see *Iyiola v Canada (Citizenship and Immigration)*, 2020 FC 324 at paras 11-14; *Aghaalikhani v Canada (Citizenship and Immigration),* 2019 FC 1080, at para 11. There is no issue in this case as to the scope of the officer's authority.

[12] This standard should not be confused with the standards applied on an appeal, as established in *Housen v Nikolaisen,* 2002 SCC 33, [2002] 2 SCR 235. They are distinct. Following *Housen*, questions of law are reviewed for correctness, whereas factually suffused questions of mixed fact and law, and questions of fact, are reviewed for palpable and overriding error. See *Mahjoub v Canada (Citizenship and Immigration),* 2017 FCA 157, [2018] 2 FCR 344, at paragraphs 56 and following.

[13] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v Canadian Union of Postal Workers,* 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61.

[14] Justice Roussel set out the standard of review in a study permit case in *Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552, at para 13:

> The standard of review applicable to a review of a visa officer's decision to refuse a study permit application is that of reasonableness (… *Vavilov,* at paras 10, 16–17 … ; *Nimely v Canada (Citizenship and Immigration),* 2020 FC 282 at para 5 …; *Hajiyeva v Canada (Citizenship and Immigration),* 2020 FC 71 at para 6). While it is not necessary to have exhaustive reasons for the decision to be reasonable given the enormous pressure on visa officers to produce a large volume of decisions each day, the decision must still be based on an internally coherent and rational chain of analysis and be justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85). It must also bear "the hallmarks of reasonableness — justification, transparency and intelligibility" (*Vavilov* at para 99).

[15] In order to intervene, the Court on this application must find an error in the decision that is sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para 100.

[16] Part 12 of the *IRPR* governs how "Students" as a class of persons may become temporary residents of Canada. To study in Canada, *IRPR* section 213 requires a foreign national to apply

for a study permit before entering Canada. Under subsection 216(1), an officer shall issue a study permit to a foreign national if, following an examination, certain criteria are established. Those criteria include that: the foreign national will leave Canada by the end of the period authorized for their stay (under paragraph 216(1)(*b*)); the foreign national must meet the requirements of Part 12 (paragraph 216(1)(*c*)); and the foreign national must have been accepted to undertake a program of study at a designated learning institution (paragraph 216(1)(*e*)).

[17] The onus is on the applicant to satisfy the officer that they will not remain in Canada once the visa has expired, for the purposes of paragraph 216(1)(*b*): *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690, at para 10.

[18] Section 220 of the *IRPR* provides that an officer shall not issue a study permit to a foreign national, with certain exceptions, unless they have sufficient and available financial resources as described in paragraphs 220(*a*) to (*c*).

IV. <u>Analysis</u>

[19] In this Court, the applicant argued that he met all of the requirements of *IRPR* subsection 216(1) and met the financial requirements in section 220. He submitted that there was nothing in the evidence that he would not comply with Canadian law and leave at the end of his authorized stay.

[20] The applicant marshaled an array of arguments to challenge the officer’s decision, submitting in his written memorandum that:

- the officer applied criteria not otherwise found in the governing legislation,
- the officer was unduly concerned about the disproportionate cost of studying in Canada,
- there was a deficiency of evidence to support the officer's factual findings,
- there was no rational or intelligible chain of analysis underlying the officer's conclusions based on the facts,
- the officer failed to provide transparent and intelligible justification for their reasoning, and
- there is no evidence to support the officer's finding that the applicant could not be trusted to comply with Canadian law.

[21] The oral argument focused on whether the officer's GCMS entry, which represents the reasons for the refusal of the study permit, provided sufficient justification and was responsive to the evidence in the record before the officer. The applicant argued that the officer did not explain the conclusion that the applicant was not a genuine student owing to his poor academic performance, and failed to consider critical evidence showing that the applicant had sufficient funds for the proposed program in Canada.

[22] I will analyze these arguments in turn.

A. ***The Officer's Assessment of Academic Performance***

[23] The officer's GCMS notes stated in part:

> … I am not satisfied client demonstrates the academic proficiency necessary to complete studies in Canada.
>
> Client submitted transcripts in order to substantiate academic proficiency. Transcripts indicate low average marks, and specifically low marks in core subjects. I am not satisfied client demonstrates the academic proficiency necessary to complete studies in Canada…

[24] The applicant's submission was that the officer ignored the evidence because his transcripts did not display "low average marks" as they met the requirements of the designated learning institution – otherwise it would not have accepted him into the proposed program. He argued that the officer's assessment of this evidence was tightly constrained by *IRPR* paragraph 216(1)(*e*), which merely required the applicant to demonstrate that he had been accepted to undertake a program of study at the designated learning institution. According to the applicant, having been accepted into the program, the regulations did not give the reviewing officer any discretion to evaluate the applicant's academic proficiency; that discretion is left to the designated learning institution (citing *Vavilov*, at paras 99 and 109-111). The applicant relied on *Hamedani v Canada (Minister of Citizenship and Immigration)*, 2021 FC 628, at para 13.

[25] Relatedly, the applicant argued that the officer was required in law to explain the comments about low average marks and low marks in core subjects (citing *Bougrine v Canada (Citizenship and Immigration)*, 2022 FC 528, at paras 21-22).

[26] For the reasons below, I do not agree.

[27] First, as the respondent observed, this Court has held that an officer assessing a study permit application has the authority to assess an applicant's skills and abilities (including academic proficiency and likelihood of success in the proposed program) when determining whether the applicant is a *bona fide* student and will leave Canada at the end of their authorized stay under *IRPR* paragraph 216(*b*): *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1745, at para 15; *Bougrine*, at paras 14-15; *Patel* v Canada (Citizenship and Immigration), 2020

FC 517, at para 24; *Siddiqua v Canada (Citizenship and Immigration)*, 2022 FC 1263, at paras 9 and 24.

[28] Second, I do not accept the applicant's submission in this case that *IRPR* paragraph 216(*e*) precluded or tightly constrained the officer's consideration of the matters just mentioned, including academic proficiency, under paragraph 216(*b*). This issue goes to the reasonableness of the officer's interpretation of *IRPR* section 216. Paragraph 216(*e*) concerns the applicant's acceptance into a program at a designated learning institution in Canada, whereas paragraph 216(*b*) concerns whether the applicant will leave Canada at the end of their stay. The text of paragraph 216(*e*) on its face neither constrains the officer's assessment of whether an applicant will leave Canada as contemplated by paragraph 216(*b*), nor precludes a consideration of the *bona fides* of the applicant's request for a study permit. The applicant offered no objective evidence or submissions concerning the context or purpose of either provision to support his submission. Applying *Vavilov,* I am not prepared to find that the officer failed to respect the legal constraints in section 216 generally, or in paragraph 216(*e*) specifically: *Vavilov,* at paras 116-124.

[29] I do agree that acceptance into a program offered by a designated learning institution is an indicator of the applicant's *bona fides* as a student, to be weighed by the officer with other factors in each specific case. The officer's GCMS notes in this case do not suggest that the officer failed to do so.

[30] Third, with respect to the officer's findings about low marks, the applicant made no specific submissions on the contents of his post-secondary transcripts, nor any argument about what constituted a core subject in his previous studies or how those marks would affect (or not affect) his ability to successfully complete his proposed studies at Canadore College.

[31] The applicant relied on an alleged legal requirement in *Bougrine* for an explanation for the two findings about his marks. However, in the absence of any specific submissions to the officer (or this Court) on this issue, the applicant has not discharged the onus to show why it was not reasonably open to the officer to conclude, on the record, that the applicant had low average marks and low marks in core subjects. As the respondent noted, the officer's first finding (low average marks) is adequately grounded in the record – the applicant obtained 330/600 marks overall in his sixth semester (six courses with marks of 47, 48, 53, 58, 59 and 65 out of 100, leading to letter grades from C to A). He achieved an average of C, D and C as an overall average in his second, third and fourth semesters, and a B in his first. While there are some higher marks, it does not appear that the officer ignored or fundamentally misapprehended the applicant's post-secondary academic record: *Vavilov,* at paras 125-126.

[32] In addition, *Bougrine* does not assist the applicant on the facts of this case. As I read Justice Pamel's careful reasons, the officer in *Bougrine* neglected to mention important evidence that contradicted the conclusion that Mr Bougrine had poor grades in "all subjects" and "low scores in areas of study that would form the core of future studies". As the Court explained, that omission attracted the principle in *Cepeda-Guitierrez* because there were some grades that were not low or poor, including grades in core courses directly connected to Mr Bougrine's proposed

course of study in Canada: *Bougrine*, at paraa 20-21; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration),* [1999] 1 F.C. D-53, [1998] FCJ No 1425, at paras 15-17. As the applicant properly acknowledged, the Court held at paragraph 21:

> The "burden of explanation increases with the relevance of the evidence in question to the disputed facts" (*Cepeda-Gutierrez* at para 17) and, in this case, Mr. Bougrine's grades were central to the reasons for the officer's decision.

[33] At paragraphs 22-23, the Court in *Bougrine* noted the need for caution by the officer as emphasized by Justice Norris in *Patel*, and found that the officer still had a responsibility to show that he understood the requirements of the courseload to successfully complete the program and to explain why Mr Bougrine's low general average might raise concerns about his ability to successfully complete the program, and then link those concerns to the conclusion that he was not a *bona fide* student. The Court found that the officer had not clearly presented his reasoning: *Bougrine* at paras 22-23.

[34] The Court in *Bougrine* also found that it appeared the officer did not seriously review Mr Bougrine's submissions about his academic record, instead copying and pasting a prior officer's conclusions in an overturned decision, word for word: *Bougrine*, at paras 24-25.

[35] In *Cepeda-Gutierrez*, Evans J. explained at paragraphs 15-17 that the Court may infer that a decision maker made an erroneous finding of fact "without regard to the evidence" if the decision maker's reasons failed to mention evidence that was relevant to the finding and that pointed to a different conclusion from the one reached by the decision maker. However, Evans J. was clear that such an inference is not to be made due to <u>any</u> omission from the reasons that an

applicant may identify, or based on any unmentioned piece of evidence in the record. Rather, a failure to consider evidence may lead to the decision being set aside only where the non-mentioned evidence is critical and the evidence contradicts the tribunal's decision so the reviewing court determines by inference that its omission means the decision maker did not have regard to the material before it: see *Li v Canada (Citizenship and Immigration),* 2023 FC 26, at para 28; *Zamani v Canada (Citizenship and Immigration)*, 2023 FC 19, at para 23; *Gebru v. Canada (Citizenship and Immigration),* 2022 FC 1563, at para 49; *Kargbo v. Canada (Citizenship and Immigration)*, 2022 FC 1376, at para 54; *Cepeda-Gutierrez,* at para 17 ("evidence omitted from any discussion in the reasons appears squarely to contradict the [decision maker's] finding of fact"), cited by Pamel J in *Bougrine,* at para 21.

[36] In the present case, the applicant has not demonstrated that the evidence in the record contradicts the officer's findings, either on the basis of his transcripts or because the officer was legally precluded from considering the matter in the first place. As noted, the applicant did not make submissions to challenge the officer's findings concerning which subjects were central to his previous studies or about how those prior marks would or would not affect his ability to successfully complete his proposed studies at Canadore College. Neither one is self-evident on the record. The principle in *Cepeda-Gutierrez* that the Court applied in *Bougrine* does not require further explanation from the officer in this case. For clarity, I add that the mere acceptance of the applicant into a program at the college was not evidence that triggered a requirement for additional explanation, given the specific evidence in his university transcripts in the record.

[37] Lastly, the Court in *Hamedani* concluded (*per* Bell, J) that there were four reasons to set aside the officer's decision, including that there was "no evidence" that the applicant there would not be able to complete his program from an academic perspective: at para 13. In this case, there was evidence about academic proficiency on which it was open to the officer to have concerns about the applicant's ability to complete the proposed program.

[38] I therefore conclude that the applicant has not demonstrated that the officer's conclusion on this issue was unreasonable.

B. ***The Officer's Assessment of the Applicant's Motivation and the Cost of the Proposed Education Program against its Benefits***

[39] The officer's GCMS notes stated that the applicant had:

> … failed to satisfy me that pursuing the selected program of study is reasonable given the high cost of international study in Canada when weighed against the potential career/employment benefits after completion, and the local options available for similar studies. See LOA.

[40] The applicant submitted that he has demonstrated sufficient funds to satisfy the requirements of the *IRPR*, having paid his first year tuition in full and deposited $10,000 in a GIC at a Canadian bank. He submitted that it was his choice to decide how much to invest in his education and future. Similar to his submissions above, he argued that he had sufficient funds and that the officer ignored this critical evidence.

[41] The applicant argued that it was unreasonable for the officer to weigh the cost of the program against local options and that the officer failed to transparently identify which "local options" were considered in the assessment.

[42] The applicant pointed to the financial evidence before the officer, as well as the filed recommendation and motivation letters to show the logical progression of his education and his intentions. Given that evidence, the applicant argued that there was no rational line of analysis in the officer's reasoning as required by *Vavilov*.

[43] The applicant referred to several cases, including *Fallahi v Canada (Citizenship and Immigration),* 2022 FC 506, *Afuah v Canada (Citizenship and Immigration),* 2021 FC 596 and *Aghaalikhani v Canada (Citizenship and Immigration),* 2019 FC 1080, at para 24 (which described the principles in *Cepeda-Gutierrez*).

[44] I am not persuaded by the applicant's submissions. The officer's GCMS notes did not conclude that the applicant did not have sufficient funds to study in Canada. The officer's focus was on whether the proposed program was reasonable given its cost, weighed against the potential career or employment benefits after completion of the program.

[45] The applicant's employment from 2020 onwards was as a Financial Advisor. The applicant's letter of justification advised that he wanted to pursue the program in entrepreneurship management for the purpose of career advancement. The letter variously described his motivations and objectives as: (i) seeking an entry-level position with a

multinational company in India as either a business analyst, a manager working in the day-to-day operations of the company, or a financial executive; (ii) to get exposure to handling different kinds of "business portfolios"; (iii) to get an entry-level position to help get a job after the pandemic in a slow economic growth scenario; (iv) to acquire skills to become a "pioneer in entrepreneurship management"; (v) to join one of the "big corporate giants" in India, (vi) to start his own business, either now or in the longer run, and (vii) later, to become an independent consultant. Reading the letter as a whole, the understandable common theme appears to be obtaining a better job and earning more money. The applicant also referred, admirably, to starting a business to help the growth of India.

[46] In this Court, the applicant's submissions on this issue were, in substance, an invitation to re-weigh the evidence before the officer on whether the program was reasonable weighed against its benefits, contrary to the teachings of *Vavilov* (at paragraph 125) and numerous other binding appellate authorities.

[47] In response to the concern about reweighing the evidence, the applicant submitted that the officer's reasons contained no intelligible train of analysis and that the problem was a lack of explanation – silence in the GCMS notes, which suggested that the officer was improperly "reverse engineering" an outcome. Respectfully, I see no evidence of that. Following the legal reasoning explained above and as recognized in *Aghaalikhani*, and based on the applicant's submissions, I cannot conclude that the officer fundamentally misapprehended the evidence, or ignored any critical evidence in the record in reaching the impugned finding: *Vavilov*, at para

126. There were insufficient constraints in the evidence or submissions to trigger a requirement for additional reasoning in the GCMS notes.

[48] I find no parallel between the present officer's reasons and the concerns about intelligibility described by Justice Southcott in *Fallahi*, at paras 14-15. Nor do I believe, as the applicant also contended, that the officer's reasoning runs afoul of Justice McHaffie's reasoning in *Afuah*, at paragraph 15. Although the officer did not specifically identify the "local options" available to the applicant, the officer cannot be significantly faulted for failing to specify local options given the contents of the applicant's justification letter. I do not understand *Afuah* to require officers to specify local options in every study permit case, as the applicant's submission implies.

[49] I conclude that the applicant has not demonstrated that the officer's GCMS notes contained a reviewable error on the grounds alleged.

V. Conclusion

[50] The application is therefore dismissed.

[51] Neither party proposed a question to certify for appeal and none will be stated.

JUDGMENT in IMM-2054-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified for appeal under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*

"Andrew D. Little"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2054-22
STYLE OF CAUSE:	HITANSHU HITESH BAROT v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	JANUARY 11, 2023
REASONS FOR JUDGMENT AND JUDGMENT:	A.D. LITTLE J.
DATED:	MARCH 1, 2023

APPEARANCES:

Samin Mortazani	FOR THE APPLICANT
Erica Louie	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Samin Mortazani Pax Law Corporation North Vancouver, British Columbia	FOR THE APPLICANT
Erica Louie Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT