Federal Court Cour fédérale

I. Date: 20230510

Docket: IMM-3757-22

Citation: 2023 FC 667

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 10, 2023

PRESENT: Mr. Justice Pentney

BETWEEN:

YAMEOGO, WEND WAOGA FÉLICITÉ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

II. Background

[1] The applicant, Wend-Waoga Félicité Yameogo, is a 26-year-old citizen of Burkina Faso. She graduated with a bachelor's degree in general secondary education in 2020, and the

university suggested she pursue studies in sociology and anthropology. Given the poor job prospects in the fields of sociology and anthropology, she decided to switch to computer science in order to gain quick and easy access to the job market in Burkina Faso. She was admitted to the Diploma of Vocational Studies (DVS) “Professional Training” program in computing support at the Teccart Institute in Montréal for the winter 2022 semester.

[2] The visa application was refused, and the applicant seeks judicial review of this decision. The officer refused the application because he was not satisfied that she would leave Canada at the end of the authorized period of stay, given the following:

- The reason for her visit, considering the nature of her prior studies and her command of the language; and

- Her financial situation, including her income and assets, and her family’s economic situation.

[3] The determinative issue is the reasonableness of the decision. The applicant raises an issue of procedural fairness as well; however, in light of my conclusion on the first issue, it will not be necessary to address this issue.

III. Legal framework

[4] In many recent decisions, this Court has analyzed the legal framework that applies to judicial review of a refusal to grant a student visa. The following principles, drawn from the case law, are particularly relevant to the judicial review of the decision at issue.

[5] A reasonable decision must explain the result in terms of the law and the essential facts: applying the analytical framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SSC 65 [*Vavilov*], the reviewing court must "review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at para 2). The burden is on the applicant to satisfy the Court "that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33).

[6] *Vavilov* seeks to strengthen a "culture of justification", in which the decision maker must provide a logical explanation of the outcome and take the parties' submissions into account, but also take into account the context in which the decision was rendered. According to the *Vavilov* framework, the reviewing court must focus on the decision actually made, and the justification provided must support the conclusion. In other words: ". . . it is not enough for the outcome of the decision to be *justifiable*. Where reasons for a decision are required, the decision must also be

justified, by way of those reasons, by the decision maker to those to whom the decision applies" (*Vavilov* at para 86).

[7] Visa officers must handle a high volume of applications, and their reasons are not required to be long and detailed. They must nevertheless include the key elements of their analysis and take into account the applicant's principal submissions on the most relevant points. See, for example: *Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552 at para 13, cited with approval in *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 [*Ocran*] at para 15; *Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596 at paras 9 and 10; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 17, cited with approval in *Motlagh v Canada (Citizenship and Immigration)*, 2022 FC 1098 at para 22.

[8] Applicants bear the burden of satisfying the officer that they meet the statutory requirements, and in particular the requirement to leave Canada by the end of the period authorized for their stay: the requirements include those set out in the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), and the *Immigration and Refugee Protection Regulations*, DORS/2002-227 (Regulations). Under paragraph 216(1)(b) of the Regulations, officers may not issue a study permit to a foreign national unless they are satisfied that the foreign national will leave Canada by the end of the period authorized for their stay.

[9] Visa officers must assess the "push" and "pull" factors that might induce an applicant to overstay the period authorized by the visa and remain in Canada or that might pull the applicant

to return to the home country: *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at para 14, cited with approval in *Ocran* at para 23.

IV. Analysis

[10] Having applied the principles set out above, I am of the view that the decision is unreasonable.

[11] One of the key elements of the judicial review of a refusal by a visa officer to grant a study visa is whether the reasons satisfy the "principle of responsive justification" (*Vavilov* at para 33). This is assessed in light of the context in which the decision is made—in particular, the high volume of applications to be processed and the nature of the interests at stake, including the fact that, in most cases, the applicant can simply submit a new application.

[12] In this case, the officer's decision is based on two key findings. The officer was not convinced that the applicant would leave Canada by the end of the period authorized by her study permit, given the reason for the visit and the applicant's financial situation, and her personal property in particular.

[13] However, I conclude that the decision rendered does not meet the minimum requirements of the "principle of responsive justification", given that the applicant had provided specific and important details directly related to the two grounds on which the officer based his decision. Even if the officer was not obliged to accept all the evidence presented by the applicant, he was

nevertheless required to provide an explanation of how this information was taken into account in his analysis. A reasonable decision must show that the decision maker analyzed any key evidence that was relevant given the applicable legal framework. That was not done in this case.

[14] The officer's main findings and my analysis of each of them are set out below:

A. Purpose of travel

[15] The officer found that the purpose of the trip was unreasonable, given the disproportionate cost of the program of study and considering the nature of the applicant's prior studies and her command of the language.

Discussion:

[16] The applicant explained that after finishing her bachelor's degree in general secondary education in Burkina Faso, she was encouraged by the university authorities to study anthropology and sociology, but that given challenges and crises affecting the quality of education in her country, and the fact that the job prospects were very limited in those fields, she opted to pursue information technology studies instead. She was admitted to the Teccart Institute in Montréal to pursue a DVS in computing support.

[17] At the hearing, the respondent conceded that the file contained no evidence justifying the officer's challenge of the applicant's [TRANSLATION] "command of the language". She obtained

her high school diploma from a program taught in French, and the letter that she filed with her application for a study permit shows that her command of the language is good.

[18] As for the applicant's prior studies, the officer's reasoning is unclear. It is not uncommon for students to take post-secondary technical courses, such as computer science, to improve their chances of getting a job after graduation. In this case, the applicant explained why she had turned to this field instead of continuing with her studies in anthropology and sociology. The officer's line of reasoning on this issue is neither transparent nor intelligible.

B. Financial situation

[19] In his decision letter, the officer refers to the applicant's [TRANSLATION] "personal property" and [TRANSLATION] "financial situation". According to the officer's notes in the Global Case Management System (GCMS), the officer took into account [TRANSLATION] "the economic situation (income and assets presented) of the applicant and her immediate family and the impact that this program will have on her job prospects / potential salary".

Discussion

[20] It is unclear whether the officer is referring to the applicant's financial situation with respect to her ability to cover the costs of her program of study or with respect to her ties with Burkina Faso and considerations that might encourage her to return there after her studies. Both types of considerations are relevant to the analysis that the officer was required to perform in accordance with the legislation, but it is unclear how the officer handled them in this case.

[21] As for the fees and costs associated with the program of study in Canada, the officer failed to note that the applicant's sister and brother-in-law have undertaken to pay all the costs of her program. Nurses by profession and owners of several income-generating properties in Canada, they have been well established in Canada for many years. It is unclear whether the officer took this fact into consideration. Moreover, it is unclear how the reference to her financial situation could justify the finding that the applicant would not leave Canada at the end of her period of study, without a discussion of the other key factors that would push her to return to Burkina Faso. For example, the officer made no mention of the fact that all her other family members live there.

[22] Having to speculate on the reasoning behind a point so central to the decision is a clear sign that the decision is not reasonable according to the framework approved in *Vavilov*.

[23] In conclusion, I note that the applicant has raised another issue concerning a breach of the principle of procedural fairness, related to the fact that she had to undergo a medical examination at the officer's request, and that she had a legitimate expectation of a favorable decision after having taken that step. Given my conclusion on the other issue, it is not necessary to address this issue in detail. Suffice it to say that I am not persuaded that the applicant has succeeded in demonstrating that the doctrine of legitimate expectation applies in this proceeding.

[24] For the above reasons, this application for judicial review is allowed.

[25] The decision is hereby set aside, and the matter is remitted back to a different visa officer for redetermination.

[26] There are no questions of general importance to be certified.

JUDGMENT in IMM-3757-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed.

2. The decision is hereby set aside, and the matter is remitted back to a different visa officer for redetermination.

3. There are no questions of general importance to be certified.

"William F. Pentney"
Judge

Certified true translation
Francie Gow

FEDERAL COURT

SOLICITORS OF RECORD

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