

Federal Court



Cour fédérale

Date: 20230704

Docket: IMM-2064-22

Citation: 2023 FC 923

Ottawa, Ontario, July 4, 2023

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

**IBUKUNOLUWAPO ESTHER
ANIMASAUN AND DESIREOLUWA DAVID
ANIMASAUN**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Ibukunoluwapo Esther Animasaun [Principal Applicant or PA] and her minor son [Minor Applicant] [together, the Applicants] seek judicial review of an immigration officer's [Officer] February 22, 2022 decision refusing their study permit [Study Permit Decision] and temporary resident visa applications [TRV Decision]. The Officer was not satisfied that the Applicants

would leave Canada at the end of their authorized stay, as stipulated in subsection 216(1) and paragraph 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], based on their personal assets and financial status. The parties' submissions focused on the Study Permit Decision.

[2] The application for judicial review is allowed. The Study Permit Decision was unreasonable and is remitted for redetermination. Since the Minor Applicant's application was dependent on the outcome of the PA's application, the TRV Decision also needs to be redetermined.

II. Background

[3] The Applicants are citizens of Nigeria. In 2006, the PA obtained a Bachelor's degree in Architecture at Obafemi Awolowo University. Between 2009 and 2017, she worked as an Architect with GHK Architects Limited. Since 2017, the PA has been employed as an Architect/Project Coordinator in the Construction Management Department at ProStandard Projects Limited. The Applicant also jointly owns a business, Agraffe Sites and Studio Limited, with her husband in Nigeria [Business].

[4] On October 16, 2020, the PA was accepted to Conestoga College Institute of Technology and Advanced Learning to complete a 16-month Post-Graduate Certificate in Construction Management. The estimated tuition fee for the first academic year (8 months) was \$16,476.36 CAD. On December 7, 2020, the PA paid a deposit in the amount of \$1,250 CAD to reserve her place in the program.

[5] On January 8, 2021, Immigration, Refugees, and Citizenship Canada [IRCC] received the PA's study permit application. The same day, IRCC received the Minor Applicant's temporary resident visa application to accompany his mother to Canada. The PA's husband would not accompany the Applicants to Canada.

III. The Decisions

A. *Study Permit Application*

[6] On February 22, 2022, the Officer refused the PA's study permit application based on her personal assets and financial status. The Officer's Global Case Management System [GCMS] notes, which form part of the reasons for the Study Permit Decision, are reproduced in their entirety below:

I have reviewed the application. PA seeks post-grad in Construction Management from Conestoga College. Limited evidence of applicant's personal employment and education history to support plan of study. Applicant provides a letter from Stanbic IBTC demonstrating her mutual fund investment valued at ~35KCAD. I note that the document is confirmed to be genuine. However, the PA has not provided any statements to demonstrate the history and provenance of these funds, or how they came to accumulate large savings. LOE/Certificate of Business Registration from PA/financial supporter does not satisfy me that the PA will have a sufficient inflow of funds for studies, or a reasonable source of income to support the proof of funds that was provided. I note letter from PA's current employer indicating a willingness to sponsor part of PA's studies with a bursary of ~3K CAD. No proof of sponsor's funds on file. Evidence on file does not adequately establish applicant's access to said funds. Applicant appears to have covered \$1,250 of their first year's tuition of \$16,476.36. The applicant would still need to produce ~15KCAD for tuition fees as well as living expenses for themselves and their accompanying dependent. Taking the applicant's purpose of visit into account, the applicant does not appear to be sufficiently well established that the proposed visit would be a reasonable expense. The applicant has not satisfied me that they have sufficient

economic stability, which may affect their departure from CDA. I am not satisfied that the PA has sufficient funds to support themselves (tuition, living expenses, transportation, etc.), given the proposed length of stay, without working in CDA. 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.

B. *Temporary Resident Visa Application*

[7] The same day, the Officer refused the Minor Applicant's temporary resident visa application based on his personal assets and financial status. The Officer's GCMS notes state:

I have reviewed the application. PA seeks to accompany mother on SP; see notes on S304325556. Taking the applicant's purpose of visit into account, the applicant does not appear to be sufficiently well established that the proposed visit would be a reasonable expense. The applicant has not satisfied me that they have sufficient economic stability, which may affect their departure from CDA. I am not satisfied that the PA's guardian has sufficient funds to support themselves and the PA (tuition, living expenses, transportation, etc.), given the proposed length of stay, without working in CDA. 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.

IV. Issues and Standard of Review

[8] After considering the submissions of the parties, the issues are best characterized as:

1. Was the Study Permit Decision reasonable?
2. Was there a breach of procedural fairness?

[9] The merits of the decision is subject to a reasonableness review. None of the exceptions outlined in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]

arise in this matter (at paras 16-17). A reasonableness review requires the Court to examine outcome of the decision and its underlying rationale to assess whether the decision, as a whole, bears the hallmarks of reasonableness—intelligibility, transparency, and justification—and whether it are justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at paras 87, 99). If the reasons of the decision-maker allow a reviewing Court to understand why the decision was made and determine whether it falls within the range of acceptable outcomes, the decision will be reasonable (*Vavilov* at paras 85-86).

[10] The standard of review for issues of procedural fairness is essentially correctness (*Canadian Pacific Railway Company v Canada (AG)*, 2018 FCA 69 at para 54 [*CP Railway*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). No deference is afforded to the underlying decision-maker on questions of procedural fairness (*Del Vecchio v Canada (AG)*, 2018 FCA 168 at para 4). Rather, when evaluating whether there has been a breach of procedural fairness, a reviewing court must determine if the procedure followed by the decision-maker was fair, having regard to all the circumstances (*CP Railway* at para 54).

V. Analysis

A. *Was the Study Permit Decision reasonable?*

(1) Applicants' Position

[11] Firstly, the Officer misapprehended the facts by stating that the PA paid a tuition deposit in the amount of \$1,250 CAD, when she actually paid a tuition deposit in the amount of \$8,222

CAD. This is a clear error of fact that is a sufficient ground of review (*Anwar v Canada (Citizenship and Immigration)*, 2008 FC 305 at paras 25-26).

[12] Secondly, the Officer unreasonably refused the PA's study permit application on the grounds of personal assets and financial status. The PA submitted evidence of sufficient proof of funds in the amount of \$46,222 CAD, comprising her personal investment, employer's grant, and aforementioned tuition deposit. The PA further advanced evidence of her car ownership valued at \$7,000 CAD, real estate property valued at over \$16,000 CAD, and financial support from her husband who has an annual income of approximately \$23,000 CAD. This evidence was sufficient to demonstrate the PA's compliance with section 220 of *IRPR*.

[13] Further, the Officer unreasonably assessed the PA's economic ties in Nigeria. The PA has no economic ties to Canada and strong ties to Nigeria, as evidenced from her employment and personal assets, including her certificate of Business incorporation. The Officer's conclusion surrounding the Business' insufficient funds suggests that the Officer perceives the PA's spouse as not "well-off" and that she will abandon her husband in Nigeria. Such reasoning is contrary to established jurisprudence (*Groohi v Canada (Citizenship and Immigration)*, 2009 FC 837 at para 19).

[14] Thirdly, the Officer exceeded their authority in suggesting that the intended studies were not a reasonable expense (*Liu v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1262 at para 16 [*Liu*]). Even if the Officer had the authority to reach this conclusion, the Officer would have realized that the intended studies are a reasonable expense had they analyzed the

PA's assets. The PA is also gainfully employed and has an economic motive to return to Nigeria following her studies.

[15] Further, the Officer failed to explain why the PA's employment and education history as well as her establishment in Nigeria negatively impacted the application (*Ogbuchi v Canada (Citizenship and Immigration)*, 2016 FC 764 at para 9). In doing so, the Officer effectively insinuated that the PA is not a genuine student (*Emesiobi v Canada (Citizenship and Immigration)*, 2018 FC 90 at para 27 [*Emesiobi*]; *Fakharian v Canada (Citizenship and Immigration)*, 2009 FC 440 at para 13 [*Fakharian*]; *Iyiola v Canada (Citizenship and Immigration)*, 2020 FC 324 at para 18 [*Iyiola*]). The PA explained that she decided to study in Canada due to the global recognition of Canadian educational credentials to accelerate her career growth in Nigeria. Again, the PA is also well established in Nigeria, as evidenced by her personal assets, employment, and spouse in Nigeria.

[16] Lastly, the Officer erroneously gave the PA's travel history to the United Arab Emirates negative weight. The PA's lack of any negative immigration record indicates she has positively encountered immigration policies and will likely do so in Canada (*Momi v Canada (Citizenship and Immigration)*, 2013 FC 162 at para 20).

(2) Respondent's Position

[17] The PA failed to meet her burden to satisfy the Officer that she met the legislative requirements under subsection 216(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[18] Firstly, the PA's April 5, 2021 tuition deposit receipt should be excluded from the record, as it was not before the Officer at the time of the Study Permit Decision (*Kaberuka v Canada (Immigration, Refugees and Citizenship)*, 2021 FC 1258 at para 4).

[19] Secondly, visa officers have the duty and discretion to determine whether applicants have sufficient and available resources pursuant to section 220 of *IRPR*. Here, the GCMS notes indicate that the Officer reviewed and considered the PA's financial documentation. The PA's arguments invite this Court to reweigh the evidence, which is not the function of judicial review.

[20] IRCC required the PA to demonstrate that she has sufficient and available financial resources to pay the first year tuition fee of \$16,476.36 CAD, a minimum of \$14,000 CAD to maintain herself and the Minor Applicant, and transportation costs to and from Canada. Visa officers must also be satisfied that the probability of funding for future years exists. The Officer acknowledged the PA's letter demonstrating her \$35,000 CAD mutual fund investment, her \$1,250 CAD tuition payment, and the \$3,000 bursary from her employer. However, the PA did not provide any information about her full financial situation, including her employment income or daily bank account information. Similarly, the PA did not provide her sponsor's or spouse's proof of funds, nor the proof of funds or bank account related to the Business. Accordingly, the Officer was unable to assess whether the Business generates income on a continuous basis. Given the overall lack of information, the Officer reasonably expressed concern about the PA's financial status to support her studies and living expenses.

[21] The Officer did not ignore the PA's assets in Nigeria. A visa officer is presumed to have considered all the evidence and is not required to refer to each piece of evidence (*Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 28 [*Solopova*]). In the present matter, the PA did not reference non-liquid assets, including her property and car, in assessing the availability of funds for her stay in Canada.

[22] Lastly, immigration officers need not provide extensive reasons (*Singh v Canada (Citizenship and Immigration)*, 2015 FC 115 at para 24). The reasonableness of a decision should be assessed holistically (*Shah v Canada (Citizenship and Immigration)*, 2020 FC 448 at para 21).

(3) Conclusion

[23] The Study Permit Application decision was unreasonable.

[24] As this Court has noted on numerous occasions, the onus sits with the Applicants to satisfy the Officer with sufficient evidence that they will leave Canada at the end of their authorized stay (*Patel v Canada (Citizenship and Immigration)*, 2020 FC 517 at para 13).

[25] Section 220 of *IRPR* states that “an officer ‘shall not’ issue a study permit unless, without working, students have sufficient funds to pay their tuition, maintain themselves and family members [in Canada], and transport themselves and family members home from Canada” (*Adekoya v Canada (Citizenship and Immigration)*, 2016 FC 1234 at para 9 [*Adekoya*]). Where these requirements are not met, the Officer has no discretion and must deny the application (*Adekoya* at para 9).

[26] I agree with the Respondent that the PA's argument concerning her tuition deposit is without merit. The \$8,222 CAD tuition deposit, as confirmed by the April 5, 2021 letter from Conestoga College in the Applicants' Record, was not before the Officer. The only evidence concerning tuition deposits in the Certified Tribunal Record is the December 7, 2020 letter from Conestoga College acknowledging receipt of \$1,250 CAD. Accordingly, the April 5, 2021 letter is excluded from consideration in the present matter.

[27] That said, the Officer unreasonably concluded that the PA did not demonstrate sufficient funds to support the Applicants. Pursuant to IRCC's website, cited by the Respondent, students must demonstrate sufficient funds for the first year of study, as well as \$10,000 CAD for support. Where an applicant has one accompanying family member, an additional \$4,000 CAD is required. Applicants can prove their funds through bank drafts convertible to Canadian dollars, tuition payments, and letters from individuals providing the applicant with money, among others. The website further notes, however, that "Officers should be satisfied...that the probability of funding for future years does exist". For instance, this can be demonstrated where an applicant's parents are employed.

[28] In the present matter, the PA advanced various proof of funds on behalf of herself and the Minor Applicant. The PA submitted evidence of a mutual fund investment valued at approximately \$35,000 CAD, which can be fully or partly liquidated at any time. The PA also submitted three letters: two from her employer, addressed to both the PA and the Officer, approving a tuition bursary in the amount of approximately \$3,000 CAD, and one from her husband indicating his willingness to financially support her throughout the program. Attached

to husband's letter is his offer of employment indicating an annual salary of approximately \$23,000 CAD. The PA's Letter of Explanation, dated more recently than her husband's letter, notes that her husband continues to be "gainfully employed". The PA further provided proof of ownership of a vehicle; however, the asserted value of the vehicle was not before the Officer given that the PA's Letter of Explanation appears to have not been fully included. The PA also provided a deed of agreement of a plot of land, the value of which the PA estimated at \$16,000 CAD. Lastly, the PA provided a certification of incorporation for her Business.

[29] The PA required approximately \$30,476.36 CAD per year plus travel expenses to and from Canada. She also demonstrated financial support from her spouse for the duration of her studies (*Solopova* at para 28). When reviewing the record, the Officer's conclusion that the PA did not have sufficient funds is unintelligible.

[30] Further, I agree that it is not for the Officer to determine the value of learning to the PA (*Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552 at para 18; *Liu* at para 16).

[31] Similarly, the Officer's conclusions surrounding the PA's study plan lacked justification (*Vavilov* at para 99). I note that *Emesiobi*, *Iyiola*, and *Fakharian* are distinguishable from the present matter. In these cases, the officer refused the applicants' study permit because they were dissatisfied that the applicants were genuine students (*Emesiobi* at paras 8-9; *Iyiola* at para 7; *Fakharian* at para 1). Here, the Officer did not comment on whether the PA is a genuine student. The Officer did, however, conclude that there was "[l]imited evidence of applicant's personal employment and education history to support plan of study."

[32] The PA's Letter of Explanation clearly explains that she chose to undertake the construction management program based on her education and employment history. The Letter of Explanation, when read with the letters from the PA's employer, reference the PA's need for additional qualifications. It is unclear why the Officer found this evidence limited, or what more would be required to satisfy the Officer. The Officer's conclusion on this point further adds to the unreasonableness of the Study Permit Application decision.

[33] In light of the above, and given that the Officer's refusal was based on the Applicants' personal assets and financial status, the application for judicial review is allowed. There is no need to consider the Applicants' remaining submissions.

VI. Conclusion

[34] The application for judicial review is allowed. The Study Permit Decision, as a whole, was unreasonable. It is remitted for redetermination. It follows that the TRV is also remitted for redetermination.

[35] The parties do not propose a question for certification and I agree none arise.

JUDGMENT in IMM-2064-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is remitted to a different officer for redetermination.
2. There is no question for certification.
3. There is no order for costs.

"Paul Favel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2064-22

STYLE OF CAUSE: IBUKUNOLUWAPO ESTHER ANIMASAUN AND
DESIREOLUWA DAVID ANIMASAUN v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: SASKATOON, SASKATCHEWAN

DATE OF HEARING: JANUARY 26, 2023

JUDGMENT AND REASONS: FAVEL J.

DATED: JULY 4, 2023

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