

Federal Court



Cour fédérale

**Date: 20230710**

**Docket: IMM-261-21**

**Citation: 2023 FC 938**

**Ottawa, Ontario, July 10, 2023**

**PRESENT: Mr. Justice Norris**

**BETWEEN:**

**JEAN FLAUBERT KAMDEM KAMMOGNE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant is a 24 year-old citizen of Cameroon. He has twice been denied a study permit to pursue post-secondary education at the *Collège communautaire du Nouveau-Brunswick* (CCNB) in the two year Building Engineer Technology program. After the applicant sought judicial review of the first refusal (dated September 14, 2020), the respondent agreed that the matter should be reconsidered. In a decision dated January 12, 2021, the study permit application was refused again. The officer determined that the applicant had failed to establish

that he was in a financial position to meet the costs of the program. As a result, the officer was not satisfied that the applicant would leave Canada at the end of his authorized stay, as required by paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[2] The applicant now applies for judicial review of this second refusal under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*).

[3] The parties agree, as do I, that the substance of the officer's decision is to be reviewed on a reasonableness standard. 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" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). The onus is on the applicant to demonstrate that the officer's decision is unreasonable. To set aside a decision on this basis, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[4] For the reasons that follow, I agree with the applicant that the officer's decision is unreasonable.

[5] The applicant himself does not have the financial resources to cover the costs associated with the studies he wishes to undertake at CCNB, which will be about \$25,000 per year. Instead, in his study permit application, the applicant stated that his older brother and his older sister (who are both naturalized Canadian citizens) are prepared to cover these costs jointly. The

applicant's older brother is a software engineer; his older sister is a teacher. The study permit application was supported by a joint declaration from the two siblings confirming their willingness to cover the costs of the program, including tuition and living expenses. They stated that their gross annual salaries are, respectively, \$92,000 and \$99,934.90. Both provided proof of their employment as well as monthly bank statements for the year 2020. Neither provided any other information about other assets or liabilities.

[6] Given the financial picture disclosed in the bank statements, and in the absence of any other information about their other assets and liabilities, it may be an open question whether the applicant provided sufficient information to support his contention that his brother and sister were able to cover the costs of the proposed course of study given the income and expenses reflected in the statements. This, however, is not why the officer refused the application. Instead, the officer took the available funds to be simply the closing bank balances of \$16,949.35 (as of December 11, 2020) for the applicant's brother and \$1,312.43 (as of October 16, 2020) for the applicant's sister. Why the officer chose these amounts is not explained in the decision. I accept that it was not unreasonable for the officer to be concerned about whether the applicant's brother's closing bank balance is indicative of his ability to contribute to the costs of the program given that it is largely the product of an unexplained bank transfer of \$15,000 a month earlier. On the other hand, it was unreasonable for the officer to focus solely on these closing balances given the evidence that both siblings are steadily employed in well-paying jobs.

[7] To repeat, it may have been open to the officer to conclude that the applicant had failed to establish that his siblings were in a position to provide the financial support he required for his

proposed course of studies. However, the officer drew this conclusion from an arbitrary snapshot of the applicant's siblings' financial circumstances at a particular moment in time while failing to consider other material information bearing on their ability to cover the costs of the program. This leaves a fundamental gap in the officer's analysis and calls into question the reasonableness of the decision. As *Vavilov* states, "Where a decision maker's rationale for an essential element of the decision is not addressed in the reasons and cannot be inferred from the record, the decision will generally fail to meet the requisite standard of justification, transparency and intelligibility" (at para 98). This is the case here.

[8] For these reasons, the application for judicial review must be allowed. The decision dated January 12, 2021, refusing the application for a study permit is set aside and the matter is remitted for reconsideration by a different decision maker. Given the passage of time since the decision in question was made, the applicant should be given a reasonable opportunity to provide updated information in support of the study permit application, if so advised.

[9] Neither party proposed any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

**JUDGMENT IN IMM-261-21**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is allowed.
2. The decision dated January 12, 2021, refusing the applicant's application for a study permit is set aside and the matter is remitted for reconsideration by a different decision maker.
3. The applicant shall be given a reasonable opportunity to provide updated information in support of the study permit application, if so advised.
4. No question of general importance is stated.

\_\_\_\_\_  
"John Norris"

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-261-21

**STYLE OF CAUSE:** JEAN FLAUBERT KAMDEM KAMMOGNE v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JANUARY 19, 2023

**JUDGMENT AND REASONS:** NORRIS J.

**DATED:** JULY 10, 2023

**APPEARANCES:**

Ugochukwu Udogu FOR THE APPLICANT

John Loncar FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Ugochukwu Udogu FOR THE APPLICANT  
Barrister and Solicitor  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario