Federal Court  Cour fédérale

Date: 20230727

Docket: IMM-2888-22

Citation: 2023 FC 1027

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 27, 2023

PRESENT: Mr. Justice Pentney

BETWEEN:

REBECCA PIERRE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Rebecca Pierre, is a 20-year-old citizen of Haiti. She holds a secondary school diploma, and she wishes to study nursing. She has been accepted as a full-time student at Cégep Gérald-Godin in Montréal, to pursue a Diploma of College Studies (Technical Training)

in Nursing. It is a three-year program, and the applicant could have started in August 2022. She then received a positive response to her application for temporary selection for studies and submitted an application for a study visa to the respondent.

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

- Her financial situation, including her personal property. The officer was not persuaded that she had [TRANSLATION] “sufficient and available financial resources, without working in Canada, to . . . maintain [herself] and any family members accompanying [her] during [her] proposed period of study”.

[3] This case raises two issues: the first involves the reasonableness of the decision, and the second is whether procedural fairness was breached because the officer questioned the credibility of the applicant and her guarantor without giving them the opportunity to respond to his concerns.

II. 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 . . . 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. Their decisions 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] The applicant bears 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, an officer may not issue a study permit to a foreign national unless they are convinced that the foreign national will leave Canada by the end of the period authorized for their stay. Under section 220 of the Regulations, the foreign national must demonstrate, with clear and convincing evidence, that they have sufficient and available financial resources to pay their tuition fees and maintain themselves during the period of study in Canada (including the costs of travel to Canada and back to the country of origin).

[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.

[10] With respect to the issue of procedural fairness, a reviewing court must ask, “with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed. . . . [T]he ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond.” (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54 and 56).

III. Analysis

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

[12] 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 133). 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. The latter factor is also relevant to evaluating the issue of procedural fairness.

[13] In this case, the officer’s decision is based on his assessment of the applicant’s financial situation.

A. *Financial situation*

[14] The officer was not convinced that the applicant would leave Canada by the end of the period authorized by her study permit, given her financial situation, noting, in particular, that the funding to support her studies was coming entirely from a third party, namely, Maud Bervin. The officer pointed to the inadequacy of the evidence establishing the ties between the applicant and Ms. Bervin, and explaining why should was willing or obligated to pay for the applicant. The officer also noted that Ms. Bervin's paying for the applicant would deplete her savings considerably.

IV. Discussion

[15] With respect to the issue of the ties between the applicant and Ms. Bervin, I note that the applicant submits that Ms. Bervin subsidized all of her studies in Haiti, and that she will continue to do so during her stay in Canada. However, this evidence was included neither in her form nor in the explanatory letter that she filed with her application, and the officer cannot be faulted for failing to take into account evidence that was not part of the file.

[16] The applicant simply stated that Ms. Bervin was undertaking to cover her expenses [TRANSLATION] "given her close ties with the family." The sworn statement filed by Ms. Bervin stated only that the applicant's grandmother and her own maternal grandmother were close friends, and that the applicant's grandmother had lived with her family in Canada. Ms. Bervin states that she is a friend of the family, more specifically a friend of the applicant's mother.

[17] Given this evidence, I am not convinced that the officer's questions regarding the relationship between the applicant and Ms. Bervin are unreasonable. This issue was all the more important because Ms. Bervin was the applicant's sole financial guarantor. The onus is on the applicant to file the evidence necessary to satisfy the statutory requirements, and in the circumstances of this case, it is clear that issues involving the relationship between the applicant and her guarantor are relevant to the analysis that the officer is required by the legislation to conduct: see *Roopchan v Canada (Citizenship and Immigration)*, 2021 FC 1342.

[18] Moreover, the officer's notes indicate that it is unclear why Ms. Bervin would significantly deplete her savings by covering all of the applicant's study expenses. Also, with respect to the applicant's financial needs, the documentation she submitted contains an inconsistency.

[19] In the explanatory letter accompanying her application for a study permit, the applicant stated that her tuition fees amounted to $20,534 per year, for a three-year program. The applicant also stated that she would need about $12,500 per year for her living expenses. However, in the sworn statement filed by Ms. Bervin, the latter undertakes to support the applicant financially for the duration of her studies and to give her free board in her home. No further details have been provided by the applicant to explain the $12,500 she alleges she needs for her living expenses. It is therefore unclear whether this amount is still realistic, given that she will not have expenses for housing or other daily needs with Ms. Bervin providing them for free.

[20] The officer took into account the evidence filed with respect to Ms. Bervin's financial situation and raised some concerns: "Support would significantly deplete savings of sponsor. Funds and income appear modest." In the record, in addition to her sworn statement, there is evidence of funds that she received each month from the Quebec government for operating a group home, but she provided no details about her net salary after deducting the group home's operating expenses.

[21] In addition, Ms. Bervin filed bank statements showing that her bank account contained a balance of about $40,000. Given that, according to the documentation in the record, Ms. Bervin will have to pay about $33,000 per year for the applicant, for three years, it was open to the officer not to be convinced that the applicant would have sufficient financial means to pay for her studies.

[22] The applicant submits that the officer breached his duty of procedural fairness, as he doubted the genuineness of Ms. Bervin's motives without valid reasons, and because he should have given the applicant and Ms. Bervin an opportunity to provide further specifics about their relationship and Ms. Bervin's financial situation.

[23] I am not persuaded that the officer breached his duty of procedural fairness. The onus is on the applicant to convince the officer that she meets all the statutory conditions, and in the circumstances of this case, it is clear that the relationship between the applicant and the guarantor, as well as the guarantor's financial capacity, are relevant issues.

[24] The officer did not call into question the applicant's or Ms. Bervin's credibility; however, the officer did note a lack of evidence regarding key aspects of the file. Credibility is not the issue here, and the officer was not required to give the applicant an opportunity to respond to the questions relating to the application of the statutory requirements: *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 40; see also *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24.

[25] The applicant notes that the decision in *Khodchenko v Canada (Citizenship and Immigration)*, 2015 FC 819 [*Khodchenko*] deals with a situation very similar to the matter at hand. I disagree. In *Khodchenko*, the guarantor stated very clearly why he wished to help the applicant and demonstrated that he had the financial means to do so. The guarantor's support letter in *Khodchenko* was much more detailed than Ms. Bervin's letter in this case. That decision is relevant to the analysis of this case, but not it does not support the applicant's position.

[26] For all these reasons, the application for judicial review is dismissed. There are no questions of general importance to be certified.

JUDGMENT in IMM-2888-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. 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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