Federal Court  Cour fédérale

Date: 20231106

Docket: IMM-9558-22

Citation: 2023 FC 1477

Ottawa, Ontario, November 6, 2023

PRESENT: Madam Justice Pallotta

BETWEEN:

IFEANYI GABRIEL ANIEKWE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a visa officer's decision to refuse Mr. Ifeanyi Gabriel Aniekwe's application for a study permit. The issues in dispute relate to the relief Mr. Aniekwe seeks. The respondent concedes that the officer made a reviewable error that warrants an order setting aside the decision and remitting the matter for redetermination by a different officer. However, the respondent opposes Mr. Aniekwe's request for an order that would direct

the respondent to issue a study permit, or alternatively direct the respondent to reopen and redetermine the application by the earlier of 45 days from this Court's decision or 30 days before the program start date of January 2, 2024. The respondent also opposes Mr. Aniekwe's request for a cost award in his favour, and certification of proposed questions pursuant to section 74 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

II. **Background**

[2] After being offered admission to Mohawk College's Office Administration in Health Services program in Hamilton, Ontario, Mr. Aniekwe applied for a study permit in February 2022. Mr. Aniekwe's application was refused in April 2022. He commenced an application in this Court to challenge the decision, the parties settled, and the study permit application was remitted for redetermination by a different officer. On September 20, 2022, the study permit application was refused a second time. The second refusal is the decision under challenge in this proceeding.

[3] The officer's notes as recorded in the Global Case Management System (GCMS) provide the following reasons for refusing the study permit:

> I have reviewed the application. Taking the applicant's plan of studies into account, the documentation provided in support of the applicant's financial situation does not demonstrate that funds would be sufficient or available. I am not satisfied that the proposed studies would be a reasonable expense. Bank statement shows lump sum deposits coming from a person with whom relationship has not been proven. I am not satisfied that the funds will be available for the applicant's studies. 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.

III. **Issues**

[4] As a preliminary matter, the parties agree that the style of cause in this proceeding should be amended to correct the applicant's name. The applicant's name in the style of cause will be amended to Ifeanyi Gabriel Aniekwe.

[5] The issues for determination on this application are:

A. Should the Court exercise discretion to grant a "directed verdict" or *mandamus*?

B. Should the Court certify the questions proposed by the applicant?

C. Is the applicant entitled to an award of costs?

IV. **Analysis**

A. *The officer's errors*

[6] While Mr. Aniekwe acknowledges the respondent's concession that the officer's decision should be set aside, he submits that a judicial pronouncement of the officer's errors is necessary to reduce the chances of further reviewable errors in the assessment of his application, and to "forestall further and the ongoing erroneous refusal of similar applications on same or similar grounds" by the particular visa office in question. Mr. Aniekwe is from Nigeria, and he contends there is institutionalized and entrenched bias against applicants of his background.

[7] Mr. Aniekwe makes specific submissions on each of the officer's grounds for refusing a study permit, those being the sufficiency or availability of funds, the reasonableness of the expense, and the lump sum bank deposits from a person whose relationship was not proven.

[8] Regarding the sufficiency or availability of funds, Mr. Aniekwe submits the officer's reasons are not coherent, and the decision is not justified in light of the factual and legal constraints: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 86, 99-135 [*Vavilov*]. A reviewing court must be satisfied that the officer's reasoning "adds up" (*Vavilov* at paragraph 104), and Mr. Aniekwe contends it is not possible to understand how the officer concluded he does not have sufficient available funds. He states he provided ample evidence in this regard, including banking documentation showing a balance that exceeds what he owes in tuition for the program, banking documentation showing funds held for his benefit by members of his family, and evidence explaining that he would be living with one of his brothers in Canada, and that two of his siblings had committed to support him with monthly stipends.

[9] Regarding the reasonableness of the expense of the proposed program of study, Mr. Aniekwe submits this is an extraneous and irrelevant requirement, which is not supported by or provided for in the *IRPA* or the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*], and the officer acted *ultra vires* by inquiring into and making a decision based on the reasonableness of the expense. Mr. Aniekwe states he had a legitimate expectation that his application would be assessed based on the legal criteria, and he was denied procedural fairness as he should have been afforded an opportunity to address the reasonableness of the expense. Furthermore, Mr. Aniekwe submits the officer acted contrary to the *Canadian Charter of Rights*

and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [*Charter*], because personal choices related to education are congruent with personal autonomy pursuant to section 7 and the rights under subsection 2(b) of the *Charter*.

[10] Regarding the lump sum bank deposits from a person whose relationship was not proven, Mr. Aniekwe submits the officer acted *ultra vires* by imposing a requirement that he prove the source of funds when there is no requirement in the relevant legislation that funds must come from a specific source. Mr. Aniekwe also states he had a legitimate expectation that his application would be assessed based on criteria laid down under the law, and he was denied procedural fairness as he should have been invited to explain the identities and relationship of the depositors. Furthermore, the officer ignored or overlooked evidence that the depositors were members of Mr. Aniekwe's family.

[11] Before turning to my findings regarding the alleged errors, I would note that I do not intend to make general pronouncements about how officers should assess other applications, nor do I consider it proper to attempt to forestall refusals of other applicants' applications that are based on similar grounds of refusal. The errors with the officer's decision under review are specific to Mr. Aniekwe's case, and my findings about the officer's errors are made in the context of this application, based on the record that is before me. While the respondent concedes that the officer erred, the Court, acting judicially and not as a rubber stamp, should be satisfied on the facts and the law that it should make the requested judgment: *Garshowitz v Canada (Attorney General)*, 2017 FCA 251 at paras. 17-19; *Advantage Products Inc v Excalibre Oil*

Tools Ltd, 2019 FCA 22. My findings explain why I am satisfied that judgment should be granted to set aside the decision that is under challenge.

[12] I find Mr. Aniekwe has established that the decision refusing his study permit application is unreasonable.

[13] A reasonable decision is one that is justified in light of the facts: *Vavilov* at para 126. The decision maker must take the evidentiary record and the general factual matrix that bears on the decision into account, and the decision must be reasonable in light of them: *Ibid*. Reasons for decision must be read holistically and in context, which includes the evidence that was before the decision maker and the submissions that were made: *Vavilov* at paras 94 and 97. In *Vavilov*, the Supreme Court of Canada confirmed its earlier guidance from *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 that a reviewing court may "connect the dots on the page where the lines, and the direction they are headed, may be readily drawn", but it must not speculate as to what the decision maker was thinking, supply the reasons that might have been given, or make findings of fact that were not made: *Vavilov* at para 97.

[14] With these principles in mind, in my view the GCMS notes do not articulate a transparent, intelligible basis justifying the officer's decision to refuse Mr. Aniekwe's application. The officer does not explain how the three findings noted above are justified in light of any specific evidence or information in Mr. Aniekwe's application. Reading the GCMS notes holistically and contextually in light of the evidence in the record, I cannot understand the basis

for the findings, and I am not able to discern the officer's thinking or "connect the dots" without speculating as to what the officer was thinking or supplying reasons that were not given. When considered in light of the information in Mr. Aniekwe's study permit application, it appears that the officer disregarded and misconstrued relevant information and evidence.

[15] In my view, the determinative issue is reasonableness, and the officer's errors constitute a sufficiently serious shortcoming to warrant setting aside the decision. However, since this will be the third assessment of Mr. Aniekwe's study permit application and he has asked for a pronouncement on the issues he has raised, I will briefly address the other issues.

[16] Based on the record that is before me and the reasons for the refusal in the GCMS notes, I am not persuaded by Mr. Aniekwe's submissions that the officer breached procedural fairness or acted in a way that would give rise to a legitimate expectation regarding the process. I am not persuaded the officer was under a duty to request additional information or documents, or to provide an opportunity to respond on the basis that the officer's concerns went beyond the requirements of the *IRPA* or the *IRPR*. Pursuant to paragraph 216(1)(b) of the *IRPR*, the officer had to be satisfied that Mr. Aniekwe would leave Canada by the end of the period authorized for his stay. For the reasons above, the findings supporting the officer's refusal were not transparent, intelligible or justified in Mr. Aniekwe's case, but Mr. Aniekwe has not established that the findings were *ultra vires*.

[17] Mr. Aniekwe has not established that the decision refusing his study permit application engaged his section 7 or section 2(b) *Charter* rights.

B. *Should the Court exercise discretion to grant a "directed verdict" or mandamus?*

[18] Mr. Aniekwe asks for an order directing the respondent to issue a study permit together with all other authorizations necessary to permit him to arrive in Canada and commence his program of study by January 2, 2024, or alternatively, an order that would require the respondent to reopen and redetermine the study permit application by the earlier of 45 days from this decision, or 30 days before the program start date of January 2, 2024.

[19] Mr. Aniekwe submits that the circumstances of his case warrant a directed verdict. In this regard, Mr. Aniekwe states the respondent concedes the officer erred in assessing the study permit application, the record shows there is no decision open to the respondent other than to grant a study permit, and a directed verdict would prevent further harm and injustice. Mr. Aniekwe contends the respondent seeks a third chance to assess his study permit application while he stands to lose his offer of admission because Mohawk College has already deferred the start date three times, and he needed special dispensation to obtain an exceptional fourth extension. Mr. Aniekwe relies on paragraphs 139 to 142 and particularly paragraph 142 of *Vavilov*, where the Supreme Court of Canada noted that factors influencing a reviewing court's remedial discretion include concern for delay, fairness to the parties, urgency of providing a resolution to the dispute, the nature of the particular regulatory regime, whether the administrative decision maker had a genuine opportunity to weigh in on the issue in question, costs to the parties, and the efficient use of public resources.

[20] According to Mr. Aniekwe, the factor that prevented this matter from being resolved was the respondent's refusal to commit to reassess his study permit application within a timeframe that was sensitive to the time constraints he was facing. Mr. Aniekwe submits he exhausted his options to defer his start date, and the Court should exercise its discretion to make a directed verdict to grant his study permit or require a decision to be rendered within a specified timeframe: *Canada (Minister of Human Resources Development) v Rafuse*, 2002 FCA 31 at paras 13-14 [*Rafuse*]; *Canada (Public Safety and Emergency Preparedness) v Lebon*, 2013 FCA 55 at para 14 [*Lebon*]. He submits that, like *Lebon*, the respondent does not contest that the factors the officer relied on were unsupported by the evidence, all that remain are factors supporting a positive decision, and an order of *mandamus* is available to prevent the further delay and harm that would be caused if the respondent were to be given a third chance to decide the matter in accordance with the law.

[21] The respondent concedes that this matter should be sent back to be redetermined, but opposes the request for *mandamus* and a directed verdict. The respondent submits the jurisprudence is clear that issuing a specific direction is only warranted in limited and extraordinary circumstances: *Canada (Citizenship and Immigration) v Tennant*, 2019 FCA 206 at para 69, citing *Rafuse* at para 14. The respondent submits this is not a situation where there is only one possible outcome. On redetermination, an officer will be required to review the materials and any updated submissions to determine whether a study permit should be granted. Accordingly, the respondent submits that an order directing that a study permit be granted is not appropriate in the circumstances of this case.

[22] I find Mr. Aniekwe has not established that this Court should direct the respondent to grant a study permit. The exceptional remedy of a directed verdict will rarely be granted where the issue in dispute is factual in nature: *Rafuse* at para 14. Whether Mr. Aniekwe should be granted a study permit is a highly factual inquiry within an officer's discretion, and I agree with the respondent that a specific outcome is not inevitable. Mr. Aniekwe's circumstances are distinguishable from *Lebon*. Mr. Lebon was applying to be transferred from a correctional facility in the United States to a correctional facility in Canada, nine out of the ten fixed criteria set out in the relevant legislation favoured transfer, and the single criterion against transfer was conceded to be unsupported by the evidence. In those circumstances, the Federal Court of Appeal found it was open for the reviewing court below to conclude on the evidence that the only lawful exercise of discretion was to grant the transfer. I cannot reach a similar conclusion in this case, and I decline to direct the respondent to grant a study permit.

[23] However, I am satisfied that the respondent should be ordered to assess Mr. Aniekwe's application in an expedited manner. This will be the third assessment of Mr. Aniekwe's study permit application, and he risks losing Mohawk College's offer of admission if he does not commence his studies by January 2, 2024. To have any hope of meeting that deadline, the application will need to be assessed in a shorter timeframe than it has been assessed in the past. Mr. Aniekwe also provided evidence about another study permit applicant whose offer of acceptance lapsed while waiting for a redetermination decision following settlement with the respondent, and he has shown that the respondent has refused to commit to a deadline for reassessing his application. In light of the specific procedural history of this matter, I am satisfied that the respondent should be ordered to reassess the study permit application as soon as

practicable, and to render a decision by no later than December 3, 2023, which is 30 days prior to the January 2, 2024 start date.

[24] The respondent states it should have been apparent to Mr. Aniekwe that his continued refusal to accept the respondent's offer to settle is what led this proceeding to the hearing stage. I disagree. Mr. Aniekwe also made offers to settle, which the respondent refused to accept. In fact, Mr. Aniekwe was the first party to make an offer to settle. In my view, the delay in Mr. Aniekwe's matter (in the study permit application process and in the court proceeding) is largely due to the respondent's conduct, and it is in the interests of justice to require an expedited decision. Consequently, the matter will be remitted for reconsideration in accordance with these reasons, and the respondent will be required to render a decision as soon as practicable and in any event no later than December 3, 2023.

C. *Should the Court certify the questions proposed by the applicant?*

[25] Mr. Aniekwe proposes the following questions for certification:

i. Pursuant to section 32(1) of the *Charter*, is Immigration, Refugees and Citizenship Canada (IRCC) obligated to respect and uphold *Charter* values and principles in its application of both the *IRPA* and *IRPR*, or any other enabling statute that it relies on to discharge its mandate?

ii. Does IRCC commit an error of law by applying assessment criteria that undermine or contravene any of the *Charter* values?

iii. Does impeaching the reasonableness of an applicant's expense in coming to Canada, whether as a student or visitor or permanent resident, constitute a breach

of either or both of subsection 2(b) values of freedom of thought, opinion, and expression and section 7 values of a right to liberty?

iv. Does refusing an application for a study permit on account of the economic situation in the applicant's country of residence constitute a breach of the section 15 value of non-discrimination?

[26] Mr. Aniekwe submits these questions are vital to enhance the principles of equality under the law, and certifying them would "harmonise the criteria applicable to all student permit applicants irrespective of the IRCC office handling the application" and maintain integrity in the administration of the *IRPA*. He asks the Court to certify the proposed questions so other applicants may rely on the judicial decision, to challenge the respondent's refusal of their study permits for similar reasons.

[27] The respondent submits this case turns on the facts, and Mr. Aniekwe has not demonstrated that any questions should be certified. The respondent adds that Mr. Aniekwe's accusations of institutionalized and entrenched bias are without merit.

[28] Subsection 74(d) of the *IRPA* provides that an appeal to the Federal Court of Appeal may only be made if this Court certifies a serious question of general importance. To be properly certified under section 74 of the *IRPA*, a proposed question must be dispositive of the appeal, and it must be a question that was raised before and dealt with by this Court: *Lewis v Canada (Minister of Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 36; *Canada (Minister of Public Safety and Emergency Preparedness) v XY*, 2022 FCA 113 at para 7 [*XY*].

The certification process should not be equated with a reference or used as a tool to obtain declaratory judgments from the Federal Court of Appeal on questions that need not be decided to dispose of a particular case: *XY* at para 7.

[29] None of the proposed questions for certification is dispositive of the application for judicial review. As noted above, Mr. Aniekwe has not established that the officer's decision engaged his *Charter* rights. Certifying the proposed questions in order to "harmonise the criteria applicable to all student permit applicants irrespective of the IRCC office handling the application" and maintain the integrity in the administration of *IRPA* would amount to a reference to the Federal Court of Appeal.

[30] I find that none of the questions Mr. Aniekwe has proposed meets the applicable test for certification.

D. *Should costs be granted to the applicant?*

[31] Mr. Aniekwe seeks an award of costs in the all-inclusive amount of $25,000.

[32] Mr. Aniekwe asks this Court to consider that the respondent has assessed his study permit application twice and made reviewable errors, and in this proceeding, the respondent failed to meet the deadline for filing responding materials, brought an unnecessary motion for an extension of time, and brought a motion to dismiss the application as moot and a motion for judgment that were a "flagrant abuse of both the Court's process and further contributed in driving up the Applicant's cost of these proceedings". Mr. Aniekwe states he made an early

offer to settle the application in December 2022, after filing his application record and before the respondent filed materials. The respondent "flatly refused" the offer on the basis that the respondent intended to oppose the application. However, after the Court granted the respondent's request for an extension of time in February 2023, the respondent changed position, did not file materials, and offered to settle. Mr. Aniekwe states he remained open to settlement throughout the proceeding. He accepted the respondent's terms, but he also reasonably requested a definite timeline for redetermination, which the respondent refused.

[33] The respondent submits there are no special reasons to award costs to Mr. Aniekwe. The respondent did not delay the proceedings and the litigation history demonstrates an ongoing effort since February 2023 to settle the matter and send it back to a different officer for redetermination. The respondent submits the motion to extend the deadline for responding materials had to be made, because Mr. Aniekwe offered only four days and more time was needed to review the application record and seek client instructions. Ultimately, the Court granted the extension of time. The respondent submits the motion to dismiss the application for mootness was based on Mr. Aniekwe's evidence that the start date for his program was May 2023, and he was not eligible to defer admission because he had exhausted the three deferral opportunities allowed by Mohawk College. As soon as Mr. Aniekwe informed the respondent that Mohawk College had allowed an exceptional fourth deferral until January 2024, the respondent abandoned the motion to dismiss. The respondent submits the motion for judgment was filed in the interests of judicial economy.

[34] I find Mr. Aniekwe should be awarded costs.

[35] Section 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [*CIR Rules*] states that no costs shall be awarded to or payable by any party in respect of an application for judicial review unless the Court, for special reasons, so orders.

[36] There is no statutory definition of "special reasons" as used in Rule 22 of the *CIR Rules*, and no definition has been developed in the jurisprudence: *Ndungu v Canada (Citizenship and Immigration)*, 2011 FCA 208 at para 6 [*Ndungu*]. Any number of factors may be considered to constitute special reasons, including the nature of the case, or the behaviour of a party, an immigration official, or counsel: *Ndungu* at para 7. While the threshold is high, special reasons do not require a finding of misconduct. For example, conduct that causes an applicant to suffer a significant waste of time and resources, such as taking inconsistent positions, can sometimes amount to special reasons: *Ndungu* at para 7.

[37] I am not satisfied of any misconduct by the respondent—the record does not establish that the respondent's conduct was oppressive or otherwise improper. However, I have considered and weighed the following factors that, in my view, together constitute special reasons for awarding costs: two prior refusals needed to be set aside, contributing to a delay that now jeopardizes Mr. Aniekwe's offer of admission; the delay occasioned by the respondent's missed deadline which, while not objectionable in itself, served no purpose in view of the respondent's change of position in February 2023; the absence of a reasonable explanation for refusing offers to settle that would have given Mr. Aniekwe the assurance of a timely redetermination, which delayed the resolution of this application, and necessitated a hearing in order to compel the respondent to make a timely redetermination. Furthermore, I see nothing in

Mr. Aniekwe's conduct (or that of his counsel) that weighs against a special cost award in his favour.

[38] With respect to the amount, Mr. Aniekwe has not substantiated the $25,000 cost award that he seeks. If it is based on full indemnity, Mr. Aniekwe has not pointed to any conduct that would justify full indemnity costs. I am not satisfied the amount is reasonable.

[39] In this case, the respondent's actions have occasioned delay and expense, but as noted above, I do not find the respondent's actions constituted misconduct. Considering the record in this application (noting that while the respondent's multiple motions necessitated a response, the Court specifically denied cost awards for two of the three motions), and my reasons above for finding that special costs are warranted, I find a lump sum cost award of $2,500 to be reasonable in this case.

V. **Conclusion**

[40] Mr. Aniekwe has established that the officer's decision is unreasonable. The September 20, 2022 decision refusing his study permit application is set aside, and the matter shall be remitted to a different decision maker for reassessment in accordance with these reasons.

[41] I would note that, while I have found Mr. Aniekwe did not establish certain alleged errors for the decision under review, the officer who reassesses Mr. Aniekwe's application should be alert to issues that may arise—for example, whether procedural fairness requires that Mr.

Aniekwe be given an opportunity to submit updated or additional documentation prior to redetermination, or an opportunity to respond to a particular concern.

[42] There are special reasons to award costs in accordance with the *CIR Rules*. Mr. Aniekwe is awarded costs in the all-inclusive amount of $2,500.

[43] There is no question for certification.

JUDGMENT in IMM-9558-22

THIS COURT'S JUDGMENT is that:

1. The style of cause is hereby amended to change the applicant's name to Ifeanyi Gabriel Aniekwe.

2. This application for judicial review is granted.

3. The officer's September 20, 2022 decision is set aside and the matter shall be remitted to another decision maker for reassessment in accordance with the Court's reasons. A decision shall be issued as soon practicable, and in any event, by no later than December 3, 2023.

4. For special reasons, costs are awarded to the applicant in the all-inclusive amount of $2,500.

5. There is no question to certify.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-9558-22
STYLE OF CAUSE:	IFEANYI GABRIEL ANIEKWE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
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JUDGMENT AND REASONS:	PALLOTTA J.
DATED:	NOVEMBER 6, 2023

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