Federal Court Cour fédérale

Date: 20240516

Docket: IMM-3946-23

Citation: 2024 FC 746

Ottawa, Ontario, May 16, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

AMARACHI JUSTINA OBASI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by a visa Officer [Officer] denying the Applicant's application for a study permit. In their decision dated February 3, 2023 [the Decision], the Officer denied the Applicant's application on the grounds that her assets and financial situation are insufficient to support the stated purpose of travel, and because the Officer was not satisfied that she would leave Canada at the end of her stay.

[2] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, I find that the Applicant has discharged her burden to demonstrate that the Immigration, Refugees and Citizenship Canada's decision is unreasonable. For the reasons that follow, this application for judicial review is granted.

II. Facts

[3] The Applicant, Amarachi Justina Obasi [Applicant], is a citizen of Nigeria born in 1992. She resided in Nigeria with her mother and one of her siblings; she has two other siblings residing in the United Kingdom and one sister residing in Ontario. In 2015, the Applicant obtained a Bachelor's of Science in Food Science and Technology from Michael Okpara University of Agriculture, Umudike in Nigeria. Since September 2018, she has been employed as a Child Care Giver in the Day Care Department of Living Spring Christ Academy in Nigeria.

[4] The Applicant applied and subsequently obtained admission into a two-year Diploma program in Early Childhood Education at Niagara College in Welland, Ontario. On November 17, 2022, she submitted her application for a study permit in Canada. In her Statement of Purpose dated November 16, 2022, the Applicant explained that this education would be beneficial to her career and the children she teaches and that most public and private universities in Nigeria do not offer such programs. She further described why she would like to pursue this degree in Canada, including the university's focus on student security and health. The Applicant explained that this education would allow her to return to build a career as a childcare educator and that she intended to take over her mother's legacy and manage a Montessori academy in Nigeria that her mother established. Lastly, she stated that her family, including her uncle, would

be supporting her financially during her studies and that, together with the support of her uncle, she has sufficient funds for her studies in Canada.

[5] The Applicant submitted multiple documents in support of her application. In a June 17, 2022 letter, the Applicant's employer in Nigeria confirmed granting her a two-year study leave to further her education after which time they would welcome her back. In a November 15, 2022 letter, the Applicant's uncle stated he would support his niece "both financially and in all aspects" during her studies in Canada. The Applicant also submitted proof of her bank statement, with 19,600,00 Naira (equivalent to $57,000 CAD according to the Applicant or $33,979 as of June 2023 according to the Respondent), her uncle's bank statement with $52,000 USD, and the receipt of payment for the first term of her study program in Canada.

[6] On February 3, 2023, the Applicant's student visa was denied. This is the Decision contested before this Court in this application for judicial review.

III. Decision Under Review

[7] In the Decision, the Officer refused the Applicant's study permit and stated the following reasons:

> ● I am not satisfied that you will leave Canada at the end of your stay as required by paragraph R216(1)(b) of the IRPR (https://laws-lois.justice.gc.ca/eng/regulations/sor-2002-227/section-216.html). I am refusing your application because you have not established that you will leave Canada, based on the following factors:
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> ● Your assets and financial situation are insufficient to support the stated purpose of travel for yourself (and any accompanying family member(s), if applicable).

[8] The Global Case Management System [GCMS] contained the following entry:

> I have reviewed the application. I have considered the following factors in my decision. Proof of funds on file from third party (Uncle). Insufficient supporting documents on file to establish relationship. Based on the documentation on file, and the limited information demonstrating nature of relationship between applicant and sponsor, I have concerns that third party funds would be sufficient and available for the proposed 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.

[9] The reasonableness of the Decision and the accompanying GCMS notes as well as an alleged breach of procedural fairness are at issue in this application for judicial review.

IV. Issues and Standard of review

[10] The Applicant raises two issues for judicial review before this Court:

1. Whether the Officer's Decision breached procedural fairness;
2. Whether the Officer's Decision is unreasonable.

[11] On the procedural fairness issue, as held in *Caron v Canada (Attorney General)*, 2022 FCA 196 at paragraph 5, allegations of breaches of procedural fairness are reviewed according to a standard equivalent to correctness: "When engaging in a procedural fairness analysis, [the] Court must assess the procedures and safeguards required, and, if they have not been met, the Court must intervene" (see also *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 33–34 [*Canadian Pacific*]; *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57).

[12] As reiterated in *Canadian Pacific* at paragraph 54, the role of the reviewing court on procedural fairness issues is simply to determine whether the procedure that was followed was fair, having regard to the particular circumstances of the case: "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond" (at para 56).

[13] The standard of review applicable to the merits of the Officer's Decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 39–44 [*Mason*]). To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99; *Mason* at para 59). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125–126; *Mason* at para 73). Reasonableness review is not a "rubber-stamping" exercise, it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

V. Analysis

A. *The sufficiency of the Applicant's assets and financial situation*

[14] The Applicant submits that the Officer erred when they concluded that her assets and financial situation are insufficient to support the stated purpose of travel.

[15] As aforementioned, the Applicant submitted the following information to prove that she had sufficient funds to complete the two-year program of study in Canada: a November 15, 2022 letter from her uncle confirming his agreement to supporting his niece "both financially and in all aspects" during her studies in Canada, the Applicant's bank statement, with 19,600,00 Naira, her uncle's bank statement with $52,000 USD, and the receipt of payment for the first term of her study program in Canada.

[16] The Respondent submits that the Officer reasonably found the Applicant's evidence on this point to be insufficient. I disagree. In their reasons, the Officer stated that there was "[i]nsufficient supporting documents on file to establish relationship" with the uncle. However, the Applicant has submitted a signed letter from her uncle, as well as her Statement of Purpose which also noted her uncle's support. There was no evidence suggesting that this information was not genuine. Therefore, the Officer made a veiled credibility finding, by concluding that the relationship may not be real and that the funds may not be available, to which the Applicant should have been given an opportunity to respond.

[17] This Court has held multiple times that an obligation to allow the Applicant to respond is triggered when an applicant's credibility or the authenticity of the information submitted is put into question (*Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 at para 24; *Hamad v Canada (Citizenship and Immigration)*, 2017 FC 600 at para 21; *Al Aridi v Canada (Citizenship and Immigration)*, 2019 FC 381 at paras 20, 29 [*Al Aridi*]; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 10 [*Patel*]; *Opakunbi v Canada (Citizenship and Immigration)*, 2021 FC 943 at paras 7-13 [*Opakunbi*]).

[18] As stated by Justice Walker at paragraphs 20 and 29 of *Al Aridi*:

> [20] It is well established that the scope of the duty of procedural fairness owed to visa and study permit applicants is at the low end of the spectrum (*Hamad v Canada (Citizenship and Immigration)*, 2017 FC 600 at para 21). It is the applicant's obligation to satisfy all requirements which arise directly from the provisions of the legislation and regulations and the visa officer is not required to inform the applicant of concerns regarding the sufficiency of the materials submitted in support of the application (*Kaur* at paras 24-25; *Chen v Canada (Citizenship and Immigration)*, 2011 FC 1279 at para 22). However, if the officer questions the authenticity of the documents or the applicant's credibility, the officer has an obligation to allow the applicant to respond. The parameters of this obligation were explained by Justice Mosley in *Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 at para 24:
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> [24] Having reviewed the factual context of the cases cited above, it is clear that where a concern arises directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns. Where however the issue is not one that arises in this context, such a duty may arise. This is often the case where the credibility, accuracy or genuine nature of information submitted by the applicant in support of their application is the basis of the visa officer's concern, as was the case in *Rukmangathan*, and in John and Cornea cited by the Court in *Rukmangathan*, above.
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> …
>
> [29] Although the burden rests with the Applicants to establish that they have met the requirements of the IRPA and IRPRs for the issuance of a study permit and TRVs, the Officer's determination must be based on the evidence. In my view, the Decisions were not based on deficiencies in the Applicants' evidence. The Officer simply did not believe the Applicants and made veiled credibility findings. The repetition in each Decision that the Applicants were not bona fide students or visitors, as applicable, reflects a general concern with the credibility of the Applicants' stated intentions [emphasis added].

[19] In addition, as found by Justice Diner in *Patel* at paragraph 10:

> [10] I agree with Mr. Patel that the Officer denied him his rights to procedural fairness by failing to conduct an interview or providing him with an opportunity to address the concerns about the genuineness of his application. While I acknowledge that the level of procedural fairness owed to visa and study permit applicants falls at the low end of the spectrum (see, e.g., *Al Aridi v Canada (Citizenship and Immigration)*, 2019 FC 381 at para 20 [*Al Aridi*]), concerns with credibility should be raised with the applicant, at minimum in writing. At a practical level, this means that visa officers are not required to inform applicants of concerns regarding the sufficiency of supporting materials or evidence. However, that changes when the officer impugns the authenticity of the documents or the applicant's credibility (*Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 at para 24). Here, the Officer made a negative credibility finding against Mr. Patel – and in effect his supporting evidence such as his statement of purpose – in concluding that he would not be a *bona fide* student. Neither the record, nor the reasons themselves, justified this finding [emphasis added].

[20] Lastly, as Justice Fuhrer concisely explained it at paragraphs 7 to 8 and 10 to 13 in *Opakunbi*:

> [7] Having considered the record in this matter, including the parties' written and oral submissions, I find the Officer in this case made implicit or "veiled" credibility findings that should have triggered an interview or a request for additional information from Mr. Opakunbi.
>
> [8] The duty of fairness owed to a study permit applicant generally falls at the low end of the spectrum: *Wang v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 258 [*Wang*] at para 13. A duty to permit an applicant to respond to an officer's concerns may arise, however, in limited fact-specific circumstances, such as where there are doubts about the genuineness or credibility of information submitted by an applicant in support of their application: *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 [*Hassani*] at para 24; *Iyiola v Canada (Citizenship and Immigration)*, 2020 FC 324 [*Iyiola*] at para 16.
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> …

> [10] In the Global Case Management System [GCMS] notes, which form part of the Officer's decision in the case before me, the Officer found that "[t]he applicant has provided limited documents to establish the connection between him and his uncle." In my view, the fact that supporting documentation may be limited, in itself, is not a sufficient explanation for doubting the connection or relationship between Mr. Opakunbi and his uncle, to which the uncle swore under oath in his affidavit and attested that he paid the tuition deposit of $1,500 for his nephew.
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> [11] At the hearing before me, the Respondent's counsel submitted that there should be have been more evidence provided to corroborate the relationship, especially since they have different last names. I note that it was open to the Officer to comment about their different last names but the Officer's reasons in GCMS notes are silent on this point. In other words, there is no way for this Court to know, on the face of the record, the Officer's rationale for disbelieving the relationship, apart from the reference to "limited documents" which in my view is a factual observation, rather than an explanation.
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> [12] In all circumstances, an officer must explain why an applicant's evidence is insufficient: *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 [*Ferguson*] at para 16; *Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446 [*Sallai*] at paras 57-63; *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 35; *Ayeni v Canada (Citizenship and Immigration)*, 2019 FC 1202 at para 28. This requirement protects against "veiled credibility findings," that is, credibility determinations disguised as insufficiency arguments.
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> [13] Although Mr. Opakunbi bears the onus of providing sufficient evidence, I conclude that the Officer failed to explain why the evidence, involving the uncle's sworn affidavit, including confirmation that the uncle had paid Mr. Opakunbi's tuition deposit, falls below the statutory requirements or represents "weak" evidence: *Wang*, above at para 13; *Hassani*, above at para 24; *Huang v Canada (Citizenship and Immigration)*, 2012 FC 145 at para 7.
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> [emphasis added].

[21] Similarly to Justice Fuhrer's case in *Opakunbi*, the Officer in this case found there to be, as explained in the GCMS notes, "[i]nsufficient supporting documents on file to establish

relationship" and "limited information demonstrating nature of relationship between applicant and sponsor." There is no other reason provided for the Court to be able to understand the Officer's rationale in disbelieving the relationship between the Applicant and her uncle and questioning the sufficiency and availability of the funds. The Applicant affirmed her uncle's financial support in her Statement of Purpose. I find that the Officer failed to explain how this evidence, in addition to the other evidence provided by the Applicant and listed at paragraph 15 of this decision, is lacking in meeting the statutory requirements.

B. *The Applicant's intention to return to Nigeria at the end of her stay*

[22] The Applicant submitted, as part of the evidence supporting her application, a June 17, 2022 letter from her employer in Nigeria confirming a two-year study leave to further her education after which time they would welcome her back. Her employer is an Academy where she worked as a Child Care Giver, a field directly related to the studies she wishes to pursue in Canada. The Applicant further explained, in her Statement of Purpose, her intention to take over her mother's legacy and manage a Montessori academy in Nigeria that her mother established. The Applicant also stated that she resides in Nigeria with her mother and one of her siblings.

[23] The Officer concluded that they were not satisfied that the Applicant would depart Canada at the end of her authorized period of stay, only citing the insufficient assets and financial situation of the Applicant as a factor to support this conclusion. The Officer affirms in the GCMS notes having "reviewed the application" and "[w]eighing the factors in the application."

[24] The Respondent states that an Officer's decision to refuse a study permit application can be brief and does not need to be comprehensive (*Singh v Canada (Citizenship and Immigration)*, 2012 FC 526 at para 34, citing *Li v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 791 at paras 45 to 50). However, there must still be a "coherent chain of analysis or explanation linking the information and documents submitted by the Applicant to the Officer's conclusion that [the Applicant] would not leave Canada at the end of [her] stay" (*Singh v Canada (Citizenship and Immigration)*, 2021 FC 790 at para 19). Such analysis is missing in the Officer's Decision.

[25] The Officer's reasoning is incoherent in light of the evidence, which demonstrates the Applicant's attachment and intention to return to Nigeria due to her career and family ties. The Officer did not grapple with the contradictory evidence in the record, and did not explain why it had to be dismissed nor why it was insufficient to convince them that the Applicant would depart at the end of her authorized period of stay (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 at para 17 (FC); *Vavilov* at paras 102, 106, 126, 128).

[26] The Decision therefore contains sufficient omissions causing this Court to lose confidence in the outcome reached by the Officer (*Vavilov* at para 122). The Officer had a duty to engage meaningfully with the Applicant's central arguments at the very least, and, in my view, failed to do so. Therefore, the reasons provided in the Decision do not allow this Court to understand the Officer's reasoning process (*Motala v Canada (Citizenship and Immigration)*, 2020 FC 726 at para 18), and render this Decision unreasonable.

VI. Conclusion

[27] The Officer's decision does not bear the hallmarks of a reasonableness. It is not transparent, intelligible and justified in light of the relevant legal and factual constraints (*Vavilov* at para 99; *Mason* at para 59).

[28] The Applicant's application for judicial review is granted.

[29] The parties have not proposed any question for certification and I agree that none arises in the circumstances.

JUDGMENT in IMM-3946-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. There is no question for certification.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Taiwo Olalere and Kehinde Olalere	FOR THE APPLICANT
Brooklynne Eeuwes	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Ottawa Immigration Lawyers Barristers & Solicitors Ottawa (Ontario)	FOR THE APPLICANT
Attorney General of Canada Ottawa (Ontario)	FOR THE RESPONDENT