Federal Court Cour fédérale

Date: 20240812

Docket: IMM-11821-22

Citation: 2024 FC 1254

Ottawa, Ontario, August 12, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

QUANG NHAT NGUYEN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Quang Nhat Nguyen, seeks judicial review of a decision of an immigration officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC") dated October 31, 2022, finding him inadmissible to Canada pursuant to subsection 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*") and thereby refusing his study permit application.

[2] The Applicant submits that the Officer's decision is unreasonable.

[3] For the following reasons, I find that the decision is reasonable. This application for judicial review is dismissed.

II. Analysis

[4] The Applicant is a citizen of Vietnam who applied for a study permit in Canada. In a letter dated September 28, 2022, IRCC informed the Applicant by way of a procedural fairness letter ("PFL") that there were concerns with the veracity of the Applicant's proof of tuition payment submitted in support of his application, which had been confirmed to be fraudulent.

[5] In an undated letter, an immigration consultant responded to the PFL confirming that they had doctored the Applicant's proof of tuition because they were "afraid it would be difficult for Visa Officers to keep track of the timelines."

[6] In a decision dated October 31, 2022, the Officer found that the Applicant was inadmissible to Canada pursuant to section 40(1)(a) of the *IRPA* for misrepresentation.

[7] The decision is largely contained in the Global Case Management System ("GCMS") notes, which form part of the reasons for the decision. The GCMS notes provide:

> The PA's response to the PFL was thoroughly and carefully considered; however, I am not satisfied that the concerns regarding misrepresentation identified have been satisfactorily disabused.
>
> Client provided an explanation letter, email correspondence from the school, tuition receipt and school fees account summary. Explanation letter confirms that tuition receipt provided with the initial application was altered.
>
> Explanation letter taken into consideration however, client is responsible for all documents submitted within their application. The information provided does not overcome the initial verification.
>
> As indicated in the PFL, I am concerned that the PA may be inadmissible for misrepresentation for directly misrepresenting a material fact that could have induced an error in the administration of the Act. Had the tuition receipt been assessed as genuine, it could have led the officer to be satisfied that the applicant had the financial resources to afford the cost of their studies and living in Canada, pursuant to R220. The PA could have been granted a study permit without satisfying the requirements of the Act. Refused A40 Misrepresentation.

III. **Issue and Standard of Review**

[8] The sole issue in this application is whether the Officer's decision is reasonable.

[9] The standard of review on the merits of the decision is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) ("*Vavilov*"). I agree.

[10] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole 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 (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[11] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

IV. **Analysis**

[12] The Applicant submits that the Officer failed to consider the other evidence of sufficient funds for a study permit, how the misrepresentation was material, and how the "innocent mistake" exception applied to the Applicant's circumstances.

[13] The Respondent submits that the Applicant confuses the materiality of the amount of tuition paid with the materiality of the misrepresentation, and that the Officer's decision is not to be faulted for not considering the innocent mistake exception given that the Applicant did not raise it in the response to the PFL.

[14] I agree with the Respondent. The Court has held that “to be material, a misrepresentation need not be decisive or determinative. It will be material if it is important enough to affect the process” (*Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428 (“*Oloumi*”) at para 25). Under section 220(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, a foreign national must establish that “they have sufficient and available financial resources, without working in Canada, to … pay the tuition fees for the course or program of studies that they intend to pursue.” I find that the proof of tuition payment for such tuition fees was plainly material to the Applicant’s application, the receipt’s fraudulence affecting the process for granting his study permit (*Oloumi* at para 25). I do not find that the Officer’s decision insufficiently accounted for the consequences of an inadmissibility finding, the Officer’s reasons being responsive to both the PFL response from the Applicant and why the Applicant was captured by section 40 of the *IRPA* (*Vavilov* at paras 127-128, 133).

[15] Furthermore, the argument that the Officer failed to consider the “innocent mistake” exception is meritless. This exception was not raised in the response to the PFL. The Officer refused the explanation provided for submitting the fraudulent document. In my colleague Justice Régimbald’s words, “when an officer specifically rejects an applicant’s explanation for the omission, no further inquiry as to any justification or the application of the innocent misrepresentation exception is necessary” (*Wang v Canada (Citizenship and Immigration)*, 2023 FC 62 at para 52).

V. **Conclusion**

[16] This application for judicial review is dismissed. The Applicant has failed to establish that the decision is unreasonable, and I find that the decision is justified in relation to its legal and factual constraints (*Vavilov* at paras 99-101). No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-11821-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11821-22
STYLE OF CAUSE:	QUANG NHAT NGUYEN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JULY 4, 2024
JUDGMENT AND REASONS:	AHMED J.
DATED:	AUGUST 12, 2024

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