Federal Court  Cour fédérale

Date: 20240919

Docket: IMM-259-24

Citation: 2024 FC 1476

Calgary, Alberta, September 19, 2024

PRESENT: Justice Andrew D. Little

BETWEEN:

AYOKUNLE ISAIAH ARODU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

[1] By decision dated December 20, 2023, a visa officer refused the applicant's application for a study permit under subsection 216(1) of the *Immigration and Refugee Protection Regulations,* SOR/2002-227 (the *"IRPR"*).

[2] The applicant contends that the ID's decision was unreasonable under the principles in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[3] For the reasons that follow, I conclude that the application must be allowed because the study permit decision was unreasonable.

I. Facts and Events leading to this Application

[4] The applicant is a citizen of Nigeria. For some years he has resided in South Africa with his wife and three children, one born in 2005 in Nigeria and twins born in 2014 in the United States. Since 2014, he has worked in information technology as a manager in "engineering, architecture, science and information systems" leading a "team of 10 IT professionals in the development and execution of IT infrastructure projects".

[5] The applicant applied for a study permit to pursue "a one-year post-graduate program in Project Management at Fleming College from Jan 8th - August 9th, 2024". The study permit application advised that his wife and children would not accompany him to Canada, nor would his parents who reside in Nigeria.

[6] The applicant had previously applied for temporary resident visas and a study permit. All had been refused. He had also been the subject of an expedited removal from the United States in November 2014. His application stated:

> I WAS REFUSED A VISITORS' VISA IN 2022 - UCI:
> 1120394443 and Study Permit reject in Sept 2023 and was in the
> United States with my pregnant wife in 2014 but was denied entry.

[7] The application also included a four-page letter that addressed the reasons provided for the prior denial of a study permit in Canada.

[8] The refusal letter, dated December 20, 2023, advised that the officer was not satisfied that the applicant would leave Canada at the end of his stay, as required by subsection 216(1) of the *IRPR*, based on the following two factors:

(a) The officer was not satisfied that the purpose of his visit was a temporary stay, given the "details" he provided in his application; and

(b) In the past, the applicant "did not comply with all immigration conditions imposed in another country".

[9] The Global Case Management System ("GCMS") contained the following entry on December 20, 2023:

> I have reviewed the application.
>
> I have considered the following factors in my decision.
>
> National of Nigeria, appears to be PR in South Africa (proof of status not provided though has provided an RSA ID \#), applying for a SP. LOA on file. I note GIC - unclear how this was obtained as applicant has never been to Canada and there is no agreement with South Africa. Travel history noted, including US expedited removal. Applicant indicates denial of entry with pregnant wife. 2x TRV refusals 2022 and 1x SP refusal 2023 - applicant appears to have strong motivations to enter Canada.
>
> Given the applicant's US immigration history and noting the applicant's apparent strong desire to enter Canada, not satisfied PA would leave at the end of an authorized stay.
>
> 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.

[10] The applicant now asks the Court to set aside this decision.

II. Legal Principles

[11] I agree with the parties that the standard of review is reasonableness: see e.g., *Kapenda v. Canada (Citizenship and Immigration)*, 2024 FC 821, at para 12; *Bougrine v. Canada (Citizenship and Immigration)*, 2022 FC 528, at para 13.

[12] The starting point for reasonableness review is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 102-103, 105-106 and 194. In order to intervene, the Court on this application must find an error in the decision that is sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para 100.

[13] As both parties recognized, it is not the role of the Court to re-assess or re-weigh the evidence, or to provide its own view of the merits. Thus, it is not permissible for the Court to come to its own view of the merits of the study permit application and then measure the officer's decision against the Court's own assessment: *Mason*, at para 62; *Vavilov*, at para 83; *Delios v. Canada (Attorney General)*, 2015 FCA 117, at para 28.

[14] Justice Pentney has summarized the principles found in recent decisions of this Court applying the *Vavilov* standard to study permit decisions under the *IRPR*: *Nesarzadeh v. Canada*

(Citizenship and Immigration), 2023 FC 568, at paras 5-9. Those principles are set out below (without reference to the supporting cases and legislation):

- A reasonable decision must explain the result, in view of the law and the key facts.

- Vavilov seeks to reinforce a "culture of justification" requiring the decision-maker to provide a logical explanation for the result and to be responsive to the parties' submissions, but it also requires the context for decision-making to be taken into account.

- Visa Officers face a deluge of applications, and their reasons do not need to be lengthy or detailed. However, their reasons do need to set out the key elements of the Officer's line of analysis and be responsive to the core of the claimant's submissions on the most relevant points.

- The onus is on the Applicant to satisfy the Officer that they meet the requirements of the law that applies to consideration of student visas, including that they will leave at the end of their authorized stay.

- Visa Officers must consider the "push" and "pull" factors that could lead an Applicant to overstay their visa and stay in Canada, or that would encourage them to return to their home country.

[15] Justice Pentney emphasized that a key consideration in the judicial review of an officer's denial of a student visa is whether the reasons meet the standard of "responsive justification", as appropriate for the context of study permit decision. Pentney J. referred to the high volume of applications to be processed, as well as the nature of the interests involved, including the fact that in most instances an applicant can simply re-apply. See *Nesarzadeh*, at paras 6, 11, 13; *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras 61, 74, 76; *Vavilov*, at paras 127-128; *Lingepo v. Canada (Citizenship and Immigration)*, 2021 FC 552, at para 13.

III. The Parties' Positions

[16] The applicant challenged the decision on the grounds that the reasons were inadequate and unresponsive to the actual circumstances of the applicant and ignored the materials in the record – including the applicant's explanations and evidence of positive factors supporting his application.

[17] The applicant submitted that the officer ignored positive factors related to whether he would leave Canada at the end of his studies, including his family, property and professional ties to Nigeria and South Africa, and his four-page letter that directly addressed the reasons why he was previously denied a study permit. The applicant argued that the officer "cherry-picked" evidence and ignored all of the positive factors in his application.

[18] The applicant challenged the "unjustified" inference that non-compliance with United States' immigration law in 2014 implied that he would not leave Canada at the end of his studies more than a decade later, as a Nigerian who had resided in South Africa for many years, returned to Nigeria from time to time and taken two overseas trips to France in 2022. The applicant contended that the officer failed to explain how the expedited removal from the United States outweighed these positive factors related to his compliance with other countries' immigration laws. He argued it was unreasonable to look at his American and Canadian immigration history but not his history of travel to France and South Africa. The applicant also argued that it was a "leap of logic" to use his history to predict future compliance without an express explanation of why.

[19] Noting the officer's reliance on "the applicant's apparent strong desire to enter Canada", the applicant contended that he was in a "Catch-22" situation: he needs a visa to study in Canada but cannot get one because the officer used prior denials of his application to impugn the applicant's motives for studying here.

[20] The applicant also submitted that:

(a) The officer erred in finding that the applicant appeared to be a permanent resident in South Africa, as "proof of status not provided". In fact, the applicant provided his PR permit stamped by the Republic of South Africa Department of Home Affairs. The applicant noted that his status in South Africa, as a Nigerian citizen, shows his compliance with laws of other countries.

(b) The officer unreasonably questioned how the applicant obtained a guaranteed investment certificate ("GIC") from a Canadian bank, as he had never been to Canada (but many international students obtain GICs) and "there is no agreement with South Africa", which applicant submitted is unintelligible for lack of explanation.

[21] The respondent argued that the decision was reasonable. According to the respondent, the applicant's submissions requested that the Court re-weigh the evidence to include the factors that favour his application, contrary to the principles in *Vavilov*. In addition, in the institutional context of a decision related to an application for a study permit visa, the officer's reasons were not required to refer to every piece of evidence: *Vavilov*, at para 91.

[22] The respondent contended that the application was refused because of prior noncompliance with immigration laws, specifically the applicant's expedited removal from the United States. Although he was required to provide details of prior visa refusals and noncompliance with immigration laws, he did not mention the expedited removal from the United States in his application; he stated that he was denied entry and provided no other details. His letter did not explain the United States situation.

[23] The respondent noted that the officer's GCMS entry also referred to the applicant's "[t]ravel history", so the officer must have been aware of his visit to France. The respondent observed that the officer did not deny the applicant's status in South Africa but remarked that proof of status was not provided (just an identification number). The respondent observed that the applicant's financial circumstances were not a basis for the denial of the study permit, so the comments about the GICs were not material to the decision and cannot form the basis for unreasonableness.

[24] Neither the officer's decision nor the argument on this application raised issues about non-disclosure or misrepresentation.

IV. Analysis

[25] In my view, the decision must be set aside. However, I do not agree with all of the applicant's submissions.

A. ***Allegation of inadequate reasons***

[26] The applicant's submissions were largely predicated on the absence of sufficient reasoning to support the conclusion reached. At the outset, therefore, I will explain why I do not agree with the applicant's position that seeks to extend an officer's obligation to provide written analysis and explanation when denying a study permit application. I do so with simultaneous appreciation for the advocacy of the applicant's counsel at the hearing, and the respondent's counsel in response.

[27] First, this is not a case involving generic reasoning to refuse the application, as may sometimes be observed in judicial review applications involving study or work permits. The officer's GCMS entry demonstrated that the officer had read this application. The officer also provided express reasoning for refusing the application.

[28] Second, a decision denying a study permit application is not a circumstance, on its own and without more, that typically gives rise to severe negative consequences on an individual's rights or interests: see *Vavilov,* at para 133; *Canada (Citizenship and Immigration) v. Galindo Camayo,* 2022 FCA 50, at para 50. For example, this is not a case involving inadmissibility arising from an alleged misrepresentation under subsection 40(1). Accordingly, I agree with the respondent that in the present context, the requirement for written reasons was modest.

[29] Third, but consistent with the second point, a refusal letter and the GCMS notes (which in law are considered to provide part of the officer's reasons: *Lotfikazemi v. Canada (Citizenship*

and Immigration), 2024 FC 691, at para 11; *Mohammadzadeh v. Canada (Citizenship and Immigration)*, 2022 FC 75, at para 5) must still be sufficiently responsive to the critical or central aspects of the applicant's submissions or position on the application: see the responsiveness principles applied in *Nimrani v. Canada (Citizenship and Immigration)*, 2023 FC 1448, at paras 6-7; *Nesarzadeh*, at paras 6, 11, 13; *Afuah v. Canada (Citizenship and Immigration)*, 2021 FC 596, at paras 15-19. In other words, the officer was constrained to consider and be responsive to those critical or central submissions or positions, as demonstrated in the officer's GCMS entry: *Mason*, at paras 74, 76; *Vavilov*, at paras 106, 127-128.

[30] Fourth, the officer's decision was constrained by the facts, in that the Court on judicial review may set it aside if the decision fundamentally misapprehended or misunderstood the evidence, or ignored critical evidence before the officer. When providing reasons, the GCMS notes should – again, even if briefly – indicate that the officer was aware of the key facts and provide some assessment of or reaction to them. See *Vavilov*, at paras 101, 105, 125-126; *Kapenda*, at para 24; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 (TD), at paras 16–17, quoted in *Canada (Attorney General) v Best Buy Canada Ltd*, 2021 FCA 161, at para 123. See also *Galindo Camayo*, at para 70 (albeit in a different legal and administrative context).

[31] Of course, the critical facts and the central positions or submissions of the applicant may well overlap and be addressed by an officer together in the GCMS notes.

[32] In some cases, it may also be clear from reading the letter and GCMS notes, in light of the record before the officer, why the officer made the decision: see *Vavilov,* esp. at para 94. Such a review of the officer's reasons and the record does not invite the Court to come to its own conclusion, but rather asks the Court to discern the reasons why the officer reached the decision actually made: see *Vavilov,* at paras 91-94, 97; *Zeifmans LLP v Canada, 2022 FCA 160,* at paras 9-11; *Saghaei Moghaddam Foumani v. Canada (Citizenship and Immigration),* 2024 FC 574, at para 15; *Zibadel v. Canada (Citizenship and Immigration),* 2023 FC 285, at paras 45-49.

[33] Having described why I disagree with the overall thrust of the applicant's position on inadequate reasons in this administrative context, I will now explain why I have concluded that this application must succeed.

B. ***The GCMS notes were not responsive to information filed by the applicant and his central submissions***

[34] The Court's focus on a judicial review application is on the reasoning process used by the decision maker. As *Vavilov* instructs, the analysis must start and focus on the reasons for refusing the study permit: *Vavilov,* at para 81. The analysis examines the legal and factual constraints that applied to the decision.

[35] Paragraph 216(1)(*b*) of the *IRPR* requires a study permit applicant to establish that they "will leave Canada by the end of the period authorized for their stay". Before granting a visa for study purposes, a visa officer must be satisfied that an applicant will leave Canada by the end of the applicant's authorized stay period. I agree with the respondent that the officer was constrained to follow the *IRPR* and that the onus was on the applicant.

[36] I will review both of the officer's reasons for concluding that the applicant had not established that he would leave Canada by the end of the period authorized for his stay.

(1) The officer's first reason

[37] The officer's first reason for concluding that the applicant would not leave Canada was that the officer was not satisfied that the purpose of his visit was a temporary stay, given the "details" he provided in his application. As the respondent confirmed, this reason in the refusal letter corresponds to the officer's finding in the GCMS entry of the applicant's "strong desire" or "strong motivations" to enter Canada, which the officer inferred based on three prior attempts to obtain visas (two temporary resident visas and one study permit) that were refused.

[38] I agree with the applicant that there is no indication in the GCMS entry that the officer considered or assessed:

a) ***The applicant's family ties outside Canada***. The application confirmed that his wife and three children, all resident in South Africa, would not be accompanying him to Canada during his studies. This is a factor that the officer had to consider in the required "push/pull" assessment concerning whether the application would leave Canada at the end of his authorized stay.

b) ***The applicant's letter explaining his responses to the reasons provided for previous refusal of a study permit***. In that letter, he expressly responded to the conclusion on his prior study permit application that he would not leave at the end of his stay and that the purpose of that prior proposed visit was not consistent with

a temporary stay given the details provided in his application. In his letter, the applicant explained his response under the headings “Academic and Professional Progression” and “Home tie [sic] and motivation to return to home country”.

c) ***Evidence of the applicant’s property and professional ties to Nigeria and South Africa***. The application mentioned this information in his letter and filed documents in support.

[39] In my view, this information was material and of sufficient importance to the applicant’s position on the study permit application so as to require the officer to assess it when deciding whether the applicant had established that he would leave Canada at the end of his authorized stay for the purposes of paragraph 216(1)(*b*) of the *IRPR*. See *Nesarzadeh,* at paras 9, 16-18; *Shaeri v. Canada (Citizenship and Immigration),* 2023 FC 1596, at paras 10-11; *Chhetri v. Canada (Citizenship and Immigration),* 2011 FC 872, at para 14.

[40] It is not the Court’s role to assess whether this information would have convinced the officer to find that the applicant would leave Canada as required by *IRPR* paragraph 216(1)(*b*). Rather, I find there was sufficient information about these three points in the record before the officer and that the information was material to the legal requirement that constrained the officer to conduct a “push/pull” assessment. Therefore, there had to be some assessment – even if brief – in the GCMS notes to show that the officer considered the information and was responsive to the applicant’s submissions. The GCMS notes provided no indication that the officer did so.

[41] The officer's failure to mention or assess the applicant's letter containing his express responses to the prior study permit refusal reveals a material flaw in the officer's reasoning process. The applicant provided written responses to the issue of whether he would leave Canada at the end of his permitted stay, which apparently had formed the basis for a prior refusal. Yet the officer's reasoning in this case used the mere existence of the prior refused TRVs and study permit to infer the applicant's strong motivation to come to Canada and then not leave after completing his studies. It is hard to reconcile this approach with a requirement to be responsive to express submissions made on the very question at hand (i.e., whether the applicant would leave Canada), or with IRCC's advice in refusal letters that an applicant may re-apply after being refused a study permit.

(2) The officer's second reason

[42] The officer's second reason for concluding that the applicant had not established that he would leave Canada at the end of his authorized stay was that, in the past, the applicant had not complied with all immigration conditions imposed in another country – namely the United States. The GCMS entry refers to "US expedited removal. Applicant indicates denial of entry with pregnant wife". The record before the officer advised: "EXPEDITED REMOVAL PER INA 212(A)(7) (INS ONLY)" from the United States. As already noted, the applicant's study permit application advised that he "was in the United States with [his] pregnant wife in 2014 but was denied entry".

[43] I am unable to agree with the applicant's position that the GCMS notes contain insufficient reasoning on this issue. The GCMS entry demonstrates that the officer was aware

that the applicant was resident in South Africa. The officer is presumed to know the applicant's travel history as part of the record and the GCMS entry expressly stated "[t]ravel history noted…". The applicant had two short trips to Paris and trips to his home country of Nigeria that were not mentioned expressly.

[44] In my view, the information in the record before the officer about the applicant's travels was not ignored or fundamentally misapprehended: *Vavilov,* at paras 125-126. The Court on judicial review will not revisit how the officer weighed that evidence.

C. ***The applicant's other submissions on unreasonableness***

[45] I do not need to consider the applicant's positions on the officer's statements about his status in South Africa or about the GIC. Neither one appeared to be material to the officer's findings under *IRPR* 216(1)(*b*).

D. ***The decision must be set aside***

[46] The officer refused the study permit application because the applicant had not established that he would leave Canada at the end of his permitted stay as is required under the *IRPR*. The officer gave two reasons for that conclusion. One of those reasons was unreasonable for failure to respect the factual and legal constraints bearing on it, as the decision failed to carry out a proper push/pull assessment as required in the case law and ignored the applicant's responses to prior visa refusals concerning the very issue that was decisive to the present application. These deficiencies in the officer's reasoning were not minor or peripheral; they concerned a pillar on

which the decision rested and were sufficiently important to render the decision unreasonable under *Vavilov* principles.

[47] The decision must therefore be set aside.

[48] These Reasons do not comment on the merits of the applicant's request for a study permit. That will be for the officer assigned to re-determine his application.

V. Conclusion

[49] The officer's study permit decision was unreasonable and must be set aside.

[50] Neither party proposed a question to certify for appeal and none will be stated.

JUDGMENT in IMM-259-24

THIS COURT'S JUDGMENT is that:

1. The application is allowed. The decision dated December 20, 2023, that refused an application for a study permit is set aside and the matter is remitted for redetermination by another officer.

2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act.*

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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