

Federal Court



Cour fédérale

Date: 20150714

Docket: IMM-8305-14

Citation: 2015 FC 858

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, July 14, 2015

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

LOIC CERDY KAMGUIA KOUAM

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Preliminary

[1] The Court finds that some of the documents cited by the applicant in support of his application for judicial review are not in the certified tribunal record. It is trite law that judicial review of an administrative decision must be based on the evidence presented before the administrative decision-makers (*Runchey v Canada (Attorney General)*, 2013 FCA 16 at para 31

(*Runchey*); *Gitksan Treaty Society v Hospital Employees' Union*, [1999] FCJ 1192 at para 13 (*Gitksan*)). Thus, the “new evidence” in the applicant’s record cannot be accepted by the Court.

II. Introduction

[2] This is an application pursuant to the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) for judicial review of a decision dated December 15, 2014, in which a visa officer refused the applicant’s study permit application.

[3] For the following reasons, the application is dismissed.

III. Background

[4] The applicant is a citizen of Cameroon who applied for a study permit at the Canadian Embassy in Dakar on December 1, 2014.

[5] The applicant was accepted into the minor in arts and science program at the Université de Montréal in October 2014.

[6] On December 4, 2014, the applicant obtained a Quebec Acceptance Certificate.

[7] On December 15, 2014, the visa officer refused the applicant’s study permit application, finding that he had not met the requirements of the IRPA and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR).

[8] Specifically, the officer found that the applicant had not demonstrated that he has [TRANSLATION] “sufficient and available financial resources, without working in Canada, to pay his tuition fees for the course or program of studies that he intends to pursue” (Visa Officer’s Decision, Applicant’s Record, at page 9).

IV. Statutory provisions

[9] Subsection 11(1) of the IRPA stipulates that a study visa is required to enter Canada with the intention of pursuing studies:

Application before entering Canada

11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

Visa et documents

11. (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

[10] Sections 216 and 220 of the IRPR establish the criteria for granting a study visa:

Study permits

216. (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national

(a) applied for it in accordance

Permis d'études

216. (1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

a) l'étranger a demandé un permis d'études conformément

with this Part;

(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

(c) meets the requirements of this Part;

(d) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and

(e) has been accepted to undertake a program of study at a designated learning institution.

Financial resources

220. An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to

(a) pay the tuition fees for the course or program of studies that they intend to pursue;

(b) maintain themselves and any family members who are accompanying them during their proposed period of study; and

(c) pay the costs of transporting themselves and the family members referred to in paragraph (b) to and from Canada.

à la présente partie;

b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

c) il remplit les exigences prévues à la présente partie;

d) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);

e) il a été admis à un programme d'études par un établissement d'enseignement désigné.

Ressources financières

220. À l'exception des personnes visées aux sous-alinéas 215(1)d) ou e), l'agent ne délivre pas de permis d'études à l'étranger à moins que celui-ci ne dispose, sans qu'il lui soit nécessaire d'exercer un emploi au Canada, de ressources financières suffisantes pour :

a) acquitter les frais de scolarité des cours qu'il a l'intention de suivre;

b) subvenir à ses propres besoins et à ceux des membres de sa famille qui l'accompagnent durant ses études;

c) acquitter les frais de transport pour lui-même et les membres de sa famille visés à l'alinéa b) pour venir au Canada et en repartir.

V. Standard of review

[11] Previous jurisprudence demonstrates that the determination of sufficient financial resources for the purposes of granting a study permit, which is within the visa officer's discretion, is reviewed under the reasonableness standard of review (*Hong v Canada (Minister of Citizenship and Immigration)*, 2011 FC 463 at paras 11 to 13 (*Hong*); *Thiruguanasambandamurthy v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1518 at para 27).

[12] The Court will therefore only intervene if the reviewed decision-making process lacks transparency and intelligibility or if the decision under review does not fall within the range of acceptable and defensible outcomes in respect of the totality of the evidence submitted (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at para 47).

VI. Analysis

[13] Section 220 of the IRPR, above, imposes on the applicant the requirement to demonstrate, with clear and convincing evidence, that he has sufficient financial resources to pay the tuition fees and maintain himself during his studies in Canada (*Weldegerima v Canada (Minister of Citizenship and Immigration)*, 2015 FC 268 at para 13; *Kibangoud v Canada (Minister of Citizenship and Immigration)*, [2008] FCJ 921 at para 11).

[14] The applicant claims that the visa officer's finding that he does not meet that criterion is unreasonable because it was made without regard to the evidence.

[15] The applicant claims that the evidence submitted to the officer in support of his study permit application, including a bank statement demonstrating the payment of tuition fees in the amount of \$22,015 to the Université de Montréal, a [TRANSLATION] “letter of responsibility” and a declaration of financial support, whereby the applicant’s mother agreed to cover all of his tuition and living costs during his stay in Canada, and documents demonstrating the existence of assets in the name of the applicant’s mother, were not considered by the officer in the decision-making process.

[16] The Court cannot agree with the applicant’s argument.

[17] The Court finds that some of the documents cited by the applicant in support of his application for judicial review are not in the certified tribunal record. It is trite law that judicial review of an administrative decision must be based on the evidence presented before the administrative decision-makers (*Runchey*, above, at para 31; *Gitxsan*, above, at para 13). Thus, the “new evidence” in the applicant’s record cannot be accepted by the Court.

[18] Moreover, the visa officer’s notes from the Global Case Management System (GCMS) show that the officer’s central concern was based on the sufficiency and the source of the applicant’s financial resources.

[19] The officer’s reasons suggest that she considered the evidence before her in her assessment of the applicant’s study permit application, but deemed it insufficient and

inconclusive with respect to the source of the financial resources raised (GCMS Notes, Affidavit of Elizabeth McGirr, at page 7).

[20] Regarding the officer's expertise in granting study permits and her analysis, which is anchored in the evidence, the Court is of the opinion that the officer's decision is reasonable (*Hong*, above, at para 13; *Ngalamulume v Canada (Minister of Citizenship and Immigration)*, [2009] FCJ 1593 at para 16).

VII. Conclusion

[21] For these reasons, the Court dismisses the application for judicial review.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question of general importance to be certified.

“Michel M.J. Shore”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

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