

Federal Court



Cour fédérale

Date: 20151209

Docket: IMM-383-15

Citation: 2015 FC 1370

Toronto, Ontario, December 9, 2015

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

FAUZIA YAQOOB

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] By the present Application, Ms. Yaqoob, a citizen of Pakistan, challenges the decision of a Visa Officer (Officer) dated November 25, 2014 rejecting her request for a study permit to allow her to attend an education program in Canada.

[2] Ms. Yaqoob's application for the study permit was written by her legal Counsel in a detailed letter dated August 5, 2014 and addressed to Canada's High Commission in Islamabad, Pakistan (Applicant's Application Record, pp. 11 – 17). The letter supplied comprehensive

details about Ms. Yaqoob's personal, educational, and professional background, including a precise description as to why the program she wished to attend in Canada would be professionally valuable.

I. The Decision

[3] The entire reasons for rejection provided by the Officer are as follows:

Case reviewed along with all supporting documents. Client is seeking to study at Sheridan College in the field of Business Administration-Marketing for a 3 year diploma. Client already has an MBA and is working in a relevant field. Client has previously been refused two SP's. Clients [sic] proposed path for continued education does not make sense as they already have an MBA so this type of diploma is not going to enhance any more career prospects. It does not make sense to invest such a large sum of money in this diploma program. After reviewing all aspects I am not satisfied that proposed studies in Canada make sense and justify the expense of studying in Canada. Insufficient information provided regarding how proposed studies would improve career prospects to a degree that would offset the costs of studying abroad.

Based on the information on file, I am not satisfied that the PA is well established in Pakistan and would be a genuine student.

[Emphasis added]

(Applicant's Application Record, p. 6)

On my evaluation, the reasons exude a suspicion that Ms. Yaqoob's application for a study permit was being made for an improper purpose. Since the Officer's decision is required to be based on the evidence, an examination of the evidence before the Officer must be carefully considered to determine whether the reasons provided can be supported.

II. The Evidence Submitted on Behalf of Ms. Yaqoob

[4] Ms. Yaqoob's reasons for applying for the study permit are described in her Counsel's letter under the heading "Program of Studies":

As mentioned above, Fauzia has been accepted into the 3-year Business Administration – Marketing program with Sheridan College in Brampton. Please find enclosed Letter of Acceptance International Students dated 11 July 2014. The term start date is 2 September 2014 and expected graduation date is in April 2017. The program costs for the first year (2 semesters) consist of: tuition fees- \$14,764, inclusive of administrative fees - \$476, program fees -\$40, service fee - \$180, health insurance - \$550. The payment due for the first semester was \$7,727. Please find enclosed the Sheridan International Fee Invoice. Fauzia has already paid an amount of \$7,777 to Sheridan on 21 July 2014. Please find enclosed her receipt of payment from Sheridan College as well as proof of payment of same issued by TD Canada Trust.

Fauzia is looking to develop a more in-depth understanding of the Business Administration with emphasis on Marketing. Having developed acute awareness of international trends while working in the National Bank of Pakistan, she wishes to combine her knowledge in banking and business administration with new trends and new knowledge in marketing, a subject she is very much interested in and wants to pursue even further. She believes that the Business Administration – Marketing program at Sheridan College will provide her with the professional step she needs in order to advance in her career and give her a competitive edge in an increasingly popular field.

With a keen interest in marketing, Fauzia is particularly excited about her studies in Canada as she feels that the program at Sheridan University offers a commendable focus on this subject. Upon completion of her studies, Fauzia hopes to have obtained extensive knowledge on the subject and be able to find a good position in the marketing field. In short, Fauzia is confident that this program is the most suitable for her long-term plans.

An additional reason for choosing a Canadian institution was that her eldest brother, Naeem is a Canadian citizen, already in Canada, and he is willing to help her while in Canada. In addition, she has another brother, Sohail who is a permanent resident since 2013, currently looking for a job. Being far away from home as an

international student, Fauzia and her family find comfort in the fact that she will have her two brothers to support and help her along the way.

[5] As to Ms. Yaqoob's professional life, the following evidence was provided under the heading "Relevant Background Information":

Fauzia is a Pakistani citizen, having been born in Karachi, Pakistan on 21 April 1981. Currently Fauzia resides at C-87, Block 10, Federal B Area in Karachi, Pakistan. Fauzia obtained a Certificate/Diploma in Information Technology at the New Institute of Data Processing in Karachi in June 2001, following which she enrolled in the Master of Business Administration at the Shaheed Zulfikar All Bhutto Institute of Science and Technology, at the Karachi Campus, from the fall 2002 until spring 2004, when she graduated.

After obtaining her Master's degree, Fauzia commenced looking for a job. She was hired as a Project Officer with Standard Chartered Bank from January to November 2005. In December 2005, she began work as a Management Information System (MIS)/Budget Officer with the National Bank of Pakistan, Commercial & Retail Banking Group, at their head office in Karachi. She continues to work in this position to date.

[6] As to Ms. Yaqoob's family life, the following details were supplied under the heading "Pakistan versus Ties to Canada":

Fauzia's mother, Sbamim Fatima, her brother, Shakeel Ahmed, a physician, and her sister, Kaneez Fatima, all live in Karachi. They are a very closely-knit family and they support each other in every aspect of life. Furthermore, as outlined above, Fauzia has a good position with the National Bank of Pakistan, where she has been since 2005.

Fauzia has two brothers in Canada, Naeem Ahmed, a Canadian citizen and Sohail Ahmed, a permanent resident. Other than her brothers, she has nobody else in Canada and no other ties here. As outlined above, if Fauzia will be granted the study permit, her eldest brother Naeem, will support Fauzia during her stay in

Canada. On balance, Fauzia's ties to Pakistan are stronger than her ties to Canada.

Therefore, we respectfully submit that Fauzia has substantial ties to her home country of Pakistan. Having been born, raised, educated and working in Pakistan, surrounded by the majority of her family and many friends, her life is in Pakistan.

[7] And as to Ms. Yaqoob's future intentions, the following statements were supplied under the heading "Temporary Status / Dual Intent – IRPA s. 22(2)":

Should Fauzia be issued a study permit, she understands the temporary nature of this status, including leaving Canada at the end of her authorized stay. We note that Fauzia had not violated the terms of her temporary status in the past, in the countries she visited. Moreover, she is willing to continue to abide by all terms and conditions imposed.

Fauzia also possesses dual intent regarding her status in Canada. Further to her study permit, she will be eligible to apply for a post-graduate work permit. If she obtains same, then the work experience gathered under her post-graduate work permit (PGWP) will allow Fauzia to apply for permanent resident status under the Canadian Experience Class (CEC). Should she wish to pursue immigration programs available and apply for permanent residence in Canada in the future, this should not prevent such an application. As you are aware, an eventual permanent intention does not preclude an applicant from becoming a temporary resident, in accordance with section 22(2) of the *Immigration and Refugee Protection Act* (dual intent). In addition, as indicated by jurisprudence, an applicant's initial reasons for entering and remaining in Canada may change after one's arrival in Canada. Such a scenario is described in *Patel v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 224:

The current statutory and regulatory scheme does not say that a person's initial temporary purpose must remain constant and unchanged. The only requirement is the existence of a temporary purpose.

See also: *Stanislavsky v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 835.

[8] Obviously, the Officer's reasons are completely unresponsive to the apparently forthright and transparent evidence Ms. Yaqoob submitted, and, thus, it is reasonable to conclude that the evidence was disregarded. As a result, the question is: what evidentiary reason would cause the suspicion exposed in the reasons to arise? Given the dearth of any other reason supported by the evidence, it is clear that Ms. Yaqoob's history with the High Commission in Karachi was central to the rejection presently under review.

[9] This conclusion is based on the Officer's statements that "client has previously been refused two SP's" and "based on the information on file, I am not stratified that the PA is well established in Pakistan and would be a genuine student". In my opinion, it is these statements that expose the unfounded suspicion that, with respect to Ms. Yaqoob's third application for a study permit, she was not telling the truth about her professional life and family life in Pakistan and her interest in the Business Administration – Marketing program with Sheridan College.

[10] In an attempt to ensure that this result would not occur, in the letter or request, Ms. Yaqoob's Counsel directly addressed the issue:

We note that Fauzia previously filed two separate applications for a study permit to Canada. Her first application for a study permit was made in October 2012 that was refused on 22 October 2012. Please see refusal letter attached. In the refusal letter, the immigration officer concluded:

You have not satisfied me that you would leave Canada at the end of your stay. In reaching this decision, I considered several factors, including:

- ❖ Limited employment prospects in your country of residence;
- ❖ Your personal assets and financial status.

In June 2013, Fauzia made yet another application for a study permit, which was also refused on 5 June 2013. Please see refusal letter attached. In the refusal letter, the immigration officer concluded:

You have not satisfied me that you would leave Canada at the end of your stay. In reaching this decision, I considered several factors, including:

- ❖ Your travel history;
- ❖ Your family ties in Canada and in your country of residence;
- ❖ Purpose of visit;
- ❖ Your personal assets and financial status.

We respectfully submit that the within written submissions herein thoroughly address the factors in issuing a study permit and in particular assuage any concerns expressed by previous officers.
[Emphasis added]

Given the result, this plea was also apparently disregarded.

III. Reasonableness of the Decision

[11] I find that the Visa Officer's decision is unreasonable. Besides the existence of justification, transparency and intelligibility, reasonableness in decision-making is "concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, para 47) [Emphasis added]. The Officer's decision is not defensible in respect of the facts.

IV. Breach of the Duty of Fairness

[12] Because Ms. Yaqoob's credibility was the central issue in the decision under review, I find that the Officer breached a duty of fairness owed to her by failing to provide her the opportunity of an interview to allow her to disabuse the Officer's mind of the suspicion which existed in the decision-making process.

V. Relief

[13] As a result, the Officer's decision must be set aside and Ms. Yaqoob's application for a study permit must be redetermined. I agree with Counsel for Ms. Yaqoob that the redetermination must be conducted by a different official at a different location than the High Commission in Islamabad. Understandably, Ms. Yaqoob does not trust that this, her fourth attempt to obtain a study permit, will be fairly considered and determined by anyone in that certain office.

[14] At the conclusion of the hearing of the present Application, I orally expressed my opinion as stated in these reasons, and, subsequently, the Respondent confirmed that the redetermination can be done at the High Commission of Canada in New Delhi.

JUDGMENT

THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is referred back for redetermination by a different official on the following directions:

The redetermination be conducted by an official at the High Commission of Canada in New Delhi, and if, on redetermination, a concern arises that Ms. Yaqoob's application does not meet the requirements of s. 216(1) of the *IRPA*, an interview of Ms. Yaqoob be conducted in person, by teleconference, or by videoconference, in the presence of a representative, if she so requests.

I find that there are special reasons to order costs in favour of Ms. Yaqoob to be paid by the Respondent. Simply put, given the especially unreasonable and unfair quality of the decision-making under review, Ms. Yaqoob should be provided with compensation for her efforts to engage reasonable and fair consideration. Thus, costs are awarded in the lump sum amount of \$500.

There is no question to certify.

"Douglas R. Campbell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-383-15

STYLE OF CAUSE: FAUZIA YAQOOB v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 25, 2015

JUDGMENT AND REASONS: CAMPBELL J.

DATED: DECEMBER 9, 2015

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