

Federal Court



Cour fédérale

Date: 20200120

Docket: IMM-2980-19

Citation: 2020 FC 77

Toronto, Ontario, January 20, 2020

PRESENT: Mr. Justice Diner

BETWEEN:

ROHANKUMAR JAYESHBHAI PATEL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Patel, seeks judicial review of the refusal of his study permit application, which I will grant due to fatal flaws in the decision.

[2] Mr. Patel is a 23-year-old citizen of India. In 2017, he completed a business degree in India. After that, he worked for a short period as an accountant. He was accepted into a one-year

business program at Vancouver Island University [VIU], conditional on his prior completion of an English as a Second Language [ESL] program at VIU. Mr. Patel then applied for a student permit, which was refused for the first time in 2018. The refusal letter provided that he was welcome to apply again if he felt he could overcome its shortcomings and meet all program requirements.

[3] In April 2019, Mr. Patel submitted a second study permit application. His application package included a cover letter from Mr. Patel's lawyer which addressed the weaknesses identified in the previous application and confirmed that Mr. Patel (i) intended to leave Canada at the end of his stay, and (ii) would be willing to post a removal deposit in accordance with section 45 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]. It also contained Mr. Patel's extensive "Statement of Purpose" submitted to VIU in support of his application to its business program, wherein Mr. Patel explained his reasons for undertaking the post-graduate business program, the opportunities he felt it would provide, and the reasons why the education and experience would benefit him upon his return to India at the completion of his studies.

[4] In a decision dated May 3, 2019 [Decision], an officer at the Case Processing Centre in Ottawa [Officer] refused the application, which is the subject of this review.

[5] The core of the reasons for refusal are contained in the Global Case Management System [GCMS] notes and read as follows:

PA failed to provide IELTS scores. Considering the availability of English courses locally at much less cost, I am not satisfied it is

reasonable for Applicant to upgrade English skills in Canada at such expense. On balance, the Applicant has failed to satisfy me that the course of study is reasonable given the high cost of international study in Canada when weighed against the potential career/employment benefits, the local options available for similar studies, the applicant's academic/work history and personal circumstances.

[6] Based on these reasons, the Officer came to the conclusion that (i) Mr. Patel was neither a *bona fide* student in Canada, nor (ii) would leave Canada at the end of his stay as required under paragraph 216(1)(b) of the Regulations.

II. Issues and Analysis

[7] Mr. Patel challenges two aspects of the Decision, arguing that the Officer (i) breached his right to procedural fairness, and (ii) erred in finding that he did not satisfy the Regulations. The parties agree, as do I, on the standards of review applicable to these issues. The first – procedural fairness – is reviewable on correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79), which *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] did not impact, as confirmed at paragraph 23. In examining the fairness issue, I must consider, given the nature of the substantive rights involved and the consequences for Mr. Patel, whether a fair and just process was followed (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CP*]).

[8] The second issue – whether the Officer erred in concluding that Mr. Patel would not comply with the Regulations by leaving Canada by the end of the period authorized for his stay – is reviewed on the reasonableness standard. That is because I am being asked to assess the merits

of this administrative decision (*Vavilov* at para 23). *Vavilov*'s presumption of reasonableness is not rebutted, in that the legislature did not indicate that correctness should apply in this context, nor do any of the three rule of law exceptions apply – i.e. there is no constitutional question, question of law of central importance to the legal system, or question regarding jurisdictional boundaries between administrative bodies (*Vavilov* at para 69).

[9] When reviewing for reasonableness, the Court asks “whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99). It must be internally coherent, and display a rational chain of analysis (*Vavilov* at para 85). As such, a decision will be unreasonable if the reasons read in conjunction with the record do not enable the Court to understand the decision maker's reasoning on a critical point (*Vavilov* at para 103).

A. *The Officer breached Mr. Patel's right to procedural fairness*

[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.

[11] In *Al Aridi*, a recent study permit case with a similar theme, the officer found that the applicant's proposed course of study would not improve her academic credentials or her employment prospects, and that that the applicant was not a *bona fide* student. On judicial review, Justice Walker ruled that these statements were speculative and that the "*bona fide*" comment constituted a veiled credibility finding because it reflected "a general concern with the credibility of the Applicants' stated intentions" (*Al Aridi* at para 29).

[12] Likewise, here the Officer's conclusion that Mr. Patel would not be a *bona fide* student reflected a concern with the genuineness of his application. Thus, he owed Mr. Patel an opportunity to address these concerns, and the failure to do so breached his right to procedural fairness. Certainly, that opportunity did not have to be in the form of an oral interview, but there should have been – at minimum – an opportunity for Mr. Patel to address the Officer's concerns in writing.

[13] While this flaw in the Decision is sufficient to return the matter for redetermination, I also find the Officer's rationale for Mr. Patel's prospective non-compliance with the limits of his authorized stay in Canada problematic.

B. *The Officer's Decision was unreasonable*

[14] The Officer doubted that it was reasonable for Mr. Patel to enroll in the program at VIU, citing (i) the questionable employment benefits, (ii) the availability of lower-cost options for similar study in India, (iii) his academic and employment history, and (iv) his personal circumstances. From this, the Officer concluded that Mr. Patel would not be a *bona fide* student in Canada and would not leave Canada at the end of his study permit stay, in non-compliance with paragraph 216(1)(b) of the Regulations.

[15] In my view, these four reasons, whether considered alone or together, do not provide a reasonable basis or justification for the Officer's conclusion. I appreciate that the context of a visa office, with immense pressures to produce a large volume of decisions every day, do not allow for extensive reasons. The brevity of the Decision, however, is not what makes this Decision unreasonable. Rather, it is its lack of responsiveness to the evidence. *Vavilov*, at paragraphs 127-128, describes the concept of responsiveness as follows:

The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard: *Baker*, at para. 28. The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually listened to the parties.

Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of

administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.

[Underlining added; italics in original.]

[16] As can be seen above, the Supreme Court locates responsiveness of reasons somewhere in the land between procedural fairness and reasonableness. And that is natural because to be responsive, the decision-maker has to marry the concepts of fairness – whether the party knew the case they had to meet, had an opportunity to respond (*CP* at para 41) – with a coherent, justified decision made in relation to the relevant factual and legal constraints.

[17] Again, while the reality of visa offices and the context in which its officers work include significant operational pressures and resource constraints created by huge volumes of applications, this cannot exempt their decisions from being responsive to the factual matrix put before them. Failing to ask for basic responsiveness to the evidence would deprive reasonableness review of the robust quality that *Vavilov* requires at paras 13, 67 and 72. “Reasonableness” is not synonymous with “voluminous reasons”: simple, concise justification will do.

[18] Returning to the four reasons underlying the conclusion in this case (as listed in paragraph 14 above), first, there are clear potential employment benefits to international study, including in this case, the opportunity to improve English language skills.

[19] As for the second reason cited by the Officer, lower-cost options for English programs in India does not make enrollment in a Canadian English program unreasonable. Foreign students worldwide often pay substantial fees for the experience of studying abroad, and all the salutary effects that it may have, including receiving advanced education, improving language skills, gaining international perspectives, being immersed in foreign cultures, and improving career prospects.

[20] Regarding the third ground cited in the Decision, Mr. Patel's academic and employment history is in the field of business. Therefore, I find nothing inherently unreasonable about pursuing further studies in his field.

[21] Finally, on the fourth issue cited, the Officer did not expand whatsoever – or justify in any way – what the “personal circumstances” might be, or why those might render his attendance at the university “unreasonable.” The Officer did not explain, for instance, that it would be personally difficult for Mr. Patel to leave his friends and family in his home country, overly onerous on his finances, or simply difficult to adjust to a new environment or climate. The Officer might well have had a rationale for that conclusion in mind, but none is apparent in the reasons. Vavilov, at paragraph 96, teaches us that it is not for the Court to fill in the reasons for the officer:

Where, even if the reasons given by an administrative decision maker for a decision are read with sensitivity to the institutional setting and in light of the record, they contain a fundamental gap or reveal that the decision is based on an unreasonable chain of analysis, it is not ordinarily appropriate for the reviewing court to fashion its own reasons in order to buttress the administrative decision. Even if the outcome of the decision could be reasonable under different circumstances, it is not open to a reviewing court to

disregard the flawed basis for a decision and substitute its own justification for the outcome: *Delta Air Lines*, at paras. 26-28. To allow a reviewing court to do so would be to allow an administrative decision maker to abdicate its responsibility to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion. This would also amount to adopting an approach to reasonableness review focused solely on the outcome of a decision, to the exclusion of the rationale for that decision.

[22] Here, the Officer did not offer a rational line of analysis or explanation that could reasonably lead from the evidence to the conclusion that Mr. Patel would not be a *bona fide* student and would not leave Canada at the end of the study permit period (*Vavilov* at para 102). The Decision is thus not justified in relation to the relevant factual and legal constraints (*Vavilov* at para 99).

III. Conclusion

[23] The Officer breached Mr. Patel's right to procedural fairness and rendered an unreasonable Decision. For both of these reasons, the application will be granted and the matter returned for redetermination.

JUDGMENT in IMM-2980-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted.
2. This matter will be returned for redetermination by a different officer.
3. No questions for certification were argued, and I agree none arise.
4. There is no award as to costs.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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