Federal Court  Cour fédérale

Date: 20200220

Docket: IMM-5329-19

Citation: 2020 FC 279

Winnipeg, Manitoba, February 20, 2020

PRESENT: The Honourable Madam Justice Fuhrer

BETWEEN:

XIANG LI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS
(Delivered from the Bench in Winnipeg, Manitoba on February 20, 2020
and edited for syntax, grammar, case citations and relevant provisions)

I. Background

[1] The Applicant, Xiang Li, is a citizen of the People's Republic of China. He entered Canada on January 15, 2019 on a multiple-entry visitor visa. On this entry, he was authorized to stay until July 14, 2019.

[2] From February 2 to April 18, 2019, Mr. Li attended an English as an additional language short-term learning pathway program at Heartland International English School [Heartland], a designated learning institution [DLI]. The Manitoba Institute of Trades and Technology [MITT], also a DLI, advertises on their website:

> …Direct entry available into MITT programs after meeting the completion requirements* for Advanced 1 (level 4) or Advanced 2 (level 5) of the Intensive English Program (with an average of 80%) at Heartland International English School.

[3] After finishing the Heartland program, Mr. Li received a letter of acceptance [LOA], dated June 19, 2019, into a one-year CAD Technician certificate program at MITT, with a start date of August 7, 2019. MITT's LOA, though not identical, substantially mirrors a template form provided by Immigration, Refugees and Citizenship Canada [IRCC] in so far as the summary of personal, institutional, and program information is concerned. I note that on this LOA "form", MITT indicated "N/A" under "Conditions of acceptance specified as clearly as possible" in connection with the program information. Mr. Li then applied within Canada for the requisite study permit for this program on June 27, 2019, and included as part of his application proof of his completion of the pathway program at Heartland, in respect of which he achieved a number grade well in excess of the stipulated 80% average required for the course to serve as a prerequisite.

[4] On August 15, 2019, a Visa Officer [Officer] with the Case Processing Centre Edmonton denied Mr. Li's study permit application. The Officer concluded:

> "You are not a person described in Immigration Legislation who can apply for this type of document from within Canada. An

> application of this type must be made at a Canadian Visa office in another country."

[5] The Global Case Management Notes, which form part of the Officer's decision, contain the following rationale for the decision: "…The LOA did not specify that a pre-requisite course was completed, therefore client does not meet the criteria and is ineligible to apply for a Study permit within Canada under R215." As such, the Officer found Mr. Li did not meet the criteria and was ineligible to apply for a study permit within Canada under section 215 of the *Immigration and Refugee Protection Regulations*, SOR-2002/227 [IRPR]. Accordingly, the Officer refused the application, concluding the study permit application must instead be made at a Canadian visa office in another country.

[6] Mr. Li now seeks judicial review of this denial, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [IRPA]. For the reasons that follow, I grant this application for judicial review.

II. Issue

[7] The only issue for consideration in this judicial review is: was the Officer's decision reasonable?

III. Relevant Provisions

[8] The following provisions are relevant in this proceeding:

Immigration and Refugee Protection Regulations, SOR/2002-227 [IRPR]

213. Subject to sections 214 and 215, in order to study in Canada, a foreign national shall apply for a study permit before entering Canada.

215. (1) A foreign national may apply for a study permit after entering Canada if they

(f) are a temporary resident who

(iii) has completed a course or **program of study** that is a prerequisite to their enrolling at a designated learning institution; or

[Bold emphasis added.]

Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227 [RIPR]

213. Sous réserve des articles 214 et 215, l'étranger qui cherche à étudier au Canada doit, préalablement à son entrée au Canada, faire une demande de permis d'études.

215. (1) L'étranger peut faire une demande de permis d'études après son entrée au Canada dans les cas suivants :

f) il est un résident temporaire qui, selon le cas :

(iii) a terminé un cours ou **un programme d'études** exigé pour s'inscrire à un établissement d'enseignement désigné;

[Mon emphase.]

IV. Standard of Review

[9] The Applicant's submissions were received prior to the Supreme Court of Canada recent decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Mr. Li did not specify a standard of review. The Minister submits the standard of review is reasonableness, and I agree: *Vavilov*, above at paras 9-10. In applying this standard, the Minister emphasizes this Court should intervene only when truly necessary to safeguard the legality, rationality, and fairness of the administrative process: *Vavilov*, above at paras 13, 75, and 100. This requires consideration not only of the outcome of the decision, but also the justification of the result.

[10] Following *Vavilov*, there is a rebuttable presumption that all administrative decisions are reviewable on a reasonableness standard: *Vavilov*, above at paras 9-10. I find none of the situations which rebut this presumption [summarized in *Vavilov*, above at paras 17 and 69] are present in the instant proceeding.

[11] When reviewing an administrative decision under the reasonableness standard, "…a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified": Vavilov, above at para 15. The SCC defined a reasonable decision owed deference as "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, above at para 85. The SCC found "it is not enough for the outcome of a decision to be justifiable …[,] …the decision must also be justified …": Vavilov, above at para 86 [emphasis in original]. In sum, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility – and it must be justified in relation to the factual and legal constraints applicable in the circumstances: Vavilov, above at para 99. The party challenging the decision has the onus of demonstrating that it is unreasonable: Vavilov, above at para 100.

V. Analysis

[12] IRPR s 215(1)(f)(iii) is silent about what an in-Canada study permit applicant must provide in order to demonstrate they have completed a prerequisite course or program of study. Nor does the provision specify what constitutes a "prerequisite course or program of study";

instead, this falls within the purview of the DLI to determine: *Virk v Canada (Citizenship and Immigration)*, 2018 FC 1181 at para 7.

[13] Logically, there are at least two circumstances under which a correctly completed "form" LOA will indicate that conditions [or prerequisites] of acceptance are "N/A": either there are none, or a DLI applicant completed the applicable prerequisite[s] for "enrolling" at the DLI and provided satisfactory proof of completion to the DLI prior to the issuance of the LOA, as occurred in this case. Accordingly, a form LOA indicating "N/A" for conditions of acceptance cannot be the end of the enquiry for a Visa Officer when an in-Canada study permit applicant provides additional evidence demonstrating that one or more prerequisites "for enrolling at [the] designated learning institute" have been completed. As the Officer did not engage with Mr. Li's evidence concerning completion of the Heartland program in the context of MITT's English language requirements for international students, this alone in my view is sufficient to render the Officer's decision unreasonable.

[14] Despite concluding the Officer's lack of engagement on Mr. Li's evidence is determinative, I consider next the statutory interpretation issues raised in this matter to avoid "an endless merry-go-round of judicial reviews and subsequent considerations": *Vavilov*, above at para 142.

[15] It is clear from the evidence on record, which includes what appears to be a printout from the MITT website regarding "Pathway Language Program Partners", that completion of an

English language program of study is a prerequisite for international students to be admitted into a MITT technical program:

> "International students who successfully finished any of the [specifically identified] pathway programs listed below will meet MITT's English Language requirement for admittance in a MITT technical program. Students will still need to follow the regular application procedures and must meet all other admission requirements."

[16] The Heartland program successfully undertaken by Mr. Li meets this prerequisite. This is reinforced by the email dated May 17, 2019 to Mr. Li from the "MITT Admissions Team" which states:

> "We have received your application and have noted that the following documentation are required in order to complete your application for assessment.
> - Scanned copy of your post-secondary transcript from Canadian institution or elsewhere (**if you have any**).
> - **Need completion letter from Heartland**. Heartland can send by email."
>
> [Bold emphasis added.]

[17] The Minister argues that the Officer's decision is consistent with IRCC policies. In my view, however, the policies to which the Minister pointed are not consistent with a plain reading of IRPR s 215(1)(f)(iii). For example, the Minister submits IRCC's operational guideline entitled "Study permits: Making an application" provides that foreign nationals are not eligible to apply for a study permit in Canada under IRPR s 215(1)(f)(iii) if the foreign national is either:

- unable to provide a letter of acceptance issued by a DLI either before or after the prerequisite course that proves the course is a prerequisite for **entry to the main program**;

  or

- admitted to a program with a language requirement, but a specific language training course or program is not specified in the letter of acceptance as a

> prerequisite for **entry to the main program** (for example, wording such as "must provide proof of English proficiency" does not indicate the need for a prerequisite)
>
> [Bold emphasis added.]

[18] I have outlined already what I believe to be a shortcoming of that first point [i.e. the need to engage with other evidence provided by a study permit applicant if the LOA itself does not mention a prerequisite course or program of study]. I further note the inexplicable omission from the first point of the reference to "program of study" contained in IRPR s 215(1)(f)(iii). In addition, the reference to "entry to the main program" in the first and second points misses entirely that the wording of IRPR s 215(1)(f)(iii) is "enrolling at a designated learning institution", as opposed to a program of the DLI. In fact, enrollment at a DLI is a constant requirement until a study permit holder completes their studies: IRPR s 220.1(1)(a). In other words, the wording "entry to the main program" is not consistent nor harmonious, in my view, with the text, context and purpose of the DLI enrollment provisions for study permit applicants, in particular IRPR ss 215(1)(f)(iii) and 220.1(1)(a): *Vavilov*, above at para 120; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at para 42.

[19] Regarding the bracketed example in the second point of what does not constitute a prerequisite, MITT does more than indicate "must provide proof of English proficiency"; instead MITT stipulates that international students must successfully finish one of a list of specifically identified pathway programs to meet MITT's English Language requirement for admittance in a MITT technical program. I also do not accept the Minister's submission that "most MITT students [i.e. Canadian students] presumably do not have to provide any proof of language proficiency to enroll." First, there is no evidence in this proceeding to support such a

presumption, especially in so far as enrollment at the DLI itself is concerned, as opposed to any particular course or program of study. Second, it is irrelevant in the context of international students or foreign nationals.

[20] The Minister also submitted that the IRCC operational guideline entitled "Study permits: letters of acceptance" explicitly distinguishes between "academic prerequisites" and "proof of language competence". That may be, but again this ignores the plain language of IRPR s 215(1)(f)(iii) which does not qualify the word "prerequisite" with "academic" but refers simply to a "course or program of study". Moreover, I note the "proof of language competence" is mentioned in the list of "conditions related to the acceptance or registration" that should be included in the LOA from the DLI submitted by the student at the time of their study permit application. On its face, this contradicts the second point excerpted from the IRCC's operational guideline entitled "Study permits: Making an application" and mentioned above. In any event, such "ministerial guidelines are not law": *Rakheja v Canada (Citizenship and Immigration)*, 2009 FC 633 at para 29.

[21] Finally, as noted in *Vavilov* at para 121, administrative decision makers must avoid the temptation to "reverse-engineer" a desired outcome:

> "The administrative decision maker's task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue. It cannot adopt an interpretation it knows to be inferior — albeit plausible — merely because the interpretation in question appears to be available and is expedient. The decision maker's responsibility is to discern meaning and legislative intent, not to 'reverse-engineer' a desired outcome."

VI. Conclusion

[22] For all these reasons, I find that the Officer's decision is unreasonable in that it does not bear the hallmarks of reasonableness – justification, transparency and intelligibility – and is not justified in relation to the factual and legal constraints applicable in the circumstances. I therefore grant this judicial review application, set aside the Officer's decision and order the matter remitted to a different Visa Officer for redetermination.

JUDGMENT in IMM-5329-19

THIS COURT'S JUDGMENT is that: the judicial review application is granted; the Officer's August 15, 2019 decision is set aside; and the matter is remitted to a different Visa Officer for redetermination.

"Janet M. Fuhrer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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