Federal Court  Cour fédérale

Date: 20210603

Docket: IMM-7322-19

Citation: 2021 FC 544

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 3, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

MATSING TAKOUDJOU CHANTALE

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Chantale Matsing Takoudjou, is a citizen of Cameroon. She seeks judicial review of a decision rendered on November 22, 2019, by which a visa officer [the officer] of the Canadian Embassy in Dakar, Senegal, denied her application for a study permit.

[2] In the officer's refusal letter, he stated that he is not satisfied the applicant will leave Canada at the end of the period authorized for her stay, given her previous travels and her personal assets and financial situation. The officer further stated that he is not satisfied that she has sufficient financial resources available, without working in Canada, to pay the tuition fees for the program she intends to attend.

[3] The notes in the Global Case Management System, which are part of the reasons for the decision, state the following:

- The applicant's situation does not appear to have changed significantly since the previous refusal.
- The applicant wishes to study in Canada.
- The applicant has no history of travel.
- The applicant's education would be supported by family members who have modest incomes and other dependents.
- The evidence of the applicant's family members' income shows that it is insufficient for the cost of the intended studies in Canada.
- There is evidence of deposits of money whose source is unclear.
- The applicant's family members have not demonstrated a sufficient degree of establishment.
- Based on the information currently before him and the documents in support of the application, the officer is not satisfied that the applicant is a bona fide student, whose primary purpose is to pursue an education, or that she will leave Canada at the end of her authorized stay.

[4] The applicant argues that the decision is unreasonable because the officer's findings show no connection to the facts and the law. She also argues that the officer breached procedural fairness by failing to provide sufficient reasons for his decision and by making a judgment about her credibility without giving her a right of reply when he was not satisfied that the applicant is a [TRANSLATION] "bona fide" student.

[5] The standard of review applicable to a visa officer's decision to refuse a study permit application is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16–17 [*Vavilov*]; *Nimely v Canada (Citizenship and Immigration)*, 2020 FC 282 at para 5 [*Nimely*]; *Hajiyeva v Canada (Citizenship and Immigration)*, 2020 FC 71 at para 6). While it is not necessary to have exhaustive reasons for the decision to be reasonable given the enormous pressure on visa officers to produce a large volume of decisions each day, the decision must still be based on an analysis that is internally coherent, rational and justified in light of the legal and factual constraints (*Vavilov*, at para 85). It must also bear "the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov*, at para 99).

[6] Regarding the allegation of a breach of procedural fairness, the Federal Court of Appeal made it clear in *Canadian Pacific Railway v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific*] that issues of procedural fairness do not necessarily lend themselves to a standard of review analysis. Rather, this Court's role is to determine whether the procedure is fair in all the circumstances (*Canadian Pacific* at paras 54–56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[7] The adequacy of reasons does not constitute a basis for finding a breach of procedural fairness unless there are no reasons at all (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14–16 [*Newfoundland Nurses*]).

[8] The Court agrees with the applicant that the decision in this case is not reasonable.

[9] First, it is well established that the lack of travel history must be treated as a neutral factor and cannot be used to justify the refusal of a study permit (*Ekpenyong v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1245 at paras 31–32; *Adom v Canada (Citizenship and Immigration)*, 2019 FC 26 at para 15; *Dhanoa v Canada (Citizenship and Immigration)*, 2009 FC 729 at para 12). The Court cannot agree with the respondent's argument that the officer did not consider the lack of a travel history as a reason for refusal. The officer explicitly stated in the refusal letter that he is not satisfied that the applicant will leave Canada at the end of the authorized period of stay, based on her previous travel history.

[10] Second, regarding the financial circumstances of the applicant and her guarantors, the evidence does not corroborate the officer's statement that the family members who will be supporting the applicant during her education have [TRANSLATION] "modest incomes". Rather, the evidence shows that the applicant's sister and brother-in-law together earn in excess of $100,000 annually. As for the applicant's brother, he is a doctor in Cameroon and works in several clinics. He provided pay slips, bank statements and other documents as evidence of his financial situation.

[11] The applicant's tuition is $19,270 per year, and the program is three years long. In accordance with the Immigration, Refugees and Citizenship Canada Document Checklist (IMM 5483), the applicant only had to provide evidence of financial support for her first year of study in Canada. The evidence shows that the applicant will be housed and fed by her sister and brother-in-law who live near the campus and that according to a letter from the National Bank of Canada, the applicant is the beneficiary of a bank account with a balance of $25,000. This amount was deposited by the applicant's sister and brother-in-law and would be available to the applicant for her studies. Her bank statements also show that as of September 13, 2019, she had the equivalent of approximately Can$7,000 in her bank account in Cameroon. In addition, the applicant's brother stated that she is one of the heirs to their parents' estate and that it includes a piece of land and two apartment buildings. Considering these facts, it is difficult to understand how the officer concluded that the income of the three family members and the resources available to the applicant are not sufficient to cover the cost of tuition. If the officer had any doubt about the source of the funds in the bank account, he could have asked the applicant about it (*Nsiegbe v Canada (Citizenship and Immigration)*, 2018 FC 1262 at paras 12–13).

[12] The officer also mentioned that the people who are paying for the applicant's education have dependents. There is no evidence of this and, on the contrary, the applicant's brother specifically stated in a letter that he has no dependents. The officer cannot assume that a couple has children because they are married.

[13] Finally, the officer added in his notes that the applicant's relatives have not demonstrated sufficient establishment. The officer did not explain what he was referring to. The evidence

shows that the applicant's sister and her spouse are Canadian citizens. She works as a daycare teacher and he is a member of the Quebec Order of Engineers. As for the applicant's brother, although he works in several clinics in Cameroon, he has worked in one of them for more than nine years.

[14] The Court recognizes that it must give considerable deference to a visa officer's decision to refuse an application for a study permit and that the reasons need not be perfect or exhaustive (*Newfoundland Nurses* at para 18; *Nimely* at para 7). The refusal to grant a study permit may well be reasonable. However, taking into account the file before the officer and even taking a broad and contextual approach, the reasons in this case do not allow the Court to understand the officer's reasoning and the basis for his conclusions. The decision therefore lacks the characteristics of a reasonable decision (*Vavilov* at para 96).

[15] In light of the above, it is not necessary for the Court to rule on the applicant's argument that the officer made a judgment about her credibility without granting her a right of reply when he stated he was not satisfied that the applicant is a [TRANSLATION] "bona fide" student.

[16] For these reasons, the application for judicial review is allowed, and the matter is sent back to another officer for reconsideration. No question of general importance has been submitted for certification, and the Court is of the view that none are raised by this case.

JUDGMENT in IMM-7322-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed.

2. The officer's decision of November 22, 2019 is set aside.

3. The case is sent back for reconsideration by another officer.

4. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7322-19
STYLE OF CAUSE:	MATSING TAKOUDJOU CHANTALE v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING :	HELD VIA VIDEOCONFERENCE
DATE OF HEARING:	JUNE 1, 2021
JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	JUNE 3, 2021

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