Federal Court  Cour fédérale

Date: 20210607

Docket: IMM-7239-19

Citation: 2021 FC 552

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 7, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

MICHEL MOLONGA LINGEPO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Michel Molonga Lingepo, is a citizen of the Democratic Republic of Congo [DRC]. He is seeking judicial review of a November 20, 2019, decision by which a visa officer [the officer] at the Canadian Embassy in Paris, France, denied his application for a study permit.

[2] In his refusal letter, the officer stated that he was not satisfied that the applicant would leave Canada at the end of the period authorized for his stay, given the reason for his visit to Canada and his property holdings and financial situation.

[3] The notes in the Global Case Management System [GCMS], which are part of the reasons for decision, read as follows:

> [TRANSLATION]
>
> Following my review of the application for a study permit, I find the applicant's plans to study in Canada questionable due to his previous studies and personal background. In addition, the cost of the study program appears disproportionate to me when I consider the nature of the previous studies, the economic situation (income and assets presented) of the applicant and/or the immediate family, and the potential job prospects/salaries. On the basis of my review of the file, I am not satisfied that the applicant would be a bona fide student who would leave Canada, if required, after an authorized stay. Application denied.

[4] The applicant argues that the decision was unreasonable on the basis that it was not supported by the documentation he filed in support of his permit application.

[5] First, he alleges that the officer ignored all evidence regarding his financial situation and property holdings. According to the applicant, he demonstrated that he has been a member of the Kinshasa Bar since 2003 and is a majority partner in a law firm. He receives a monthly fee of US$4,500 and owns several movable and immovable assets, from which he receives additional income. A copy of his account shows a balance of over US$67,440 in cash. He claims to have demonstrated financial self-sufficiency well in excess of the standard prescribed by the visa office's *Operational Instructions and Guidelines*, which state that students must demonstrate

financial self-sufficiency for their first year of study only, regardless of the length of their studies.

[6] The applicant also criticized the officer's determination that his plan to study in Canada was questionable. He alleges that he submitted abundant evidence both on his line of work and on the steps taken with the Barreau du Québec, which gave the applicant access to the law equivalencies program at Laval University.

[7] Finally, he claims that the officer did not take into account his family ties in Kinshasa. He is married and has five children. He adds that he has stayed in a number of European countries on several occasions and that he left those countries at the end of the regulatory stays.

[8] The respondent raised a preliminary objection to the evidence submitted by the applicant in this application for judicial review, arguing that several documents that were included in the applicant's record were not before the officer. The respondent further argued that the applicant had added new allegations to his memorandum.

[9] In response, counsel for the applicant argued at the hearing that these documents accompanied the permit application and that the Certified Tribunal Record [CTR] was incomplete.

[10] In the absence of an affidavit from the applicant to that effect, the Court is unable to conclude that this is indeed the case.

[11] That said, the Court finds that there are nonetheless indications in the record that the CTR may be incomplete. On the one hand, the GCMS notes contain an entry dated November 1, 2019, indicating that there was a technical problem with some sort of transmission. Furthermore, in the introductory letter written by applicant's former counsel, it is stated that the applicant provided [TRANSLATION] "his travel documents". However, the CTR contains only a photo of the first page of the applicant's passport, while the applicant alleges that he also provided a copy of his previous travel visas. The use of the plural in the cover letter suggests that other documents may have been submitted.

[12] In any event, the Court does not deem it necessary to rule on the objection raised by the respondent, since it is of the opinion that there are grounds for intervention. It draws this conclusion without taking into account the new facts and additional documents submitted by the applicant.

[13] The standard of review applicable to a review of 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 internally coherent and rational chain of analysis and be justified in relation to the facts and law that constrain the decision maker

(*Vavilov* at para 85). It must also bear "the hallmarks of reasonableness — justification, transparency and intelligibility" (*Vavilov* at para 99).

[14] In this case, the officer determined that he was not satisfied that the applicant would leave Canada at the end of his stay, for two reasons: (1) the reason for the applicant's visit; and (2) the applicant's property holdings and financial situation. The notes in the GCMS provide little detail as to what led the officer to doubt that the applicant would return to his country of origin under these two headings.

[15] With respect to the reason for refusal regarding the reason for the applicant's visit, the officer indicated in his notes that the plan to study in Canada appeared questionable because of the applicant's previous education and personal background. He added that when he considered the nature of the applicant's previous studies, the economic situation of the applicant and/or that of his immediate family, and the potential employment [TRANSLATION] "prospects" and salaries, the cost of the study program appeared disproportionate to him.

[16] The officer provided no explanation as to why he believed that the applicant's previous studies were incompatible with his plans to study in Canada (*Ogbuchi v. Canada (Citizenship and Immigration)*, 2016 FC 764 at para 12). The applicant demonstrated that he had studied law in his country of origin, that he has been a member of the Barreau de Kinshasa since 2003, and that he has been accepted into the "programme d'insertion dans les ordres professionnels" at Laval University. Although the applicant's letters of interest could have been clearer on his objectives, they nevertheless demonstrate that the applicant was seeking to obtain in-depth

knowledge of bijural law that would allow him to [TRANSLATION] “adapt to the globalization that is taking place in all social areas” and that would be useful in his career in the DRC. In light of this, the Court cannot understand how the officer came to the conclusion that the applicant’s study plan was questionable. On the contrary, the Court can easily understand that a lawyer would want to have a better understanding of different legal systems and be a member of several bar associations.

[17] The same is true of the officer’s conclusion regarding the applicant’s financial situation. The officer’s concerns about the disproportionate cost of the study program lack justification.

[18] First, it is recognized that it is not the officer’s role to determine the value of learning to an applicant (*Zuo v Canada (Citizenship and Immigration)*, 2007 FC 88 at para 25, citing *Liu v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1262 at para 16).

[19] Second, the applicant is a partner in a law firm in Kinshasa in which he owns 55% of the shares. Thus, the officer’s reference to the applicant’s potential job prospects and salary is unclear.

[20] Third, the applicant filed bank account statements indicating that he had a cash balance of over US$67,440 and that his tuition was $21,063.18 per year. Even considering the costs of housing, living expenses, and transportation, on the face of it, the applicant appears to have the means to cover the first year of his education. The respondent argues that the bank account deposits and withdrawals suggest that the applicant is not the sole account holder. Possibly, but

there is nothing in the record to suggest that the officer had any doubt in this regard. Nor could the officer, as the respondent claims, rely on the fact that the applicant had to support his wife and five children. Paragraph 220(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, provides that an applicant seeking a study permit must demonstrate the ability to maintain themself and any accompanying family members. In this case, the applicant will not be accompanied by any family members.

[21] 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 extensive (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 18; *Nimely* at para 7). The denial of a study permit may well be reasonable in this case. However, even taking a broad and contextual approach, the Court cannot, in light of the CTR, understand the officer's reasoning and the basis for his conclusions from his reasons. The decision therefore lacks the hallmarks of reasonableness (*Vavilov* at para 96).

[22] For these reasons, the application for judicial review is allowed and the matter is referred back for redetermination by a different officer. No question of general importance has been submitted for certification, and the Court is of the opinion that none arises in this case.

JUDGMENT in IMM-7239-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed;

2. The officer's decision, dated November 20, 2019, is set aside;

3. The matter is referred back for redetermination by a different officer; and

4. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
Johanna Kratz, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7239-19
STYLE OF CAUSE:	MICHEL MOLONGA LINGEPO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JUNE 1, 2021
JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	JUNE 7, 2021

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