

Federal Court



Cour fédérale

Date: 20210914

Docket: IMM-4847-20

Citation: 2021 FC 943

Ottawa, Ontario, September 14, 2021

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

DOYINSOLA ODUNAYO OPAKUNBI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Doyinsola Odunayo Opakunbi, is a Nigerian citizen. He holds a Bachelor of Science in International Relations and a Masters in Peace and Strategic Studies, and he was employed as a Project Coordinator by Positive Minds Initiative. Following his acceptance into Conestoga College's 8-month post-graduate Program Management course, in Ontario, Canada, Mr. Opakunbi applied for a study permit/temporary residence. His application included a sworn

affidavit from Oyeniya Kayode Akande, who attested that Mr. Opakunbi is his nephew and that he, Mr. Akande, would provide financial support for tuition and other financial needs during his nephew's program in Canada.

[2] A Visa Officer with the High Commission of Canada, Visa Section, in Nairobi, Kenya refused Mr. Opakunbi's application because the Officer was not satisfied that:

- (a) Mr. Opakunbi would leave Canada at the end of his stay;
- (b) he had the sufficient funds, without working in Canada, to pay his tuition which was almost \$16,000; and
- (c) he had sufficient funds, without working in Canada, to support himself and any accompanying family members.

[3] Mr. Opakunbi now seeks judicial review of the Officer's decision dated September 28, 2020, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [IRPA], on the basis of procedural unfairness and that the decision is unreasonable. For the reasons explained below, I grant this judicial review application on both bases.

[4] See Annex "A" below for relevant legislative provisions.

II. Standard of Review

[5] The presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10. It is not a "rubber-stamping" exercise, but rather a robust form of review: *Vavilov*, above at para 13. A reasonable decision must be "based on an internally coherent and rational chain of analysis" and it must be justified

in relation to the factual and legal constraints applicable in the circumstances: *Vavilov*, at para 85. Courts should intervene only where necessary. To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility: *Vavilov*, at para 99.

[6] Breaches of procedural fairness in administrative contexts, however, have been considered subject to a “reviewing exercise ... ‘best reflected in the correctness standard’ even though, strictly speaking, no standard of review is being applied”: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54. The duty of procedural fairness “is ‘eminently variable’, inherently flexible and context-specific”: *Vavilov*, above at para 77. In sum, the focus of the reviewing court is whether the process was fair.

III. Analysis

A. *Breach of Procedural Fairness*

[7] Having considered the record in this matter, including the parties’ written and oral submissions, I find the Officer in this case made implicit or “veiled” credibility findings that should have triggered an interview or a request for additional information from Mr. Opakunbi.

[8] The duty of fairness owed to a study permit applicant generally falls at the low end of the spectrum: *Wang v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 258 [*Wang*] at para 13. A duty to permit an applicant to respond to an officer’s concerns may arise, however, in limited fact-specific circumstances, such as where there are doubts about the genuineness or

credibility of information submitted by an applicant in support of their application: *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 [*Hassani*] at para 24; *Iyiola v Canada (Citizenship and Immigration)*, 2020 FC 324 [*Iyiola*] at para 16.

[9] In *Wang*, for example, the Court found that the visa officer ought to have advised the applicant of concerns about the sincerity of the offer of support from the applicant's cousin, and the applicant's *bona fides* as a temporary visitor to Canada, and provided the applicant with an opportunity to respond. Justice Linden, writing for the Court, found that he "arrive[d] at this conclusion because the evidence produced by the Applicant cannot be said to be weak": *Wang*, above at para 13.

[10] In the Global Case Management System [GCMS] notes, which form part of the Officer's decision in the case before me, the Officer found that "[t]he applicant has provided limited documents to establish the connection between him and his uncle." In my view, the fact that supporting documentation may be limited, in itself, is not a sufficient explanation for doubting the connection or relationship between Mr. Opakunbi and his uncle, to which the uncle swore under oath in his affidavit and attested that he paid the tuition deposit of \$1,500 for his nephew.

[11] At the hearing before me, the Respondent's counsel submitted that there should be have been more evidence provided to corroborate the relationship, especially since they have different last names. I note that it was open to the Officer to comment about their different last names but the Officer's reasons in GCMS notes are silent on this point. In other words, there is no way for this Court to know, on the face of the record, the Officer's rationale for disbelieving the

relationship, apart from the reference to “limited documents” which in my view is a factual observation, rather than an explanation.

[12] In all circumstances, an officer must **explain why** an applicant’s evidence is insufficient: *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 [*Ferguson*] at para 16; *Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446 [*Sallai*] at paras 57-63; *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 35; *Ayeni v Canada (Citizenship and Immigration)*, 2019 FC 1202 at para 28. This requirement protects against “veiled credibility findings,” that is, credibility determinations disguised as insufficiency arguments.

[13] Although Mr. Opakunbi bears the onus of providing sufficient evidence, I conclude that the Officer failed to explain why the evidence, involving the uncle’s sworn affidavit, including confirmation that the uncle had paid Mr. Opakunbi’s tuition deposit, falls below the statutory requirements or represents “weak” evidence: *Wang*, above at para 13; *Hassani*, above at para 24; *Huang v Canada (Citizenship and Immigration)*, 2012 FC 145 at para 7.

[14] In addition, I note that the Officer questioned Mr. Opakunbi’s “intended purpose” in Canada based essentially on perceived insufficiency of evidence to establish a reasonable progression of studies (i.e. “[t]he choice to pursue a certificate in an unrelated field and at a lower level with questionable links to his current position raises questions...”). When coupled with (albeit regulatory) references to “without working in Canada,” notwithstanding evidence of Mr. Opakunbi’s own financial means, as well as financial support from his uncle and his employer, in my view, the Officer also made impermissible veiled credibility findings regarding

Mr. Opakunbi's intention to pursue a course of study in Canada and to leave Canada at the conclusion of his studies. Further, I find the Officer failed to make any serious attempt to determine the strength of Mr. Opakunbi's ties to Nigeria: *Li v. Canada (Citizenship and Immigration)*, 2008 FC 1284 at para 30.

B. *Reasonableness*

[15] I further find that the Officer's decision and reasons either were unjustified or unintelligible in several respects and, thus, unreasonable. I note as a starting point that, except in the clearest of cases where the evidence supports only one reasonable outcome, conclusions without analysis may be found arbitrary or unintelligible: *Iyiola*, above at para 18.

[16] First, at the hearing before me, Mr. Opakunbi's counsel referred to the Officer's third reason for refusing the study permit application, namely, that the Officer was not satisfied Mr. Opakunbi had sufficient funds, without working in Canada, to support himself and any accompanying family members. As counsel noted, and I agree, there is no evidence that any family members would accompany Mr. Opakunbi during his stay in Canada. I thus find that there was no justification for factoring the accompaniment of family members into the Officer's third reason, notwithstanding para 220(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[17] Second, the Officer referred to the sizable financial transactions in Mr. Opakunbi's bank statements, in contrast to his salary and payslips, and concluded that, "I am not satisfied that those funds would **not** be available to the applicant" [emphasis added]. I find this conclusion

unintelligible in the circumstances. Even taking into account that the inclusion of the second “not” may have been a clerical error, and bearing in mind that the reviewing court’s role should not devolve into a line-by-line treasure hunt for error, I nonetheless find that the Officer failed to explain or justify the further conclusion that “I am not satisfied that the applicant **will have access** to the funds necessary for his planned studies” [emphasis added]. As noted by Mr. Opakunbi, and I agree, there is no evidence that his employment salary was his only source of financial resources.

[18] Further, I disagree with the Respondent’s submission at the hearing that the bank statements may have been “put together for the application.” I find this statement speculative, without foundation, and indicative of credibility concerns.

[19] Third, I find the following statement in the GCMS notes devoid of intelligibility: “The applicant has not satisfactorily explained how the certificate is related to his experiences and work, **especially in light that his employer will continue to pay him 80,000 NGN monthly**” [emphasis added]. In my view, the fact that the employer was willing to continue to pay Mr. Opakunbi during his studies in Canada was indicative of his employer’s support for its “Project Coordinator” to pursue a post-graduate Program Management course.

[20] Further, in its letter to Mr. Opakunbi granting his study leave application with financial support, his employer, Positive Minds Initiative, self-described the organization as one that strives to see its employees improve on their abilities and potentials. In addition, in its letter of support to the Officer, Positive Minds Initiative stated its belief that “this further training will

equip [Mr. Opakunbi] with international best practices in project management training.” The record otherwise does not contain a description of the content of Conestoga College’s post-graduate Project Management course nor of Mr. Opakunbi’s duties as a Project Coordinator.

[21] That said, Mr. Opakunbi described his expectations regarding the course in his letter of explanation to the Visa Officer as follows: “It will give me an opportunity to learn from a multi-cultural environment, and hone my project planning, project delivery, team and stakeholder management, and business operation skills.” Although it was open to the Officer to conclude this was not a sufficiently satisfactory explanation (assuming the Officer considered it, along with the letters from Positive Minds Initiative), I find the Officer provided no justification for discounting it on the basis that Mr. Opakunbi’s employer would continue to pay him.

[22] Fourth, while Mr. Opakunbi needed to satisfy the Officer that he would leave Canada at the end of his studies pursuant to the *IRPA* s 20(1), I find the Officer did not articulate intelligibly reasons why the Officer believed Mr. Opakunbi would not leave Canada at the end of his studies. As mentioned, the rationale provided is that Mr. Opakunbi’s chosen program of study constitutes an “unrelated field and at a lower level with questionable links to his current position.” In my view, however, the Officer provided no explanation for, and thus failed to justify, the conclusions that Mr. Opakunbi’s plans to study in Canada are incompatible with his previous studies, that the post-graduate course is at a “lower level” and that the progression of studies is not reasonable: *Adu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 565 at para 20; *Fakharian v Canada (Citizenship and Immigration)*, 2009 FC 440 at para 13; *Ogbuchi v. Canada (Citizenship and Immigration)*, 2016 FC 764 at para 12.

IV. Conclusion

[23] For the above reasons, I conclude that the Officer's decision was procedurally unfair and unreasonable in the circumstances. The Officer breached the duty of fairness owed to Mr. Opakunbi by not inviting him to address questions related to the credibility of evidence supporting his relationship with his uncle and the intended purpose of his trip to Canada. In addition, the Officer did not articulate reasonably on what grounds the Officer suspected Mr. Opakunbi did not have the funds to pay for his course and support himself while in Canada, and that he would not leave Canada at the end of his studies.

[24] Neither party proposed a serious question of general importance for certification and I find that none arises in this case.

JUDGMENT in IMM-4847-20

THIS COURT'S JUDGMENT is that:

1. The Applicant's judicial review application is granted.
2. The Visa Officer's decision dated September 28, 2020, is set aside and the matter will be remitted to a different visa officer for redetermination.
3. There is no question for certification.

"Janet M. Fuhrer"

Judge

Annex “A”: Relevant Provisions

Immigration and Refugee Protection Act (S.C. 2001, c. 27)
Loi sur l’immigration et la protection des réfugiés (L.C. 2001, ch. 27)

<p>Requirements and Selection Application before entering Canada</p> <p>11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.</p>	<p>Formalités et sélection Visa et documents</p> <p>11 (1) L’étranger doit, préalablement à son entrée au Canada, demander à l’agent les visa et autres documents requis par règlement. L’agent peut les délivrer sur preuve, à la suite d’un contrôle, que l’étranger n’est pas interdit de territoire et se conforme à la présente loi.</p>
<p>Entering and Remaining in Canada Obligation on entry</p> <p>20 (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,</p> <p style="padding-left: 2em;">(a) to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence; and</p> <p style="padding-left: 2em;">(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.</p>	<p>Entrée et séjour au Canada Obligation à l’entrée au Canada</p> <p>20 (1) L’étranger non visé à l’article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :</p> <p style="padding-left: 2em;">a) pour devenir un résident permanent, qu’il détient les visa ou autres documents réglementaires et vient s’y établir en permanence;</p> <p style="padding-left: 2em;">b) pour devenir un résident temporaire, qu’il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.</p>

Immigration and Refugee Protection Regulations (SOR/2002-227)
Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227)

<p>Issuance of Study Permits Study permits</p> <p>216 (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national</p> <p style="padding-left: 40px;">(a) applied for it in accordance with this Part;</p> <p style="padding-left: 40px;">(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;</p> <p style="padding-left: 40px;">(c) meets the requirements of this Part;</p> <p style="padding-left: 40px;">(d) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and</p> <p style="padding-left: 40px;">(e) has been accepted to undertake a program of study at a designated learning institution.</p>	<p>Délivrance du permis d'études Permis d'études</p> <p>216 (1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :</p> <p style="padding-left: 40px;">a) l'étranger a demandé un permis d'études conformément à la présente partie;</p> <p style="padding-left: 40px;">b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;</p> <p style="padding-left: 40px;">c) il remplit les exigences prévues à la présente partie;</p> <p style="padding-left: 40px;">d) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);</p> <p style="padding-left: 40px;">e) il a été admis à un programme d'études par un établissement d'enseignement désigné.</p>
<p>Temporary Resident Visa Issuance</p> <p>179 An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national</p> <p style="padding-left: 40px;">...</p> <p style="padding-left: 40px;">(b) will leave Canada by the end of the period authorized for their stay under Division 2;</p> <p style="padding-left: 40px;">...</p>	<p>Visa de résident temporaire Délivrance</p> <p>179 L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :</p> <p style="padding-left: 40px;">...</p> <p style="padding-left: 40px;">b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;</p> <p style="padding-left: 40px;">...</p>

<p>Restrictions on Studying in Canada</p> <p>Financial resources</p> <p>220 An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to</p> <ul style="list-style-type: none"> (a) pay the tuition fees for the course or program of studies that they intend to pursue; (b) maintain themselves and any family members who are accompanying them during their proposed period of study; and (c) pay the costs of transporting themselves and the family members referred to in paragraph (b) to and from Canada. 	<p>Restrictions applicables aux études au Canada</p> <p>Ressources financières</p> <p>220 À l'exception des personnes visées aux sous-alinéas 215(1)d) ou e), l'agent ne délivre pas de permis d'études à l'étranger à moins que celui-ci ne dispose, sans qu'il lui soit nécessaire d'exercer un emploi au Canada, de ressources financières suffisantes pour :</p> <ul style="list-style-type: none"> a) acquitter les frais de scolarité des cours qu'il a l'intention de suivre; b) subvenir à ses propres besoins et à ceux des membres de sa famille qui l'accompagnent durant ses études; c) acquitter les frais de transport pour lui-même et les membres de sa famille visés à l'alinéa b) pour venir au Canada et en repartir.
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FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4847-20

STYLE OF CAUSE: DOYINSOLA ODUNAYO OPAKUNBI v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

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DATED: SEPTEMBER 14, 2021

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