

Federal Court



Cour fédérale

Date: 20210922

Docket: IMM-4093-20

Citation: 2021 FC 977

Ottawa, Ontario, September 22, 2021

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

IRFAN AHMED

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Irfan Ahmed is a citizen of Pakistan. He seeks judicial review of the refusal by a visa officer [Officer] of his request for a study permit to attend Bow Valley College in Calgary, Alberta. The Officer was not satisfied that Mr. Ahmed would leave Canada at the end of the authorized stay.

[2] The reasons provided do not explain the basis on which the Officer found Mr. Ahmed not to be a *bona fide* student, or demonstrate that the Officer meaningfully grappled with the key issues or central arguments raised. The application for judicial review is therefore allowed.

II. Background

[3] Mr. Ahmed is a 36-year-old single man. All of his immediate family members, specifically his mother, brother, and two sisters, reside in Calgary. His father is deceased.

[4] Mr. Ahmed has previously been refused temporary resident visas to visit his family on four occasions, in 2011, 2016 and 2017.

[5] On February 1, 2019, Mr. Ahmed was accepted into a program at Bow Valley College leading to a diploma in business administration. In his request for a study permit, he said that he intended to focus on digital marketing.

[6] Mr. Ahmed's request for a study permit was first refused on July 17, 2019. He sought judicial review of the refusal in this Court. The Respondent agreed to have the request redetermined by a different visa officer, and the application for judicial review was discontinued.

[7] Mr. Ahmed submitted the following additional evidence in respect of the redetermination of his request for a study permit:

- (a) proof of completion of a two-year Bachelor's Degree in Commerce from the University of Punjab in 2006;
- (b) a study plan, in which Mr. Ahmed noted that:
 - (i) there was no similar program in Pakistan that taught digital marketing and provided the practical experience of a co-op placement;
 - (ii) his experience was in traditional marketing, and he wanted to expand his credentials to become eligible for more senior management roles;
 - (iii) his brother was willing to pay for his studies, and living with his family in Calgary would allow Mr. Ahmed to minimize the expenses associated with attaining a diploma;
- (c) a letter from his employer, Shezan International, confirming that he had been employed there since 2008 as a marketing manager, and the company would be willing to hire him in a more senior management role after the completion of his diploma;
- (d) proof of ownership of a parcel of land in Lahore, Pakistan; and

- (e) a rationale for his chosen course of studies, namely that the Canadian credentials he sought are regarded as prestigious in Pakistan, and would enhance his employment opportunities upon his return.

[8] In written submissions to the Officer, Mr. Ahmed's counsel acknowledged that Mr. Ahmed would be eligible for a three year post-graduate open work permit upon his graduation, and he may at that time choose to pursue permanent resident status as a member of the Canadian Experience Class or the Federal Skilled Worker Class.

[9] The Officer refused Mr. Ahmed's request for a study permit on three grounds: (a) his travel history; (b) his family ties in Canada and lack thereof in Pakistan; and (c) the purpose of his visit.

III. Issue

[10] The sole issue raised by this application for judicial review is whether the Officer's refusal of Mr. Ahmed's request for a study permit was reasonable.

IV. Analysis

[11] The Officer's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only if "there are sufficiently serious

shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100). These criteria are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[12] The Officer’s notes in the Global Case Management System [GCMS] form a part of the decision under review (*Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 at para 5). The Officer’s GCMS notes provide the following additional information regarding the reasons for refusal:

Applicant is 34 yo, single. Seeks SP to study at Bow Valley College for a 2y diploma of Business Administration. 4 TRV refusals noted and declared. I note that applicant completed his Bachelor of Commerce in 2006, after which has been working as a Marketing Manager for Sherzan International. IELTS on file, overall band 5.5 with 4.5 in writing. Study plan seen. PA states he wants to specialize in digital marketing. Considering PA's previous studies and current management position, not satisfied course of study follows the natural or normal progression because PA intends to study in a lesser field than what PA has already accomplished. To be supported by brother and sister who are CC. Mother also resides in Canada, father deceased. I note that the client has strong family ties in Canada, while providing limited evidence of ties to home country. Not satisfied ties to Pakistan are strong enough to compel return. The applicant's prior travel history or lack thereof is insufficient to count as a significant positive factor in my assessment. Weighing the factors in this application. I am not satisfied that the applicant will adhere to the terms and conditions imposed as a temporary resident. For the reasons above, I have refused this application.

[13] Mr. Ahmed argues that the Officer’s reasons do not exhibit the requisite degree of justification, intelligibility and transparency. He says there is nothing in the refusal letter or

GCMS notes to support the Officer's contention that a two-year post-secondary course in Canada is a "lesser field" of study than a two-year post-secondary course in Pakistan.

[14] Mr. Ahmed notes that a diploma focused on digital marketing is directly relevant to his previous studies in commerce, his current employment in marketing, and his interest in assuming a senior management role in the future. Furthermore, the GCMS notes do not indicate whether the Officer considered the letter from Mr. Ahmed's employer confirming that he would be considered for a senior management role upon completing his studies in Canada.

[15] Mr. Ahmed's study plan provided a clear rationale for pursuing his chosen course of study in Canada: there were no comparable programs in Pakistan; he wanted to obtain practical experience through the co-op opportunity; his previous experience was in traditional marketing, and he wanted to expand into digital marketing; Canadian credentials are considered prestigious in Pakistan, and this would increase his eligibility for senior management roles; and he would minimize his expenses by living with family members in Calgary. None of these factors were addressed in the Officer's refusal letter or GCMS notes.

[16] A foreign national may have the dual intention of immigrating, and also of abiding by immigration laws respecting temporary entry (*Loveridge v Canada (Citizenship and Immigration)*, 2011 FC 694 at para 18). Mr. Ahmed's submissions acknowledged that he would potentially be eligible for a three year post-graduate open work permit upon the completion of his Canadian studies, and he may at that time choose to pursue permanent resident status as a member of the Canadian Experience Class or the Federal Skilled Worker Class. This

consideration had a direct bearing on the Officer's concern about whether Mr. Ahmed would leave Canada at the end of his authorized stay, but it too was not addressed in the Officer's reasons.

[17] The duty of fairness owed by a visa officer is at the lower end of the spectrum (*Nauman v Canada (Citizenship and Immigration)*, 2013 FC 964). Nevertheless, the reasons must still permit a reviewing court to understand why the decision was made. As Justice Alan Diner explained in *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 [*Patel*] at paragraph 17:

[...] 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.

[18] 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 (*Vavilov* at para 128). It is not the brevity of a decision that makes it unreasonable, *per se*, but rather the lack of responsiveness to the submissions made (*Patel* at para 15).

[19] Neither the refusal letter nor the GCMS notes explain the basis on which the Officer found Mr. Ahmed not to be a *bona fide* student, or demonstrate that the Officer meaningfully grappled with the key issues or central arguments raised. The application for judicial review must therefore be allowed.

V. Conclusion

[20] The application for judicial review is allowed, and the matter is remitted to a different visa officer for redetermination in accordance with these reasons. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed,
and the matter is remitted to a different visa officer for redetermination.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4093-20

STYLE OF CAUSE: IRFAN AHMED v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION CANADA

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ALBERTA AND OTTAWA, ONTARIO

DATE OF HEARING: SEPTEMBER 1, 2021

JUDGMENT AND REASONS: FOTHERGILL J.

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