Federal Court  Cour fédérale

Date: 20220421

Docket: IMM-5714-21

Citation: 2022 FC 582

Ottawa, Ontario, April 21, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

ANTHONY CHINEMELUM EZEUDU
FRANCISCO CHIDERA EZEUDU
JOSEPH CHIDIEBUBE EZEUDU
EMMANUEL IFEMELIE EZEUDU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of the decision of an immigration officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC"), dated August 23, 2021,

to refuse their study permit applications pursuant to subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*").

[2] The Applicants submit that the Officer's decision is unreasonable because the Officer conducted a flawed assessment of the supporting documentation submitted with their applications. The Applicants further submit that their rights to procedural fairness were breached because the Officer failed to alert the Applicants of concerns with the evidence on the record.

[3] For the reasons set out below, I find the Officer's decision is reasonable and that there was no breach of procedural fairness. Accordingly, this application for judicial review is dismissed.

II. **Facts**

A. *The Applicant*

[4] The four Applicants are siblings, and all are minors: Anthony Chinemelum Ezeudu (age 17), Emmanuel Ifemelie Ezeudu (age 15), Francisco Chidera Ezeudu (age 14), and Joseph Chidiebube Ezeudu (age 14). The Applicants are citizens of Nigeria.

[5] The Applicants applied for open study permits to attend high school in Canada and join their mother, Ifeyinwa Patricia Ezeudu, who is currently pursuing a Master's degree at University Canada West on a study permit valid until June 30, 2023. While pursuing her studies,

the Applicants' mother has been working as a Community Support Worker on a part-time basis for approximately 20 hours per week, earning $20.00 per hour.

[6] The Applicants' father is deceased. The Applicants have been in the care of their grandmother in Nigeria while their mother has been studying in Canada.

B. *Decision Under Review*

[7] By letters dated August 23, 2021, the Officer refused the Applicants' study permit applications. The Officer was not satisfied that the Applicants will leave Canada at the end of their stay pursuant to subsection 216(1) of the *IRPR* based on a) their family ties in Canada and in Nigeria and b) their personal assets and financial status.

[8] In their GCMS notes, which form part of the reasons for the decision, the Officer acknowledges the Applicants' mother's proof of enrolment in a Master's degree program, as well as her proof of employment in Canada and the evidence of funds from her bank accounts. With respect to the finances available to the Applicants through their mother's support, the Officer found that the Applicants had failed to demonstrate that their mother is financially capable of sustaining their living expenses, as well as her own.

[9] The GCMS notes also acknowledge that the Applicants' father is deceased. Given the Applicants' lack of family ties in Nigeria and their close family ties in Canada, the Officer found that the Applicants' incentive to remain in Canada outweighs their ties to Nigeria.

III. **Issues and Standard of Review**

[10] This application for judicial review raises the following issues:

A. *Whether the Officer's decision is reasonable; and*

B. *Whether there was a breach of procedural fairness.*

[11] It is common ground between the parties that the first issue is to be reviewed upon the reasonableness standard. I agree that the appropriate standard of review for the denial of study permits is reasonableness (*Iyiola v Canada (Citizenship and Immigration*), 2020 FC 324 at paras 11-14). I find that this conclusion accords with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paragraphs 16-17.

[12] The second issue is to be reviewed upon what is best reflected in the correctness standard, as it concerns whether the Officer complied with the principles of procedural fairness (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[13] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is 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* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[14] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

[15] Correctness, in contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

IV. **Analysis**

A. *Whether the Officer's decision is reasonable.*

[16] Pursuant to subsection 216(1) of the *IRPR*, an officer shall issue a study permit to a foreign national if it is established that the foreign national meets the requirements and will leave Canada by the end of the authorized period. The Officer in this case was not satisfied that the Applicants would leave Canada at the end of their stay as temporary residents.

(1) **Financial documentation**

[17] With respect to the financial support available to the Applicants through their mother, the Officer's decision acknowledges their mother's bank statements and proof of employment in Canada. However, the Officer noted unexplained lump sums deposited in the Applicants' mother's bank account in the previous four months, and found that the Applicants had failed to demonstrate that their mother has sufficient funds to financially support them:

> Although there is proof of company ownerships provided by the mother, evidence of business income and business funds have not been provided, hence the source of income in the personal bank statement is unclear including its availability to sustain the children's living expenses in Canada.
>
> As per current policy, the applicant is required to demonstrate at least CAD $4,000 for the first child and an additional CAD $3,000 for every additional child annually. All 4 children require at least CAD $12,000 annually for living expenses. Inclusive of the applicant's tuition and living expenses of approximately CAD $30,000, the applicant is required to demonstrate a minimum of CAD $42,000 per year. Based on the financial documents provided, it appears that the applicant's mother has failed to demonstrate that she is financially capable to sustain living expenses for all children in addition to her own study expenses.

[18] The Applicants submit that the Officer failed to properly review the financial documents submitted in support of their study permit applications, and that the Officer's decision is thus unreasonable because it was not based on the evidence or did not flow from the facts (*Al Aridi v Canada (Citizenship and Immigration),* 2019 FC 381 at para 29 ("*Al Aridi*"); *Asong Alem v Canada (Citizenship and Immigration),* 2010 FC 148 at paras 17-18).

[19] Specifically, the Applicants argue that the Officer erred in the calculation of the funds required by the Applicants' mother to sustain herself and her children's expenses while in Canada. The Applicants note that the Officer's calculations included the costs related to their mother's tuition, yet this failed to consider how their mother had already paid her tuition for the 2021 academic year. The Applicants submit that their mother should instead have been required to show proof of $10,000 CAD for her personal expenses, and at least $12,000 CAD for the Applicants' annual living expenses, totalling $22,000 CAD, instead of the $42,000 CAD required by the Officer.

[20] The Applicants further submit that the Officer ignored the evidence on the record explaining the sources of the funds in their mother's personal bank account, notably a copy of the bank statement showing deposits from the Applicants' mother's business account, and a copy of the Applicants' mother's business ownership documents in Nigeria. The Applicants state that the Officer also failed to consider their mother's letter of invitation, which explains the sources of the lump sum deposits in her personal bank account. The letter states:

> While I work and earn a considerable amount, I still have savings in Nigeria and also have my businesses (Watson Pharmacy and fluxy weight management program) running smoothly, and I will

> use funds from my personal account and some proceeds from my businesses as needed, to ensure that my children and I are well taken care of.

[21] The Respondent contends that it was reasonable of the Officer to conclude that the Applicants' mother was not capable of financially sustaining them in Canada while also paying for the expenses related to her own schooling. The Officer reviewed the Applicants' mother's bank account statements and noted irregular deposits into her bank account in March and April of 2021, right before the Applicants' study permit application was submitted.

[22] I agree with the Respondent's position. I have reviewed the Officer's decision and the documentation submitted by the Applicants in support of their applications, including the evidence of their mother's financial assets. In light of the evidence, I find that it was reasonable of the Officer to conclude that the Applicants have not demonstrated that they have access to sufficient funds through their mother's financial support to sustain their living expenses while in Canada.

[23] As counsel for the Respondent rightly brought to my attention during the hearing, the Applicants' mother began her part time employment on April 22, 2021 – only weeks before the Applicants' application was received by IRCC on May 12, 2021. The projected income that their mother would earn is based on two paystubs in the record, and is only a reflection of anticipated earnings, rather than actual earnings. The Applicants failed to provide proof of their mother's annual income, such as copies of their mother's tax returns in Canada.

[24] Furthermore, while the Officer took no issue with the evidence of the Applicants' mother's proof of company ownership in Nigeria, I find that it was reasonable of the Officer to conclude that, based on the record, no evidence of business income or funds had been provided. I also agree with the Respondent that it was reasonable of the Officer to question the source of the income of the irregular deposits into the Applicants' mother's bank accounts in the months leading up to the Applicants' study permit applications.

[25] The onus was on the Applicants to establish that they have met the requirements of the *IRPR* for the issuance of study permits (*Al Aridi* at para 29). I find that the Applicants failed to meet their burden of providing sufficient evidence to demonstrate that their mother would be able to financially sustain them – as well as finance her own studies – during their stay in Canada.

(2) **Lack of family ties**

[26] The GCMS notes of the Officer's decision state:

> I am not satisfied that the applicants would leave Canada at the end of their stay as a temporary resident. Given the lack of family ties in home country and close ties in Canada, the applicant's incentives to remain in Canada may outweigh their ties to their home country. 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.

[27] The Applicants submit that the above statement is speculative, as the Officer did not provide proof that the Applicants have violated terms and conditions of a temporary residency in

the past, nor is there any evidence that they would violate the terms and conditions of their study permit. The Applicants maintain that the Officer's conclusion on this point is not logical or substantiated by the facts on the record.

[28] The Applicants note that their mother's invitation letter explains that she is inviting her children to stay with her in Canada while she completes her studies because their grandmother and guardian in Nigeria can no longer care for them due to illness. The Applicants further submit that there is no evidence suggesting that they, as minors, can make their own decision to remain in Canada after their mother returns to Nigeria upon completion of her studies. Finally, the Applicants submit that it is in their best interest to be temporarily reunited with their mother in Canada since their father is deceased and their grandmother can no longer care for them.

[29] The Respondent contends that the Applicants' arguments invite this Court to re-weigh the evidence and that the Applicants have not shown that the Officer failed to consider evidence on the record. The Respondent maintains that each of the Officer's findings were grounded in the evidence on the record, and that an officer is presumed to have considered all of the evidence before making a decision, unless the contrary is shown (*Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 at para 17; *Akram v Canada (Minister of Citizenship and Immigration)*, 2004 FC 629 at para 15).

[30] The Respondent further argues that it was reasonable of the Officer to find that the Applicants' strong incentive to remain in Canada outweighs their ties to their home country. This finding was based on the evidence that the Applicants' mother, who currently resides in

Canada, is their sole surviving parent. There was also no evidence that the Applicants own property or businesses in Nigeria, nor do any of them have dependents in Nigeria.

[31] I agree with the Respondent that the Officer conducted a reasonable analysis of the Applicants' study application and came to an intelligible conclusion based on the evidence on the record. The evidence included the Applicants' father's death certificate, and the Applicants' submissions stated that their grandmother in Nigeria was no longer able to care for them. Based on this information, and the fact that their only parent is currently in Canada, I find it was reasonable of the Officer to determine that the Applicants failed to meet their burden of demonstrating that they have sufficient ties to Nigeria (*Al Aridi* at para 29). I also do not find that the Officer was required to prove that the Applicants have violated the terms and conditions of a temporary residency in the past. The Applicants in this case simply did not meet their onus of satisfying the Officer that they would leave after their study permit expired.

[32] While I sympathize with the Applicants and recognize their wishes to be reunited with their mother now that their grandmother can no longer care for them, I do not find that the Officer failed to review key evidence on the record. I therefore find that the Officer's decision bears the hallmarks of reasonableness as it was based on a rational chain of analysis and is transparent, intelligible and justified (*Vavilov* at paras 103; 15).

B. *Whether there was a breach of procedural fairness.*

[33] The Applicants submit that they met the requirements for open study permits and that the Officer was required to notify them of any concerns with the credibility, accuracy or genuine

nature of the information submitted, and to provide them with an opportunity to respond (*Hassani v Canada (Minister of Citizenship and Immigration),* 2006 FC 1283 at para 24). The Applicants further submit that the duty of fairness required the Officer to give them an opportunity to respond to concerns about their financial status (*Ogunfowora v Canada (Citizenship and Immigration),* 2007 FC 471 at para 51).

[34] The Respondent maintains that the Officer conducted a thorough analysis of the study permit applications and provided clear reasons for their decision. Further, the Respondent submits that a reviewing court is entitled to fill in logical inferences from the result of a decision that were not expressly drawn in the reasons (*Gechuashvili v Canada (Citizenship and Immigration),* 2016 FC 365 at para 22, citing *Komolafe v Canada (Citizenship and Immigration),* 2013 FC 431 at paras 10-11).

[35] In my view, there was no breach of procedural fairness in this case. A high degree of deference is owed to the Officer's assessment of the study permit applications, and the procedural fairness owed to a study permit applicant is at the low end of the spectrum (*Al Aridi* at para 20; *Penez v Canada (Citizenship and Immigration),* 2017 FC 1001 ("*Penez*") at paras 36-37). I agree with the Respondent that the Officer's decision falls within the range of possible, acceptable outcomes defensible on the facts and the law.

[36] I do not find that the Officer's decision raises credibility concerns, nor do I find that the Officer based their decision on stereotypes or generalizations, as the Applicants suggest (*Hernandez Bonilla v Canada (Minister of Citizenship and Immigration),* 2007 FC 20 at paras

25-27). I also do not find that the Officer was obligated to give the Applicants an opportunity to rectify or address any concerns related to the evidence of their mother's ability to finance their stay in Canada (*Penez* at para 37). As was correctly noted by the Respondent, the Applicants bore the burden of satisfying the legislative requirements, and the Officer was not required to advise the Applicants of any tentative conclusions based on the materials provided in their application (*Hakimi v Canada (Citizenship and Immigration)*, 2015 FC 657 at paras 22-24).

V. **Conclusion**

[37] For the reasons above, I find the Officer's decision is reasonable. I do not find that there was a breach of procedural fairness. Accordingly, this application for judicial review is dismissed. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-5714-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5714-21
STYLE OF CAUSE:	ANTHONY CHINEMELUM EZEUDU, FRANCISCO CHIDERA EZEUDU, JOSEPH CHIDIEBUBE EZEUDU AND EMMANUEL IFEMELIE EZEUDU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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