

Federal Court



Cour fédérale

Date: 20220412

Docket: IMM-3211-21

Citation: 2022 FC 528

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 12, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

YOUNES BOUGRINE

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Younes Bougrine, is a 33-year-old Moroccan citizen who is seeking judicial review of a decision by an Immigration, Refugees and Citizenship officer [the officer] dated May 4, 2021 [the decision], refusing Mr. Bougrine's application for a study permit. The officer was not convinced that Mr. Bougrine would leave Canada at the end of his authorized

stay under subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations] considering the reason for his visit, or that he would be able to successfully complete his program of studies in Canada based on the transcripts provided.

[2] For the following reasons, I feel that the application for judicial review should be allowed, as the officer neglected to address evidence that, in my opinion, contradicted his conclusion and I am not convinced that the officer clearly presented his reasoning in arriving at the conclusion that Mr. Bougrine would not be successful in his studies. The officer failed to show the care that Justice Norris referred to in *Patel v Canada (Citizenship and Immigration)*, 2020 FC 517 at paragraph 24 [*Patel*]; his decision was not based on an internally coherent and rational chain of analysis, and it was not justified in relation to the facts and law that constrain the decision maker. The decision was therefore not reasonable.

II. Background

[3] Mr. Bougrine was born and lived his entire life in Morocco. All of his close family members live in Morocco, except one of his sisters who lives in the United States. Given that he was passionate about cars and trucks, in 2012, he studied auto mechanics at the Specialized Industrial Institute in Casablanca [SIIC]. During his studies, Mr. Bougrine completed three workplace internships and developed an interest in heavy vehicle mechanics. As a new graduate of SIIC, Mr. Bougrine was unable to find full-time work as an automobile mechanic and worked in client services for two companies while waiting to find employment in his field. When an employer informed him that they were looking for heavy vehicle mechanics, Mr. Bougrine

decided to specialize in this field by applying for admission to an academic program offered in Montreal.

[4] On May 22, 2020, Mr. Bougrine received a letter of admission from the École des métiers de l'équipement motorisé de Montréal [EMEMM], a designated teaching institution, for the heavy-duty road vehicle mechanics program. He then obtained his Quebec Certificate of Acceptance on July 8, 2020, valid for the period of December 1, 2020, to April 30, 2023. On September 28, 2020, Mr. Bougrine received an offer of employment as heavy vehicle mechanic from a garage in Casablanca, Morocco; this offer was conditional to his obtaining his diploma at the EMEMM. Mr. Bougrine submitted his application for a study permit through the Student Direct Stream [SDS] on October 2, 2020, with the intention of starting the EMEMM program in January 2021.

[5] His uncle by marriage attested that he would take care of Mr. Bougrine's expenses for his return plane ticket, moving costs, and living expenses while he was studying in Montreal. He also agreed to pay the EMEMM tuition and to lodge him for the duration of his studies. Mr. Bougrine also submitted proof from the Caisse Desjardins of a guaranteed investment certificate of \$10,020 and proof of two payments made to the EMEMM totalling \$17,886.85.

[6] On December 2, 2020, an officer refused Mr. Bougrine's application for a study permit because he was not convinced that Mr. Bougrine would be able to successfully complete his studies at the EMEMM considering his poor academic results at the SIIC and because he remained unconvinced that the applicant was a *bona fide* student who would leave Canada at the

end of his authorized stay. The officer considered the high tuition at EMEMM for foreign students, when there were other similar, more affordable programs in Morocco and considered the salary perspectives in heavy vehicle mechanics. After a request for reconsideration by Mr. Bougrine, the officer confirmed the rejection of his study permit on January 14, 2021, given that no new information regarding his application had been submitted.

[7] On December 9, 2020, Mr. Bougrine filed an application for leave and judicial review of the January 14, 2021, decision (IMM-6400-20). However, Mr. Bougrine abandoned this application on March 16, 2021, after reaching an agreement with the respondent, the Minister of Citizenship and Immigration [the Minister], that his application for a study permit would be reassessed by a different officer and that Mr. Bougrine would have the opportunity to update his file by submitting additional documentation. As additional documentation, Mr. Bougrine submitted a new letter of admission dated March 16, 2021, obtained from the EMEMM for the heavy-duty road vehicle mechanics program beginning in August 2021; a bank statement in the names of his uncle and aunt; and further proof of his guaranteed investment certificate in the amount of \$10,022.57 from the Caisse Desjardins.

III. Immigration officer's decision

[8] On May 4, 2021, the officer refused Mr. Bougrine's application for a study permit because he was not convinced he would leave Canada at the end of the period authorized for stay under paragraph 216(1)(b) of the Regulations.

[9] The officer explained the reasons for his decision in notes entered into the Global Case Management System [GCMS]. First, the officer found that Mr. Bougrine had sufficient funds to cover the high tuition for foreign students, and therefore concluded that Mr. Bougrine met the first concern of the previous officer regarding the reasonableness of his plan of study, despite the high cost of international studies in Canada. However, the officer was not convinced that Mr. Bougrine would be able to successfully complete his program at the EMEMM considering his poor academic results:

The applicant has not provided updated documentation or explanation addressing the second concern of the officer about the poor academic record and low scores in areas of study that would form the core of future studies. According to IMM1294 PA had previous education from 2010-09 to 2012-06 in Car Repair from Institut Supérieur Industriel de Casablanca (ISIC). PA provided transcripts showing that the total average that was obtained in the degree is 10.97/20 (54%). The mark sheets provided show poor academic records in all subjects and very low scores in areas of study that would form the core of future studies. I have concerns that the applicant will be able to successfully complete the study program in Canada. Therefore, I am not satisfied that the applicant would be a bona fide student in Canada who will leave Canada by the end of the period authorized for their stay. Application refused.

[Emphasis added.]

IV. Statutory regime

[10] The SDS is a process that allows foreign nationals to quickly obtain a study permit. The legislative and regulatory framework for applications for study permits also applies to applications filed under the SDS system.

[11] The officer shall issue a study permit to a foreign national that meets the criteria under section 216 of the Regulations:

Study permits

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

(a) applied for it in accordance with this Part;

(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

(c) meets the requirements of this Part;

(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

(e) has been accepted to undertake a program of study at a designated learning institution.

[Emphasis added.]

Permis d'études

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 :

a) l'étranger a demandé un permis d'études conformément à la présente partie;

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;

c) il remplit les exigences prévues à la présente partie;

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);

e) il a été admis à un programme d'études par un établissement d'enseignement désigné.

[Je souligne.]

V. Issue and standard of review

[12] This application for judicial review raises a single issue: was the officer's decision reasonable?

[13] The applicable standard of review for a decision regarding an application for a study permit is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*]; *Patel* at para 6; *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 11). According to the reasonableness standard, the Court must determine whether the decision 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). An officer’s decision to refuse or grant a study permit is a decision that is made in the exercise of a discretionary power that calls for deference, wherein the Court will only intervene if the decision is not transparent, intelligible and justified (*Vavilov* at para 99; *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 12).

VI. The officer’s decision was unreasonable

[14] I must first note the teachings of Justice Norris in *Patel*, according to which immigration officers must be take care when considering education transcripts to determine whether an applicant is able to successfully complete their studies in Canada and finding that an applicant is not a *bona fide* student who will leave Canada at the end of the period authorized. Justice Norris stated the following:

[24] In theory, an applicant’s prospects for success could be relevant to paragraph (b). Wanting to undertake a course of studies in which one was unlikely to succeed could raise questions about whether an applicant is a *bona fide* student who will leave Canada by the end of the period authorized for their stay. This is, however, something immigration officers should approach with care. The connection between the two concepts would appear to be weak at best. There is no reason to presume that immigration officers have expertise in assessing individuals’ prospects for success in a given academic program. One can complete a program successfully without necessarily excelling in it. And many of the factors that can determine academic success are dynamic, not static

[Emphasis added.]

[15] To begin with, Mr. Bougrine cited *Patel* in support of the suggestion that grades cannot be used by an immigration officer as a basis for determining whether an applicant will leave Canada at the end of the period authorized for stay. I disagree. *Patel* did not address this issue in a conclusive manner. In *Patel*, Justice Norris found that the officer's determinative statement that he was not convinced that the applicant would be able to complete the program successfully meant that the decision was not based on an inherently coherent and rational analysis, but only on the presumption that it was open to the officer to consider the applicant's prospects of completing the proposed program of studies successfully. In my opinion, I see nothing unreasonable in an immigration officer's considering grades and possibly other factors to determine whether the applicant is a *bona fide* student, and if not, to determine whether the applicant meets the requirements of paragraph 216(1)(b) of the Regulations. In the end, it seems to me that the issue is not whether immigration officers should consider grades when determining whether an applicant meets the requirements of paragraph 216(1)(b) of the Regulations, but rather, whether (and to what extent) the academic records influenced the decision and reasoning used by the immigration officer when reaching a conclusion on the issue, either way.

[16] Additionally, Mr. Bougrine argued that the officer's decision was unreasonable because it failed consider evidence that contradicted his conclusion. He added that the officer acted outside of his expertise by finding that the applicant would not be able to successfully complete his studies in Canada, when he had received an acceptance letter from the EMEMM, a designated teaching institution under paragraph 216(1)(e) of the Regulations. According to Mr. Bougrine, it

was not true to claim that he had poor grades in “all subjects” and “low scores in areas of study that would form the core of future studies.” He asserted that if the officer had considered all of the evidence, he would have noted that the applicant had successfully completed his automotive mechanic program and had obtained good results in certain subjects, that he was ranked 7th out of 29 students in the July 2011 session, and that he had obtained excellent results during his workplace internships.

[17] The Minister posited that the officer’s notes were detailed, which showed that he had taken Mr. Bougrine’s entire record into consideration, including the additional documentation he had submitted. Mr. Bougrine had the burden of providing all of the relevant information to the officer to convince him that he met the requirements set out in the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*Akomolafe v Canada (Citizenship and Immigration)*, 2016 FC 472 at para 11 [*Akomolafe*]). The Minister suggested that Mr. Bougrine had not taken the opportunity to provide additional documentation to explain his poor academic results. According to the Minister, it was therefore reasonable for the officer to have concluded that Mr. Bougrine had obtained poor results in his automotive mechanics program and that he would not be able to successfully complete his studies in Canada in heavy-duty vehicle mechanics.

[18] The Minister drew the Court’s attention to Mr. Bougrine’s grades in the fields that would form the core of his future studies in heavy-duty vehicle mechanics:

- Fuel system maintenance (gas and diesel) part 2: 11.5/20;
- Steering and undercarriage system maintenance: 11.33/20;
- Air conditioning system maintenance and repair: 11.33/20;
- Workshop organization: 10.42/20;

- Suspension system maintenance: 10.42/20.

[19] According to the Minister, given that Mr. Bougrine's highest grade in these subjects was 11.5/20 (58%) and his overall average was 10.97/20 (55%), it was open to the officer to infer that his grades were low and to have concerns about Mr. Bougrine's ability to successfully complete his heavy-duty vehicle mechanics program. This would be an entirely reasonable finding of fact (*Akomolafe* at para 12, citing *Zhang v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1493 at para 7).

[20] However, like the officer, the Minister neglected to mention evidence that, in my opinion, contradicted that conclusion (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53, 1998 CanLII 8667 (FC) at para 17 [*Cepeda-Gutierrez*]). Although Mr. Bougrine had the opportunity to provide additional evidence prior to the reassessment of his application, he had already submitted all of the academic documents he had in his possession to the officer: his transcript, his workplace internship reports and his diploma in automobile mechanics from the SIIC. The officer's conclusion that Mr. Bougrine had obtained poor results in all subjects and low results in the subjects that would form the core of his future studies at the EMEMM was, in my opinion, contradicted by some of his grades. First, the officer failed to specify which of the SIIC subjects would form the core of his future studies at the EMEMM. Furthermore, the officer neglected to mention the grades Mr. Bougrine had obtained that, in my opinion, were not poor or low. In addition to the grades listed by the Minister, Mr. Bougrine obtained the following results:

- Written and oral communications: 12.67/20;
- Technical English: 13.33/20;

- Legislation/SME: 12.83/20;
- Transmission system maintenance: 14/20;
- Brake system maintenance: 16.33/20;
- Organization and management of fleet maintenance: 11.33/20;
- Job search methods: 13.58/20;
- Business internship: 12.67/20;
- Final training exam: 62.5/120 (of note, 49/80 for the practical assessment and 13.5/40 for the theoretical assessment).

[Emphasis added.]

[21] Mr. Bougrine’s two highest grades in his automobile mechanics program were for transmission system maintenance (70%) and brake system maintenance (82%). In my opinion, this contradicts the officer’s conclusion that Mr. Bougrine had obtained poor grades in all subjects and low results in the subjects that would form the core of his future studies at the EMEMM. The officer failed to explain how the maintenance of a transmission system or brake system would not form the core of his future studies in heavy-duty vehicle mechanics compared to the other subjects. The “burden of explanation increases with the relevance of the evidence in question to the disputed facts” (*Cepeda-Gutierrez* at para 17) and, in this case, Mr. Bougrine’s grades were central to the reasons for the officer’s decision.

[22] Additionally, in *Patel*, Justice Norris urged caution in the context of an officer analyzing an applicant’s potential for success in a future program of study. I agree that *Patel* involves a particular set of facts; however, the officer still had the responsibility of showing, at the very least, that he understood the requirements of the course load to successfully complete the proposed program and explaining why a low general average might raise concerns about

Mr. Bougrine's ability to successfully complete the program and how those concerns could lead the officer to be unconvinced that Mr. Bougrine was a *bona fide* student who would leave Canada at the end of the period authorized for stay, particularly in light of the fact that Mr. Bougrine had been accepted into the program by the EMEMM.

[23] I am not convinced that the officer clearly presented his reasoning for reaching the conclusion that Mr. Bougrine would not successfully complete his studies at the EMEMM. In his reasons, the officer did not specify which particular subjects Mr. Bougrine had allegedly received low marks in. The officer also failed to explain how those subjects in the automobile mechanics program would form the core of his future studies in heavy-duty road vehicle mechanics. The EMEMM felt that Mr. Bougrine had the necessary requirements to qualify for the heavy-duty road vehicle mechanics program and his admission was not conditional on receiving any prior training. In his reasons, the officer failed to show that he had been cautious when assessing Mr. Bougrine's ability to successfully complete his studies or that he had a general understanding of the abilities required to successfully complete the program Mr. Bougrine was considering.

[24] Moreover, Mr. Bougrine submitted that the officer committed the same error that had been committed in the December 2, 2020, decision even though the Minister had [TRANSLATION] "consented to the findings" he had presented to the Federal Court in his application for leave and judicial review of that decision when they had reached a settlement. In this case, it must be recalled that a settlement agreement reached between the parties for the decision to be reassessed

by a different decision maker does not guarantee a positive result. The officer's notes in the GCMS provide the details of the agreement:

The following term of settlement [*sic*] have been agreed to by the parties: The decision of January 14, 2021 is set aside; The file is to be re-determined by another officer; and The Applicant will be provided an opportunity to submit updated documentation in support of their application; and No costs to either party.

[25] Thus, the officer in charge of reassessing the application was not required to accept it. However, in this case, I share Mr. Bougrine's opinion: it appears that the officer did not seriously review Mr. Bougrine's submissions regarding his academic record and merely copied and pasted, word for word, the first officer's findings, a decision that had been overturned. The purpose of a settlement between parties is for the application to be sent to a different officer for redetermination; the officer's decision does not bear the hallmarks of a new determination and must therefore be considered to be unreasonable.

[26] Lastly, Mr. Bougrine feels that referring the decision to a different officer to reassess his application for a study permit would [TRANSLATION] "stymie the timely and effective resolution of matters" because [TRANSLATION] "there are reasons to believe that [the officer] will reject the application...for the same reason" and he contends that there are exceptional circumstances that militate in favour of an exceptional remedy, namely that the Court render its own decision rather than return the application to the respondent. Here, I do not share Mr. Bougrine's opinion. In *Vavilov*, the Supreme Court of Canada stated that it may be appropriate for a reviewing court to decline remitting the matter to the decision maker "where it becomes evident to the court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose" (*Vavilov* at para 142). This is discretion that "must be

carefully exercised bearing in mind that the administrative decision-maker, not the reviewing court, is the merits-decider” (*Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100 at para 100). In this case, I am not convinced that this is an exceptional situation in which returning the matter would lead to an inevitable outcome. It is possible for an officer, even one who is informed of these reasons, to reasonably reach the same conclusion. I would therefore return the matter for redetermination by a different officer.

VII. Conclusion

[27] I allow the application for judicial review and remit the matter for redetermination by a different officer.

JUDGMENT in IMM-3211-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The officer's decision is set aside and the matter is remitted to a different officer for redetermination.
3. No question is certified.

“Peter G. Pamel”

Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3211-21

STYLE OF CAUSE: YOUNES BOUGRINE v MINISTER OF
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PLACE OF HEARING: MATTER HEARD BY VIDEOCONFERENCE

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