Federal Court  Cour fédérale

**Date: 20220518**

**Docket: IMM-5552-21**

**Citation: 2022 FC 728**

**Ottawa, Ontario, May 18, 2022**

**PRESENT: The Honourable Mr. Justice Favel**

**BETWEEN:**

**FELIX OBIORA IBEKWE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Nature of the Matter

[1] Felix Obiora Ibekwe [Applicant] seeks judicial review of a visa officer's July 26, 2021 decision denying his study permit application [Decision]. The Applicant submits that the visa officer [Officer] breached his rights to procedural fairness and that the Decision is unreasonable.

[2] The application for judicial review is dismissed.

## II. Background

[3] The Applicant is a 24-year-old citizen of Nigeria who is sponsored and supported by his father. He completed his secondary school studies at the Madonna International College [College] and obtained his West African Senior School Certificate [WASSC] in 2014.

[4] The Applicant applied to the University of Manitoba [UofM] for a Bachelor of Science in Engineering. The UofM rejected the Applicant for that program but, on January 20, 2021, the UofM issued a letter accepting the Applicant to the University 1 Program [Acceptance Letter] beginning in September 2021. The Acceptance Letter states that the University 1 Program is "year 1 of 4 year program". The estimated annual tuition (based on two terms of full course load) was $22,600 and annual living expenses were estimated at $11,500 (plus tuition, health insurance, books, and supplies). On April 12, 2021, the Applicant submitted his study permit application.

## III. Decision

[5] On July 6, 2021, the Officer refused the Applicant's study permit. The Officer's Global Case Management System notes state the following:

> Application reviewed – Applicant is seeking to study bachelor program - Applicant's plan of studies does not demonstrate a clear career path – Given applicant's education and employment history, I am not satisfied the course of studies is reasonable given the cost of international study weighed against the potential career/employment benefits – Based on documents submitted, I am

> not satisfied that sufficient funds are available to support applicant's study plan in Canada – Taking the applicant's plan of studies into account, the applicant does not appear to be sufficiently well-established that the proposed studies would be a reasonable expense – I am not satisfied that the applicant is sufficiently motivated to return – Based on documents on file, I am not satisfied of applicant's purpose of visit. Weighing the factors presented in the application, I am not satisfied the applicant is a bona fide student who will leave Canada at the end of authorized stay. Application refused.

[6] The Decision was made pursuant to paragraph 20(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [*IRPA*] and sections 179, 216(b), and 220 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. Together, these provisions require that the Officer be satisfied that the Applicant will leave Canada at the end of his authorized stay and have sufficient and available financial resources to pay tuition, maintain himself during his period of study, and travel back to Nigeria.

## IV. Issues

[7] After considering the submissions of the parties, the issues are best characterized as:

1. Was there a breach of procedural fairness?
2. Is the Decision reasonable?

## V. Standard of Review

[8] The Applicant, citing *Dunsmuir v New Brunswick*, 2008 SCC 9, submits that the reasonableness standard applies to the Officer's "assessment of the totality of the evidence and

the circumstances of this case" while the correctness standard applies to the Officer's "interpretation and application of the law."

[9] The Respondent submits that the ultimate question for issues of procedural fairness is whether the Applicant knew the case to be met and had a full and fair chance to respond (*Canadian Pacific Railway Company v Canada (AG)*, 2018 FCA 69 at para 56). The Respondent submits that the merits of the Decision are reviewable on the standard of reasonableness. The Respondent states that visa officers are entitled to considerable deference in light of their expertise and that they have wide discretion in assessing applications for student visas (*Onyeka v Canada (Citizenship and Immigration)*, 2017 FC 1067 at para 10 [*Onyeka*]).

[10] The first issue, which is a question of procedural fairness, is reviewable on the standard of correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Oleynik v Canada (AG)*, 2020 FCA 5 at para 39; *Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 at para 12). No deference is afforded to the underlying decision-maker on questions of procedural fairness (*Del Vecchio v Canada (AG)*, 2018 FCA 168 at para 4).

[11] The merits of the Decision are subject to a reasonableness review. None of the exceptions outlined in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] arise in this matter (at paras 16-17). A reasonableness review requires the Court to examine the decision for intelligibility, transparency, and justification and whether the decision "is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). If the reasons of the decision-maker allow a reviewing 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, the decision will be reasonable (*Vavilov* at paras 85-86). In conducting a reasonableness review, the reviewing court must look to both the outcome of the decision and the justification of the result (*Vavilov* at para 87).

## VI. Analysis

### A. *Was there a breach of procedural fairness?*

[12] The Applicant submits that there was a breach of procedural fairness because, if the Officer had credibility concerns, he was entitled to notice and the opportunity to respond to the Officer's concerns (*Hassani v Canada (MCI),* 2006 FC 1283 at para 24 [*Hassani*]).

[13] Likewise, the Applicant submits that officers have an obligation to give an applicant the opportunity to rectify or address concerns that are raised by extrinsic evidence (*Jesuorobo v Canada (MCI),* 2007 FC 1092 at para 14 [*Jesuorobo*]). Additionally, the Applicant submits that if the Officer had concerns about the Applicant's finances, the Officer should have given the Applicant notice of these concerns and the opportunity to respond (*Wang v Canada (MCI),* 2003 FCT 258 at para 13 [*Wang*]).

[14] Finally, the Applicant submits that the Decision is based on stereotypes, which officers are not allowed to rely on when making decisions (*Hernandez Bonilla v Canada (Minister of Citizenship and Immigration),* 2007 FC 20 at para 25 [*Bonilla*]).

[15] The Respondent submits that the degree of procedural fairness is relaxed in the context of student visas (*Solopova v Canada (MCI)*, 2016 FC 690 at para 37 [*Solopova*]). The Respondent states that the Officer was not obligated to notify the Applicant and seek clarification about the Officer's concerns, nor did the Officer have to supplement the Applicant's evidence (*Solopova* at para 41). In any event, the Respondent points out that the Applicant was issued a letter on April 26, 2021, requesting additional information to process his application. This letter illustrates that the Officer gave the Applicant an opportunity to present additional support for his application. Finally, the Respondent submits that an officer does not have to forward concerns that arise from the evidence provided by an applicant or from the requirements of the *IRPA* (*Toor v Canada (MCI)*, 2006 FC 573 at para 17 [*Toor*]).

[16] I find that the Officer did not breach the Applicant's rights to procedural fairness. I agree with the Respondent that the degree of procedural fairness is relatively low in the context of student visas. I also agree that the burden sits with the Applicant to satisfy the Officer that the permit should be granted (*Solopova* at paras 37, 41).

[17] Generally speaking, an applicant will not be entitled to an interview or notice of specific concerns unless the officer: "identifies evidence giving rise to credibility concerns"; "identifies evidence of a possible misrepresentation by the applicant, including when that misrepresentation may lead to inadmissibility"; and/or "identifies new, salient internal information or extrinsic evidence that is not available to the applicant" (*Garcia Diaz v Canada (MCI)*, 2021 FC 321 at para 80 [*Diaz*]). In the last situation, an obligation may not apply "if the documents are the

applicant's own documents, at least in relation to a factor in (or directly related to) the provision being applied by the officer" (*Diaz* at para 80).

[18] The Applicant has not identified the nature of the alleged adverse credibility finding or what part of the application the Officer disbelieved. In relation to the sufficiency of funds, the submitted bank statements do not show sufficient funds. Therefore, there was nothing for the Officer to 'disbelieve.' Officers are not required to provide applicants with notice or an opportunity to respond to concerns related to sufficiency of funds, since this is a requirement clearly dealt with in the *IRPR* (*Toor* at para 17; *Hassani* at para 24; *Adekoya v Canada (MCI)*, 2016 FC 1234 at para 8 [*Adekoya*]).

[19] Contrary to the Applicant's submission, *Wang* does not stand for the proposition that an officer must give an applicant the opportunity to address concerns about their finances. Rather, the Court in *Wang* found that an applicant's rights to procedural fairness were breached because an Officer made a credibility finding about a family member's offer of support and the applicant's *bona fides* as a student (at para 13).

[20] I also disagree with the Applicant that the Officer relied on extrinsic evidence, as was the case in *Jesuorobo*. In *Jesuorobo*, the Court found a breach of procedural fairness because the officer relied on extrinsic information located in the Field Operations Support System [FOSS] database, which contains information about past immigration records. The information in the FOSS database was not provided by the applicant and the applicant was not given an opportunity

to respond (at para 2). In the present case, the Officer's concerns about finances stemmed from the information provided by the Applicant – not extrinsic evidence.

[21] Finally, I disagree with the Applicant that the Officer inappropriately relied on stereotypes, as was the case in *Bonilla*. The Applicant has not pointed to anything within the Decision that indicates the Officer relied on stereotypes or generalizations.

B. *Is the Decision reasonable?*

[22] The Applicant submits that the Officer ignored relevant evidence and failed to explain why they reached certain conclusions. For example, the Officer concluded that the Applicant would not leave Canada "based on [his] personal assets and financial status." Similarly, the Officer concluded that the expense of international study was not a "reasonable expense." According to the Applicant, the Officer did not explain why he reached these conclusions. The Applicant submits that the following evidence was ignored:

a) The affidavit of sponsorship from the Applicant's father;

b) A copy of the father's bank account statement, showing the equivalent of $59,094.44 (CAD) and a bank reference letter;

c) A copy of the Applicant's bank account statement, showing the equivalent of $16,897.90 (CAD) and a bank reference letter.

[23] The Applicant submits that he only had to show that he could pay $34,100.00 ($22,600.00 CAD in tuition and $11,500.00 CAD to support himself) for one year of studies. The Applicant states that he provided bank statements to establish that he and his father possess a

total of $75,992.34 CAD and that it is unclear why the Officer concluded that these funds were insufficient. The Applicant submits that his case is similar to *Kavugho-Mission v Canada (MCI)*, 2018 FC 597 [*Kavugho-Mission*], where an applicant had $86,000 available in financial resources and her tuition cost $46,000. In that case, this Court set aside the officer's finding that the applicant lacked sufficient financial resources (at para 17). The Applicant submits that the evidence does not indicate that the expenses would deplete the savings available to the Applicant (*Motala v Canada (Citizenship and Immigration)*, 2020 FC 726 at para 17 [*Motala*]). Rather, the record demonstrates that the Applicant's father has a stable job and that the funds were in his bank account for more than four months, in accordance with Immigration, Refugee and Citizenship Canada's Proof of Funds policy. The Applicant states that the father was not required to show that he has available funds for "other children or obligations", contrary to the Respondent's submission.

[24] The Applicant also submits that, despite evidence of his good senior school grades which confirm he has a "flair for science", the Officer erred in concluding that "[g]iven the Applicant's education and employment history, I am not satisfied the course of studies is reasonable given the cost of international study weighed against the potential career/employment benefits."

[25] Finally, the Applicant submits that the Officer fails to point to anything within the record to justify the finding that they were "not satisfied [of] the Applicant's purpose of visit."

[26] The Respondent submits that the Applicant is asking the Court to reweigh the evidence, which is not the function of judicial review (*Musadiq v Canada (MCI)*, 2020 FC 316 at para 38

[*Musadiq*]; *Vavilov* at para 125). The Respondent emphasizes that the onus is always on applicants to satisfy a visa officer that they meet all statutory requirements, including that they will leave Canada after their authorized stay (*Solopova* at para 41; *Musadiq* at para 37). The Respondent states that the Applicant simply failed to provide sufficient evidence to discharge that burden.

[27] The Respondent also submits that the Officer did not err in finding that there was insufficient funds to support the Applicant's studies. An officer is presumed to have considered and weighed all the evidence and is not required to refer to each constituent element of that evidence (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16 [*Newfoundland Nurses*]). The Respondent submits that this case is similar to *Onyeka*, where this Court held that an officer reasonably found that a father lacked sufficient funds to support his son's studies because the father's accounts would be depleted (at paras 12-17). The Respondent points out that the father states that the Applicant is his "first son" but does not provide evidence about how many other children or obligations he has. The Respondent states that the Applicant simply failed to satisfy the Officer that he had sufficient funding.

[28] I find that the Decision is reasonable. I disagree with the Applicant that his financial statements contradict the Officer's conclusion that the Applicant lacks sufficient funds. The justification within a visa officer's decision may be concise and simple as long as it is responsive to the evidence (*Patel v Canada (MCI)*, 2020 FC 77 at para 17). For a decision to be reasonable, it must have the attributes of intelligibility and transparency, and the reasons must allow the

reviewing court “to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes” (*Newfoundland Nurses* at para 16; *Vavilov* at paras 85-86).

[29] The Certified Tribunal Record includes four bank statements. As noted by the Applicant, the total of the most recent bank statements equates to about $76,000 CAD. The Applicant submits that he only had to show that he could pay $34,100.00 (one year’s worth of expenses). The jurisprudence says otherwise. In *Onyeka*, the Court held that officers must consider whether there are adequate funds for the entirety of the program (at para 12). The same approach was taken in *Kavugho-Mission*, where the Court considered the applicant’s total expenses against her income over the course of three years (the entire duration of her PhD) (at para 17). A similar approach was recently taken by this Court in *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at paragraphss 44-45 [*Ocran*]. In comparison, the Court in *Motala* only considered whether the applicant’s father had expenses for one year of tuition (at para 17) but the applicant in that case was a high school student (at para 3). This case is more similar to *Onyeka*, *Kavugho-Mission*, and *Ocran*, which all concerned students pursuing higher education.

[30] The UofM estimates that the Applicant requires a total of $34,100.00 CAD per year plus travel expenses back to Nigeria. As noted earlier in these reasons, the Acceptance Letter states that the Applicant was accepted for year one of a four year program. While the Applicant has enough money to pay for his first year of school, it is not enough to support the Applicant and pay tuition for four years. To satisfy the Officer that he met the statutory requirements, the Applicant would have had to show a total of $136,400 CAD plus travel expenses.

[31] This case is also similar to *Adekoya*, where the applicant submitted an application to renew her study permit but failed to show sufficient funds (at para 6). Justice Simpson held that "[s]ection 220 of the IRPR states that an officer 'shall not' issue a study permit unless, without working, students have sufficient funds to pay their tuition, maintain themselves and family members, and transport themselves and family members home from Canada. Since [the applicant] had insufficient funds, the Officer had no discretion and was required to deny the [application]" (at para 9). The exact same can be said in this case.

[32] Accordingly, the Officer reasonably concluded that "[b]ased on the evidence submitted, I am not satisfied that sufficient funds are available to support [the] applicant's study plan in Canada." In light of this finding, the Court does not need to consider the rest of the Applicant's submissions.

## VII. Conclusion

[33] The Officer did not breach the Applicant's rights to procedural fairness. The Officer did not have to notify the Applicant of their concerns related to the statutory requirements of the *IRPR*. The Officer also reasonably concluded that the Applicant had insufficient funds for a four-year program.

[34] The application for judicial review is dismissed. Neither party proposes a question for certification and I agree that none arises.

**JUDGMENT in IMM-5552-21**

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is dismissed.

2. There is no question for certification and none arises.

3. There is no order as to costs.

"Paul Favel"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-5552-21 |
| **STYLE OF CAUSE:** | FELIX OBIORA IBEKWE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD BY VIDEOCONFERENCE |
| **DATE OF HEARING:** | MAY 9, 2022 |
| **JUDGMENT AND REASONS:** | FAVEL J. |
| **DATED:** | MAY 16, 2022 |

**APPEARANCES:**

| | |
|---|---|
| Peace Eze | FOR THE APPLICANT |
| Meenu Ahluwalia | FOR THE RESPONDENT |

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