

Federal Court



Cour fédérale

Date: 20230727

Docket: IMM-10086-22

Citation: 2023 FC 1025

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 27, 2023

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

BANGUIAN, SALAMATOU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Salamatou Banguian, citizen of Burkina Faso, is a seamstress, fashion designer and owner of the clothing company Hampanie Design SARL, a limited company in Burkina Faso. She also markets clothing, as well as commercial and home office equipment and furniture imported from Türkiye. Ms. Banguian is seeking judicial review of the decision by a

visa officer dated August 26, 2022. The officer denied the applicant's application for a visitor visa, unconvinced that Ms. Banguian would leave Canada at the end of her stay.

[2] Ms. Banguian wanted to visit Canada as a tourist, in particular the cities of Montréal, Québec and Niagara Falls. Her husband and two minor daughters live in Burkina Faso. Ms. Banguian has movable and immovable property, in particular her family residence and a 2018 Range Rover Velar vehicle; she produced her bank statements that show a cumulative total balance available of FCFA29,234,560, or more than \$58,000 according to the applicant. Moreover, Ms. Banguian had paid for her return plane ticket and had made a reservation at a Montréal hotel for 14 nights. She had previously travelled in several European countries and in the United States, and had always left those countries at the end of her authorized stay, and had always complied with the laws and regulations of the countries she had the opportunity to visit. She was committed to returning to Burkina Faso at the end of her stay, to be with her family and run her business.

[3] The decision letter indicates that the officer was not convinced that Ms. Banguian would leave Canada at the end of her stay, for the following reasons:

[TRANSLATION]

Your property and financial situation are insufficient to support the reason for your trip (and that of family members accompanying you, if any).

The reason for your visit to Canada is not compatible with a temporary stay considering the information you have provided in your application.

[Emphasis added.]

[4] The officer's notes in the Global Case Management System [GCMS] state the following:

[TRANSLATION]

I have reviewed the application and, to make my decision, I have considered the following factors. The property and financial situation of the applicant are insufficient to support the stated purpose of her trip (and that of family members accompanying her, if any). The purpose of the applicant's visit to Canada is not compatible with a temporary stay, according to the details provided in the application. Considering all these factors, I am not convinced that the applicant will leave Canada at the end of her authorized stay. For all these reasons, I am denying the application.

[5] This application for judicial review raises the issue of reasonableness. The merits of the visa officer's decision are subject to review for reasonableness (*Musasiwa v Canada (Citizenship and Immigration)*, 2021 FC 617 at para 22; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 [*Vavilov*]).

[6] Ms. Banguian submits that the officer committed a palpable error in the assessment of the facts that led to an erroneous finding of fact (*Vavilov* at para 104), because the officer did not take into consideration her ties to her family in Burkina Faso or the other factors that supported her return to Burkina Faso at the end of her stay (*Zhang v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1493 at para 18; *Zuo v Canada (Citizenship and Immigration)*, 2007 FC 88 at para 31; *Vavilov* at para 126).

[7] The respondent admits that the officer's decision is brief and attempted to search in the Certified Court Record to justify it. However, it is not counsel's job to do this. As the Supreme Court of Canada stated in *Vavilov*: "it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified* by way

of those reasons, by the decision maker to those to whom the decision applies” (*Vavilov* at para 86).

[8] The officer’s silence with regard to relevant facts that favour Ms. Banguian constitutes a ground for overturning the decision (*Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at paras 25–26; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paras 16–17; *Oloruntoba v Canada (Citizenship and Immigration)*, 2012 FC 1414 at para 8). From what I can see, the visa officer’s decision is patently unreasonable. In this case, the officer’s findings are not justified on the basis of the evidence and submissions on record, nor are they justified in themselves. In fact, I must admit that it is strange that the amount available, \$58,000, was not deemed sufficient to cover reasonable expenses for Ms. Banguian during her two-week stay in Canada when she had already paid for her return plane ticket and when her hotel fees were estimated at \$5,314.54 for 14 nights. Indeed, the reasons in the GCMS add nothing to the findings in the decision letter.

[9] The officer’s decision is neither transparent, intelligible or justified. The Court is not able to trace the officer’s reasoning (*Vavilov* at para 102); the decision is not based on an internally coherent and rational chain of analysis and is not justified in relation to the facts and law that constrained the officer (*Vavilov* at para 85). In fact, I doubt that the officer even reviewed the documents in the file, considering that he referred to [TRANSLATION] “family members accompanying you, if any” when the visa application involved only Ms. Banguian.

JUDGMENT in IMM-10086-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed and the officer's decision is quashed.
2. The matter is referred back to another visa officer for redetermination in accordance with these reasons.
3. No question is certified.

“Peter G. Pamel”

Judge

Certified true translation
Elizabeth Tan

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10086-22

STYLE OF CAUSE: SALAMATOU BANGUIAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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