

Federal Court



Cour fédérale

Date: 20240709

Docket: IMM-10657-23

Citation: 2024 FC 1079

Ottawa, Ontario, July 9, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

**ETHAN SAMUEL CHRISTIAN
THROUGH HIS LITIGATION
GUARDIAN RAJU VISHALA AVANTI**

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant Ethan Samuel Christian is a 10-year old citizen of India. His parents, also citizens of India, both obtained valid status in Canada. His mother, who also is his litigation guardian, is in Canada on a study permit, and she is pursuing a masters of business

administration while working part-time. His father was approved for a spousal open work permit but delayed travel to Canada when their son's application for a study permit was refused.

[2] The primary reason for the refusal is that the Applicant's "assets and financial situation are insufficient to support the stated purpose of travel." The Global Case Management System [GCMS] notes do nothing to illuminate the visa officer's reasons for refusing the study permit. Instead, notwithstanding the Respondent's arguments to the contrary, they highlight the illogicality of the determination and lack of a rational chain of analysis, essentially untethered from his parents' situation. Please see Annex "A" below for relevant legislative provisions.

[3] I have no hesitation in finding that the decision is unreasonable and will be set aside, with the matter remitted to a different visa officer for redetermination.

II. Analysis

[4] I find that the Applicant has met his burden of showing that the refusal of his study permit application is unreasonable, in that it lacks the hallmarks of justification, transparency and intelligibility: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 99-100.

[5] Contrary to the Respondent's submissions, this is not a case involving a minor seeking to study in Canada who will be accompanied by his parent(s), if approved; rather, it involves a minor seeking to live with his parents who have status in Canada and intending to continue his primary school education in their care while here. For this reason, I find the following cases on

which the Respondent relies distinguishable because they involve the former scenario as opposed to the latter: *Zibadel v Canada (Citizenship and Immigration)*, 2023 FC 285; *Farnia v Canada (Citizenship and Immigration)*, 2022 FC 511.

[6] The officer's reasons, in my view, are unresponsive to the Applicant's specific situation: *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 17. Notwithstanding that the GCMS notes acknowledge the Applicant is a minor whose parents have status in Canada, they speak in terms of the young child's establishment and ability to cover tuition and living costs. In other words, they treat him as though he were an adult applicant, like his mother for example.

[7] The evidence of record, however, indicates that this child will reside with his mother in an apartment she already rents, and will have few or minimal expenses, including any tuition, given his intention to attend elementary school. Even if tuition were \$200, as the Respondent states but the GCMS notes do not (although I note this amount is stated in the Applicant's study permit application), this is a nominal amount.

[8] Further, at the hearing of this matter, the Respondent argued that the Applicant has not met his onus of demonstrating, to the officer's satisfaction, the availability of \$10,000 to cover living expenses that is required, according to the guidance of Immigration, Refugees and Citizenship Canada [IRCC] entitled "Study permit: Get the right documents," which is in evidence in this matter.

[9] As I understand the Respondent's argument, the Applicant's financial situation is tied to that of his parents and there is no specific allocation of the mother's savings of approximately \$21,000 or her part-time income of about \$37,000 toward the Applicant's required \$10,000 for living expenses, nor the \$200 for tuition. None of the Respondent's points, however, can be found in the GCMS notes and, therefore, represent unacceptable bolstering, in my view.

[10] I find that, in essence, the officer's reasons regarding tuition and living expenses are contradicted by the evidence, which was not mentioned and presumably overlooked by the officer: *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 24.

[11] I also find it difficult to discern the logic behind the officer's statement to the effect that they are "not satisfied that the applicant will adhere to the terms and conditions imposed as a temporary resident." On its face, it appears to suggest that the Applicant would ignore the terms of a study permit and remain in Canada after his parents returned to India.

[12] Both of his parents, however, have status in Canada. IRCC already has determined that they can afford their living expenses, will leave Canada at the end of their authorized stay, and will adhere to the terms and conditions imposed on them as temporary residents. In my view, it is speculative to assume that the Applicant, as a dependent minor child, would not accompany his parents when they leave.

[13] As this Court previously has held, “[a] finding that the applicant could not be trusted to comply with Canadian law is a serious matter” that requires intelligible and transparent justification: *Cervjakova v Canada (Citizenship and Immigration)*, 2018 FC 1052 at para 12.

III. Conclusion

[14] For the above reasons, the judicial review application will be granted. The August 14, 2023 decision refusing the Applicant’s study permit application will be set aside, with the matter remitted to a different visa officer for redetermination.

[15] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-10657-23

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is granted.
2. The August 14, 2023 decision of a visa officer of Immigration, Refugees, and Citizenship Canada refusing the Applicant's study permit application is set aside.
3. The matter will be remitted to a different visa officer for redetermination.
4. There is no question for certification.

"Janet M. Fuhrer"

Judge

Annex “A”: Relevant Provisions

***Immigration and Refugee Protection Regulations, SOR/2002-227.
Règlement sur l’immigration et la protection des réfugiés, DORS/2002-227.***

<p>Study permits</p> <p>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</p> <p>(a) applied for it in accordance with this Part;</p> <p>(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;</p> <p>(c) meets the requirements of this Part;</p> <p>(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</p> <p>(e) has been accepted to undertake a program of study at a designated learning institution.</p>	<p>Permis d’études</p> <p>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 :</p> <p>a) l’étranger a demandé un permis d’études conformément à la présente partie;</p> <p>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;</p> <p>c) il remplit les exigences prévues à la présente partie;</p> <p>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);</p> <p>e) il a été admis à un programme d’études par un établissement d’enseignement désigné.</p>
<p>Financial resources</p> <p>220 An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to</p> <p>(a) pay the tuition fees for the course or program of studies that they intend to pursue;</p> <p>(b) maintain themselves and any family members who are accompanying them during their proposed period of study; and</p> <p>(c) pay the costs of transporting themselves and the family members referred to in paragraph (b) to and from Canada.</p>	<p>Ressources financières</p> <p>220 À l’exception des personnes visées aux sous-alinéas 215(1)d) ou e), l’agent ne délivre pas de permis d’études à l’étranger à moins que celui-ci ne dispose, sans qu’il lui soit nécessaire d’exercer un emploi au Canada, de ressources financières suffisantes pour :</p> <p>a) acquitter les frais de scolarité des cours qu’il a l’intention de suivre;</p> <p>b) subvenir à ses propres besoins et à ceux des membres de sa famille qui l’accompagnent durant ses études;</p> <p>c) acquitter les frais de transport pour lui-même et les membres de sa famille visés à l’alinéa b) pour venir au Canada et en repartir.</p>

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: ETHAN SAMUEL CHRISTIAN THROUGH HIS
LITIGATION GUARDIAN RAJU VISHALA AVANTI
v MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JULY 4, 2024

JUDGMENT AND REASONS: FUHRER J.

DATED: JULY 9, 2024

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