

Federal Court



Cour fédérale

Date: 20241010

Docket: IMM-9546-23

Citation: 2024 FC 1610

Toronto, Ontario, October 10, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

PAYALBEN HITESHKUMAR DESAI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant Payalben Hiteshkumar Desai is a citizen of India. She applied for a study permit because she was accepted into two programs, Professional Certificate – Project Management and Professional Certificate – Supply Chain Management, at the Southern Alberta Institute of Technology [SAIT], a Designated Learning Institution. Her study permit application

was refused because the officer was not satisfied that the purpose of her visit to Canada was consistent with a temporary stay [Decision].

[2] Ms. Desai seeks judicial review of the Decision, arguing procedural unfairness and unreasonableness.

[3] The Respondent argues that Ms. Desai has not shown the officer relied on any extrinsic evidence or made an adverse credibility finding and, further, that she has not met her burden to demonstrate the Decision is unreasonable.

[4] I find that there was no breach of procedural fairness but that Ms. Desai has shown the Decision was unreasonable, notwithstanding the potential redundancy of the SAIT courses.

[5] For the more detailed reasons below, the judicial review application will be granted.

II. Analysis

A. *No breach of procedural fairness*

[6] Questions of procedural fairness attract a correctness like standard of review: *Benchery v Canada (Citizenship and Immigration)*, 2020 FC 217 at paras 8-9; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 77. The focus of the

reviewing court is whether the process was fair in the circumstances: *Chaudhry v Canada (Citizenship and Immigration)*, 2019 FC 520 at para 24.

[7] Ms. Desai argues that the officer should have provided her with an opportunity to address the officer's concerns. She also argues that the officer questioned her credibility by indicating that the purpose of her visit was not consistent with a temporary stay. I disagree on both counts.

[8] As the Respondent correctly notes, the level of procedural fairness owed to a study permit applicant is low: *Asemebo v Canada (Citizenship and Immigration)*, 2024 FC 937 at para 27, citing *Rajabi v Canada (Citizenship and Immigration)*, 2024 FC 371 at para 23.

[9] Further, the jurisprudence of this Court does not support the proposition that a visa officer must alert an applicant to concerns about the sufficiency of their evidence and give them an opportunity to respond: *Hamid v Canada (Citizenship and Immigration)*, 2022 FC 886 at para 18, citing *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at paras 51-52 and *Patel v Canada (Citizenship and Immigration)*, 2020 FC 517 [*Patel*] at paras 13-14.

[10] I am not convinced by Ms. Desai's submission that the statement about her proposed stay not being consistent with a temporary one, in itself, is enough to establish the officer made a credibility determination. As Justice Norris observes in *Patel* (at paras 13-14), the onus is on the study permit applicant who is a foreign national to rebut the presumption that they are immigrants (i.e. that Ms. Desai's proposed stay here is not consistent with a temporary stay) and to establish their entitlement to a study permit with sufficient evidence.

[11] I agree with the Respondent that the officer did not refer to any extrinsic evidence or make any credibility findings in the Decision, including the Global Case Management System [GCMS] notes which provide the officer's reasoning.

B. *The Decision is unreasonable*

[12] I am persuaded, however, that Ms. Desai has met her onus of showing the Decision is unreasonable: *Vavilov*, above at para 100.

[13] A reasonable decision is one that exhibits the hallmarks of justification, transparency and intelligibility, and is justified in the context of the applicable factual and legal constraints: *Vavilov*, above at para 99.

[14] Ms. Desai argues that the officer unreasonably engaged in "career counselling": *Adom v Canada (Citizenship and Immigration)*, 2019 FC 26 at para 17. I agree.

[15] The GCMS notes show that the officer questions the expense of the SAIT programs in light of Ms. Desai's "higher level of qualification." The officer's concern is rooted in whether the SAIT programs show a logical progression of studies in light of her "reported scholarly/work history." Ms. Desai's educational qualifications include certificates in Supply Chain Planning and Supply Chain Excellence for online courses through the University of California, Irvine and at Rutgers University respectively.

[16] I do not disagree necessarily with the Respondent that the officer was entitled to consider the redundancy of the SAIT programs given that, like the other supply chain courses Ms. Desai took, they are non-credit. The officer's consideration of her planned course of studies in Canada, however, did not end there.

[17] The officer concludes that "Client [i.e. Ms. Desai] has failed to satisfy me that pursuing the selected program of study is reasonable given the high cost of international study in Canada when weighed against the potential career/employment benefits after completion, and the local options available for similar studies."

[18] In my view, the officer's conclusion is unreasonable for at least three reasons that point to an inappropriate foray into career counselling.

[19] First, the officer fails to describe the relevance of a Bachelor of Commerce (Ms. Desai's university degree which focused on business administration, accountancy, statistics and economics) being higher than the SAIT courses which, on their face, are in a different line of study – i.e. project management and supply chain management. Ms. Desai's statement of purpose describes in some detail how the courses are a logical progression in her professional development. The officer's reasons are unresponsive, in my view, to her statement of purpose and suggest that it, or aspects of it, were overlooked: *Rajasekharan v Canada (Citizenship and Immigration)*, 2023 FC 68 at para 23.

[20] Second, this Court’s jurisprudence has found that it is not the role of the officer to opine on the value of the intended education for an applicant: *Najmi v Canada (Citizenship and Immigration)*, 2023 FC 132 at para 24, citing *Caianda v Canada (Citizenship and Immigration)*, 2019 FC 218 at para 5.

[21] Third, the officer refers to “local options available for similar studies” as a factor in deciding to refuse Ms. Desai’s application. There is no evidence in the certified tribunal record to support the officer’s conclusion, nor does the officer provide any examples of local options, including their cost, to permit meaningful review by the Court. As this Court previously has held, a reference to the availability of local alternatives “should be substantiated by the record”: *Motlagh v Canada (Citizenship and Immigration)*, 2022 FC 1098 at para 18.

[22] As an added reason, even if the officer reasonably concluded that the previous supply chain online courses pointed to redundancy, while that may be so for the SAIT Professional Certificate – Supply Chain Management program, there is no explanation (implied or otherwise) of why that would be the case for SAIT Professional Certificate – Project Management program.

[23] I find that cumulatively these shortcomings in the Decision warrant the Court’s intervention.

III. Conclusion

[24] For the above reasons, the judicial review application is granted. The Decision will be set aside and remitted to a different officer for redetermination.

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

JUDGMENT in IMM-9546-23

THIS COURT'S JUDGMENT is that:

1. The Applicant's judicial review application is granted.
2. There is no question for certification.

"Janet M. Fuhrer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: PAYALBEN HITESHKUMAR DESAI v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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