Federal Court  Cour fédérale

Date: 20241212

Docket: IMM-8493-23

Citation: 2024 FC 2019

Ottawa, Ontario, December 12, 2024

PRESENT: Mr. Justice McHaffie

BETWEEN:

PATRICK ONOME OBOGHOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] A visa officer denied Patrick Oboghor's application for a study permit because they were not satisfied Mr. Oboghor had demonstrated he had sufficient available funds for his course of study. Mr. Oboghor had filed evidence that he had a bank draft in his name drawn on a Canadian bank. He argues this was sufficient proof of funds according to the website published by Immigration, Refugees and Citizenship Canada [IRCC], and that it was unreasonable for the visa

officer not to accept the bank draft as proof of the availability of the stated funds. He also argues that if the visa officer had any concerns regarding the source or availability of the funds, the duty of fairness required the visa officer to raise those concerns and give him an opportunity to respond.

[2] For the reasons given in further detail below, Mr. Oboghor has not persuaded me that the visa officer's decision was unreasonable or unfair. The visa officer reasonably reviewed the evidence Mr. Oboghor submitted regarding his finances, concluding that the limited evidence regarding the source of his funds raised concerns about the sufficiency and availability of those funds. Such an analysis has been recognized as reasonable on numerous occasions by this Court. Despite Mr. Oboghor's submissions, I see nothing in the nature of a bank draft drawn on a Canadian bank that immunizes it from further review or renders an analysis of the source of funds unreasonable. I also conclude, in keeping with this Court's jurisprudence, that the duty of fairness does not require a visa officer to provide an applicant with an opportunity to address concerns that arise from the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and the associated *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[3] Mr. Oboghor's application for judicial review will therefore be dismissed.

II. Issues and Standard of Review

[4] Mr. Oboghor's application for judicial review essentially raises the following two issues:

A. Did the visa officer err in concluding that Mr. Oboghor had not provided satisfactory evidence of sufficient and available funds?

B. Did the visa officer breach the duty of fairness by not giving Mr. Oboghor notice of their concerns and an opportunity to respond to them?

[5] The parties agree that the first of these questions goes to the merits of the visa officer's decision and is reviewable on the standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. Applying this standard, the Court will only set aside a decision where the applicant has demonstrated that it is unreasonable, in the sense that it is internally incoherent, or fails to show the requisite characteristics of transparency, intelligibility, and justification: *Vavilov* at paras 15, 85, 100, 136.

[6] The second question pertains to the manner in which the decision was made, rather than the substance of the decision. In addressing such questions, the Court asks whether the duty of fairness has been met, in other words, whether the process leading to the decision was fair having regard to all the circumstances: *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56.

III. Analysis

A. *The visa officer's decision was reasonable*

(1) Mr. Oboghor's study permit application

[7] Mr. Oboghor applied to come to Canada to attend a 10-month certificate program in Business Administration. His study permit application included his letter of acceptance from Saskatoon Business College; a letter from his employer in Nigeria discussing his managerial role with the company and indicating its support for a study leave; and information about his spouse and children, who planned to remain in Nigeria.

[8] Letters from Mr. Oboghor and his lawyer each indicated that he had two sources of funds to pay for his study in Canada: a tuition deposit of $3,000 already paid to Saskatoon Business College, and a Royal Bank of Canada [RBC] bank draft in Mr. Oboghor's name in the amount of $30,000. Copies of a tuition receipt and the RBC bank draft were provided with the application. Mr. Oboghor's letter stated that since conceiving of the idea of studying in Canada, he had "saved [his] resources to pay for [his] education which explains [his] personal funds of $30,000 which is immediately available to [him]."

(2) The visa officer's decision

[9] By letter dated June 30, 2023, a visa officer with IRCC refused Mr. Oboghor's application. The letter briefly indicated that the visa officer was not satisfied that Mr. Oboghor would leave Canada at the end of his stay, as required by paragraph 216(1)(b) of the *IRPR*,

because his assets and financial situation were insufficient to support the stated purpose of the travel. Elaboration of these brief reasons is found in the visa officer's notes in the Global Case Management System [GCMS], which notes are taken to be part of the visa officer's reasons for decision.

[10] The visa officer's GCMS notes refers to Mr. Oboghor's proposed course of study, the tuition deposit receipt, and the RBC bank draft. They then state the following:

> Limited evidence pertaining to the source [of] stated funds provided. In the absence of satisfactory documentation showing the source of these funds, I am not satisfied the applicant has sufficient funds for the intended purpose[.] Taking the applicant's plan of studies into account, the documentation provided in support of the applicant's financial situation does not demonstrate that funds would be sufficient or available for tuition, living expenses and travel. I am not satisfied that the proposed studies would be a reasonable expense. Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay.
>
> [Emphasis added.]

[11] The "sufficient or available for tuition, living expenses and travel" language seen in the visa officer's GCMS notes is reflective of section 220 of the *IRPR,* which provides that an officer shall not issue a study permit to a foreign national "unless they have sufficient and available financial resources, without working in Canada" to pay for their tuition, maintain themselves and any accompanying family members for the period of study, and pay for their travel to Canada.

(3) The visa officer's decision is reasonable

[12] Mr. Oboghor argues that the RBC bank draft demonstrated he had sufficient and available funds and that it was unreasonable for the visa officer not to accept this. He notes that IRCC's website regarding proof of financial support for study permits states that applicants can prove their funds "with at least one of the following," followed by a list that includes a bank draft.

[13] As the Minister points out, this Court has concluded in a number of recent decisions that a visa officer's obligation to be satisfied as to the sufficiency and availability of funds goes beyond simply accepting financial documents at face value. In particular, visa officers must be satisfied as to the "source, nature, and stability" of funds, which is relevant to whether the funds shown in, for example, bank records will in fact be available to the applicant for the course of their studies: *Sani v Canada (Citizenship and Immigration)*, 2024 FC 396 at para 27, citing *Sayyar v Canada (Citizenship and Immigration)*, 2023 FC 494 at para 12 and *Bidassa v Canada (Citizenship and Immigration)*, 2022 FC 242 at paras 21–22; see also *Kita v Canada (Citizenship and Immigration)*, 2020 FC 1084 at para 20 and *Hendabadi v Canada (Citizenship and Immigration)*, 2024 FC 987 at para 23. As Justice Pamel, then of this Court, stated in *Sayyar*, "it is not a simple matter of reviewing the applicants' bank account and, if they have sufficient funds, granting them a permit; the visa officer must conduct a more detailed and fulsome investigation about the source, nature, and stability of these funds": *Sayyar* at para 12.

[14] Mr. Oboghor contends that this jurisprudence does not apply, as it dealt with cases in which the funds at issue were overseas, typically in foreign bank accounts. I cannot agree. The requirement in section 220 of the *IRPR* that an officer be satisfied that an applicant have "sufficient and available financial resources" does not distinguish between funds in Canada and those outside Canada. Funds in Canada are also susceptible to being unavailable to an applicant, as with those outside the country. Without information as to the source, nature, and stability of funds, it is reasonable for a visa officer not to be satisfied that they will not be sufficient and available to an applicant.

[15] I also cannot accept Mr. Oboghor's argument based on the IRCC website, for two reasons. First, IRCC's website cannot and does not override the requirements of the *IRPR*, including the requirement that an applicant demonstrate that they have "sufficient and available financial resources." While the website assists applicants by indicating what types of documents may be submitted as proof of funds, it does not indicate that this proof will be accepted at face value, or that visa officers are precluded from considering whether the evidence submitted shows that an applicant has sufficient and available funds.

[16] Second, as the Minister points out, the IRCC website is not the only relevant document related to study permit applications. IRCC's study permit Visa Office Instructions for Nigeria contains additional requirements, calling for applicants to file "[c]ertified bank statements or financial investments with past six months' history […]" and noting that applicants "must also show a reliable source of funds for the duration of [their] academic program." While these

instructions also link to the IRCC website, an applicant must consider both the instructions and the website in assessing what must be filed in support of a study permit application.

[17] In support of his arguments on the sufficiency of the bank draft, Mr. Oboghor cites this Court's decision in *Kaur v Canada (Citizenship and Immigration)*, 2014 FC 678. In that case, an applicant for permanent residence in the skilled worker class had similarly submitted a Canadian bank draft as proof of her possession of the settlement funds required by subparagraph 76(1)(b)(i) of the *IRPR*. A visa officer refused the application on the basis that there was no explanation as to the provenance of the funds or whether a third party had lent the money to buy the bank draft, and they were therefore not satisfied that the funds were "unencumbered by debts or other obligations," as required by subparagraph 76(1)(b)(i) of the *IRPR*. Justice de Montigny, as he then was, found that the visa officer's decision was unreasonable, as he could not understand the logic behind the reasoning that a bank draft is insufficient proof of unencumbered settlement funds: *Kaur* at para 15. He also noted that the lack of information about the purchaser of a draft, or the existence of a loan, would apply to the other acceptable proofs of settlement funds in IRCC's document checklist, such as a bank certification letter, savings balance, or deposit statements: *Kaur* at para 15.

[18] In addition to the differences between subparagraph 76(1)(b)(i) and section 220 of the *IRPR*, there appear to be differences between the documents identified in the IRCC checklist for settlement funds for skilled workers at issue in *Kaur* and those currently listed on the IRCC website for study permits. In any event, I agree with the Minister that *Kaur* cannot be taken to stand for a general proposition that a visa officer must accept a bank draft as sufficient proof of

"sufficient and available financial resources" for purposes of a study permit. This is particularly so in light of the extensive jurisprudence of this Court subsequent to *Kaur* that underscores the obligation on visa officers to be satisfied as to the sufficiency and availability of funds, including through consideration of the source, nature, and stability of those funds.

[19] Mr. Oboghor also cites the recent decision of this Court in *Raoufi v Canada (Citizenship and Immigration)*, 2024 FC 550, where the refusal of a study permit was found unreasonable on a number of grounds, including the visa officer's findings regarding sufficient funds. The visa officer in that case said they were not satisfied the applicant had sufficient funds because the banking records provided "do not include [a] history of transactions to track the provenance of available funds": *Raoufi* at para 5. Justice Norris noted that the applicant had provided certificates of account balances for herself and her husband, and documentation to establish that both had been gainfully employed for several years. Justice Norris found the visa officer's finding unreasonable since it did not explain why, despite this information and the absence of any credibility concerns, there were concerns about the "provenance" of the available funds: *Raoufi* at para 11, citing *Jalilvand v Canada (Citizenship and Immigration)*, 2022 FC 1587 at paras 16–17.

[20] In the present case, unlike in *Raoufi* and *Jalilvand*, I conclude that the visa officer adequately explained their concerns about the provenance or source of funds. The visa officer first noted that there was limited evidence pertaining to the source of the stated funds. They then linked this absence of evidence to not being satisfied that the funds would be sufficient and available for Mr. Oboghor's tuition, living expenses, and travel for his studies. While the

reasoning could have been more detailed, I am satisfied that it reasonably conveyed the visa officer's basis for refusing the application, particularly in the administrative context of the requirements of section 220 of the *IRPR* and the legal context of the jurisprudence such as *Kita*, *Sayyar*, and *Sani*: *Vavilov* at paras 90–94, 108–112.

[21] Mr. Oboghor asserts that, as in *Raoufi*, he presented evidence of continued employment for both himself and his wife. He claims that the visa officer neglected to consider this information, rendering the decision unreasonable. However, while Mr. Oboghor is correct that his application provided letters from his and his wife's employers, those letters provided no information about either person's salaries, which might have provided the visa officer with additional information about the source of the bank draft funds. In this context, Mr. Oboghor's statement that he had been saving his resources to pay for his education "which explains [his] personal funds of $30,000," without further detail, is fairly and reasonably described by the visa officer as giving limited evidence regarding the source of the stated funds.

[22] I note that the visa officer's decision is stated to have been made on the basis of paragraph 216(1)(b) of the *IRPR*, which requires an applicant to demonstrate that they will leave Canada at the end of their authorized stay, rather than section 220 of the *IRPR*, which requires them to demonstrate they have sufficient and available financial resources. The visa officer's GCMS notes similarly refer to the language of paragraph 216(1)(b), concluding that they were not satisfied that Mr. Oboghor would leave Canada at the end of his stay. Despite this language, I agree with the Minister that the context of the decision, read as a whole, adequately and reasonably conveys to Mr. Oboghor that the reason for the refusal was that he had not

demonstrated that he had sufficient or available funds for his studies. As this is a mandatory requirement for the issuance of a study permit, I conclude that the visa officer's reference to section 216 but not section 220 does not constitute a central flaw that renders the decision unreasonable. This Court has upheld the reasonableness of other visa decisions that cite section 216 rather than section 220, on the basis that a reasonable finding regarding the sufficiency and availability funds is determinative: *Sani* at paras 3–4, 25–27, 32–33; *Hendabadi* at paras 1, 7, 21–29; *Davoodabadi v Canada (Citizenship and Immigration)*, 2024 FC 85 at paras 7, 9–10, 13–16.

[23] The visa officer's decision refusing Mr. Oboghor's study permit on grounds that he had not adequately demonstrated the existence of sufficient and available funds was transparent, intelligible, and justified. Mr. Oboghor has not satisfied me that there were sufficiently serious shortcomings or flaws in the decision that would render it unreasonable.

B. *The visa officer did not breach the duty of procedural fairness*

[24] Mr. Oboghor also contends that the visa officer was obliged to raise their concerns regarding the source of funds and give him the opportunity to explain or respond to those concerns. He argues that the visa officer's failure to do so breached the duty of procedural fairness, requiring the decision to be set aside. I am not persuaded.

[25] This Court has repeatedly and consistently held that the duty of procedural fairness owed to a study permit applicant is at the low end of the spectrum, and that a visa officer has no general obligation to advise an applicant of concerns that arise from the application of the *IRPA*

or the *IRPR*: *Sani* at paras 36–38; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 517 at para 12; *Davoodabadi* at para 19, citing *Singh v Canada (Citizenship and Immigration)*, 2022 FC 855 at para 22 and *Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284 at para 23.

[26] Here, the obligation to demonstrate that the applicant has not only funds at a particular point in time, but funds that will be sufficient and available to them for their tuition, expenses, and travel, arises directly from section 220 of the *IRPR*. Mr. Oboghor had the onus to file sufficient evidence to satisfy a visa officer that he met the requirements of section 220, among other provisions. He was not owed another opportunity to do so before the visa officer concluded that he had not met those requirements: *Bidassa* at paras 8–10.

[27] Contrary to Mr. Oboghor's submissions, the visa officer's findings do not make any adverse credibility findings that might trigger an obligation to give notice of their concerns and an opportunity to respond to them. The officer did not question the authenticity of the bank draft or any other document. They simply were not satisfied that the bank draft and the other information provided in the application were enough to demonstrate that Mr. Oboghor would have sufficient and available funds for his studies. This does not amount to a credibility finding and does not trigger any fairness requirement to provide notice: *Sani* at para 39; *Bidassa* at para 11.

IV. Conclusion

[28] As Mr. Oboghor has not demonstrated that the visa officer's decision refusing his study permit application was unreasonable or unfair, the application for judicial review is dismissed.

[29] Neither party proposed a question for certification and I agree that none arises in the matter.

JUDGMENT IN IMM-8493-23

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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