

Common reasons for study permit refusals in Canada

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In 2019 the Government of Canada granted more than 400,000 study permits to foreign nationals, an increase in the number of foreign students accepted in recent years.^[1] However, with 39 per cent of applications refused between January and May of that year, it's clear that being approved for a study permit is a cumbersome process for many potential students.^[2]

A study permit is a document that allows a foreign national to study at a designated learning institution in Canada, valid for the length of the study programme plus up to an additional 90 days before the student may apply to extend their stay. The issuance of study permits to enter Canada for visitors, students and temporary workers is governed by the Immigration and Refugee Protection Act (IRPA), which came into force in 2002.^[3] The Immigration and Refugee Protection Regulations (IRPR) set out further requirements in addition to the IRPA, which applicants must comply with.^[4]




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Pursuant to section 11(1) of the IRPA, a foreign national must apply for a study permit prior to entering Canada, where a reviewing officer may issue a study permit if satisfied that the foreign national is not inadmissible and meets the requirements of the IRPA.^[5] Immigration, Refugees and Citizenship Canada (IRCC) officers are authorised under the IRPA to approve or refuse applications made for study permits.^[6]

Common reasons for refusal

There are several reasons why an application for a study permit may be refused. IRCC officers use the Global Case Management System (GCMS) to review and process applications for citizenship and immigration services. Notes from reviewing officers are recorded against each application in the GCMS and form part of any decision regarding a study permit application. Officers often indicate more than one reason for their decision to refuse an application for a study permit. The most common reasons for refusal are discussed below.

Applicant may not return to home country after study period

 officer may refuse an application for a study permit if they are not satisfied that the foreign national will leave Canada after their authorised period of stay as a temporary resident, as set out in section 216(1)(b) of the IRPA.^[7]

   ther, the IRPR expressly states in section 179(b) that 'an officer shall issue a temporary resident permit to a foreign national if, following an examination, it is established that the foreign national [...] will leave Canada by the end of the period

authorized for their stay under Division 2'.^[8] As such, all foreign nationals must establish in their applications that they will leave Canada at the conclusion of their study period.^[9]

Moreover, the applicant 'bears the burden of satisfying the visa officer that he or she will not remain in Canada once their visa has expired'.^[10] There are many additional factors why an officer may determine that the applicant does not meet the requirements of section 216(1)(b) of the IRPA, as discussed below.

However, per section 22(2) of the IRPA, a foreign national may have the dual intention to become a permanent resident in Canada and that should not preclude them from being issued a temporary resident visa should the officer be satisfied that the individual will leave Canada at the end of their study period.^[11] The onus falls on the applicant to properly establish this in their application.

Poor or vague documentation

In some cases, officers have noted poor documentation and/or vague explanations as to why the applicant wishes to study in Canada.^[12] Applicants must provide all necessary documentation and avoid vague, broad or insufficient details in order to provide officers with a clear picture of their intent as a *na fide* student. Pursuant to section 219(1) of the IRPR, 'a study permit shall not be issued to a foreign national unless they have written documentation from the designated learning institution where they intend to study that states that they have been accepted to study there'.^[13]



Incomplete application, misrepresentation or suspicion of fraud

It is critical that all information in a foreign national's application is presented clearly and completely. If the documentation provided misrepresents the application, this may lead an officer to conclude that the applicant is inadmissible and/or has fraudulent intent. Section 40(1)(a) of the IRPA provides that 'a permanent resident or a foreign national is inadmissible for misrepresentation [...] for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act'.^[14]

Insufficient funds

Pursuant to section 220 of the IRPR, an officer will not issue a study permit to a foreign national unless the applicant can demonstrate that they have access to sufficient financial resources to '(a) pay the tuition fees for the course or program of studies that they intend to pursue; (b) maintain themselves and any family members who are accompanying them during their proposed period of study; and (c) pay the costs of

transporting themselves and the family members referred to in paragraph (b) to and from Canada'.^[15] Failure to demonstrate a clear source of funds may be a reason for an officer to refuse a study permit application.^[16] If an applicant has dependents in their home country, they should be able to provide financial documents or other proof of funds to show how they will support their dependents while continuing their studies in Canada.^[17]

Previous travel history

An officer will consider the previous travel history of an applicant. In *Akomolafe v Canada (Minister of Citizenship and Immigration)*, the officer reviewed the application of a foreign national who had travelled for a holiday to the United Kingdom on three separate occasions, each for five to six months at a time. The officer indicated in the notes on the GCMS that it seemed 'odd to go on holiday for that period of time without having to resort to work' and that, furthermore, the applicant did not provide documentation to verify entry and exit dates of travel.^[18] Because of this lack of clarity, the officer was concerned about the applicant's credibility in relation to financially supporting his family while on vacation for several months. Therefore, the genuine nature of the applicant's intent was not clear and was a factor in the refusal of the application.^[19]

Study and career plan don't make sense

An application may be refused if it is unclear to the officer why the foreign national is seeking to pursue their intended study programme based on the applicant's career context. If the applicant does not articulate how studying in Canada will benefit them, or if the applicant fails to relay a plan of study

aligning their long-term goals, the officer may refuse the application.^[20] If an officer identifies an unexplained lengthy gap in an applicant's education history and all other supporting documentation fails to show the benefits of the sudden attempt to restart an educational career, the officer may refuse the application.^[21] An application may be refused if the officer determines that the 'potential total costs for tuition, travel and living expenses would affect the entire savings' of the applicant's family 'without any clear indication as to how the educational program would benefit her future job prospects'.^[22]

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Insufficient connection to country or place of residence

An officer may determine that the applicant has not demonstrated their intention to leave Canada after the conclusion of their authorised stay, should they fail to provide adequate evidence of family or other relationship ties to their home country.^[23] Officers will look for an incentive to depart from Canada after the end of the study period, including family that remains in the applicant's country of residence or in another country.^[24]

Judicial review of refused applications

Section 72(1) of the IRPA provides that an applicant may apply for judicial review of the decision made on their study application by the Federal Court.^[25] If an application for judicial review is granted by the Federal Court, then the original decision is overturned and the matter is reconsidered by a different visa officer. The judicial review of a visa officer's denial of a study permit is based on a standard of reasonableness.^[26]



A recent landmark case *Canada (Minister of Citizenship and Immigration) v Vavilov* provided a clear framework for the standard of review in administrative decisions for reviewing courts.^[27] *Vavilov* established a revised framework of a rebuttable presumption that all administrative decisions are reviewed on a standard of reasonableness.^[28] This means that in the context of an application to the Federal Court under section 72(1) of the IRPA, the court must review whether a decision of a visa officer to refuse a study permit was reasonable as a whole.

To do this, the reviewing court is tasked with determining whether the officer's decision 'bears the hallmarks of reasonableness – justification, transparency and intelligibility' and whether the decision is justified in relation to the relevant factual and legal context.^[29]

The decision-maker – in this case, the visa officer – is not required to 'refer explicitly to all evidence' in their decision, as it is presumed that the officer will take all evidence into consideration. It is for the applicant to establish that the visa officer ignored evidence. For instance, in *Hashem v Canada (Minister of Citizenship and Immigration)*, the court found that the applicant's failure to demonstrate that the officer ignored evidence simply amounted to the applicant's own disagreement with the determinative factors of the decision.^[30]

Procedural fairness

In addition to the standard of reasonableness, reviewing courts will determine whether the officer's decision to refuse a study permit was reasonable on the basis of responsiveness in relation to procedural fairness: 'The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually listened to the parties.'^[31]

in The duty of procedural fairness is relaxed in the context of study permit applications, and 'it is the applicant's obligation to satisfy requirements which arise directly from the provisions of the legislation and regulations'.^[32] Accordingly, the officer is not required to inform the applicant of any weaknesses in an application.



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The officer has a duty to provide the applicant an opportunity to address the concerns regarding the review only where the officer questions the credibility or authenticity of materials or documents presented.^[33] In *Patel v Canada (Minister of Citizenship and Immigration)*, the court found that the officer made a negative finding of credibility on the genuineness of an applicant and thereby owed the applicant the opportunity to address these concerns in writing or in an interview. The failure to do so was a breach of procedural fairness and subsequently rendered the decision unreasonable, which was returned for redetermination.^[34]

Conclusion

Visa officers may make the determination that a foreign national is not a 'genuine student' based on factors including the applicant's travel history, financial situation or family and relationship ties in Canada. Ultimately, visa officers are given 'wide discretion' when reviewing and making decisions on study permit applications pursuant to the IRPR and IRPA.^[35] The onus to ensure that the foreign national meets the requirements falls ultimately on the applicant, who must provide information and documents in a clear, transparent and understandable manner.



Immigration, Refugees and Citizenship Canada, 'Canada - study permit holders by country of citizenship and year in which permit(s) became effective'

www.open.canada.ca/data/en/dataset/90115b00-58-49e8-afa3-b4cff8facee

[2] ICEF Monitor, 'Canada: Study permit rejection rates on the rise' (18 September 2019) see

www.monitor.icef.com/2019/09/canada-study-permit-rejection-rates-on-the-rise.

[3] SC 2001 c 27 [IRPA].

[4] SOR/2002-227 s 213 [IRPR].

[5] See n 3 above at s 11(1).

[6] *Ibid* at s 6(1).

[7] See n 4 above at s 216(1)(b).

[8] *Ibid* at s 179(b).

[9] See n 3 above at s 20(1)(b).

[10] *Akomolafe v Canada (Minister of Citizenship and Immigration)* 2016 FCJ No 506 at para 11.

[11] See n 3 above at s 22(2).

[12] *Hajiyeva v Canada (Minister of Citizenship and Immigration)* 2020 FCJ No 81 at para 3.

[13] See n 4 above at s 219(1).

[14] See n 3 above at s 40(1)(a).

[15] See n 4 above at s 220.

[16] See n 10 above at para 13.


[17] *Nimely v Canada (Minister of Citizenship and Immigration)* 2020 FCJ No 281 at para 12.


 [18] See n 10 above at para 17.

[19] *Ibid*.

 [20] See n 17 above at para 9.

[21] See n 10 above at para 21.

 [22] *Hashem v Canada (Minister of Citizenship and Immigration)* 20 FCJ No 37 at para 20.

 [23] *Solopova v Canada (Minister of Citizenship and Immigration)* 2016 FCJ No 662 at para 25.

[24] See n 22 above at para 21.

[25] See n 3 above at s 72(1).

[26] *Iyiola v Canada (Minister of Citizenship and Immigration)*

2020 FCJ No 305 at para 10; see n 10 above at para 9.

[27] 2019 SCC 65 at para 2.

[28] *Ibid* at paras 9–10.

[29] See n 28 above at para 99.

[30] See n 22 above at para 28.

[31] See n 28 above at para 127.

[32] *Al Aridi v Canada (Minister of Citizenship and Immigration)*

2019 FCJ No 364 at para 20.

[33] See n 12 above at para 9.

[34] 2020 FCJ No 46 at paras 10–13.

[35] See n 24 above at para 33.

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