Federal Court Cour fédérale

Date: 20240506

Docket: IMM-1771-23

Citation: 2024 FC 691

Ottawa, Ontario, May 6, 2024

PRESENT: Mr. Justice Norris

BETWEEN:

PANTEH A LOTFIKAZEMI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a citizen of Iran. She holds a Ph.D. in Urban and Regional Planning.

[2] The applicant works as a manager for Sazian Consulting Engineers Company ("Sazian") in Tehran. In April 2021, Sazian incorporated a Canadian subsidiary, Sazian Canada Consulting Services Incorporated ("Sazian Canada"). Although incorporated in British Columbia, Sazian

Canada plans to operate in the Greater Toronto area. It will provide engineering, urban development planning, and design services to the construction industry and municipal planners.

[3] The applicant has been appointed the Executive Director of Sazian Canada. She is to be responsible for setting up the company's operations in Canada. Accordingly, in September 2021, the applicant applied for a work permit as an intra-company transferee under paragraph 205(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (*IRPR*). Under this provision, a work permit may be issued without a Labour Market Impact Assessment (LMIA) to a foreign national who intends to perform work that "would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents." More particularly, the applicant applied under the International Mobility Program – LMIA exempt code C12 (intra-company transferees).

[4] A visa officer refused the application on December 13, 2022. In its entirety, the reason for the refusal in the decision letter reads: "You have not established that you meet the eligibility requirements as an intra-company transferee in the C12 Specialized Knowledge category under R205(a)."

[5] The applicant has applied for judicial review of this decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). She submits that the decision is unreasonable and that it was made in breach of the requirements of procedural fairness.

[6] As I will explain, the applicant has not established that the decision is unreasonable or that it was made in breach of the requirements of procedural fairness. This application will, therefore, be dismissed.

[7] At the hearing of the application, counsel for the applicant focused her submissions on whether the decision is unreasonable.

[8] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from a reviewing court (*ibid*.). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov*, at para 125). The onus is on the applicant to demonstrate that the decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, at para 100).

[9] The applicant points out that there is an erroneous reference to the "C12 Specialized Knowledge category under R205(a)" in the decision letter. As the applicant notes, she applied as an intra-company transferee, which is a different category under the Regulation. While I agree

with the applicant that there is an error in the decision letter, I do not agree that it calls the reasonableness of the decision into question. It is clear this is a mere typographical error.

[10] As set out in paragraph 4, above, the decision letter also notes (correctly) that the applicant had applied as an intra-company transferee. Moreover, the officer's Global Case Management System (GCMS) notes reflect that the application was for a work permit "under C12 LMIA exemption: intra-company transferee/Start-Up Company." There are no references in the notes to the specialized knowledge category.

[11] It is well-established that decision letters must be read together with any relevant GCMS notes to understand fully the reasons for a decision: see *Rabbani v Canada (Citizenship and Immigration)*, 2020 FC 257 at para 35; *Ezou v Canada (Citizenship and Immigration)*, 2021 FC 251 at para 17; and *Jamali v Canada (Citizenship and Immigration)*, 2023 FC 1328 at para 46, among other cases. Doing so here resolves any ambiguity that may have been created by the decision letter.

[12] I pause at this point to note that, in her memorandum of argument, the applicant submitted that the failure of Immigration, Refugees and Citizenship Canada (IRCC) to provide the GCMS notes with the decision letter occasioned a breach of the requirements of procedural fairness. The Court has rejected this argument in several previous decisions involving the same solicitor of record: see *Haghshenas v Canada (Citizenship and Immigration)*, 2023 FC 464 at para 25; *Raja v Canada (Citizenship and Immigration)*, 2023 FC 719 at paras 31-33; *Jamali*, at paras 44-47; *Koshteh v Canada (Citizenship and Immigration)*, 2023 FC 1518 at paras 9-10; and

Shahbazian v Canada (Citizenship and Immigration), 2023 FC 1556 at para 27. There is no merit to this argument.

[13] Returning to the substance of the decision, as previously stated, the applicant applied for a work permit under the intra-company transferee category. Given that Sazian Canada was not yet a going concern, the applicant sensibly included a detailed business plan with her application. The officer noted that, according to the plan, the company proposed to pay comparatively low salaries to its Canadian staff and that the proposed business line is very competitive in Canada. On this basis, the officer was "not satisfied that the proposed employment would generate significant economic benefits or opportunities for Canadian citizens or permanent residents," an essential requirement under paragraph 205(a) of the *IRPR*.

[14] The applicant has not established that this determination is unreasonable. The sufficiency of the business plan is fundamentally a matter for the officer to assess. It is a relevant consideration when determining whether the proposed business will provide a significant benefit to Canada, which is required under the Regulation (*Wang v Canada (Citizenship and Immigration)*, 2021 FC 1002 at para 21; *Shidfar v Canada (Citizenship and Immigration)*, 2023 FC 1241 at para 10). The applicant's business plan had itself highlighted how competitive the construction engineering industry is in the Greater Toronto area. It also included information suggesting that the proposed salaries for staff were comparatively low. Given the information the applicant presented, it was not unreasonable for the officer to conclude that the applicant had not established that the proposed business would generate significant economic benefits. The applicant's submissions on review amount to little more than an invitation for this Court to

assess the business plan for itself and reach a different conclusion. As stated above, this is not the Court's role on judicial review under a reasonableness standard.

[15] Finally, there is no merit to the generic procedural fairness arguments in the applicant's memorandum of argument. Similar arguments have also been consistently rejected by the Court in other cases arising under paragraph 205(a) of the *IRPA* (again, cases involving the same solicitor of record). In addition to the decisions cited in paragraph 11, above, see *Ardestani v Canada (Citizenship and Immigration)*, 2023 FC 874 at paras 9-10; *Zargar v Canada (Citizenship and Immigration)*, 2023 FC 905 at paras 9-16; *Shirkavand v Canada (Citizenship and Immigration)*, 2023 FC 1022 at paras 10-23; and *Shidfar* at paras 11-24.

[16] For these reasons, the application for judicial review will be dismissed.

[17] The parties did not propose any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-1771-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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