Federal Court  Cour fédérale

Date: 20181031

Dockets: IMM-1334-18
IMM-1335-18

Citation: 2018 FC 1097

[REVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, October 31, 2018

PRESENT: The Honourable Mr. Justice Martineau

Docket: IMM-1334-18

BETWEEN:

MITRA KHERADPAZHOOH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-1335-18

AND BETWEEN:

BABAK ERTEFEAI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants are spouses and Iranian citizens. In December 2017, they applied for temporary visas for a short 15-day stay in British Columbia and Montréal from March 16 to 31, 2018. However, an immigration officer [officer] at the Canadian Embassy in Turkey refused to issue the requested visas because, as required under paragraph 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], he was not satisfied that the applicants would leave Canada at the end of the authorized period, hence these applications for judicial review.

[2] Prior to entry to Canada, a foreign national has the burden of satisfying the officer, on a balance of probabilities, that after the authorized period of stay, he or she will leave Canada. The issue, therefore, is whether the officer's refusal to issue the temporary visas to the two applicants was reasonable in this case (*Zhou v Canada (Citizenship and Immigration)*, 2013 FC 465 at para 8 [*Zhou*]; *Ajeigbe v Canada (Citizenship and Immigration)*, 2015 FC 534 at para 12). But we must first recall certain general principles.

[3] As a general rule, under subsection 183(2) of the IRPR, the authorized period of stay for a temporary resident is six months or any other period fixed by the officer before issuing the visa on the basis of the means of support in Canada, the period of stay requested and the expiry of the passport (or other travel document). It is a given that the conditions of section 179 of the IRPR

must be met for the officer to issue a temporary resident visa, including the condition that the foreign national will leave Canada at the end of the authorized period of stay and will not work or study in Canada unless authorized to do so.

[4] In determining whether the conditions of paragraph 179(b) of the IRPR have been met, the purpose of the visit to Canada is clearly a relevant factor, but not the only one. Family ties in Canada and in the country of residence, the economic and employment situation abroad, past attempts to emigrate to Canada (or elsewhere), absence of prior travel outside the country of origin, and the capacity and willingness of the foreign national to leave Canada at the end of the authorized period of stay are all relevant factors that will also be considered by the officer when assessing the temporary visa application.

[5] In itself, the existence of a legitimate business purpose, supported by objective evidence, is certainly a valid reason to apply for a temporary resident visa for a short stay in Canada. The foreign national is not required to provide a complete itinerary of the expected trip. He or she is not required to show a "compelling reason" to visit Canada either (*Agidi v Canada (Citizenship and Immigration)*, 2013 FC 691 at para 7; *Singh v Canada (Citizenship and Immigration)*, 2015 FC 1210 at para 15). However, reasons that are abstract, vague or not founded on objective evidence may constitute a factor, among others, that will lead the officer to conclude that the foreign national has not met the burden of demonstrating that he or she will leave Canada at the end of the authorized period of stay (*Hamad v Canada (Citizenship and Immigration)*, 2017 FC 600 at paras 13-16; *Omijie v Canada (Citizenship and Immigration)*, 2018 FC 878 at para 16.

[6] The facts in this case were not really contested.

[7] Since 1992, the male applicant has been the chief executive officer of a small family company that distributes auto parts in Iran and of which he is a 33% shareholder [applicant's company]. Since her marriage (in 1995), the female applicant has stayed in the family home. The applicants want to make an exploratory visit to Vancouver (and Montréal at the same time) to learn more about the local realities before investing in Canada. They are thinking of eventually applying for permanent residence under the provincial investor program in British Columbia, known as "BC PNP Entrepreneur Immigration Program" [the provincial program]. They have several real estate assets and have sufficient financial means to travel and pay for all their expenses during their stay in Canada. Their two children, aged 15 and 20, are still in school and will not be participating in the planned trip.

[8] In October 2017, the applicants made an initial visa application that was refused by an officer because, at the time, they did not establish that they had contacts with the destination location or that they had adequate funds. In support of their second application, which also includes the travel history and family situation, they also submitted the following documents, among others:

- Copies of the visas stamped in the applicants' passports;
- The applicants' birth certificates, passports and marriage certificates, as well as proof that the male applicant completed his mandatory military service in 1992;
- Birth certificates, passports and proof of education for both children in Iran;
- Title of ownership in the applicants' apartment and a document certifying the existence of a mortgage on the apartment;

- A letter sent to the applicants by a real estate agent in Vancouver, dated December 21, 2017, in which the agent explains that she will accompany the applicants during the visits of two companies they are considering purchasing;

- A letter sent to the applicants by a lawyer in Montréal, dated December 22, 2017, in which he explains his intention to help them invest in British Columbia by introducing them to associates and lawyers specializing in business and immigration law;

- A trip itinerary showing that the applicants would arrive in Vancouver on March 16 and in Montréal on March 28, and would leave Canada on March 31, 2018;

- The certificate for the male applicant's company, the financial statements for 2013 to 2017, documents regarding the seven employees' insurance and social security, and a summary of a contract between the male applicant and an automobile manufacturer allowing the company to sell the manufacturer's auto parts;

- A translation of the property assessment of the male applicant's real estate holdings, which are estimated at 19,176,000,000 Iranian rials [IRR], approximately CAN$705,000, and documents regarding property taxes paid from 2013-2014 to 2015-2016; and

- Two certificates attesting to the value of the applicants' bank assets: one account with 814,000,000 IRR and another account with 1,110,282,104 IRR for a total estimated value of CAN$65,000.

[9] The Court would like to point out that during their 15-day exploratory visit, the applicants called upon the services of three separate professionals. Neither the good faith nor the competencies of these professionals are being called into question by the respondent. At first glance, this is a fairly standard *modus vivendi* of planned visits. Indeed, the letters and documents prepared by some of these professionals are quite similar to those that were reviewed by the Court in *Abdollahi v Canada (Citizenship and Immigration)*, 2017 FC 972 [*Abdollahi*], and that had been sent to the Canadian Embassy in Turkey by other Iranian citizens seeking to conduct

exploratory visits to pursue possible investment opportunities in Canada with a view to eventually settling in Canada.

[10] In this case, we note, in particular, the following:

a) The applicants had conversations with a real estate broker in Vancouver, Ms. Valeria Lockwood. According to the letter she provided, she would visit businesses with the applicants, looking for one in which they could invest. In particular, she identified two businesses she sought to have the applicants visit. These companies specialized in cosmetic products and services and had an estimated market value of $200,000 to $300,000;

b) The applicants also consulted a Montréal lawyer, Mr. Eiman Sadegh. According to his letter, he would provide legal advice to the applicants and would introduce them to other lawyers practising in business and immigration law, to help them invest in British Columbia and, ultimately, file applications for permanent residence under the provincial program. These two steps are connected: points are attributed in an application under the provincial program for, among other things, an applicant's proposed business plan; and

c) Lastly, a Canadian lawyer acting as the applicants' immigration consultant, Mr. Shahram Bahramdaryabeigi, prepared a five-page document explaining, among other things, the purpose of the visit by referring to two other letters, to the applicants' ties to Iran, to their professional experience, and to their intention to return to Iran at the end of their visit.

[11] The administrative system for evaluating permanent or temporary applications is highly standardized. Elements justifying the refusal of a visa, or rendering an applicant inadmissible to Canada, are checked off with an "X" by the officer in the appropriate box of the IMM 5621 (03-2017) E GCMS form (available in French as IMM 5621 F) [form]. The form contains the following statement: "Please note that only the grounds that are checked off apply to the refusal of your application" [emphasis added]. Brief notes are also entered by officers in the Global Case Management System and allow applicants, and the Court for that matter, to understand why a checked-off element on the form is problematic: (*Maxim v Canada (Citizenship and Immigration)*, 2012 FC 1029 at paras 12-13; *Kavugho-Mission v Canada (Citizenship and Immigration)*, 2018 FC 597 at paras 5-6).

[12] On March 16, 2018, a standard decision letter, including the form, was sent to the applicants for each of their files to notify them of the officer's refusal to issue the temporary visas sought. In particular, under the "You have not satisfied me that you would leave Canada at the end of your stay as a temporary resident. In reaching this decision, I considered several factors . . ." box, the following three sub-boxes were checked by the officer: "Travel History", "Length of Proposed Stay in Canada" and "Purpose of Visit". In this case, the sub-box for "Legitimate Business Purpose" was not checked by the officer. In addition, it appears that the status, family ties, financial and personal circumstances, employment prospects and current employment situation of the applicants in Iran did not raise any particular concerns in this case, given that these sub-boxes of the form were not checked off by the officer (*Dhanoa v Canada (Citizenship and Immigration)*, 2009 FC 729 at paras 7, 13; *Abdollahi* at para 11(d).

[13] On April 11, 2018, the Global Case Management System notes were sent to the applicants in response to their application under Rule 9 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22. The transmittal letter indicates that these notes form part of the decision. I agree that this is ordinarily the case (*Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 at para 19), but the notes in question must be consistent with the reasons for refusal or inadmissibility checked off on the form and not contradict them (*Martinez v Canada (Citizenship and Immigration)*, 2016 FC 636 at paras 14-15).

[14] Moreover, these notes state the following:

> I have reviewed the application. The applicant is travelling for the following purpose: Business Exploratory Visit BC.
>
> I have noted that the applicant has some travel history, and that the applicant has declared that funds are available for this trip. However, the applicant's travel history is insufficient to build a track record of international travel that would count as a positive in my assessment. Furthermore, I am not satisfied that the proposed visit is reasonable, based on the following factors: the purpose of the visit itself does not appear to be reasonable, in view of the fact that the applicant is planning to stay in Canada for an extended period, which appears to be inconsistent with stated ties to the applicant's country of residence, specifically, applicant and spouse have one short term visit in Europe in 2009. The rest of travel is regional. This is applicant's second application for a TRV for same. The lawyer in Canada indicates that their partners will meet once they are in Canada to make in person visits, however, no one is named. There is one invite on file from a real estate agent. There does not appear to be any contact with the province, the city or the municipality of their destination city by the applicant's or the consultants at this point. As such, the letter from the lawyer is vague and has little weight.
>
> In view of the foregoing reasons, I consider that the incentive to remain in Canada may outweigh the applicant's ties to their country of residence. For this reason, I am not satisfied that the

> applicant will depart Canada at the end of the period authorized for their stay.
>
> [Emphasis added.]

[15] Before this Court, the applicants submit that the officer's general conclusion was unreasonable and contrary to the evidence on the record. The applicants' financial capacity, their assets in Iran, the male applicant's employment situation, the amount of the male applicant's financial stake in his company, the applicants' significant ties in Iran, the legitimate business purpose of their short visit to Canada and the explanations that were provided in this regard were not considered or were otherwise arbitrarily disregarded by the officer. In addition, the officer did not take into account the fact that the provincial program encourages potential investors to conduct an exploratory visit in British Columbia before applying under that program. It is therefore logical that letters of support from provincial and municipal authorities were not provided at this stage of the proceeding since applicants conducting an exploratory visit are not provided with letters of support. The real estate agent and the lawyers are sufficient contacts. Moreover, the officer failed to consider a number of items of credible evidence establishing the legitimate purpose of the visit, including the planned visit of two small businesses in Vancouver where the male applicant might want to invest. The officer's finding regarding the travel history is also unreasonable since the applicants have always respected the conditions of visas issued by other countries. When one considers all the evidence on the record, the officer's general conclusion is therefore not an acceptable outcome.

[16] The respondent replies that the officer had to be satisfied that the applicants would leave Canada when their temporary visas expired. The applicants are simply dissatisfied with the

officer's assessment of the evidence. Officers enjoy broad discretion, and their expertise in this area is recognized by this Court. It must also be presumed that the officer considered the evidence and statements that were provided. The respondent submits that the Global Case Management System notes suggest that the officer assessed all the evidence on file, even if some items were not expressly mentioned. The respondent notes that the officer did not question the authenticity of the letters from the real estate agent and the lawyers; he simply did not feel that these documents carried any weight. The applicants cannot be given a [TRANSLATION] "blank cheque". The basic problem is that they do not have a definitive business plan, and the letters they produced are general and speculative. Furthermore, the officer's findings regarding the travel history are neutral: the travel history was simply insufficient to satisfy the officer of the applicants' good faith. The rejection of the visa applications was therefore an acceptable outcome.

[17] Intervention is warranted in this case.

[18] First, the officer had before him extensive documentation, the authenticity and relevance of which have not been challenged in this case. Even though an officer is presumed to have weighed and considered all of the evidence on file (*Zhou* at para 20), if the officer ignores relevant evidence pointing to an opposite conclusion and contradicting the officer's findings, it can be inferred that the officer did not review the evidence or arbitrarily disregarded it (*Canada (Citizenship and Immigration) v Tefera*, 2017 FC 204 at paras 30-31; *Shakeri v Canada (Citizenship and Immigration)*, 2016 FC 1327 at paras 21-23). On the face of it, a visit to explore businesses in British Columbia is a legitimate business purpose for applying for a temporary

resident visa. In this case, the officer ignored or arbitrarily disregarded concrete evidence of the reasons for the applicants' visit and the applicants' very strong family and economic ties with their usual country of residence. This evidence squarely contradicts the officer's finding that the applicants' motivation to stay in Canada upon expiry of the visa outweighs the applicants' ties with Iran.

[19] At the risk of repeating myself, it seems reasonable that the applicants would undertake their planned trip to British Columbia to familiarize themselves with the real estate market conditions and investment opportunities in British Columbia before filing an official application as investors under the provincial program (*Abdollahi* at para 11(d)). Indeed, the goal of the provincial program is to assess candidates presenting a viable business plan for a district of British Columbia that will stimulate economic growth and create jobs. The provincial program is operated using a selection process. Out of 200 points in total, applicants in that category can receive up to 80 points for the business concept they present. Applicants can also be given up to 32 points for adaptability. For this last factor, the provincial authority will give up to 4 points if the applicant establishes that he or she visited British Columbia previously. A previous exploratory visit is therefore a positive factor, especially as applicants have to demonstrate their ability to adapt.

[20] Also, the applicants have two children who are going to school in Iran, and they own an apartment in Iran; in addition, the male applicant manages a business in which he owns 33% of the shares and which employs seven other employees. This is not a case where a foreign national applying for a temporary visa in Canada does not have a job, family or property in his or her

country of residence, and has either a disadvantageous or no travel history. The applicants have made several relatively short trips for pleasure. They visited Germany in 2009, the United Arab Emirates in 2010, Cyprus in 2012, and Turkey three times between 2013 and 2017. On his own, the male applicant visited China in 2007, Thailand in 2008 and Armenia in 2008. For a number of these trips, the applicants had to obtain visas (for the trip to Germany for example). It was also unreasonable to characterize a short two-week trip as "an extended period". The refusal to issue temporary visas to the applicants is not an acceptable outcome.

[21] For these reasons, the Court allows the applications for judicial review. The impugned decisions are set aside, and the visa applications are referred back for redetermination by a different officer after the applicants have had a chance to complete their visa applications (since the dates for the two-week trip outside Iran have now elapsed). Counsel raised no question of general importance.

JUDGMENT in IMM-1334-18 and IMM-1335-18

THIS COURT ORDERS AND ADJUDGES that the applications for judicial review are allowed. The impugned decisions are set aside, and the visa applications are referred back for redetermination by a different immigration officer after the applicants have had a chance to complete their visa applications. No question of general importance is certified.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1334-18
STYLE OF CAUSE:	MITRA KHERADPAZHOOH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-1335-18
STYLE OF CAUSE:	BABAK ERTEFEAI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	OCTOBER 22, 2018
JUDGMENT AND REASONS BY:	MARTINEAU J.
DATED:	OCTOBER 31, 2018

APPEARANCES:

Mbombo Mujanji, Student-at-Law	FOR THE APPLICANT
Mbombo Mujanji Student-at-Law	FOR THE APPLICANT
Lisa Maziade	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cabinet Hugues Langlais Montréal, Quebec	FOR THE APPLICANT
Cabinet Hugues Langlais Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT