Federal Court  Cour fédérale

Date: 20200121

Docket: IMM-2894-19

Citation: 2020 FC 89

Winnipeg, Manitoba, January 21, 2020

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

ABOLFAZL EBRAHIMSHANI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by a visa officer with the Visa Section of the Embassy of Canada in Warsaw, Poland, denying the Applicant's application, pursuant to s 100(2) of the *Immigration and Refugee Protection Regulations,* SOR/2002-227 (IRP Regs), for permanent residence in the self-employed persons class.

Background

[2] The Applicant, Abolfazl Ebrahimshani, is a citizen of Iran. He applied for permanent residency in Canada in November 2017, in the economic class as a self-employed person. In his application, he describes himself having worked as a self-employed artist since December 2014. His artistic endeavors include sculpting, designing carpets, and designing book and CD covers. Prior to this, he was a project manager for the restoration of a historical property. The occupation in which he intends to be self-employed is to establish an art gallery where he can design carpets and sculptures for sale and hold workshops. With his application, the Applicant also submitted a business plan. The visa officer denied the application on the basis that the Applicant had failed to establish that he had or could meet the definition of a self-employed person as set out in s 88(1) of the IRP Regs. This is the judicial review of that decision.

Decision under review

[3] In the March 7, 2019 decision letter the visa officer indicated that, pursuant to s 12(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), a foreign national may be selected as a member of the economic class on the basis of their ability to become economically established in Canada. Further, that for the purposes of s 12(2) of the IRPA, s 100(2) of the IRPA Regs states that the self-employed persons class is a prescribed class of person who may become permanent residents based on their ability to become economically established in Canada and who are self-employed persons within the meaning of s 88(1). Section 88(1) defines a self-employed person as a foreign national who has relevant experience and has the intention and ability to be self-employed in Canada and to make a significant contribution to specified

economic activities in Canada. Pursuant to s 100(2) of the IRP Regs, if such applicants are not self-employed persons as defined by s 88(1), then the application shall be refused and no further assessment required.

[4] The visa officer was not satisfied that the Applicant met the definition of a self-employed person because, based on the submitted evidence, he had not established that he had the ability and intent to become self-employed in Canada. Consequently, the Applicant was not eligible to receive a permanent resident visa as a member of the self-employed persons class.

[5] The Global Case Management System notes (GCMS Notes) form a part of the reasons for the decision (*De Hoedt Daniel v Canada (Citizenship and Immigration)*, 2012 FC 1391 at para 51; *Afridi v Canada (Citizenship and Immigration)*, 2014 FC 193 at para 20; *Muthui v Canada (Citizenship and Immigration)*, 2014 FC 105 at para 3). These indicate that the Applicant submitted that he is a self-employed sculptor in Iran and that he would like to establish his own gallery in Canada where he would design carpets and sculptures for sale, and hold workshops. In the GCMS notes the visa officer records that the Applicant's submissions in support of the application were reviewed, including his business plan. Further, that information about the Applicant's intended self-employment in Canada is reflected in the application and business plan. However, that the Applicant featured only a brief description of his intended self-employment. The business plan provides general information about the business in the related field in Canada. It also states that the Applicant would like to open an art gallery in Canada where he could design and exhibit his own works, and organize some events, including workshops. The business plan provides some financial figure projections, however, the basis for

the figures was unclear. The business plan also includes high level, general, open source information about the industry in Canada as a whole, with only a modest amount of information on Toronto and the surrounding area where the Applicant intends to settle. The visa officer indicated that there was insufficient information that the Applicant has actually made any contacts in Canada in order to research the feasibility of the proposed business and no evidence of an exploratory visit. The visa officer found that the Applicant provided insufficient evidence to show that he had done in depth research of the Canadian market, specifically the city of destination, in his proposed business activity field, and that his plan would reasonably be expected to lead to future self-employment and penetration of the market in the field of the Applicant's intended self employment. The visa officer was not satisfied that the Applicant had the ability and intent to become self-employed in Canada.

Issues

[6] The Applicant submits that the visa officer unreasonably found that the Applicant's business plan was too general, and breached procedural fairness in failing to provide the Applicant with an opportunity to respond to the visa officer's concerns. The Respondent submits that the only issue for judicial review is whether it was reasonable for the visa officer to conclude the Applicant had not established that he had the intention or ability to become self-employed in Canada.

[7] I would reframe the issues as follows:

1. Did the visa officer breach the Applicant's right to procedural fairness?
2. Was the visa officer's decision reasonable?

Standard of review

[8] In his written representations, the Applicant made no specific submissions as to the standard of review. The Respondent submitted that the standard of review is reasonableness because permanent residency decisions by visa officers involve questions of fact, and visa officers have recognized expertise.

[9] Subsequent to the parties filing their written submissions, the Supreme Court of Canada issued its decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*) in which that Court revisits the standard of review applicable to administrative decisions. Accordingly, at the hearing of this application for judicial review, I inquired if the parties wished to make any additional submissions arising from *Vavilov* and concerning the standard of review applicable in this matter.

[10] Counsel agreed that reasonableness continues to be the appropriate standard of review when assessing the merits of a visa officer's decision. The Applicant submitted that correctness is the standard to be applied to the question of procedural fairness.

Procedural Fairness

[11] In *Mission Institution v Khela*, 2014 SCC 24 at para 79 and in *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43 the Supreme Court found that questions of procedural fairness are reviewed on a correctness standard. In *Vavilov*, the Court does not explicitly state whether questions of procedural fairness will continue to be reviewed on a

correctness standard. However, in establishing reasonableness as the presumptive standard of review for most questions on judicial review, the Supreme Court's framework was concerned with circumstances where "the merits of an administrative decision are challenged" (*Vavilov* at para 16). And, at paragraph 23, the Court indicated that a challenge on the merits is not one that relates to natural justice or procedural fairness:

> 23 Where a court reviews the merits of an administrative decision (i.e., judicial review of an administrative decisions other than a review related to a breach of natural justice and/or the duty of procedural fairness), the standard of review it applies must reflect the legislature's intent with respect to the role of the reviewing court, except where giving effect to that intent is precluded by the rule of law. The starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness.

[12] On this basis, in my view, prior jurisprudence that establishes correctness as the standard of review for questions related to procedural fairness is still authoritative.

[13] I do not agree with the oral submission of counsel for the Applicant that, as I understood it, based on paragraph 58 of *Vavilov* the correctness standard has application to the question of procedural fairness that the Applicant raises because this is a general question of law of central importance to the legal system as a whole. That is not what paragraph 58 indicates. However, for the above reasons, I agree that the correctness standard remains applicable to questions of procedural fairness, I therefore need not further address this submission.

Merits

[14] As to the merits of the decision, *Vavilov* established a presumption that reasonableness is the applicable standard whenever a Court reviews an administrative decision (*Vavilov* at paras 16, 23, 25). That presumption can be rebutted in two types of situations. The first being where the legislature explicitly prescribes the applicable standard of review or where it has provided a statutory appeal mechanism from an administrative decision to a court. The second being when the rule of law requires that the standard of correctness be applied. This will be the case in certain categories of questions, namely, constitutional questions, general questions of law of central importance to the legal system as a whole, questions regarding jurisdictional boundaries between administrative bodies, or any other category that may subsequently be recognized as exceptional and also requiring review on the correctness standard (*Vavilov* at paras 17, 69).

[15] The majority in *Vavilov* held that, "it is the *very fact* that the legislature has chosen to delegate authority which justifies a default position of reasonableness review" (*Vavilov* at para 30, emphasis original). In this matter, the presumptive reasonableness standard applies because the visa officer has the delegated authority to make the decision under review and because none of the circumstances exist which might rebut that presumption.

[16] The Supreme Court in *Vavilov* also addressed how a reasonableness review should be conducted by a reviewing court (paras 73-145). In that regard, the Supreme Court held that "[i]n order to fulfill *Dunsmuir*'s promise to protect 'the legality, the reasonableness and the fairness of the administrative process and its outcomes', reasonableness review must entail a sensitive and respectful, but robust, evaluation of administrative decisions: para. 28" (*Vavilov* at para 12). The

reviewing court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified (*Vavilov* at para 15).

Preliminary Issue – Lack of Personal Affidavit

[17] At the leave stage, the Respondent made submissions concerning the fact that the Applicant did not file a personal affidavit in support of his application for judicial review, including that this irregularity alone was a sufficient basis upon which the Court could dismiss the application. When appearing before me, the Respondent did not pursue that aspect of its submissions but maintained that, even if the absence of a personal affidavit was not fatal, where there is no evidence based on personal knowledge filed in support of an application for judicial review, any error asserted by the Applicant must appear on the face of the record. The Respondent submits that the Applicant has not done this.

[18] The Applicant submits that an application for judicial review need not be dismissed for want of a proper affidavit where the affidavit that was submitted is sufficient to establish the fact of the application and its rejection (*Zheng v Canada (Citizenship and Immigration)*, 2002 FCT 1152 at para 5; *Turcinovica v Canada (Citizenship and Immigration)*, 2002 FCT 164 at paras 11-14 (*Turcinovica*)).

[19] In this matter, the only affidavit filed was that of Ms. Helia Hazaei, who states that she is an assistant in the office of the Applicant's previous counsel that assisted the Applicant with his immigration matters. As such, she has personal knowledge of the facts deposed to therein.

However, the affidavit deposes to no facts other than stating that attached as Exhibit A is a copy of the application for permanent residence that was submitted by her office on behalf of the Applicant.

[20] An affidavit supporting an application for judicial review in an immigration matter is one of the primary sources of information from which the Court gains an understanding of the Applicant's concerns with the decision making process (*Zhang v Canada (Citizenship and Immigration*), 2017 FC 491at para 14 (*Zhang 2017*)). Where a supporting affidavit is not provided by an applicant, the application for judicial review is incomplete and the Court may dismiss the application on that basis (*Dhillon v Canada (Citizenship and Immigration),* 2009 FC 614 at para 9). Where an affidavit is, as here, provided not by an applicant but by a legal assistant and merely confirms that an application seeking permanent residency was filed, this Court may afford it no probative value or weight (*Dhillon* at para 10; *Zhang 2017* at para 14). Further, where there is no evidence based on personal knowledge filed in support of an application for judicial review, any error asserted by the applicant must appear on the face of the record (*Turcinovica* at para 14*).*

[21] In this matter, the Hazaei affidavit merely serves to confirm that an application for permanent residence was submitted on behalf of the Applicant. The Applicant's record provided the decision rejecting the application. In this circumstance, I will not dismiss the application for judicial review simply on the basis that a personal affidavit of the Applicant was not provided. However, I note that the Hazaei affidavit is problematic for other reasons. First, the attached immigration application was actually filed by Masoud Feiz of World Wide Immigration Services

Inc., which would appear to be an immigration consultant, not counsel, as Ms. Hazaei states in her affidavit. More significantly, and as pointed out by the Respondent, some of the wording in the business plan attached to the affidavit differs from the wording of the business plan found in the Certified Tribunal Record (CTR). There is no explanation for this. This brings into question Ms. Hazaei's personal knowledge of the content of the immigration application that was submitted by her office on behalf of the Applicant.

[22] In these circumstances, the affidavit serves to establish only that the application for permanent residency was filed. I will otherwise afford the affidavit and its content no probative value and will rely only on the CTR. Further, the errors asserted by the Applicant must appear on the face of that record.

Issue 1: Did the visa officer breach the Applicant's right to procedural fairness?

Applicant's Position

[23] The Applicant's submissions are contradictory in some respects but boil down to the position that a failure to provide an applicant with an opportunity to respond to a visa officer's concerns is a breach of procedural fairness, particularly where an officer's concerns relate to the credibility, accuracy or genuineness of the information submitted by the applicant (*Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24 (*Hassani*)).

[24] The Applicant submits that the visa officer's findings do not relate to the sufficiency of evidence, which would not entitle the Applicant to an opportunity to address their concerns. He

submits that the evidence was there but the officer found it was too general, had questions as to its source and ultimately did not believe that the Applicant had the ability and intent to be self-employed in Canada. According to the Applicant, the visa officer's concerns could not have been anticipated and should have afforded him an opportunity to address them.

[25] Further, that questioning the source of evidence is tantamount to questioning its credibility, and that procedural fairness required that the Applicant should have been given an opportunity to disabuse the visa officer of those concerns.

Respondent's Position

[26] The Respondent submits that the duty of procedural fairness owed by the visa officer was at the low end of the spectrum and there is no obligation on a visa officer to notify applicants of deficiencies with their documentation or provide them opportunities to respond (*Tollerene v Canada (Citizenship and Immigration)*, 2015 FC 538 (*Tollerene*)). Further, applicants bear the burden of adducing sufficient evidence in support of their application so as to establish that they have met the visa requirements (IRPA s 22(1); *Guryeva v Canada (Citizenship and Immigration)*, 2015 FC 1103 at para 5; *Kameli v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 772 at para 17). Specifically, applicants claiming permanent residence in the self-employed persons class have to show their ability and intent to become economically established in Canada (IRP Regs ss 88(1), 100(1)-(2); *Pourkazemi v Canada (Citizenship and Immigration)*, 1998 CanLII 8830 at para 16). The Applicant simply did not meet his burden.

Analysis

[27] In *Hamza v Canada (Minister of Citizenship and Immigration)*, 2013 FC 264 (*Hamza*), Justice Bédard provided a helpful summary of the law which has application in this matter:

> [22] First, the onus clearly falls on the applicant to establish that he or she meets the requirements of the Regulations by providing sufficient evidence in support of his or her application (*El Sherbiny v Canada (Minister of Citizenship and Immigration*), 2013 FC 69 at para 6 (available on CanLII) [*El Sherbiny*]; *Enriquez*, above at para 8; *Torres*, above at paras 37-40; *Kaur v Canada (Minister of Citizenship and Immigration)*, 2010 FC 758 at para 30 (available on CanLII) [*Kaur*]; *Oladipo v Canada (Minister of Citizenship and Immigration)*, 2008 FC 366 at para 24, 166 ACWS (3d) 355; *Ismaili*, above, at para 18.
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> [23] Second, the duty of procedural fairness owed by visa officers is on the low end of the spectrum (*Farooq v Canada (Minister of Citizenship and Immigration)*, 2013 FC 164 at para 10 (available on CanLII) [*Farooq*]; *Sandhu*, above at para 25; *Trivedi v Canada (Minister of Citizenship and Immigration*, 2010 FC 422 at para 39 (available on CanLII) [*Trivedi*]; *Khan v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345 at paras 30-32, [2002] 2 FC 413; *Patel v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 55 at para 10, 288 NR 48; *Chiau v Canada (Minister of Citizenship and Immigration) (2000)*, [2001] 2 FC 297 at para 41 (available on CanLII) (CA), leave to appeal to SCC refused, 28418 (August 16, 2001).
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> [24] Third, a visa officer has neither an obligation to notify an applicant of inadequacies in his or her application nor in the material provided in support of the application. Furthermore, a visa officer has no obligation to seek clarification or additional documentation, or to provide an applicant with an opportunity to address his or her concerns, when the material provided in support of an application is unclear, incomplete or insufficient to convince the officer that the applicant meets all the requirements that stem from the Regulations (*Hassani*, above at paras 23-24; *Patel*, above at para 21; *El Sherbiny*, above at para 6; *Sandhu*, above at para, 25; *Luongo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 618 at para 18 (available on CanLII); *Ismaili*, above at para 18; *Triveldi*, above at para 42; Singh, above at para 40; *Sharma v Canada (Minister of Citizenship and Immigration)*, 2009 FC 786 at para 8, 179 ACWS (3d) 912 [*Sharma*]).

> [25] Nevertheless, a duty to provide an applicant with the opportunity to respond to an officer's concerns may arise when the officer is concerned with the credibility, the veracity, or the authenticity of the documentation provided by an applicant as opposed to the sufficiency of the evidence provided.

This latter point stems from *Hassani*, where Justice Mosley held:

> 24 …it is clear that where a concern arises directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns. Where however the issue is not one that arises in this context, such a duty may arise. This is often the case where the credibility, accuracy or genuine nature of information submitted by the applicant in support of their application is the basis of the visa officer's concern, as was the case in *Rukmangathan*, and in *John* and *Cornea* cited by the Court in *Rukmangathan*, above.

[28] More recently, in *Lv v Canada (Citizenship and Immigration)*, 2018 FC 935, Justice Gascon also provided a summary of the principles of procedural fairness in the context of decisions made by visa officers:

> [22] It is well-established that an immigration officer's duty on an application or permanent residence under a specific class (such as the self-employed class sought by Mr. Lv) is relaxed. As correctly stated by the Minister, the duty of procedural fairness generally owed in an application for a permanent resident visa is located towards the lower end of the range *(Canada (Minister of Citizenship and Immigration) v Patel*, 2002 FCA 55 at para 10; *Kamchibekov v Canada (Citizenship and Immigration)*, 2011 FC 1411 at para 23). More specifically, in the context of a visa officer's decision on an application for permanent residence, the duty of fairness is quite low and easily met, "due to the absence of a legal right to permanent residence, the fact that the burden is on the applicant to establish [his] eligibility, the less serious impact on the applicant that the decision typically has, compared with the removal of a benefit, and the public interest in containing administrative costs" *(Tahereh v Canada (Citizenship and Immigration)*, 2008 FC 90 at para 12). The onus is on visa applicants to put together applications that are convincing, to

> anticipate adverse inferences contained in the evidence and address them, and to demonstrate that they have a right to enter Canada (*Hassani* at paras 21, 26). Procedural fairness does not arise whenever an officer has concerns that an applicant could not reasonably have anticipated *(Singh v Canada (Citizenship and Immigration)*, 2012 FC 526 at para 52).
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> [23] In the context of permanent residence applications, an immigration officer has no legal obligation to seek to clarify a deficient application, to reach out and make the applicant's case, to apprise an applicant of concerns relating to whether the requirements set out in the legislation have been met, to provide the applicant with a running score at every step of the application process, or to offer further opportunities to respond to continuing concerns or deficiencies *(Bhatti v Canada (Citizenship and Immigration)*, 2017 FC 186 at para 46; *Sharma v Canada (Citizenship and Immigration)*, 2009 FC 786 at para 8; *Mazumder v Canada (Minister of Citizenship and Immigration)*, 2005 FC 444 at para 14; *Kumari v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1424 at para 7; *Fernandez v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 994 (QL) at para 13; *Dhillon v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 574 (QL) at paras 3-4). To impose such an obligation on a visa officer would be akin to giving advance notice of a negative decision, an obligation that has been expressly rejected by this Court on many occasions (*Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 37; *Tofangchi v Canada (Citizenship and Immigration)*, 2012 FC 427 at para 45; *Ahmed v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 940 (QL) at para 8).

(Also see *Jafari v Canada (Citizenship and Immigration)*, IMM-6099-19 at para 14 [Unpublished Oral Decision dated July 24 2019] (*Jafari*); *Tollerene* at para 15).

[29] I am not persuaded by the Applicant's argument that the visa officer raised concerns that did not stem from the IRP Regs, or made comments tantamount to questioning the credibility of the Applicant's submissions. Nor are the visa officer's concerns ones that the Applicant could not reasonably have anticipated.

[30] First, the onus was on the Applicant to demonstrate that he was in compliance with all of the applicable eligibility requirements in order to be afforded a permanent residence visa (IRP Regs, ss 88(1), 100(1)-(2); IRPA, s 12(2)). The visa officer's decision was explicitly concerned with whether the Applicant provided sufficient evidence to demonstrate his ability and intent to be self-employed in Canada. The requirement for an applicant to have the ability and intent to be self-employed in Canada is found in s 88(1) and s 100(1) of the IRP Regs. The concerns, therefore, stemmed from the applicable regulations.

[31] Further, in the GCMS Notes the visa officer stated the concern that the evidence supplied by the Applicant was insufficient because it was brief, general, and/or lacking justification. In my view, comments as to the brevity or generality of evidence are comments directed at the sufficiency of evidence, and they are not disguised credibility assessments. I agree with the Respondent that the visa officer's decision hinged on the sufficiency of evidence and did not give rise to a duty of procedural fairness to provide the Applicant with the opportunity to respond.

[32] As to the Applicant's submission that questioning the source of the Applicant's evidence was tantamount to questioning its credibility, thus giving rise duty to provide the Applicant with an opportunity to respond to the concern, I do not agree. The visa officer's reference to the source of the Applicant's information was made in the context of the finding that the Applicant's submissions contained "high-level, open source information". There is nothing in the visa officer's reasons suggesting that the visa officer was of the view that open source information is unreliable or not credible. A review of the reasons as a whole makes it clear that the Officer was

commenting on the sufficiency of the information provided by the Applicant intended to show that the Applicant had the ability and intention to become self-employed in Canada, and that general, open source information was insufficient to support the Applicant's business plan. The visa officer's concern was not one of credibility of the sources, which included Justice Canada and the Statistics Canada website, and the officer was under no duty to provide the Applicant with an opportunity to address the visa officer's concerns as to the sufficiency of the Applicant's evidence.

[33] Additionally, the visa officer's concerns were with the generality of the business plan. As discussed below, this included the unclear basis for the financial figures provided and a lack of information and market research relevant to the location where the Applicant intended to open his business. In my view, it could reasonably have been anticipated that the absence of this information and reliance upon general information from open sources could be considered insufficient to establish that the Applicant had the ability and the intent to be self-employed in Canada.

[34] In short, the Applicant had the burden of adducing sufficient evidence to support his application. The Officer was not required to alert the Applicant to any insufficiency with his documentation submitted as part of his application. The visa officer's findings related to the sufficiency of evidence provided by the Applicant and stemmed from the IRP Regs. The visa officer did not breach the Applicant's right to procedural fairness by failing to give the Applicant an opportunity to respond to the visa officer's concerns about the sufficiency of the evidence.

Issue 2: Was the visa officer's decision reasonable?

Applicant's Position

[35] The Applicant submits that his business plan identified the nature of the proposed self-employed business; discussed the particular market that the Applicant seeks to enter; outlined how his personal competencies – which are well documented in his resume and documentary materials –make him a good candidate to run a profitable venture in the said market; detailed potential competition and possible competitors in geographic proximity to his business; and, listed events that he could attend to promote his business, particularly in Richmond Hill. The business plan also provided information on projected staffing, the specific location and projected cost for leasing a space in the area; as well as projected and detailed costs over four years. Further, the Applicant's Schedule 6A form demonstrated that the Applicant has a total of $774,238 in assets, of which $290,159 was in funds, and that he would have $300,000 available to start his business. Given this, the Applicant submits that refusal of his application on the basis that the visa officer believed that the business plan was too general and not detailed enough was not reasonable.

[36] The Applicant also argues that there is nothing improper with open source information and that it is hard to understand what is wrong with relying on general online sources. The Applicant also disputes the Respondent's reliance on jurisprudence holding that the applicants in those cases had failed to do the necessary research to demonstrate the viability of their venture on the basis that he had done so.

[37] Further, the Applicant submits that the officer mistakenly identified Toronto, as opposed to Richmond Hill, as the Applicant's intended place of business.

Respondent's Position

[38] The Respondent submits that, before a visa applicant can immigrate to Canada under the self-employed persons class, s 88(1) of the IRP Regs requires that they demonstrate that they have met three specified requirements, being that they have relevant experience, the intention and ability to be self-employed in Canada, and the intention and ability to make a significant contribution to the specified economic activities in Canada.

[39] The visa officer's finding that the Applicant's business plan referenced high-level open source information was reasonable because the "References" section of the business plan confirms that the information came from general online sources. Further, the officer reasonably found that the Applicant did not provide any basis for the figures asserted in his business plan.

[40] Additionally, the jurisprudence is clear that it was open to the visa officer to find that a lack of research by the Applicant to demonstrate the viability of his proposed self-employment activity could reasonably lead to the application being denied. Accordingly, it was reasonable for the officer to conclude that the brief description of the proposed business venture, coupled with a general business plan, did not support an intention and ability to be self-employed in Canada.

Analysis

[41] The officer found that the business plan provided some financial figures and projections. However, that the basis for those figures was unclear. A review of the business plan that was in the record before the visa officer confirms this finding. For example, under the heading "project costs, funding, and financials", the Applicant states that starting his business will cost approximately $250,000 but does not provide the basis for that figure or data explaining that start-up cost. Also included is a graph, said to depict a "Break-Event [*sic*] Analysis" over four years, but there is no information substantiating the graph. The Applicant also submitted charts following his Business plan with more detailed cost-breakdowns, but those charts again provide only figures; there is no basis for the figures. The charts also contain general information. For example, under the "Start-up Costs" chart, the Applicant allocates $15,000 for "equipment", the only description of this equipment being that it is "necessary to run the operations". There is also an entry for an "opening inventory" of $3,400, the only explanation of this being "To start operation". The chart for "Sales" projects that the gallery will have sales of $100,000 in Year 1, $140,000 in Year 2 and $200,000 in year 3, but no basis for those projections is provided. Looking to the record, therefore, it can be understood why the officer found that the Applicant's business plan lacked a basis for the provided financial figures and projections. The absence of a sound basis for those figures and projections for the Applicant's proposed business contributed to the officer's finding that the Applicant had not demonstrated that he has the ability and intent to become self-employed in Canada.

[42] The visa officer also found that the business plan includes high level, general, open source information about the area of industry in Canada as a whole with only a modest amount of information on Toronto and the surrounding area where the Applicant intends to settle.

[43] In that regard, a review of the business plan indicates that the intended location of the business is in Richmond Hill. While the Applicant submits the visa officer misconstrued the evidence as to the location of the intended business as being Toronto, he does not elaborate on this or suggest that it was a reviewable error. Nor did the officer state that the intended location of the business was Toronto. Rather, in assessing the content of the business plan, the visa officer noted that it contained a modest amount of information "on Toronto and the surrounding area, where the applicant intends to settle". Richmond Hill is part of the surrounding area.

[44] A review of the business plan also confirms that much of it is, indeed, general in nature. For example, there is a section entitled "Regulations". This informs that before registering a company, a name search must be conducted, and if the name is already in use, the new company will not be able to legally register under that name. Further, that according to Justice Canada, there are rules and regulations, which would have to be complied by any business in this field of activity. This statement is followed by a list of references that may or may not be relevant to the proposed business, such as general Import Permit No. 100 – Eligible Agriculture Goods. Reference is then made to the Canadian Labour Program website as containing a comprehensive list of rules and regulations. The business plan also notes that on the Canada Business Network there is a list of related regulations in the areas of Regulated Business Activities, Standards, and Regulated Industries, which also needs to be considered, and points out that regulations for

Ontario can be found at a specified website. The business plan states that a legal advisor will be used to ensure regulatory and other compliance. Under the "References" section of the business plan are listed Canada business, Statistics Canada Website, Industry Canada Data base, Industry Canada Benchmarking Tool, Justice Canada, and the yellow pages Canada website.

[45] Similarly, the "Industry Analysis" (which is, in fact, not contained in the version of the business plan found in the CTR) indicates that the proposed company would slot into the North American Industry Classification System under code 45392, Art Dealers. That industry is comprised of establishments primarily engaged in retailing original and limited edition art works. The proposed new company would also provide design services to carpet and rug mills. The analysis states that based on information found on the Industry Canada website, there are more than 100 establishments active in manufacturing carpets and rugs in Canada and the volume of import for that product exceeds $800 million. And, that according to Canadian Financial Performance Data, there are 1389 establishments in Canada in the field of art gallery and dealership of original art-works. Their average revenue is $314,300 annually with 72.7% of the companies in that field being profitable. In Ontario, there are 359 such companies with an average revenue of $265,600 with 74.7% being profitable. The market size of the industry in Ontario is approximately $95.3 million. The business plan states that these statistics suggest that the industry is strong.

[46] And, under "Competition and Competitive Advantage", the business plan re-states that the market size of this industry in Ontario is approximately $95.3 million annually and that the average revenue of establishments in this industry is approximately $314,000 annually. The

business plan states that the owner expects the company to reach this industry average within a period of 3 to 4 years based on the competency of the Applicant – being his past experience and his expectation that a large part of his clientele will be Middle Eastern people with whom he has a shared cultural familiarity – as well as the competencies of the new company. Competencies of the new company include that it will position itself as a specialist in carpet and rug design distinguishing it from its competitors, and that the quality of its work will assist in attaining customer trust and retention. The plan lists eight companies, found in Toronto, Mississauga and Richmond Hill, that are identified as potential competitors, noting that none of them provide the same combination of services (gallery, carpet design service and craft workshop) as proposed by the Applicant.

[47] In my view, as demonstrated by the examples above, the visa officer reasonably found that the information provided by the business plan is general, high level, open source information. And, while the officer found this information concerned the area of industry in Canada as a whole with only a modest amount of information on Toronto and the surrounding area where the Applicant intends to settle, it might be more accurate to say that the information concerning both Canada and Ontario was high level, general and open source. Regardless, there was no information about the number and performance of galleries in Toronto and surrounding areas, including Richmond Hill. Further, the Applicant only discusses Toronto and the surrounding area in his business plan with respect to industry competition (listing 8 galleries), events for advertising (4 festivals and “Christmas Events”) and available retail space. Nor does the “Industry Analysis”, if it was included in the business plan submitted by the Applicant, concern Toronto or the surrounding area.

[48] The visa officer also found that the Applicant had provided insufficient information that he had actually made any contacts in Canada in order to research the feasibility of the proposed business and that there was no evidence of an exploratory visit. Given this, the officer concluded that the Applicant had not established that he had done in-depth research of the Canadian market, specifically the city of destination, in his proposed business activity field, or that he had adopted a plan that would reasonably be expected to lead to future self-employment and penetrate the market in that field.

[49] As stated in *Singh Sahota v Canada (Minister of Citizenship and Immigration)*, 2005 FC 856 (*Sahota*), it is not unreasonable for a visa officer to explore a business plan to assess the applicant's knowledge of the business environment and the cost of doing business (*Sahota* at para 13). These questions are relevant to the assessment of the seriousness of the applicant's intentions and his ability to carry out those intentions. If the plan is not realistic or is excessively vague, the applicant is unlikely to meet the requirements for an entrepreneur immigrant (*Sahota* at para 13; also see *Singh v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 84 at paras 34, 36, 38). Nor was it an error for the visa officer to consider the fact that the Applicant had not conducted an exploratory visit to Canada. As in *Sahota*, it is apparent from a reading of the reasons as a whole that the visa officer did not view this as fatal in and of itself (*Sahota* at para 12). Rather, it was one of the factors that contributed to the ultimate finding that the Applicant failed to establish that he had the intention and ability to become self-employed in Canada.

[50] Further, a lack of research with respect to the proposed venture can also justify a finding that the plan was not viable (*Sahota* at para 14, referencing *Shehada v Canada (Citizenship and*

Immigrations), 2004 FC 11 at para 7 (*Shehada*)). And, while in both *Sahota* and *Shehada* an interview had been held during which the applicants therein were given an opportunity to explain their business proposals, in my view, the fact that the visa officer did not do so in this case does not change this general principle.

[51] Further, "a measure of precision" is required in order to satisfy the test of the ability to become economically established in Canada, and every such application must demonstrate that the proposed venture has been "thoroughly conceived and concrete steps taken to ensure the implementation that will result in the successful economic activity to meet the requirements of self-employed immigrant under section 88(1)" (*Gur v Canada (Citizenship and Immigration)*, 2019 FC 1275 at para 18 referencing *Wei v Canada (Citizenship and Immigration)*, 2019 FC 982 at para 44).

[52] The Applicant may well be talented and have funds available to him to finance his endeavour, however, to be granted a visa his application and submitted materials were required to demonstrate that he had the intention and ability to be self-employed in Canada. The application form notes that it is important that applicants complete the form fully and accurately and that the information provided will be used to gauge applicant's ability to meet the requirements of the IRPA and the IRP Regs as they apply to the self-employed persons class. The Applicant's permanent residence application, in describing the occupation in which he intended to be self employed, stated only that he intended to establish an art gallery where he could design carpets and sculptures for sale and hold workshops. It appears that the Applicant elected to submit the business plan to provide all of the detail to support his proposed business

and the visa officer found that it contained insufficient evidence. In other words, the Applicant failed to meet his burden. Moreover, the Applicant's argument that his business plan was detailed enough is, in effect, asking this Court to reweigh the evidence, which is not its role (*Qaddafi v Canada (Citizenship and Immigration)*, 2016 FC 629 at para 59).

[53] In conclusion, in my view, the visa officer's concern that the business plan lacked sufficient information about the basis for his financial information, relied on high level, general open source materials and lacked area-specific research was justified and reasonable, as was the visa officer's conclusion that the Applicant had not established that he has the intent and ability to become self-employed in Canada (*Jafari* at paras 29-30). This is because, having considered the visa officer's reasons in conjunction with the record, I am satisfied that the visa officer's reasoning process was sound. Further, that the visa officer's decision was justified in relation to the facts before the officer, as provided in the Applicant's documentary submissions, and in relation to the requirements for self-employed permanent residents as found in IRPA and the IRP Regs. The decision meets the hallmarks of reasonableness: justifiability, transparency, and intelligibility (*Vavilov* at para 99).

JUDGMENT in IMM-2894-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. There shall be no order as to costs; and

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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