

Federal Court



Cour fédérale

**Date: 20210628**

**Docket: IMM-588-20**

**Citation: 2021 FC 680**

**Ottawa, Ontario, June 28, 2021**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**SAIFOOR RAHMAN SAIF**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an application for judicial review of a decision, dated January 21, 2020, made by a visa officer [the Officer] at the Embassy of Canada in Abu Dhabi, United Arab Emirates [the Decision]. In the Decision, the Officer refused the Applicant's temporary resident visa application, because the Officer was not satisfied that the Applicant would leave Canada at the

end of his stay as a temporary resident, as stipulated in paragraph 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations].

[2] As explained in more detail below, this application is dismissed, because the Decision is intelligible, and there is no basis for the Court to conclude that the Officer overlooked or ignored evidence or that the analysis in the Decision was based on credibility concerns that invoked procedural fairness requirements.

## II. **Background**

[3] The Applicant, Mr. Saifoor Rahman Saif, is a foreign national from Afghanistan. He has a wife and three children who all live in Afghanistan. He is also a co-owner of a business called Saif Eshaq Zai Ltd. that imports motor oil to Afghanistan.

[4] The Applicant applied for a temporary resident visa to visit Canada on August 13, 2019. In his application, he indicated that he was applying for a temporary resident visa for two reasons: (a) he would like to visit his sister, Arifa Khapalwak, and her family who currently live in Canada; and (b) he would like to explore and assess business opportunities in British Columbia. He explained that Arifa Khapalwak moved to Canada in early 2018 when her husband, Ruhullah Khapalwak, was admitted into the Masters of Journalism program at the University of British Columbia.

[5] That application for a temporary resident visa was refused by a visa officer from the Embassy of Canada in Abu Dhabi, United Arab Emirates on August 16, 2019. In the letter sent

to the Applicant, refusing his application, the visa officer explained that they were not satisfied that the Applicant will leave Canada at the end of his stay as a temporary resident, as stipulated in paragraph 179(b) of the Regulations, based on: (a) his family ties in Canada and in his country of residence; (b) the purpose of his visit; (c) his current employment; and (d) his personal assets and financial status.

[6] The Applicant filed an application for leave for judicial review of the August 16, 2019 decision. That application was discontinued after the Applicant and the Minister came to an agreement, and the matter was sent back for reconsideration by a different visa officer.

[7] The Applicant had an opportunity to provide new or updated evidence to the Officer making this redetermination. He submitted additional documents, including a letter in which he explained that his original application had incorrectly indicated that Arifa Khapalwak is his sister. She is actually his sister-in-law. However, this error is not material to the issues in this application for judicial review.

### III. **Decision Under Review**

[8] In the Decision that is the subject of this application for judicial review, the Officer rejected the Applicant's application for a temporary resident visa. The Decision is comprised of a letter dated January 21, 2020 and Global Case Management System [GCMS] notes from an entry also dated January 21, 2020.

[9] The letter briefly explains that, after reviewing the Applicant's visa application and supporting documentation, the Officer determined that the application does not meet the requirements of the *Immigration and Refugee Protection Act*, SCC 2001, c 27, and the Regulations. Specifically, the Officer was not satisfied that the Applicant will leave Canada at the end of his stay as a temporary resident, as stipulated in paragraph 179(b) of the Regulations, based on: (a) his personal assets and financial status; and (b) the purpose of his visit.

[10] The entry in the GSMS notes dated January 21, 2020 provides further detail as to why the Officer refused the Applicant's visa application. The GCMS notes list the documents that the Applicant submitted when the visa application was sent for re-determination. The GCMS notes state that the Applicant's sister-in-law is a temporary resident in Canada, her husband has a Canadian work permit, and the Applicant's wife and children remain in Afghanistan. The GCMS notes recognize that the Applicant stated he intends to assess business opportunities while in British Columbia, but the Officer found that the Applicant provided minimal details regarding the type of business opportunities he wishes to assess and whether or not he had made arrangements to visit businesses during his stay. The Applicant also indicated that he is interested in potentially immigrating to Canada. The GCMS notes therefore observe that the Applicant has dual intent.

[11] In relation to the Applicant's finances, the GCMS notes state that the Applicant is the vice-president of Saif Eshaq Zai Ltd. A letter from the president of the company indicates that the Applicant has shares in the company, but the percentage is not declared. The GCMS notes indicate that the Officer reviewed the company bank statements, summarizing information

therein. The Officer described the balances in these bank statements as company funds and found that it was unclear what funds, if any, are available to the Applicant for the purpose of travel to Canada. The Officer found an absence of evidence demonstrating the Applicant's personal assets or funds, such as personal bank statements, income earned, percentage of company shares, or personal property.

[12] Therefore, despite the evidence of company funds and the family in Afghanistan, on a whole the Officer was not satisfied that the Applicant is a genuine temporary visitor or that there are sufficient reasons to compel his return to his country of residence at the end of the period authorized for a stay in Canada as required by paragraph 179 (b) of the Regulations.

#### IV. **Issues and Standard of Review**

[13] In his Memorandum of Fact and Law, the Applicant submits that the issues in this application for judicial review are whether the Officer reached an unreasonable Decision:

- A. By erring in assessing the Applicant's finances; or
- B. By ignoring or failing to take into consideration material evidence and relying on insufficient and deficient reasoning.

[14] As reflected in this articulation of the issues, the standard of review applicable to the Court's consideration of these issues is reasonableness.

[15] At the hearing of this application, the Applicant's counsel also raised a procedural fairness issue, arguing that the Officer breached procedural fairness, because the Officer doubted the credibility of the Applicant's assertion, that he would leave Canada at the end of his stay, or his supporting evidence, but failed to afford him an opportunity to address that concern. This procedural fairness issue is reviewable on the standard of correctness.

V. **Analysis**

A. *Did the Officer err in assessing the Applicant's finances?*

[16] The first ground for refusing the application was the Officer not being satisfied that the Applicant would leave Canada at the end of his stay, based on his personal assets and financial status. The GCMS notes state the Officer's acknowledgement that the Applicant provided evidence of company funds, but the Officer concluded that it was unclear what funds, if any, were available to him personally for the purpose of travel to Canada.

[17] The Applicant argues that the Officer erred by failing to appreciate that, in relation to one of the banks for which he provided statements, all accounts are joint accounts between the company, him and another co-owner. The Applicant also emphasizes his evidence that he is a founder, vice-president and part owner of the company and that he provided substantial evidence of the company's assets and its business dealings. He notes that, according to the Immigration, Refugees and Citizenship Canada Operational Manual, the question for an officer's assessment is whether there is evidence that applicants can support themselves while in Canada. In his case, the Applicant indicated that he wished to visit Canada for only 14 days.

[18] The Applicant argues that the evidence was clearly sufficient to satisfy this question. In support of his argument, he relies on authorities in which the Court concluded that an officer had ignored relevant evidence of an applicant's assets in assessing whether the applicant had sufficient funds (see *Girn v Canada (Citizenship and Immigration)*, 2015 FC 1222; *Motala v Canada (Citizenship and Immigration)*, 2020 FC 726).

[19] I agree with the Respondent's position, in response to this argument, that the Officer's conclusion related to the Applicant's finances turned on the sufficiency of the Applicant's evidence. While the Officer does not expressly note that some of the bank accounts are joint between the company and the Applicant, this point does not undermine the intelligibility of the Officer's analysis in the GCMS notes, the relevant portion of which reads as follows:

... Applicant is the vice-president of a family business, Saif Eshaq Zai Ltd. Business license submitted. Letter from president of the company indicates that applicant has shares in the company however percentage of shares is not declared. Company bank statements reviewed including: Bank statements from Azizi bank with Afghan funds showing numerous cash deposits as well as deposits from unknown named individuals. Bank statements from Ghazanfar Bank with US funds showing large deposit of \$200,000 US. Bank statement from Ghazanfar Bank with Euro funds showing "transfer" or bank transfer" with large transactions of 100,000 Euro and 150,000 Euro. I acknowledge that there are company funds however it is unclear what funds, if any, are available to the applicant for the purpose of travel to Canada as evidence of assets submitted does not clearly demonstrate applicant's personal assets or funds such as personal bank statements, income earned, percentage of company shares, personal property etc. ...

[20] This passage demonstrates that the Officer understood the Applicant's role with the company and the evidence surrounding the company's financial circumstances. The Officer's

concern was with the lack of evidence showing the Applicant's personal financial circumstances, including his particular financial interest in the company. As the Respondent notes, the Officer's reasons identify the type of evidence which would have assisted in demonstrating the level of personal assets available to the Applicant.

[21] This analysis is intelligible. The fact that some of the company's bank accounts were jointly held with the Applicant is not inconsistent with the analysis, does not support a conclusion that this fact was overlooked, and does not otherwise undermine the reasonableness of the analysis.

B. *Did the Officer err by ignoring or failing to take into consideration material evidence and relying on insufficient and deficient reasoning?*

[22] The second ground for refusing the application was the Officer not being satisfied that the Applicant would leave Canada at the end of his stay, based on the purpose of his visit. The Applicant argues that the Officer's finding was made without regard for the evidence of his business and family ties to Afghanistan, which would compel his return. The Applicant also refers to the evidence from his brother-in-law, a renowned Afghan journalist, supporting his visit, and to his history of international travel and returning to Afghanistan.

[23] The Applicant refers the Court to authority for a visitor refusal being set aside where the Court is unable to understand the decision-maker's reasoning (see, e.g., *Groohi v Canada (Citizenship and Immigration)*, 2009 FC 837 at para 14) or where the officer has overlooked



significant material facts (see, e.g., *Paramasivam v Canada (Citizenship and Immigration)*, 2010 FC 811 para 42).

[24] The GCMS notes refer to the Applicant's dual intent of wishing to assess business opportunities while in BC and also being potentially interested in immigrating to Canada. However, the Officer was concerned that the Applicant had provided minimal detail regarding the type of business opportunities he wished to assess and whether or not he had made arrangements to visit businesses during his stay. This reasoning allows the Court to understand the Officer's analysis and does not support a conclusion that the Officer overlooked the evidence upon which the Applicant relies. With respect to the Applicant's establishment in Afghanistan, the conclusion of the analysis in the GCMS notes expressly refers to his family in Afghanistan but states that, notwithstanding that fact, the Officer was not satisfied there were sufficient reasons to compel his return. While the Officer does not expressly refer to the Applicant's travel history, there is no inconsistency between that evidence and the Officer's analysis that would allow the Court to conclude that this evidence was overlooked.

[25] I note the Applicant's reliance on *Kheradpazhooh v. Canada (Citizenship and Immigration)*, 2018 FC 1097, in which the Court observed that exploratory visits to Canada are reasonable, before individuals commit to submitting an immigration application, and that such visits are encouraged and recognized by provincial nomination programs (at para 19). The Court also noted that a foreign national is not required to provide a complete itinerary for the expected trip (at para 5). However, in my view, those principles do not detract from the intelligibility and reasonableness of the Officer's analysis in the case at hand. As the Respondent submits, the

Officer's finding again turned on the insufficiency of the Applicant's evidence as to his intended business exploration activities.

*C. Did the Officer breach procedural fairness?*

[26] The thrust of the Applicant's procedural fairness argument is that, because his evidence was clearly sufficient to meet his burden to demonstrate that he would leave Canada at the end of his stay, the Officer must have disbelieved that evidence or his assertion as to his intention to leave. Therefore, the Applicant submits that, before refusing his application based on a credibility concern, procedural fairness required the Officer to afford him an opportunity to address that concern.

[27] I find no basis for a conclusion that the Decision turned on credibility concerns. As reflected in the above analysis of the other issues in this judicial review, the Decision turned on sufficiency of evidence, not credibility. While the Applicant argues that his evidence was sufficient, the Officer reached a contrary conclusion. The Officer's analysis supporting that conclusion is intelligible, and it is not the Court's role in judicial review to reweigh the evidence. The Decision is reasonable, the Officer's reasoning did not invoke a procedural fairness requirement, and this application for judicial review must therefore be dismissed.

[28] Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT IN IMM-588-20**

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

No question is certified for appeal.

“Richard F. Southcott”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-588-20

**STYLE OF CAUSE:** SAIFOR RAHMAN SAIF v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 21, 2021

**JUDGMENT AND REASONS:** SOUTHCOTT J.

**DATED:** JUNE 28, 2021

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