Federal Court  Cour fédérale

Date: 20220204

Docket: IMM-710-21

Citation: 2022 FC 127

Ottawa, Ontario, February 4, 2022

PRESENT: THE CHIEF JUSTICE

BETWEEN:

IRADJ MOHAMMADI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] At its heart, this application for judicial review concerns a decision by a visa officer that did not meaningfully address important facts provided by the Applicant, Mr. Iradj, after being invited to make submissions. Mr. Iradj submits that this shortcoming in the officer's reasons rendered the decision unreasonable.

[2] I agree. If a visa officer invites an applicant for permanent residence to make submissions to address identified concerns, it is unreasonable to fail to address the most important aspect of those submissions in the course of explaining the basis for the decision. Stated differently, it is unreasonable to simply list the principal submissions at the outset of the decision, and then to conduct an assessment that does not engage with one or more important and uncontested facts that are entirely inconsistent with the conclusion ultimately reached.

[3] Given that this is essentially what occurred in this case, the visa officer's decision that Mr. Iradj is inadmissible to Canada will be set aside and remitted to another officer for redetermination.

II. **Background**

[4] Mr. Iradj is a citizen of Iran. In 2013, he applied for permanent residence in Canada as a member of the investor class after being selected by provincial authorities in Quebec.

[5] In 2020, he was sent a procedural fairness letter. Among other things, that letter expressed concerns that there are reasonable grounds to believe that he is inadmissible to Canada under paragraph 34(1)(d) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. Pursuant to that provision, a permanent resident or a foreign national is inadmissible on security grounds for being a danger to the security of Canada.

[6] The concerns identified in the letter were based on the fact that Mr. Iradj stated in one of the forms he submitted that he was the CEO of Neka Novin Co. [**NNC**] from 1999-2011. The

letter observed that, according to open sources such as *Iran Watch*, NNC is involved in the proliferation of material related to weapons of mass destruction and is linked to the Atomic Energy Organization of Iran. The letter further noted that NNC had been added to the Specially Designated Nationals list maintained by the United States Department of Treasury's Office of Foreign Assets Control [**USDTO**]. The letter concluded by inviting Mr. Iradj to "submit additional information relating to this issue, such as providing information as to why [NNC] would have been identified as an entity directly supporting proliferation-sensitive nuclear activities."

[7] In response, Mr. Iradj submitted detailed submissions. Among other things, he explained that although NNC had been placed on the above-noted list in the U.S. in 2013, and on similar lists in the European Union [**EU**] and the United Kingdom [**UK**], this was done before NNC had any opportunity to make submissions. After it made such submissions, its listings in the EU and the UK were re-evaluated and then removed. He further explained that NNC received no response to its similar submissions the USDTO.

III. **The Decision Under Review [the "Decision"]**

[8] At the outset of the Decision, the visa officer [the **"Officer"**] provided a summary of the relevant background facts. These included a summary of Mr. Iradj's submissions, including those mentioned immediately above.

[9] After stating that Mr. Iradj's submissions had been reviewed in their entirety, the Officer explained the basis for the Decision. This included that NNC had been "listed as a person or entity involved in nuclear or ballistic missiles activities by the Council of the EU." The Officer acknowledged Mr. Iradj's statement that such listing had been lifted in 2017. However, nothing more was said about that important fact.

[10] Instead, the Officer proceeded to discuss the information provided by *Iran Watch* and to observe that Mr. Iradj had conceded that this information was upheld by the USDTO. The Officer also noted that NNC is included in the list of sanctioned organizations issued pursuant to the *Special Economic Measures (Iran) Regulations*, SOR/2010-165, Schedule 1, Part I.[1] The Officer then stated:

> I find it unusual that the EU, Canada, USA would have identified this company as being involved in the proliferation of material related to weapons of mass destruction completely by error or at random. I find it unusual that the US Treasury Department would link this company to contracting with an Iranian nuclear facility erroneously. [Emphasis added.]

[11] The Officer returned to the EU listing in the following passage at the end of the Decision:

> Given that the company was listed on several sanctions lists as an entity involved in the proliferation of WMD, and given that there are credible sources such as the US Treasury Department that link this company to Iran's nuclear facilities, there are reasonable grounds to believe that it may have been involved in these activities. Given the applicants' [sic] position as CEO in the company for 12 years, and CEO at the time it became a listed

[1] Issued under the *Special Economic Measures Act*, SC 1992, c 17.

> entity by the EU [this] renders it likely that he was aware of the company's procurement activities. [Emphasis added.]

IV. **Issue and Standard of Review**

[12] The Applicant submits that there are several shortcomings with the Decision. However, I agree with the Respondent that these can all be subsumed into the single issue of whether the Decision was unreasonable. Implicit in this is that the applicable standard of review is reasonableness.

[13] When reviewing a decision on this standard, the Court will be "concerned with *both* outcome *and* process" [emphasis in original]: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 87 [***Vavilov***]. In conducting its review, the Court will seek to determine not only whether the decision is *justifiable*, but also whether it is *justified*, by way of the reasons that were given: *Vavilov*, at para 87. This determination will include an assessment of whether the decision is appropriately transparent and intelligible.

[14] To meet these requirements, the decision must reflect "an internally coherent and rational chain of analysis" and be "justified in relation to the facts and law that constrain the decision maker": *Vavilov*, above, at paras 85 and 99. In this regard, the Court "must be satisfied that 'there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived'," *Vavilov*, above at para 102, quoting *Law Society of New Brunswick v Ryan*, 2003 SCC 20 at para 55.

V. **Analysis**

[15] Mr. Iradj submits that the Decision is unreasonable for several reasons, including that it failed to consider the implications of the reversal of the listings of NNC in the EU and the UK. Although the Officer acknowledged this fact at the outset of the Decision, nothing was said about this in the justification that was provided for the conclusion that Mr. Iradj is inadmissible because he is a danger to the security of Canada.

[16] I agree. In my view, the Decision was unreasonable because the justification provided did not address a very important fact that was inconsistent with the conclusion reached. That fact was that the listings of NNC in the EU and the UK had been reversed, once NNC had the opportunity to make submissions to the relevant authorities in those two jurisdictions. The Officer's failure to address this evidence was then exacerbated when the Officer referred to the initial EU listing, twice, in the course of justifying the inadmissibility finding that was made: see the underlined passages in the quotes at paragraphs 10 and 11 above. Indeed, given the reversal of that listing in 2017, the repeated reliance on the initial listing rendered the Decision unintelligible.

[17] The Respondent insists that the remaining evidence was more than sufficient to support the conclusion that was ultimately made. However, this conflates the important distinction between *justifiable* and *justified*: see paragraph 14 above. The Decision may well have been reasonably justifiable based on the remaining evidence. But that is not sufficient. To survive review on a standard of reasonableness, the Decision also had to be appropriately justified by

reference to the evidence that was adduced: see paragraph 15 above and *Vavilov*, above, at para 126. A failure to engage with important evidence that is inconsistent with the conclusion ultimately reached is unreasonable: *Canada (Attorney General) v Fauteux*, 2020 FCA 165, at paras 17 and 24.

[18] This is so even if the ultimate conclusion reached by the Officer would not have changed.

VI. **Conclusion**

[19] For the reasons provided above, the Decision will be set aside and remitted to a different decision-maker. It is unnecessary to consider the other reasons why Mr. Iradj contends that the Decision is unreasonable. However, the new decision-maker would be well advised to take those submissions into account in justifying their decision.

[20] I agree with the parties' position that the legal and factual matrix of this Application does not give rise to a serious question of general importance for certification.

JUDGMENT in IMM-710-21

THIS COURT'S JUDGMENT is that:

1. This Application is granted. The Decision is set aside and remitted back for redetermination by a different visa officer.

2. The legal and factual matrix of this Application does not give rise to a serious question of general importance for certification.

"Paul S. Crampton"
Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-710-21
STYLE OF CAUSE:	IRADJ MOHAMMADI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JANUARY 20, 2022
JUDGMENT AND REASONS:	CRAMPTON C.J.
DATED:	FEBRUARY 4, 2022

APPEARANCES:

Lorne Waldman	FOR THE APPLICANT
John Loncar	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto Ontario	FOR THE RESPONDENT