

Federal Court



Cour fédérale

**Date: 20220210**

**Docket: IMM-6839-19**

**Citation: 2022 FC 99**

**Ottawa, Ontario, February 10, 2022**

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

**BETWEEN:**

**HAMID AZANI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the Matter

[1] Mr. Azani [Applicant] applies for judicial review of a September 14, 2019 decision [Decision] of a visa officer [Officer] from the Embassy of Canada in Warsaw, Poland. The Officer rejected the Applicant’s application for permanent residence in the “self-employed persons class” pursuant to subsection 100(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations].

[2] The Decision is reasonable. The application for judicial review is dismissed.

## II. Background

[3] The Applicant is a citizen of Iran and is a self-employed artist and urban designer. In September 2018, he applied for permanent residence in Canada in the economic class, as a self-employed person. His intended occupation in Canada is a self-employed urban artist, providing public art services. Although not required by the *Regulations*, in support of his application, the Applicant submitted a Business Plan describing his intention to start a business that will design and produce “made-to-order public art/urban art” such as sculptures, paintings, accessory and art pieces, lighting fixtures, and 2D as well as 3D projects. The business would also procure and sell Iranian antiques.

## III. The Decision

[4] In denying the application, the Officer found that the Applicant was not a self-employed person pursuant to subsection 88(1) of the *Regulations* because the Officer was not satisfied that the Applicant had the ability and intent to become self-employed in Canada. In short, the Applicant did not meet the requirements of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]* and the *Regulations*.

[5] The following entries are recorded in the Officer’s Global Case Management System [GCMS] notes:

- Applicant stated that his English language abilities require improvement, however for the time being is relying on business opportunities with the Iranian diaspora.

- A business plan was provided, however, this plan provides only general information about the industry in Canada.
- Insufficient information provided about the financial details of applicant's potential business in Canada and the financial projections, especially their source.
- There is also insufficient information to indicate that applicant has indeed made adequate research of the market in Canada and that the proposed business would indeed be feasible. The information provided in the business plan failed to satisfy me of this; the applicant simply provided a brief outline of the projected business's strengths and weaknesses but insufficient information to satisfy me that he indeed has the intention and ability to become self-employed in Canada.
- There is insufficient evidence that the applicant has made any contacts in Canada in order to assess the feasibility of the proposed business. Based on the above, I am not satisfied that applicant has the ability and intent to become self-employed in Canada.
- Applicant provided insufficient evidence to show in-depth research of the Canadian market, specifically the area of destination, in proposed business activity field or that has adopted a plan that would reasonably be expected to lead to future self-employment and penetration of the urban design market.
- Therefore, I am not satisfied that applicant has the ability and intent to be self-employed in Canada. Consequently, does not meet definition of self-employed. Application refused.

#### IV. Issues and Standard of Review

[6] The issues are:

- (1) Did the Officer breach the Applicant's rights to procedural fairness?

(2) Is the Decision reasonable?

[7] Questions of procedural fairness are reviewable on the standard of correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Oleynik v Canada (Attorney General)*, 2020 FCA 5 at para 39; *Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 at para 12 [*Ebrahimshani*]). The court, owing no deference to the decision-maker, must ask, “whether the procedure that was followed was fair having regard to all the circumstances” (*Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14). The Supreme Court of Canada decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] did not displace this jurisprudence regarding questions of procedural fairness.

[8] The merits of the Decision are reviewable on the standard of reasonableness because none of the exceptions outlined in *Vavilov* arise in this matter (*Vavilov* at paras 16-17). A reasonableness review requires the Court to examine the decision for intelligibility, transparency, and justification and whether the decision “is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99). If the reasons of the decision-maker allow a reviewing Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law, the decision will be reasonable (*Vavilov* at paras 85-86). In conducting a reasonableness review, the reviewing court must look to both the outcome of the decision and the justification of the result (*Vavilov* at para 87).

V. Parties' Positions

A. *Did the Officer breach the Applicant's rights to procedural fairness?*

(1) Applicant's Position

[9] When an officer is concerned about the sufficiency of an application and supporting evidence, fairness requires the officer to advise the applicant of these concerns and provide an opportunity to respond. Operation Manual "OP 8: Entrepreneur and Self-Employed" [Operation Manual OP-8] does not require applicants to submit a formal business plan. The Applicant had a legitimate expectation that his materials, including the Business Plan, were sufficient. As such, it is "not fair in the circumstances...for the Officer not to have alerted [the Applicant] as to the concerns about his business plan" (*Mohitian v Canada (Citizenship and Immigration)*, 2015 FC 1393 at paras 18-23 [*Mohitian*]).

(2) Respondent's Position

[10] The Applicant has not satisfied his onus of demonstrating that he has the ability and intention to become economically established in Canada. The Officer's concerns about the Business Plan relate to its generality and its failure to establish that the Applicant had the ability and intention to become economically established in Canada. The Officer is not required to notify the Applicant that his evidence is insufficient.

[11] Operation Manual OP-8 is no longer operationally relevant. It was replaced by the Program Delivery Instruction [PDI] on the Self-Employed Persons Class, which has been in

force since August 2, 2016. The Applicant's reliance on the outdated Operational Manual OP 8 does not give rise to a legitimate expectation that would enhance the duty of procedural fairness owed to the Applicant (*Jumalieva v Canada (Citizenship and Immigration)*, 2020 FC 385 at paras 19-21).

[12] *Mohitian* is distinguishable from the present matter on its facts and because it was decided in reference to Operation Manual OP-8, which is no longer referred to by officers. The Respondent submits that *Gur v Canada (Citizenship and Immigration)*, 2019 FC 1275 [*Gur*] (at paras 13-15) and *Rezaei v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 444 [*Rezaei*] (at paras 15-17) also distinguish *Mohitian* on its facts.

B. *Is the Decision reasonable?*

(1) Applicant's Position

[13] The Officer's reasons do not engage with the details of the Business Plan and, as a result, they are not intelligible nor transparent. The Officer does not explain why the Business Plan is insufficient or inadequate, suggesting that the Officer applied arbitrary criteria.

(2) Respondent's Position

[14] The Officer adequately explained why the information in the Business Plan was insufficient. The Respondent submits that the reviewing court may "connect the dots" of the Officer's reasons, considering the evidence that was actually before them. *Ebrahimshani* is a

highly analogous case where the Court went on to consider an applicant's 'insufficient' business plan.

VI. Analysis

A. *Did the Officer breach the Applicant's rights to procedural fairness?*

[15] The duty of procedural fairness owed in an application for a permanent resident visa is at the lower end of the spectrum (*Ebrahimshani* at para 28; *Khan v Canada (MCI)*, 2001 FCA 345 at paras 31-32; *Lv v Canada (Citizenship and Immigration)*, 2018 FC 935 at paras 22-23)

because of the following factors:

- i. The absence of a legal right to permanent residence;
- ii. The fact that the burden is on the visa applicant to establish their eligibility;
- iii. The less serious impact on the applicant that the decision typically has, compared with the removal of a benefit, and
- iv. The public interest in containing administrative costs.

[16] I agree that *Mohitian* is distinguishable from the present matter. Firstly, Operational Manual OP-8 was not relevant at the time when the Applicant filed his application in this matter nor was it considered by the Officer. Secondly, *Mohitian* is distinguishable on its facts. In *Mohitian*, the GCMS notes and the decision letter were contradictory on a material point (*Mohitian* at para 16; *Gur* at para 13). In addition, the visa request had been in abeyance for more than seven years when the officer sent the applicant a 'checklist' of forms and information to submit. That checklist did not include a business plan (*Mohitian* at paras 2, 18). The visa officer then considered that the business plan submitted by the applicant was unrealistic, and the Court

found that the officer should have provided the applicant a further opportunity to support his application (*Mohitian* at para 23).

[17] In *Gur*, the Court held that the decision in *Mohitian* relied substantially on the lengthy delay and the contradiction between the GCMS notes and the decision letter (*Gur* at para 13). At paragraph 16 of *Gur* the Court cited the general rule originally articulated in *Hamza v Canada (Minister of Citizenship and Immigration)*, 2013 FC 264 [*Hamza*] at paragraph 24:

... 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.

[18] However, *Hamza* also notes that an applicant should be provided an opportunity to respond where 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” (*Hamza* at para 25). In the present matter, and contrary to the Applicant’s submissions, there are no credibility concerns raised.

[19] In *Rezaei*, similar to the present matter, the officer found that the business plan “only provided general and statistical information about the industry in Canada and only provided limited information as to how this general information relates to the Applicant’s proposed self-employment” (*Rezaei* at para 6). In distinguishing *Mohitian*, the Court held that an officer is only obliged to provide an additional opportunity for submissions “where the visa officer may base [a



potentially adverse] conclusion on information not known to the applicant or when the officer's concern lies with the applicant's credibility or the authenticity of documents he/she submitted in support of his/her application" (*Rezaei* at para 12). That is also not the case in the present matter.

[20] In the present matter, the Officer's concerns with the Business Plan and other documents flowed directly from the requirements of the *IRPA* and the *Regulations* concerning the self-employed class. In summary, the Applicant provided insufficient information or details about whether the proposed business met the statutory requirements and whether it satisfied the intention and ability of the Applicant to be self-employed. I find that these concerns are not directed at the credibility of the Applicant, but rather at the sufficiency of the application.

[21] The applicant in *Ebrahimshani* made the same argument as the Applicant in this matter: that questioning the source of a figure is tantamount to questioning the credibility of the applicant (*Ebrahimshani* at paras 24-25). Justice Strickland dismissed this argument and addressed this point directly at paragraphs 32-33:

[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.

[22] The circumstances of this case did not require the Officer to provide the Applicant with an opportunity to respond to the Officer's eventual finding that the evidence was insufficient. This is consistent with the jurisprudence and the low level of procedural fairness owed in visa applications. There was no breach of procedural fairness.

B. *Was the Decision reasonable?*

[23] The Decision is reasonable. The Officer assessed the Applicant's evidence related to his intention and ability to be self-employed in Canada for the purposes of the *Regulations*. The Officer found that the Business Plan lacked sufficient details about the Applicant's market research, financial projections, and the feasibility of the proposed business in Toronto. I will not go over the detailed submissions of the parties but will highlight aspects of the Decision for the purposes of assessing its reasonableness.

[24] I agree with the Respondent that *Ebrahimshani* is analogous to the present matter and therefore instructive.

[25] This Court should read the Officer's reasons "holistically and contextually" (*Vavilov* at para 97). That is, it is permissible for a reviewing court to look beyond the Officer's reasons and consider the contents of the Business Plan to "connect the dots on the page" (*Vavilov* at para 97).

[26] The Court notes that the Business Plan contains many generalizations. A bare statement by the Applicant to the effect that 'the business will succeed' is not sufficient to establish one's intention and ability to be self-employed in Canada. Such a statement must be supported by evidence in order to be reliable and probative on that material issue. The Officer may reasonably expect that figures and projections would be based on relevant primary sources of data and information, not on speculative or irrelevant information.

[27] The Applicant provides no statistics relating to Toronto other than its population. The Applicant instead bases his market analysis on statistics for Ontario and Canada as a whole. In relation to Ontario, the Applicant considers the number of municipalities, the number of small and medium businesses in exhibition, arts, and environment category, urbanization and loss of urban area.

[28] The Business Plan also includes charts and graphs with little explanation or context. The 'Financial Plan' section of the Business Plan was likewise general. The Business Plan itself indicates that "this financial plan is approximate" and it is not evident if the Applicant based the projections on market research or on objective standards. The Applicant did not provide evidence to support his projections as to the likely number of sales or the value of each sale.

[29] The Respondent argues that the Applicant's financial projections are particularly suspect since the Applicant estimates that he will greatly exceed the total net profit of his established business in Iran. Accordingly, the Applicant's arguments in support of the financial projections should be given little weight. The Applicant submits on judicial review that the increased profits will result from the different currency, a much larger target market in Toronto (though the Applicant did not provide comparative statistics with the art market in Tehran), and unspecified differences in the culture and marketplace. The Respondent notes that the Applicant did not make these submissions before the Officer and that they are not relevant to the Officer's findings that the financial projections did not contain sufficient details or sources. The Officer was not required to make these logical leaps in order to accept the Applicant's evidence. Without these contextual submissions, the Officer reasonably discounted the financial projections as overly general.

[30] The Officer found that the Applicant's current language skills would not enable him to work with English-speaking clients. The Applicant stated the following in his Business Plan:

I have a moderate knowledge of the English language. This means that I have improve my English language skills to be able to communicate more effectively in English. This can have significant effect on my success as a self-employed graphic designer. As a result, I have been trying to reach a higher level of proficiency in English.

Due to my Iranian background, I'm fluent in Persian. This can be beneficial to me as I'm planning to settle in Toronto. A city that hosts more than 86,000 Iranian-Canadians. It means it will be easier for me to do business with Iranian businesses and individuals.

[31] The Applicant admits that his limited English will be a challenge for him and that it will be critical to improve his language skills, but he does not account for this in his actual projections or marketing strategy. I find that it was reasonable for the Officer to conclude that the Applicant would have a more limited client base due to his limited English skills.

[32] The Respondent submits that the Applicant's Business Plan simply lacked sufficient information about the basis for his financial information, did not demonstrate adequate research into the Canadian market, and failed to show the proposed business would be feasible.

[33] I agree. The Applicant was responsible for submitting sufficient evidence that would support his application. The evidence the Applicant submitted was deficient on its face and did not establish his ability to become self-employed in Canada.

[34] All of the above illustrates that the Officer had a basis for reaching his overall conclusion that the Applicant did not meet the requirements of the *IRPA* or the *Regulations*. The Officer's conclusion that the Applicant did not establish that he was a 'self-employed person' under the *Regulations* was reasonable in the circumstances. It is not the function of this Court on judicial review to re-weigh the evidence before the Officer.

## VII. Conclusion

[35] The Officer was not required to allow the Applicant a further opportunity to submit evidence or submissions in support of his application. Therefore, there is no breach of procedural fairness.

[36] The Decision bears the hallmarks of reasonableness. It is intelligible, transparent, and justified in relation to the relevant factual and legal constraints.

[37] The application for judicial review is dismissed. There is no question for certification.

**JUDGMENT in IMM-6839-19**

**THIS COURT'S JUDGMENT is that:**

1. The Application for judicial review is dismissed.
2. There is no question of general importance for certification.
3. There is no order as to costs.

"Paul Favel"

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Judge

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

**DOCKET:** IMM-6839-19

**STYLE OF CAUSE:** HAMID AZANI v THE MINISTER OF CITIZENSHIP  
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**DATED:** FEBRUARY 10, 2022

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