

Federal Court



Cour fédérale

Date: 20220422

Docket: IMM-336-21

Citation: 2022 FC 589

Ottawa, Ontario, April 22, 2022

PRESENT: Mr. Justice James W. O'Reilly

BETWEEN:

MARYAM SAFARZADEH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 2018, Ms Maryam Safarzadeh, a citizen of Iran, applied for permanent residence in Canada as a self-employed person. Her plan was to open an art studio in Toronto where she would show her own works and offer art classes.

[2] In her application, Ms Safarzadeh provided evidence of her background as an artist, including previous exhibitions, art courses, and sales contracts. She also identified her financial resources, supplied estimates of the operating costs for the studio, and outlined a marketing strategy.

[3] In 2020, a visa officer refused Ms Safarzadeh's application because she had not submitted sufficient evidence of her ability to establish herself as a self-employed person. After summarizing the information set out in Ms Safarzadeh's application, the officer stated that she had not provided any additional documentation and, in particular, had not supplied a business plan.

[4] Ms Safarzadeh argues that the officer's decision was unreasonable because it contradicted the detailed information that she had supplied in her application. In addition, she submits that the officer treated her unfairly by requiring that she supply a business plan, yet not giving her an opportunity to provide one. Ms Safarzadeh asks me to quash the officer's decision and order another officer to reconsider her application.

[5] I agree with Ms Safarzadeh that the officer's decision was unreasonable because it did not accord with the evidence, and will grant this application for judicial review on that basis. Given my conclusion on that issue, I need not consider the question of unfairness.

II. Was the officer's decision unreasonable?

[6] Ms Safarzadeh contends that the officer's decision is neither intelligible nor transparent. One cannot tell from the decision what further information the officer was looking for or why the application was deficient. The officer appeared to insist on a business plan, but even that is unclear. Further, she says that it would be unreasonable for an officer to require a business plan because the document checklist for self-employed persons did not include a business plan, and the applicable operational manual counselled against requiring one.

[7] The Minister maintains that the officer's decision was reasonable because the evidence provided by Ms Safarzadeh was insufficient – it did not include any market analysis or feasibility plan. Further, the officer did not require a business plan but merely noted that none was submitted.

[8] I disagree with the Minister.

[9] The information supplied by Ms Safarzadeh was extensive. It showed that she was capable of establishing herself as an artist and teacher based on her past experiences and successes. It specified the significant financial resources at her disposal to set up and operate a studio.

[10] The Minister accurately points out that additional information could have been provided – market surveys and feasibility studies (analyses one often finds in a business plan). But we do not know if that is what the officer was looking for, unless an inference can be drawn from the observation that Ms Safarzadeh had not filed a business plan.

[11] The Document Checklist for the Self-Employed Persons class (IMM 5784) sets out the categories of documentation that an applicant must provide. It does not mention a business plan. The Operational Manual: OP8 for Entrepreneurs and the Self-Employed instructs officers to discourage applicants from filing formal business plans (5.12) and notes that requiring formal business plans may impose an unnecessary expense and administrative burden (11.7).

[12] The officer may have been looking for something other than a formal business plan. But one cannot tell from the decision what that was. The rationale of the officer cannot be discerned from the reasons, rendering the conclusion unintelligible and opaque – qualities of an unreasonable decision.

III. Conclusion and Disposition

[13] It is unclear what further information the officer required from Ms Safarzadeh and, therefore, one cannot determine why the officer denied her application for permanent residence. Accordingly, I find that the decision was unreasonable, and must allow this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-336-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-336-21

STYLE OF CAUSE: MARYAM SAFARZADEH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARING HELD BY VIDEOCONFERENCE IN
TORONTO, ONTARIO

DATE OF HEARING: JANUARY 27, 2022

JUDGMENT AND REASONS O'REILLY J.

DATED: APRIL 22, 2022

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