Federal Court  Cour fédérale

Date: 20220901

Docket: IMM-9369-21

Citation: 2022 FC 1250

Ottawa, Ontario, September 1, 2022

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

SHIDEH SEYEDSALEHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Shideh Seyedsalehi, is a citizen of Iran who applied for a Canadian study permit while residing in Malaysia. The study permit was refused. The Applicant seeks judicial review of the refusal, raising issues of reasonableness and breach of procedural fairness.

[2] A reasonable decision is one that exhibits the hallmarks of justification, transparency and intelligibility, and is justified in the context of the applicable factual and legal constraints: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 99.

[3] I am satisfied that the Applicant here has met their onus of establishing that the study permit refusal is unreasonable: *Vavilov*, above at para 100. This is the determinative issue. In the circumstances, I decline to address the asserted breach of procedural fairness.

[4] See Annex "A" below for relevant legislative provisions.

II. Analysis

[5] The parties raised a preliminary issue concerning the letter of acceptance from Northern Lights College accepting the Applicant into the Early Childhood Education and Care Diploma program that was missing from the certified tribunal record [CTR]. At the hearing before me, both parties acknowledged that there is no dispute the letter was before the visa officer [Officer]. In the circumstances, I agree with the Respondent that nothing turns on the omission of the letter from the CTR, a copy of which is in the Applicant's record.

[6] I find that the Decision, as defined in the next paragraph, lacks the requisite justification, intelligibility and transparency to avoid judicial interference. I provide several examples below that in my view are sufficient to dispose of this application for judicial review.

[7] The Officer refused the study permit application on October 19, 2021. The Officer was not satisfied that the Applicant would leave Canada at the end of her stay because of: (1) the Applicant's personal assets and financial status; (2) the Applicant's family ties in Canada and in her country of residence; (3) the purpose of the Applicant's visit; (4) the Applicant's current employment situation; (5) the Applicant's immigration status; and (6) the limited employment prospects in the Applicant's country of residence [Decision].

[8] The following facts about the Applicant are not in dispute:

- single (divorced), mobile, no dependents, family ties in Iran but none in Canada or Malaysia;
- no negative travel history;
- Bachelor's Degree in Psychology obtained in Malaysia in 2015;
- studied for a Master's Degree in Developmental Psychology in Malaysia; and
- prepaid tuition deposit of $6,000 toward estimated tuition of $11,860 at Northern Lights College, a designated learning institution.

[9] The Officer's Global Case Management System [GCMS] notes, which form part of the Decision, do not discuss the Applicant's family ties at all in connection with the Officer's consideration of the Applicant's establishment in or ties to her "country of residence/citizenship." Further, the Decision states: "I am not satisfied that you will leave Canada at the end of your stay, as stipulated in subsection 216(1) of the IRPR, based on your family ties in Canada and in your country of residence." The Applicant's evidence, however, discloses no family ties in either Canada or Malaysia, but demonstrates that the Applicant has significant family ties in her home country of Iran. The Applicant's evidence also indicates that she plans to come to Canada unaccompanied.

[10] In the circumstances, and paraphrasing my colleague Justice Walker, I find that the Officer's reliance of the Applicant's family ties in Canada and in her country of residence as a reason for refusal of the study permit is a reviewable error because it is neither intelligible nor justified: *Rahmati v Canada (Citizenship and Immigration)*, 2021 FC 778 at para 18.

[11] The GCMS notes also state: "I am not satisfied that the applicant would leave Canada at the end of their stay as a temporary resident, I note that: -the client is single, mobile … and has no dependents." The Officer fails to provide any explanation, however, why these three factors satisfy the Officer that the Applicant would not leave Canada, nor in my view, is any explanation readily apparent on the record. As I explain below, this is an example of an administrative decision lacking a rational chain of analysis that otherwise could permit the Court to connect the dots or satisfy itself that the reasoning "adds up": *Vavilov*, above at paras 85, 103-104.

[12] I note that the ellipsis in the above paragraph replaces the Officer's reference to "is not well established." Unlike the three factors mentioned, the Officer does consider the factor of establishment, as discussed below in these reasons.

[13] Although the Officer concludes that the factors in the application were weighed, it is not evident how the Officer weighed these particular factors. For example, if they were considered negative factors, the Officer should have stated this clearly in my view, with reasons – even brief reasons, so that the Court could have reviewed the Decision in a more meaningful way. What is left unanswered with this litany of factors is the "why" the Officer considered them relevant. In other words, the Officer provides a conclusion (i.e. that the Applicant would not leave Canada at

the end of her temporary stay) and lists factors that were considered (i.e. that the Applicant is single, mobile and has no dependents) but fails to explain how these three factors in particular support the conclusion. I find that this also renders the Decision unreasonable and warrants the Court's intervention. As noted recently by Justice McHaffie, "[e]ven where the obligation to give reasons is minimal, the Court cannot be left to speculate as to the reasons for a decision, or attempt to fill in those reasons on behalf of a decision-maker where they are not clear from the decision read in light of the record": *Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596 [*Afuah*] at para 17.

[14] In my view, the Officer's discussion of the Applicant's motivation letter (i.e. study plan) highlights again the lack of rationality that sometimes permeates study permit refusals. In the Officer's view, "it is not logical that someone currently studying Masters Psych at University would study ECE at the college level in Canada." The GCMS notes, however, provide no insight into why the Officer considers this illogical. Further, as I explain below, this lack of rationality involves an example of the decision maker misapprehending or failing to account for the evidence before it, contrary to the guidance in *Vavilov* (para 126).

[15] I find that the Officer unreasonably fails to account for the Applicant's explanation in her motivation letter. The Applicant explained that while she enjoys attending and reading about psychological seminars, she intends to pursue content-based language teaching (i.e. teaching other subjects such as math or science in English) in her home country, a methodology that is not widely practised. After researching universities internationally, the Applicant chose the Early

Childhood Education and Care Diploma program at Northern Lights College in Canada as suiting the needs of her intended pursuit. Nowhere does the Officer grapple with this evidence.

[16] Further, one is left wondering on what basis the Officer finds studying a college level program illogical in the face of a previously studied Masters level program at university. For example, does the Officer correlate the Masters program in Malaysia with a similar Masters level program in Canada? Does the Officer find the illogicality rests in a university (regardless of where located) versus a college program, i.e. is the latter considered to be a lower level or of lesser value? Or is it the Applicant's change of focus from psychology to early childhood education and care? Nowhere does the Officer provide reasons for the finding of illogicality, especially in the context of the Applicant's motivation letter or study plan. In my view, the Officer's finding is tantamount to an unreasonable "foray into career counselling" that lacks intelligibility and transparency: *Adom v Canada (Citizenship and Immigration)*, 2019 FC 26 at para 17.

[17] The Officer's ensuing discussion about the cost of the college program could be a basis for the Court concluding that the Officer views the college program of lesser value than a university program, but I find this is unclear in the GCMS notes. Rather, the Officer compares the cost of studying in Canada with "comparable programs in home country/region" and concludes that the motivation letter "does not provide a reasonable explanation of the realistic potential benefit of proposed study at this level that would realistically compensate the cost of studying in Canada." This is unreasonable in my view for at least two reasons.

[18] First, nowhere does the CTR contain information about comparable programs in Iran, or Malaysia for that matter, or their cost. Second, it ignores the Applicant's motivation letter and the reasons why, after research, she chose the early childhood education program in Canada, including the affordability of tuition. With nothing further in either the reasons or the record to explain the reference to "comparable programs in home country/region," I also am unable to assess the reasonableness of this aspect of the Decision: *Afuah*, above at para 15.

[19] The Officer also concludes that the Applicant's level of establishment in home country/country of residence is insufficient to motivate departure by the end of an authorized stay period. As mentioned above, the Officer does not mention the Applicant's family ties in her home country at all in the GCMS notes. Rather, the Officer's focus in the establishment analysis, unreasonably as I explain, is on the Applicant's employment situation.

[20] The Applicant's evidence does not point to any current employment beyond 2019. Her evidence is that she has taught children in the past, that she recently has completed Masters studies in Malaysia, and that she is seeking to undertake further studies in Canada to facilitate in turn the start of her own bilingual (Persian or Farsi and English) kindergarten and preschool in Iran. The Officer states, however, that "[t]aking the applicant's **current** employment situation into consideration, the employment does not demonstrate that the applicant is sufficiently well established that the applicant would leave Canada at the end of a period of study" [emphasis added]. This is unreasonable in my view for at least three reasons.

[21] First, the Applicant's own evidence is that she was planning to leave Malaysia at the end of her period of study there. The Officer provides no explanation why Canada would be any different for the Applicant. Second, she is not employed currently, although she has been in the past. That said, her evidence is that she owns two pieces of land in Iran, and co-owns a third piece of land with her parents, but inexplicably the Officer does not mention this evidence. Third, employment is the only factor the Officer takes into account in considering the Applicant's establishment in either Malaysia or Iran, with no indication of what would constitute "sufficient" establishment.

[22] I do not disagree with the Respondent that the Officer is not required to account for every piece of evidence. I find it unreasonable in the circumstances, however, that the Officer focusses unduly on the Applicant's employment in the context of establishment, to the exclusion of other relevant evidence or factors of establishment, in the absence of a description or discussion of what would be considered "sufficient." In addition, the Decision specifically mentions that the Officer is not satisfied the Applicant will leave Canada at the end of her stay based on her "personal assets," without any consideration of the Applicant's land holdings (i.e. significant personal assets, in my view) in the GCMS notes.

[23] I find further that the Officer turns an otherwise positive factor into a negative one. The Officer observes that "[t]he applicant's immigration status in their country of residence is temporary, which reduces their ties to that country." First, the Officer's observation unreasonably overlooks the Applicant's return to her home country: *Nsiegbe v Canada (Citizenship and Immigration)*, 2018 FC 1262 at para 17. Second, while this observation may be

the case as far as it goes, the Applicant's evidence points to her compliance with the immigration laws or requirements of other countries, including Malaysia, rather than showing any non-compliance. This segues to my next point.

[24] The Officer states repeatedly that they are not satisfied the Applicant will leave Canada at the end of her temporary stay or the period authorized for her stay. My colleague Justice Norris observes, however, "[a] finding that the applicant could not be trusted to comply with Canadian law is a serious matter": *Cervjakova v Canada (Citizenship and Immigration)*, 2018 FC 1052 at para 12. As alluded in the reasons above, the Officer has failed, in my view, to provide any rational basis for distrusting the Applicant in this regard.

[25] Finally, I find that the Officer unreasonably failed to consider the Applicant's evidence that points to an opposite conclusion to that of the Officer, to the effect that "the applicant's financial situation does not demonstrate that funds would be sufficient or available."

[26] First, the Officer discounts the evidence of the Applicant's financial status because of a lack of historical bank statements and because "[l]arge deposits of funds to accounts without evidence of the origin of these funds will not be considered as reliable evidence of the ability to afford international studies." As I explain below, however, I find that the Officer unreasonably assumed the amount in the Applicant's account represented a "large deposit."

[27] I note that the Officer does not dispute the authenticity of the Account Balance Statement provided by the Applicant's bank confirming that as of the specified date, the account contained

the amount indicated. The statement says nothing about whether the amount represents a large deposit or an accumulation of deposits, whether small or large, over a number of years. In other words, it also does not confirm when the deposit or deposits were made, although it does show the account was opened in December 2013. The statement also says nothing about whether the funds will remain in the account. I thus agree with the Applicant that Officer's conclusion concerning a large deposit or the availability of funds is not justified in the circumstances. While I might not have considered this error sufficient, in isolation, to warrant interference, I find that it reinforces the overall unreasonableness of the Decision.

[28] Second, and more concerning, is the Officer's seeming disregard of the Applicant's evidence in the form of an affidavit or undertaking by her parents "to fully pay costs of our daughter… including costs of education and living and etc., so long as she studies in Canada" in addition to other evidence of her father's finances.

[29] Third, the Officer does not take into account the Applicant's evidence that half of the estimated tuition already has been paid as a deposit.

[30] As mentioned above, the Officer also inexplicably fails to take into account the Applicant's land holdings in the context of "personal assets" mentioned in the Decision.

III. Conclusion

[31] For the foregoing reasons, I find that the Decision refusing the Applicant's application for a study permit unreasonable. I thus grant this judicial review application. The Decision is set aside, with the matter remitted to a different decision maker for reconsideration.

[32] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-9369-21

THIS COURT'S JUDGMENT is that:

1. The Applicant's judicial review application is granted.
2. The October 29, 2021 decision of the visa officer refusing the Applicant's application for a study permit is set aside.
3. The matter will be remitted to a different decision maker for reconsideration.
4. There is no question for certification.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

Immigration and Refugee Protection Regulations, SOR/2002-227
Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227)

Issuance of Study Permits **Study permits**	**Délivrance du permis d'études** **Permis d'études**
216 (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national	**216 (1)** Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
(a) applied for it in accordance with this Part; **(b)** will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9; **(c)** meets the requirements of this Part; **(d)** meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and **(e)** has been accepted to undertake a program of study at a designated learning institution.	**a)** l'étranger a demandé un permis d'études conformément à la présente partie; **b)** il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9; **c)** il remplit les exigences prévues à la présente partie; **d)** s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3); **e)** il a été admis à un programme d'études par un établissement d'enseignement désigné.

FEDERAL COURT

SOLICITORS OF RECORD

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