Federal Court Cour fédérale

Date: 20221027

Docket: IMM-6755-21

Citation: 2022 FC 1469

Ottawa, Ontario, October 27, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

PARHAM TORKESTANI

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

[1] Following oral submissions, I informed the parties that this application would be allowed and that reasons would be provided later explaining why. These are those reasons.

[2] The Applicant, Parham Torkestani, is a teenage student who lives in Tehran, Iran. He was 17-years-old when he applied for a study permit to attend Grade 11 at Dr. G.W. Williams Secondary School in Aurora, Ontario.

[3] With his application, he submitted a study plan and documentary evidence of his family's financial status. The Applicant's study plan details his reasons for wanting to study Grade 11 in Canada. He says that he wants to improve his English skills by studying in Canada. Although he completed Grades 6-8 at an international school in Malaysia, Farsi is the language of education in Iran. Furthermore, the Applicant states, someone who graduates from a Canadian high school, college, or university is ahead of their peers and at an advantage in the Iranian job market. After completing high school, the Applicant hopes to study at a Canadian college or university, then return to Iran to work. He says that his parents and brother all live in Iran and they have "close emotional ties."

[4] On September 27, 2021, the Officer denied the Applicant's study permit application. The decision letter reads, in material part, as follows:

> I am refusing your application on the following grounds:
>
> - I am not satisfied that you will leave Canada at the end of your stay, as stipulated in subsection 216(1) of the IRPR [*Immigration and Refugee Protection Regulations,* SOR/2002-227], based on your personal assets and financial status.
>
> - 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 the purpose of your visit.

[5] The Officer's notes in the Global Case Management System [GCMS] set out the rationale for the refusal. The Applicant observes that much of the language therein is identical to that found in the recent decision of Justice Pentney in *Soltaninejad v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1343. I have underlined the points of overlap in the following identical passages:

> I have reviewed the application. Although the tuition has been paid, the applicant's family does not appear to be sufficiently well established that the proposed studies would be a reasonable expense. The funds provided possess limited documentation concerning the source of supporting funds. Minor applicant to study at York Region District School Board– grade 11. The purpose of the visit itself does not appear to be reasonable, in view of the fact that similar programs are available closer to the applicant's place of residence. Motivation to pursue studies in Canada does not seem reasonable given that a comparative course is offered in their home country for a fraction of the cost. The purpose of the visit does not appear reasonable given the applicant's socio-economic situation and therefore I am not satisfied that the applicant would leave Canada at the end of the period of authorized stay. Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

[6] Perhaps the same officer made both determinations, or perhaps the Respondent has provided officers with standard phraseology. Regardless, the rationale for the conclusion reached is not reasonable within the framework established in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[7] It was recently observed in *Mundangepfupfu v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1220 [*Mundangepfupfu*] at paras 10 and 11 that in assessing the reasonableness of a decision, a reviewing court must take into account the "decision's institutional context" and "Visa officers are responsible for considering a high volume of study permit applications." Nonetheless, "while extensive reasons are not required, an officer's decision must be transparent, justified, and intelligible" (*Mundangepfupfu* at para 11).

[8] Decisions made on study permit applications are important to those applying to study in Canada and they are entitled to reasons that enable them to understand why, given the materials filed, the application has been refused.

[9] There are several deficiencies in the reasons offered in the GCMS notes.

[10] First, I agree with the Applicant that there was no evidence before the Officer indicating that similar programs are available closer to the Applicant's place of residence, at a fraction of the cost. These were described by Justice Gascon in *Aghaalikhani v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1080 as "elusive programs" (para 20).

[11] It is true, as the Respondent noted, that there are schools in Iran; however, in the Applicant's study plan, he writes:

> The second major reason I have chosen to study in Canada is that in Iran, Farsi is the language of education and since I have completed grades 6-7- and 8 in Malaysia, I already have a good understanding of English language. By studying in Canada, I will have the opportunity to improve the much-needed English language skills.

[12] It does not appear in the record that there is equivalent English language instruction in Iran. The fact that the Applicant had to travel to Malaysia to study English at an international school is indicative of the lack of English studies in Iran.

[13] Counsel for the Respondent, trying to assist the Officer, writes in his memorandum:

> In his submission letter accompanying his application, the Applicant indicated that he was studying at Avicenna International

> School in Tehran. The Applicant did not submit any documents or transcripts from that school, but it also appears to be an international school whose main language of instruction is English. (footnoting https://ir.avicenna.hu/, retrieved on October 5, 2022).

[14] Perhaps counsel is correct; however, that web site is in Farsi and the Court is therefore unable to affirm counsel's suggestion. Regardless, the Officer never identified this school or its program as that to which he was referring. Had it been, I would have expected the Officer to have noted simply that the Applicant appeared already to be enrolled in an English language program of study in Iran.

[15] Second, the Officer's findings on financial and socio-economic status of the Applicant's family does not accord with the record.

[16] The Applicant submitted his father's bank statement, title deeds to five properties owned by his father, his father's business permit, and title deeds to three properties owned by the Applicant. The father's bank account contains over $500,000 CAD. I agree with the Applicant that his father's funds, combined with the properties owned by both the Applicant and his father, contradict the Officer's finding that the Applicant's family is not well established in Iran.

[17] Respondent's counsel, not the Officer, notes that the bank statement submitted by the Applicant does not contain the name of the account holder or show a transactional history. While no transactional history is shown, the personal identification number on the bank statement is that of the Applicant's father found elsewhere in the record. Counsel, but again not the Officer, observes that the title deeds provide no evidence regarding the share of the interests

or the equity in those properties. Regardless, a father with over $500,000 CAD in cash has the financial resources to pay for his son's education for one year or more in Canada.

[18] In my view, the Respondent repeatedly and inappropriately attempts to "fill in the blanks" in the Officer's reasoning.

[19] The Supreme Court of Canada in *Vavilov* at para 96 instructs:

> Where, even if the reasons given by an administrative decision maker for a decision are read with sensitivity to the institutional setting and in light of the record, they contain a fundamental gap or reveal that the decision is based on an unreasonable chain of analysis, it is not ordinarily appropriate for the reviewing court to fashion its own reasons in order to buttress the administrative decision. [emphasis added]

[20] In my view, it is equally inappropriate for counsel advocating for a decision maker to fashion counsel's own reasons to buttress the decision. The decision and its reasons must stand or fall on their own.

[21] For these reasons, the application is allowed and the decision under review is set aside. No question was proposed for certification.

JUDGMENT in IMM-6755-21

THIS COURT'S JUDGMENT is that the application is allowed, the matter is referred for reconsideration by another officer, and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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