

Federal Court



Cour fédérale

Date: 20230127

Docket: IMM-3625-22

Citation: 2023 FC 132

Vancouver, British Columbia, January 27, 2023

PRESENT: Madam Justice McDonald

BETWEEN:

**SARA NAJMI AND
FATEMEH ESMAEILZADEH**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] On this application the applicant mother and daughter [the Applicants] seek review of a decision of a visa officer [Officer], dated March 28, 2022 [the Decision], refusing their applications for a study permit and a temporary resident visa. The Officer was not satisfied that the Applicants would leave Canada at the end of their stay.

[2] This judicial review is granted as the Officer's reasons are unreasonable because they are bereft of any analysis on the grounds relied upon to deny the visas.

I. Background and Decision

[3] The 12-year-old applicant and her mother are citizens of Iran.

[4] The student visa application was for the daughter to attend one term of junior high school at a school in Edmonton, Alberta. The Applicant's Mother applied for a temporary resident visa so that she could accompany her daughter until she found a reliable person or family to be her daughter's custodian in Canada.

[5] In support of the application, the Officer had the minor Applicant's acceptance letter, proof that her tuition fee had been paid in full, and proof of funds.

[6] On March 28, 2022, their applications were refused. The Officer was not satisfied that the Applicants would leave Canada at the end of their stay, based on both the purpose of the visit and their travel history.

II. Issue and Standard of Review

[7] The only issue is reasonableness of the Officer's decision.

[8] The standard of review applicable to the merits of the Decision is reasonableness, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[9] As stated by the Supreme Court in *Vavilov*, a reasonable decision is one that possesses the three hallmarks of reasonableness – justification, transparency and intelligibility – within the decision-making process (at paras 86, 99). With respect to justification, it is not enough for an outcome to be justifiable. Instead, where reasons for a decision are required, the decision must also be justified, by those reasons, by the decision-maker to those whom the decision applies (at para 86).

III. Analysis

[10] The Applicants argue that the Officer made a number of conclusions without any reference to how those conclusions were reached relative to the materials filed in support of their application.

[11] I accept that a visa officer has discretion in assessing applications and I accept the detailed reasons are neither required nor expected. However, it is expected that on a reading of the Officer's decision, however brief, the Court can delineate why the Officer reached their decision. I cannot do so here and I will outline some of the Officer's findings to illustrate this.

[12] First, in the Global Case Management System [GCMS] notes, the Officer states that the "purpose of the visit does not appear reasonable given the applicant's socio-economic situation". However, the Officer does not say why.

[13] The study permit application notes that tuition would cost \$13,250 CAD, and another \$18,000 CAD for room, board, and other expenses, which was being paid by her parents. The evidence was that tuition had already been paid in full in November 2021 and there was over \$32,500 CAD in available funds in her mother's bank account.

[14] The Officer does not address this evidence in any manner.

[15] At the hearing, Respondent's counsel submitted that it was open to the Officer to consider the Applicants' socio-economic situation, and that this factor was not the Officer's main concern. I agree that it was open for the Officer to consider socio-economic factors, however, the issue that arises here is that the Officer does not address any of the Applicants' evidence on this point.

[16] The Officer has failed to explain in any manner or provide any justification as to how the conclusion with respect to the socio-economic situation was reached. Further, there is nothing in the Officer's reasoning that allows the Court to understand how prominently the Officer's analysis on this consideration factored into the outcome they reached

[17] The second issue relates to the Officer's finding on the Applicants' travel history. In the GCMS notes the Officer states: "The applicant's prior travel history or lack thereof is insufficient to count as a significant positive factor in my assessment."

[18] Travel history is a relevant consideration on a visa application (*Obeng v Canada (Citizenship and Immigration)*, 2008 FC 754 at para 13).

[19] However, here, the Applicant had not travelled. This Court has confirmed that the lack of travel history is at most a “neutral” factor, and that it is an error to treat the absence of travel history as a negative factor (see, e.g., *Dhanoa v Canada (Citizenship and Immigration)*, 2009 FC 729 at para 12; *Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 at para 29; *Adom v Canada (Citizenship and Immigration)*, 2019 FC 26 at para 15; *Chantale v Canada (Citizenship and Immigration)*, 2021 FC 544 at para 9).

[20] The Officer’s explicit reliance on travel history as a ground for refusal suggests that the Officer treated the Applicants’ lack of travel history as a negative factor and not a “neutral” factor. This was similarly the finding of the Court in *Chantale v Canada (Citizenship and Immigration)*, 2021 FC 544 at paragraph 9.

[21] At the hearing, the Respondent, for the first time, raised an alternative argument. Relying on *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at paragraphs 46-48, the Respondent suggested that even if this Court was inclined to find, as I have, that the Officer erred in treating the Applicants’ lack of travel history as a negative factor, that the error was not so fundamental so as to render the entire decision unreasonable. In *Ocran*, the officer provided four distinct grounds for refusal, of which one was the applicants travel history (at para 11). The Court ultimately found that no error in the officer’s conclusions with respect to the three other grounds, and as such was not prepared to find that an error in analysing the applicants’ travel

history was sufficient to render the entire decision unreasonable (at para 48). In my view, *Ocran* is distinguishable from the present case, where there is only one other ground for refusal, which I have found the Officer to also err in analysis.

[22] Third, and finally, is the Officer's justification for their finding regarding the applicant's motivation to study in Canada.

[23] The Officer states the following in the GCMS notes:

Motivation to pursue studies in Canada does not seem reasonable given that a comparative course is offered in their home country at a fraction of the cost.

[24] This conclusion appears to have been reached by the Officer in the absence of evidence in the record. In any event, this Court has held that it is unreasonable for an officer to have suspicions of an applicant merely because a particular individual puts a high value on higher education and that concerns about the disproportionate cost of studying lack justification (see, e.g., *Caianda v Canada (Citizenship and Immigration)*, 2019 FC 218 [*Caianda*] at para 5).

[25] There are many valid reasons for choosing to study in Canada in spite of the comparatively higher cost, and it is not an officer's role to determine the value of learning to an applicant (*Caianda* at para 5; *Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552 at para 18).

[26] During oral submissions, Respondent's counsel made a number of submissions as to why the Officer's conclusion on the Applicants' motivation was justified and reasonable. The

fundamental issue with these submissions, regardless of whether they represent a possible explanation for the Officer's concerns, is that the Officer did not set out that explanation themselves. As emphasized in *Vavilov*, reasonableness review is concerned with a *decision maker's justification for their decision* (at para 15).

IV. Conclusion

[27] For the reasons outlined above, this judicial review is granted and the decision is quashed and remitted for redetermination by a different officer.

[28] There is no question for certification.

JUDGMENT IN IMM-3625-22

THIS COURT'S JUDGMENT is that:

1. This judicial review is granted.
2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3625-22

STYLE OF CAUSE: NAJMI ET AL v MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

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