

Federal Court



Cour fédérale

Date: 20230316

Docket: IMM-3741-22

Citation: 2023 FC 366

Vancouver, British Columbia, March 16, 2023

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

MOHAMMADAMIN GHORBANI KELIDBARI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mohammadamin Ghorbani Kelidbari is a citizen of Iran. He seeks judicial review of a decision by a visa officer [Officer] to refuse his request for a study permit to complete Grade 10 at Pattison High School in Vancouver, British Columbia.

[2] At the time he submitted his application for a study permit, Mr. Kelidbari was 16 years old. His application was accompanied by a letter from an immigration consultant, who stated the following:

The family's level of establishment and socio-economic situation in their home country is reasonable [*sic*] to decide to send their child to Canada to study. Education in Canada is an investment into a child's future. Universities and colleges all across the world recognize a Canadian high school diploma. Canada's secondary school education system is well-known for being of high quality, rigorous, and equitable. Students will also stand out on their university applications. The latest in technology, equipment, and resources are used to enhance and support student learning. Students who have access to cutting-edge materials can improve their digital abilities and feel supported in their studies. Attending a Canadian high school can help students prepare for university success and improve their job opportunities at home. Local options do not have the same quality education. The quality of education at Canadian high schools is not similar to the ones in the applicant's home country.

[3] The immigration consultant also noted that Mr. Kelidbari's parents had paid the annual tuition fee and other school fees in the amount of \$20,000, and that an additional \$44,500 was available to cover living and other expenses.

[4] The Officer was not satisfied that Mr. Kelidbari would leave Canada at the end of his authorized stay. The Officer found that the purpose of his visit did not appear to be reasonable, and that he had not demonstrated sufficiently strong ties to Iran.

[5] The Officer's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10). The Court will intervene only where "there are sufficiently serious

shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

[6] The criteria of “justification, intelligibility and transparency” are met if the reasons allow the 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 (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[7] The Officer’s notes in the Global Case Management System [GCMS] form a part of the decision under review (*Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 at para 5). According to the Officer’s GCMS notes:

No Explanation letter to review. The lack of Study plan leaves no outline to clarify the career/educational path for which the sought educational program would be of benefit. Insufficient explanation or details has [*sic*] been given on how the proposed studies in Canada will be of benefit at this stage in PA’s life. Recent education transcripts and diplomas not provided.

[8] While the correspondence from the immigration consultant may not have amounted to a “study plan”, it was at a minimum an “explanation letter to review”. It is unclear whether the Officer read or considered the reasons provided by the immigration consultant for Mr. Kelidbari’s desire to complete high school in Canada.

[9] The Officer also noted that Mr. Kelidbari was “single, mobile, not well established and has no dependents”. It does not appear that the Officer fully grasped that Mr. Kelidbari was a

teenaged high school student who was still dependent on his parents for financial and other support (*Mundangepfupfu v Canada (Citizenship and Immigration)*, 2022 FC 1220 at para 21).

[10] The Officer's refusal letter stated: "I am not satisfied that you will leave Canada at the end of your stay [...] based on your family ties in Canada and in your country of residence." In fact, Mr. Kelidbari had no family ties in Canada whatsoever.

[11] The Respondent says that the Officer is presumed to have considered all of the information provided, and is not required to refer to each piece of evidence (citing *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 28). The letter from the immigration consultant contained only general statements regarding the benefits of Mr. Kelidbari's proposed studies in Canada, and no supporting evidence. Nor were his parents' financial circumstances supported by evidence. The Respondent therefore maintains that Mr. Kelidbari failed to meet his burden of providing sufficient evidence to demonstrate he would leave Canada at the end of his authorized stay (citing *Roopchan v Canada (Citizenship and Immigration)*, 2021 FC 1342 at paras 14-19).

[12] As the Supreme Court of Canada held in *Vavilov* at paragraph 86, "it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies" [emphasis original]. A decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it (*Vavilov* at para 128).

[13] The Officer's assertions that Mr. Kelidbari had family ties in Canada and that he had failed to provide a study plan or letter of explanation were factually incorrect. It is doubtful that the Officer fully grasped that Mr. Kelidbari was a teenaged high school student who was still dependent on his parents. This calls into question whether the Officer was actually alert and sensitive to the reasons advanced by Mr. Kelidbari for seeking to complete his high school education in Canada.

[14] The application for judicial review is therefore allowed, and the matter is remitted to a different visa officer for redetermination. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed and the matter is remitted to a different visa officer for redetermination.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3741-22

STYLE OF CAUSE: MOHAMMADAMIN GHORBANI KELIDBARI v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: MARCH 9, 2023

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: MARCH 16, 2023

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