

Federal Court



Cour fédérale

Date: 20230406

Docket: IMM-4351-22

Citation: 2023 FC 494

Ottawa, Ontario, April 6, 2023

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

**ZAHRA SAYYAR AND
TOORAJ ASSADIAN**

Applicants

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] On April 20, 2022, the principal applicant, Zahra Sayyar, a 32-year-old lawyer and citizen of Iran, was refused a permit to study in Canada; the visa officer was not satisfied that Ms. Sayyar would leave Canada at the end of her studies based on her available financial resources, her family ties in Canada and Iran, and the purpose of her visit. Her spouse, Tooraj Assadian, also an Iranian citizen, was therefore refused a work permit as he was looking to

accompany his wife while she studied here; because Ms. Sayyar was refused a study permit, the visa officer was not satisfied that Mr. Assadian would depart Canada at the end of the authorized period given the purpose of his visit. The applicants now seek judicial review of those two decisions.

[2] For the reasons that follow, I am not convinced that the visa officer breached the principles of procedural fairness by not affording the applicants, by way of an interview or a procedural fairness letter, an opportunity to address any concerns that the visa officer had with respect to their applications. Nor am I convinced that the visa officer's ultimate decisions in this matter were unreasonable. Accordingly, I am dismissing the present application for judicial review.

II. Facts

[3] Zahra Sayyar was accepted into the Master of Public Policy and Administration program at Adler University in British Columbia. She has a bachelor's degree in law and has worked as an administrative assistant in the office of a notary public and as a part-time legal advisor with Zarin Samin Khorasan Trade Development Company [Zarin Co]. As part of her study permit application, Ms. Sayyar submitted a letter from Zarin Co offering her what she states is a promotion to the position of legal department manager upon and as a result of completing her master's degree in public policy and administration.

[4] As to the financial capacity of the applicants, the visa officer found that the applicants' documentation did not demonstrate that they have sufficient funds to cover their living expenses

as well as Ms. Sayyar's college tuition for the period of their stay in Canada. As regards Ms. Sayyar's ties to Iran, the visa officer determined that such ties were not sufficiently established, with the result that they would weaken with Mr. Assadian accompanying her to Canada; the visa officer was not satisfied that Ms. Sayyar's remaining ties to Iran were sufficient to motivate her to return to Iran upon completion of her studies in Canada.

[5] As regards Ms. Sayyar's study plan, the visa officer found it to be short on detail and supporting documentation; the visa officer noted Ms. Sayyar's submission that she wanted to pursue the program in Canada so as to help train younger students for public service in Iran and provide them with the prerequisites and standards to obtain employment in the Iranian public sector. However, the visa officer found that Ms. Sayyar provided neither details explaining how the proposed studies would help her achieve that goal nor compelling reasons to satisfy the visa officer that such a program would be of benefit to her under the circumstances. Finally, as regards the prospects of employment in Iran upon the applicants' return, the visa officer noted Ms. Sayyar's continued offer of employment but found that the "employment letter/work certificate only mentions that they will hold the position for the duration of studies, there's no mention of a guaranteed promotion or a need for international studies to secure the employment."

III. Standard of Review and Analysis

[6] There is no issue between the parties that questions of procedural fairness require an approach resembling the correctness standard (*Kambasaya v Canada (Citizenship and Immigration)*, 2022 FC 31 at para 19) while the standard of review with respect to the

conclusions of the visa officer is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65; *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 11; *Carin v Canada (Citizenship and Immigration)*, 2020 FC 740 at para 4).

[7] On the issue of procedural fairness, the applicants read into the Global Case Management System notes that the visa officer had concerns as to whether Ms. Sayyar was a *bona fide* student—veiled credibility concerns that ought to have been put to her in order to allow her to respond, either by way of an interview or by way of a procedural fairness letter (*Yaqoob v Canada (Citizenship and Immigration)*, 2015 FC 1370 [*Yaqoob*] at para 12). Ms. Sayyar argues that study permit applicants are owed an opportunity to respond to a visa officer’s concerns in certain cases, such as where an officer uses extrinsic evidence to form an opinion, or otherwise forms a subjective opinion that an applicant had no way of knowing would be used in an adverse way, or where an officer’s concerns did not arise from the legislative or regulatory requirements and where the applicant could not reasonably have foreseen concerns that were of interest to the visa officer (*Gu v Canada (Citizenship and Immigration)*, 2010 FC 522 [*Gu*] at paras 24–25, quoting *Campbell Hara v Canada (Citizenship and Immigration)*, 2009 FC 263, 341 FTR 278, [2009] FCJ No 371 (QL) [*Hara*] at para 23, which cites *Li v Canada (Citizenship and Immigration)*, 2008 FC 1284 at paras 35–36).

[8] While I agree with the proposition set forth in *Gu* and the decisions cited therein by Mr. Justice Mainville, I fail to see how those decisions assist the applicants. Here, there is a presumption that a foreign national seeking to enter Canada is an immigrant, and the onus was

on the applicants to establish, to the officer's satisfaction, that they would leave Canada at the end of their stay (*Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 at para 16). Unlike the visa officer's decision in *Yaqoob*, here the visa officer's decision was based on sufficiency of evidence, not credibility. The visa officer did not rely on extrinsic evidence to form an opinion or otherwise form a subjective opinion that the applicants had no way of knowing would be used against them; nor did the officer have concerns about the credibility, accuracy, or genuineness of the information submitted (*Gu* at paras 24–25; *Hara* at para 23; *Baybazarov v Canada (Citizenship and Immigration)*, 2010 FC 665 at paras 11–12). Moreover, concerns arising from the sufficiency of the evidence do not have to be communicated to an applicant given that this is part of the initial burden of providing a complete application (*Rezvani v Canada (Citizenship and Immigration)*, 2015 FC 951 at para 21; *Sharafeddin v Canada (Citizenship and Immigration)*, 2022 FC 1269 [*Sharafeddin*] at para 25). Consequently, I have not been convinced of any breach of procedural fairness in this case.

[9] Turning to the reasonableness of the decision, I am not convinced that the visa officer's decision is unreasonable as regards the determinative issues.

[10] First, I see no reviewable error in the breadth of the visa officer's analysis. It is not incumbent upon visa officers to provide a detailed analysis as part of their decisions. The need to give reasons is circumscribed by their operational realities, which for the most part include the need to process a high volume of visa applications. A visa officer's duty is only to provide minimal reasons sufficient to understand their reasoning (*Sharafeddin* at para 26). As was stated by Mr. Justice McHaffie in *Iriekpen v Canada (Citizenship and Immigration)*, 2021 FC 1276 at

paragraph 7, “[g]iven this context and the nature of a visa application and refusal, the Court has recognized that the requirements of fairness, and the need to give reasons, are typically minimal”.

[11] As to the assessment of the applicants’ financial circumstances, the visa officer stated:

I note that the estimated tuition fee for the first academic year is the amount of \$17550 CAD. Detailed bank statements show overall low funds. Not enough to cover tuition and living expenses for PA [Principal Applicant] and spouse. Taking the applicant’s plan of studies into account, the documentation provided in support of the applicant’s financial situation does not demonstrate that funds would be sufficient. I am not satisfied that the proposed studies would be a reasonable expense.

[12] The applicants argue that *Operational Bulletin OP12: Students s. 7.7* [Operational Bulletin] requires only that the couple meet a combined minimum threshold for living expenses of \$14,000 in their first year alone, and that given that the applicants’ combined banking records showed available funds of over \$31,000—net of Ms. Sayyar’s initial payment of \$5,000 towards her tuition—and that the evidence included the lease of Mr. Assadian’s apartment to tenants who were paying him the equivalent of about \$4,245 per month in rent, the determination of the visa officer on this issue is unreasonable. I cannot agree with the applicants. Putting aside that a visa officer is not necessarily bound by the Government of Canada’s operational guidelines, it is correct that the Operational Bulletin states that “[s]tudents are required to demonstrate financial sufficiency for only the first year of studies”, but it also states that visa officers “should be satisfied however that the probability of funding for future years does exist (i.e., parents are employed); scholarship is for more than one year.” I accept the Minister’s assertion that it is not

a simple matter of reviewing the applicants' bank account and, if they have sufficient funds, granting them a permit; the visa officer must conduct a more detailed and fulsome investigation about the source, nature, and stability of these funds, as well as determine the likelihood of future income and ability to pay for subsequent years of education and living expenses while in Canada. There is a presumption that the visa officer took into account all documentation provided in support of the applicants' financial situation, including the funds emanating from Mr. Assadian's rental apartment, in the assessment of future funding capacity.

[13] This is not a situation, as was the case in *Caianda v Canada (Citizenship and Immigration)*, 2019 FC 218 [*Caianda*], where the visa officer relied on what would seem to be the high cost of the applicant's proposed education in Canada as a reason to find the applicant not to be a *bona fide* student (*Caianda* at para 5). Nor is this case similar to that in *Liu v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1262 [*Liu*], where the visa officer took it upon herself to determine how much money should reasonably be spent on international education (*Liu* at para 16). Here, the issue is squarely one of the visa officer's determination as to the applicants' financial ability to live in Canada while paying for Ms. Sayyar's education. It is not for this Court to reweigh the evidence on this issue, and therefore, I see nothing unreasonable with the visa officer's assessment.

[14] As regards Ms. Sayyar's establishment and job prospects in Iran, the visa officer stated:

The applicant is married, spouse is accompanying. PA states to have close family ties in their home country, but is not sufficiently established. I am not satisfied that the ties to Iran are sufficiently great to motivate departure from Canada. The ties to Iran weaken with the intended travel to Canada

involving their immediate family, as the motivation to return will diminish with the applicant's immediate family members residing with them in Canada.

...

With regards to the PA's job offer, employment letter/work certificate only mentions that they will hold the position for the duration of studies, there's no mention of a guaranteed promotion or a need for international studies to secure the employment.

[Emphasis added.]

[15] As to Ms. Sayyar's ties to Iran, the visa officer determined that the fact that Mr. Assadian was travelling with her would weaken these ties. I see nothing unreasonable with such a finding. That does not mean that Ms. Sayyar no longer has any ties to Iran—clearly most of the members of her family still reside there, Iran remains her childhood home, and Mr. Assadian has property in Iran. It was, however, certainly open to the visa officer to find that Ms. Sayyar, having left her job and life in Iran to study in Canada, might be less motivated to return in light of her husband's presence in Canada, which was one of the many factors to consider. Put another way, had Mr. Assadian remained in Iran, Ms. Sayyar would have normally been expected to feel an even greater pull back to Iran upon completion of her studies.

[16] This is not a situation similar to that in *Jafari v Canada (Citizenship and Immigration)*, 2023 FC 183 [*Jafari*], where the visa officer seemingly based the refusal of the study permit primarily on the fact that the accompanying spouse would lessen the applicant's motivation to return to Iran, without also considering the applicant's employment prospects and offer of a promotion from his current employer in Iran. In that context, I quite agree with Madam Justice

McDonald when she states the following at paragraph 19: “The logical conclusion from the Officer’s reasoning is that no applicant coming to Canada with a spouse or immediate family member would ever have sufficient ties to their home country to be granted a visa in Canada.” However, this is not a case where the entire basis for finding that the applicants are “not sufficiently established” in Iran appears to be the simple fact that they applied to come to Canada together. Here, the visa officer specifically considering the letter from the employer and the prospect of future employment in Iran; the assertion that the presence of a spouse would reduce the pull factors for returning to one’s country of origin must be assessed in context as, again, just one element in the overall assessment by the visa officer.

[17] As for the job offer, Ms. Sayyar argues that the visa officer disregarded the letter from her present part-time employer; on the basis of the decision, however, the visa officer clearly did consider it. The letter from Ms. Sayyar’s employer states the following: “[w]e hereby offer you to hold the position of Legal Department Manager at this company upon completion of your studies in the master's program of Public Policy and Administration at Adler University of Canada and upon your return to Iran. Your salary and allowances will be determined as (*sic*) the basic rate at the time of employment plus 65% extra.” The employer also seems to be basing its offer to Ms. Sayyar on her track record with the company, including her perseverance, professional ethics, and commitment in assisting with moving the company’s objectives forward. For her part, Ms. Sayyar characterizes the offer by her employer as a commitment to a promotion, with an actual increase in salary of 65%; this promotion is apparently conditional upon her obtaining a master’s degree in public policy, which is in line with the company’s seemingly recent direction to develop “business relationships with public sectors and provide

trading services for them.” However, very little of what Ms. Sayyar suggests as being behind the company’s offer is in fact set out in the company’s letter, which makes no mention of a new business direction focusing on the public sector; this letter also does not mention that the company would require a master’s degree in public policy, that the new position is in fact a promotion or that the proposed salary of 65% above the basic employment salary is in fact a pay raise for Ms. Sayyar. Although I am invited to read into the letter precisely what Ms. Sayyar is suggesting that the letter actually says, I am not convinced that the determination of the visa officer is unreasonable.

[18] As to the visa officer’s findings regarding Ms. Sayyar’s study and career plan, the visa officer determined:

PA is applying for a Master’s in Public Policy and Administration. Previous university studies: Law. Currently employed [p]art-time as a Counselor at Zarin Samin Khorasan Trade Development Company. Study plan reviewed and considered. Job offer noted. I note that the study plan submitted is short on detail and supporting documentation. PA states that “Because gaining employment in the public sector is not easily attainable in my home country, I intend to train and familiarize young talents with the prerequisites and standards of these kinds of jobs”. However, PA did not provide supporting details or explanation on how the proposed studies would help them achieve that. Also, PA does not demonstrate to my satisfaction compelling reasons for which such an educational program would be of benefit. It is unclear how a Masters in Public Policy and Administration, which its main objective is to prepare students to work in the public arena, would benefit the applicant’s career at this stage, especially considering her previous studies and employment. The studies do not appear to reflect logical academic or career progression.

[19] In her study plan, Ms. Sayyar speaks at length about furthering social justice and about how training in public policy is lacking at the government and public company level; she refers to her concerns about youth unemployment, her background as a legal advisor, her experiences and involvement with government regulation, her concerns about efficiency in public services in Iran, the process by which she chose her proposed program of study, her review of the syllabus and its application to her goals, and her decision “to launch a center to help university graduates find suitable governmental jobs.” Ms. Sayyar continues by stating that “[b]ecause gaining employment in the public sector is not easily attainable in my home country, I intend to train and familiarize young talents with the prerequisites and standards of these kinds of jobs”. In addition, Ms. Sayyar states that while she was thinking about her long-term goals, her employer offered her the position of legal manager as set out above, thereby purportedly requiring that she hold a master’s degree in public policy.

[20] There are two aspects to Ms. Sayyar’s study and career plan. The first, a more short-term objective, is for her to return to Iran after her studies to take up the position of manager of her present employer’s legal department. The second, which is more long-term, is to launch a centre for public policy to prepare students for a career in the public sector. I have already addressed the more short-term plan. As regards the more long-term plan, the visa officer, having reviewed Ms. Sayyar’s admittedly lengthy submissions, found that the study plan was short on detail and supporting documentation; the visa officer also found that Ms. Sayyar did not provide supporting details or an explanation with respect to how her proposed studies would assist in achieving the goal of training students to take on public service opportunities. This is unlike the situation where the visa officer simply failed to consider the applicant’s study plan (*Jafari* at para 14).

Here, in short, Ms. Sayyar simply did not satisfy the visa officer of the reasons for which such an educational program would be of benefit to her career at this stage, especially considering her previous studies and employment. I must say that I have not been convinced that such a finding is unreasonable.

[21] In the end, the visa officer weighed the factors and was not satisfied that the applicants would depart Canada at the end of the period authorized for their stay. I have not been convinced that such a decision was unreasonable given the material before the visa officer.

JUDGMENT in IMM-4351-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Peter G. Pamel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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