Federal Court  Cour fédérale

Date: 20230207

Docket: IMM-4535-22

Citation: 2023 FC 176

Vancouver, British Columbia, February 7, 2023

PRESENT: Justice Andrew D. Little

BETWEEN:

SEYED ARASH ATSHANI KOUCHESFAHANI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a 28-year old citizen of Iran. He applied for judicial review of a decision by a visa officer dated May 3, 2022, refusing his application for a study permit under subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the *"IRPR"*).

[2] Applying the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 563, this application for judicial review is allowed.

I. Material Facts

[3] The applicant received a Bachelor's Degree in Civil Engineering from Islamic Azad University in 2016. He has been employed in Iran by Asanbar Company as a Senior Expert and Employee in Digital Marketing since 2020.

[4] On April 8, 2022, the applicant was accepted to the Diploma in Marketing Management program at Langara College. It is a two-year program. He paid a $12,000 tuition deposit in full.

[5] The applicant applied for a study permit on April 14, 2022.

II. The Decision under Review

[6] By letter dated May 3, 2022, an officer refused the applicant's request for a study permit. The officer was not satisfied that the applicant "will leave Canada at the end of [his] stay, as stipulated in subsection 216(1) of the *IRPR*" based on (a) the applicant's family ties in Canada and in his country of residence, and (b) the purpose of his visit to Canada.

[7] The Global Case Management System ("GCMS") contained the following entry on May 3, 2022:

> I have reviewed the application. 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, is not well established and has no dependents PA is applying to study diploma in Marketing Management. Previously obtained Bachelors in Civil Engineering and currently employed as Digital Marketing Consultant. Study plan submitted is vague and does not outline a clear career path for which the sought educational program would be of benefit. Considering applicant's education and previous

> work, I am not satisfied that applicant would not have already achieved the benefits of this program. In light of the PA's previous study and current career, I am not satisfied that this is a reasonable progression of studies. 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.

III. Analysis

[8] For the reasons that follow, I conclude that the officer's decision was not reasonable and must be set aside. There are three considerations.

[9] First, in *Chhetri v Canada (Citizenship and Immigration),* 2011 FC 872, Justice Rennie stated:

> [14] The focus must, therefore, be on the strength of ties to the home country. Visa officers must assess the strength of the ties that bind or pull the applicant to their home country against the incentives, economic and otherwise, that might induce the foreign national to overstay. In this sense the relative economic advantage is a necessary component of the decision, but it is not the only part of the analysis. It is only through objective evidence of countervailing strong social and economic links to the home country that the onus to establish an intent to return be discharged.
>
> [Emphasis added.]

[10] This Court has endorsed this approach in numerous recent decisions including: *Hassanpour v Canada (Citizenship and Immigration),* 2022 FC 1738, at para 19; *Gilavan v Canada (Citizenship and Immigration),* 2022 FC 1698, at para 22; *Namin v Canada (Citizenship and Immigration),* 2022 FC 1706, at para 16; *Hashemi v. Canada (Citizenship and Immigration),* 2022 FC 1562, at paras 19-20; *Soltaninejad v. Canada (Citizenship and Immigration),* 2022 FC

1343, at paras 12-13; *Zeinali v. Canada (Citizenship and Immigration)*, 2022 FC 1539, at para 20.

[11] In the present case, the officer was not satisfied that the applicant would leave Canada at the end of his stay based on the applicant's family ties in Canada and Iran. The reasons in the GCMS notes must be read alongside the evidence in the record: *Vavilov* at paras 91-96. In the record, there was no evidence of any family, financial, professional or other ties to Canada. By contrast, the evidence before the officer of the applicant's ties to Iran included family (parents and siblings residing in Iran), financial (an apartment he owned and rented out) and professional (employment) ties.

[12] The officer therefore failed to respect a legal constraint bearing on the study permit decision and ignored material evidence that contradicted the conclusion under *IRPR* paragraph 216(1)(*b*). In these circumstances, the officer's decision contained reviewable errors: *Rahmati v Canada (Citizenship and Immigration),* 2021 FC 778, at para 18.

[13] The second consideration is that the officer's GCMS notes stated that the applicant "is single, mobile, is not well established and has no dependents". That was a negative factor in the conclusion that the applicant would not leave Canada at the end of his authorized stay. While an officer may take into account that the applicant for a study permit is single, mobile and without dependants, the Court has repeatedly stated that the mere fact that an applicant does not have a dependent spouse or child, without any further analysis, should not necessarily be considered a negative factor: see, e.g., *Gilavan*, at para 23; *Barril v Canada (Citizenship and Immigration),*

2022 FC 400, at para 20; *Iyiola v Canada (Citizenship and Immigration)*, 2020 FC 324, at para 20; *Onyeka v. Canada (Citizenship and Immigration)*, 2009 FC 336, at para 48.

[14] The applicant challenged the officer's specific finding that he was "not well established", on the basis that the officer must have ignored the evidence that he has been employed for several years with one company. The company's letter in the record endorsed his studies with a leave of absence, requested that he report monthly on his progress and expressed a desire that he return to work there after his studies. I agree that there is no indication in the GCMS notes, even briefly, to shed light on what "not well established" meant in the context of this particular application for a study permit. Nor can I be confident what the officer meant from a review of the record. To quote Justice McHaffie in *Afuah*, "[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, at para 17.

[15] Read in light of the applicable law and the record, the phrase "single, mobile, is not well established and has no dependents" in the GCMS notes appears to be an unresponsive boilerplate or template language that could be used to describe a great many students who apply for study permits. The phrase "not well established" in particular does not appear apposite for this applicant, without explanation. These considerations undermine my confidence that the officer considered and decided this particular application on its merits: see *Vahora v. Canada (Citizenship and Immigration)*, 2022 FC 778, at para 39 (citing *Gill v. Canada (Citizenship and Immigration)*, 2021 FC 1441, at para 34). Without further information in the GCMS notes, the

officer's statement does not constitute a transparent and justified analysis or conclusion as contemplated by *Vavilov*.

[16] The third consideration concerns the applicant's challenge to the officer's analysis of the evidence related to his career path. Amongst other submissions arising from the evidence in the record, he contended that the officer erroneously assumed the role of career counsellor (citing *Adom v Canada (Minister of Citizenship and Immigration),* 2019 FC 26, at paras 16-17), failed to provide a rational chain of analysis (citing *Fallahi v Canada (Minister of Citizenship and Immigration),* 2022 FC 506, at paras 13-14) and ignored evidence (citing *Aghaalikhani v Canada (Minister of Citizenship and Immigration*, 2019 FC 1080, at para 24). I do not agree with all of the applicant's submissions related to the evidence. A reviewing court cannot re-assess the evidence itself, and I respectfully decline to string together selected paragraphs or narrow points of reasoning from this Court's decided cases to arrive at a desired result.

[17] However, a reasonable conclusion about the purpose of his proposed visit to Canada does require an understanding of the applicant's stated reasons for study overseas and the related evidence. The officer found that the applicant had "already achieved" the benefits of the Canadian education program, which, on its face, seems to be attributable to the nature of the proposed program in marketing management and his four years already working for the employer in Iran as a senior expert in digital marketing. Accepting that, however, raises a further concern for judicial review purposes – that the officer did not engage with the evidence at a sufficient level of detail to realize that the applicant's proposed course in Canada includes a 16-week practicum – about four months of international work experience – which the applicant

believes will benefit him and his Iranian employer with its work to attract more customers using social media in neighbouring Azerbaijan. The employer's letter, premised on the applicant having a leave of absence and returning to the company after his study, appears to agree.

[18] The GCMS notes do not refer to or account for the evidence of a practicum, his position on the purpose of his studies and the relevant contents of the employer's letter. While perhaps not a reviewable error in itself, this third concern causes me to lose further confidence in the officer's reasoning.

[19] For these reasons, I conclude that the officer's decision refusing the study permit must be set aside as unreasonable, applying the principles in *Vavilov*.

[20] Neither party proposed a question to certify for appeal, and none arises.

JUDGMENT IN IMM 4535-22

THIS COURT'S JUDGMENT is that:

1. The application is allowed. The officer's decision dated May 3, 2022 is set aside. The application for a study permit is remitted to a different decision maker for redetermination.
2. No question certified for appeal under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4535-22
STYLE OF CAUSE:	SEYED ARASH ATSHANI KOUCHESFAHANI v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	JANUARY 17, 2023
REASONS FOR JUDGMENT AND JUDGMENT:	A.D. LITTLE J.
DATED:	FEBRUARY 7, 2023

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