Federal Court  Cour fédérale

Date: 20230524

Docket: IMM-6712-22

Citation: 2023 FC 734

Vancouver, British Columbia, May 24, 2023

PRESENT: Mr. Justice Gascon

BETWEEN:

GHAZAL HASSANI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Ghazal Hassani, is a citizen of Iran. Ms. Hassani seeks judicial review of a decision rendered on June 28, 2022 [Decision] by a visa officer [Officer] of Immigration, Refugees and Citizenship Canada, denying her study permit application. The Officer was not satisfied that Ms. Hassani would leave Canada at the end of her stay, as required by paragraph 216(1)b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[2] Ms. Hassani submits that the Decision is unreasonable, as it relies on an unintelligible reasoning when considered with the evidence she provided. Furthermore, Ms. Hassani claims that the Officer breached her procedural fairness rights by failing to give her an opportunity to respond to their concerns.

[3] For the reasons that follow, Ms. Hassani's application for judicial review will be granted. Having considered the evidence before the Officer and the applicable law, I conclude that the Decision displays an irrational analysis and lacks clear and logical justification of its outcome. The Officer ignored evidence directly contradicting their conclusions and no evidence supported some of the Decision's key factual findings. This justifies the Court's intervention. Given that conclusion, and the limited submissions made by Ms. Hassani on the procedural fairness issue, it is not necessary to deal with this second ground of judicial review.

II. **Background**

A. ***The factual context***

[4] Ms. Hassani is a single, twenty-four-year-old woman with no children. She lives in Iran with her parents and sibling.

[5] In 2021, Ms. Hassani obtained a Bachelor's Degree in Photography-Advertising from the University of Applied Sciences & Technology in Tehran.

[6] In April 2022, Ms. Hassani was accepted in the Professional Photography program at Langara College, in Vancouver, British Columbia [Program].

[7] In May 2022, Ms. Hassani applied for a study permit in Canada.

B. *The Officer's Decision*

[8] As is typically the case for refusals of study permits, the Decision takes the form of a standard letter in which the Officer indicates that they were not satisfied that Ms. Hassani would leave Canada at the end of her authorized stay. In the letter, the Officer based the refusal on two factors, namely, that Ms. Hassani did not have significant family ties outside Canada, and that the purpose of her visit was not consistent with a temporary stay given the details she provided in her application.

[9] The Decision also includes the Officer's notes located in the Global Case Management System [GCMS] (*Sharma v Canada (Citizenship and Immigration)*, 2020 FC 381 at para 7), where the Officer details the reasons for the conclusion reached.

[10] The GCMS notes indicate that the Officer was concerned with the fact that Ms. Hassani is unmarried with no dependents, and has no significant financial assets in Iran. Accordingly, the Officer held that Ms. Hassani had weak economic and family ties to Iran.

[11] The Officer also found that only a minimum tuition payment had been paid to hold Ms. Hassani's place in the Program, but that there was no additional payments made for the first tuition year.

[12] Finally, the Officer observed that Ms. Hassani already pursued similar studies at an academic level higher than the proposed studies in Canada, which constituted a redundant course of action that did not appear to be a logical progression in her career path.

C. ***The relevant provisions***

[13] The relevant provisions of the *Immigration and Refugee Protection Act*, SC 2001, c 27 are subsections 11(1) and 22(2), which provide that a person wishing to become a temporary resident of Canada must satisfy an officer that "she or he meets the requirements of the Act" and that "an intention by a foreign national to become a permanent resident does not preclude them from becoming a temporary resident if the officer is satisfied that they will leave Canada by the end of the period authorized for their stay". Paragraph 216(1)(b) of the IRPR further requires a study permit applicant to establish that he or she "will leave Canada by the end of the period authorized for their stay". Thus, it is well accepted and clear that an applicant for a study permit bears the burden of satisfying the visa officer that he or she will not remain in Canada once the visa has expired (*Kavugho-Mission v Canada (Citizenship and Immigration)*, 2018 FC 597 at para 7; *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 [*Solopova*] at para 10).

D. *The standard of review*

[14] It is well established that the standard of reasonableness applies to a visa officer's assessment of an application for a study permit when the officer is not satisfied that the applicant will leave Canada at the end of the authorized stay (*Ilaka v Canada (Citizenship and Immigration)*, 2022 FC 1622 at para 10; *Hasanalideh v Canada (Citizenship and Immigration)*, 2022 FC 1417 [*Hasanalideh*] at para 4; *Abbas v Canada (Citizenship and Immigration)*, 2022 FC 378 at para 14; *Marcelin v Canada (Citizenship and Immigration)*, 2021 FC 761 at para 7; *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 [*Aghaalikhani*] at para 11; *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 [*Penez*] at para 11; *Solopova* at para 12). Moreover, since the Supreme Court of Canada decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], there is a presumption that reasonableness is the applicable standard of judicial review whenever a reviewing court considers the merits of an administrative decision.

[15] Reasonableness focuses on the decision made by the administrative decision maker, which encompasses both the reasoning process and the outcome (*Vavilov* at paras 83, 87). Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The reviewing court must therefore consider whether the "decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99).

[16] A judicial review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must begin its inquiry by examining the reasons provided with "respectful attention", and seek to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13), without "reweighing and reassessing the evidence" before it (*Vavilov* at para 125).

[17] The onus is on the party challenging the administrative decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

III. **Analysis**

[18] Ms. Hassani asserts that the Decision is unreasonable because of a panoply of reasons, namely: 1) the Officer's analysis on the sufficiency of her family ties in Iran is illogical; 2) the Decision is based on stereotypes and broad generalizations on unmarried women with no dependents; 3) the Officer failed to account for her specific economic situation, as she is still financially dependent of her parents, before determining that she had weak economic ties to Iran; 4) the Officer failed to explain why the purpose of her visit is inconsistent with a temporary stay;

5) there is no evidence to support the Officer's conclusions about the redundancy of her study plan; 6) the Officer failed to consider contradictory evidence on her intentions to return to Iran; 7) the Officer failed to provide intelligible and transparent justification on the issue of the partial payment of tuition fees; and 8) there is no evidence to support the Officer's finding that Ms. Hassani could not be trusted to comply with Canadian law.

[19] I will only address some of the arguments invoked by Ms. Hassani, as these are sufficient to render the Decision unreasonable.

A. *Ms. Hassani's family ties outside Canada and her status as an unmarried woman without children*

[20] The sufficiency of family ties outside Canada is one of the two grounds expressly singled out by the Officer in the refusal letter. This finding is at odds with the evidence on the record.

[21] Visa officers are authorized to consider the marital status and the absence of dependents as part of the "constellation of factors" they must assess and weigh against one another (*Gilavan v Canada (Citizenship and Immigration)*, 2022 FC 1698 [*Gilavan*] at para 22). The ties to an applicant's home country, such as family or economic ties, are often assessed against the incentives that might induce a foreign national to overstay in Canada (*Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at para 14).

[22] In the present case, Ms. Hassani has absolutely no family ties in Canada nor any future plans in Canada. All of Ms. Hassani's family ties are in Iran, and the evidence on the record

strictly points to ties to Iran. Her parents and younger brother, with whom she usually lives, reside in Iran and do not intend to travel to Canada with Ms. Hassani. In the circumstances, I fail to see how Ms. Hassani could be found to have "insufficient" family ties in her country of residence when her entire immediate family still lives there, a family to whom she has "strong emotional ties".

[23] In light of the evidence on the record, the Officer's finding on Ms. Hassani's family ties outside Canada is neither intelligible nor justified. It could not constitute a reason for refusing Ms. Hassani's study permit (*Hasanalideh* at paras 7–8; *Aghaalikhani* at para 19). Stated differently, I detect no logic or rational reasoning that could have led the Officer to conclude that Ms. Hassani's family ties would pull her in the direction of Canada and support a concern that she would not leave Canada at the end of her studies. In fact, it is typically the very opposite situation (i.e., the presence of limited ties to one's country of residence coupled with existing links to Canada) that prompts visa officers to question the true intent behind a study permit application.

[24] It appears from the GCMS notes that the Officer's concerns with family ties outside Canada may have had more to do with Ms. Hassani's mobility, as the Officer noted that Ms. Hassani is unmarried and has no dependents. Therefore, the presence of her parents and brother in Iran seemed to have been insufficient to reassure the Officer that Ms. Hassani would leave Canada at the end of her stay.

[25] Even if the Officer's reasons were interpreted under that generous light, I still consider that the Decision fails the reasonableness test. While I am not prepared to agree with Ms. Hassani that assessing her status as an unmarried woman with no dependents amounted to "stereotyping" women with such characteristics, "[t]his Court has repeatedly recognized that an applicant's lack of a dependent spouse or children, without any further analysis, should not be considered a negative factor on a study permit application" (*Barril v Canada (Citizenship and Immigration)*, 2022 FC 400 [*Barril*] at para 20; see also *Gilavan* at paras 22–23). Such factors merely place Ms. Hassani in the position of most students applying for study permits (*Onyeka v Canada (Citizenship and Immigration)*, 2009 FC 336 at para 48). In and of itself, the status of Ms. Hassani as an unmarried woman with no dependents is therefore not a sufficient or logical reason, without any more elaborate analysis, for refusing her study permit application.

[26] I do not dispute that a decision maker is generally not required to make an explicit finding on each constituent element of an issue when reaching its final decision. I also accept that a decision maker is presumed to have weighed and considered all the evidence presented to him or her unless the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) at para 1). I further agree that failure to mention a particular piece of evidence in a decision does not mean that it was ignored and does not constitute an error (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (QL) [*Cepeda-Gutierrez*] at paras 16–17). Nevertheless, it is also well established that a decision maker should not overlook contradictory evidence. This is particularly true with respect to key elements relied upon by the decision maker to reach its conclusion. When an administrative tribunal is silent on evidence clearly pointing to an opposite conclusion

and squarely contradicting its findings of fact, the Court may intervene and infer that the tribunal ignored the contradictory evidence when making its decision (*Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at paras 9–10; *Cepeda-Gutierrez* at para 17). The failure to consider specific evidence must be viewed in context, and it will lead to a decision being overturned when the non-mentioned evidence is critical, contradicts the tribunal's conclusion and the reviewing court determines that its omission means that the tribunal disregarded the material before it (*Penez* at paras 24–25). This is precisely the case here with respect to Ms. Hassani's family ties in Iran.

[27] In sum, this is a situation where the Officer ignored the evidence on the record regarding Ms. Hassani's family ties and the general factual matrix that bears on the Decision, and "fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at para 126). This calls for the Court's intervention.

B. ***Ms. Hassani's study plan***

[28] Ms. Hassani also submits that the evidence offers no support to the Officer's conclusions about the redundancy of her study plan. She argues that the Officer failed to account for the evidence regarding the relevance of the Program to her career development in Iran. This argument relates to the second ground identified by the Officer to deny a study permit to Ms. Hassani, namely, the fact that her visit was not consistent with a temporary stay given the details she provided in her application.

[29] Again, I agree with Ms. Hassani.

[30] In her motivation letter, Ms. Hassani provided details as to why she wants to pursue the Program here in Canada, despite the university degree in photography she has already obtained in Iran. Ms. Hassani described the barriers she encountered, as a woman, to effectively learn professional photography in Iran. Those barriers included the lack of sufficient supplies and devices as well as the limits on subjects due to religious and gender-based limits. In their reasons, the Officer simply ignored this evidence and did not refer to Ms. Hassani's explanation as to why she wanted to pursue the Program despite her degree in photography.

[31] In the GCMS notes, the Officer dealt with this issue as follows:

> The purpose of the applicant's visit to Canada is not consistent with a temporary stay given the details provided in the application. The client has similar studies at a higher academic level as the proposed studies in Canada. I note that, the PA proposed studies of a College degree in Professional Photography is not reasonable, as the PA indicates previous education of a Bachelor in Photography-Advertising. In light of the PA's previous studies and current career, the intended program is a redundant course of action and does not appear to be a logical progression in their career path.

[32] I agree with Ms. Hassani that the Officer should have addressed the differences between the Program and the degree she possesses, as she duly explained them in her motivation letter (*Barril* at para 26). In stating that Ms. Hassani's study plan is redundant with her previous studies and is of a lower level, the Officer failed to grapple with the contrary evidence and with the specific submissions made by Ms. Hassani on that point. The Officer's characterization of the Program as being at a lower level than Ms. Hassani's prior education disregards her explanations as to the purpose of pursuing this specific study plan (*Nia v Canada (Citizenship and*

Immigration), 2022 FC 1648 at paras 24–26). In fact, the Officer's apparent conclusion that Ms. Hassani may have already achieved the expertise she is seeking in Canada or that there are no clear benefits to the Program is nothing but speculation that finds no basis on the record. Moreover, the Program is anything but a "redundant course of action", since it would allow Ms. Hassani to enhance and complete her education in photography with in-depth studies and experiences to which she did not have access as a woman in Iran.

[33] If the Officer did not believe that Ms. Hassani had provided sufficient reasons for her study plan or for the differences between the Program and her prior education, they should have stated so. However, the Decision is silent on that aspect. As stated above, while visa officers are presumed to have considered all the evidence (*Ahmed v Canada (Citizenship and Immigration)*, 2013 FC 1083 at para 34), their silence on evidence pointing to the opposite conclusion may lead the reviewing court to infer that contradictory evidence was overlooked (*Cepeda-Gutierrez* at paras 16–17).

[34] In his memorandum and at the hearing before the Court, the Minister of Citizenship and Immigration [Minister] tried to inappropriately bolster the Decision on the issue of the study plan (Respondent's Memorandum at para 25; *Rajasekharan v Canada (Citizenship and Immigration)*, 2023 FC 68 at para 20). The Minister argues that, based on *Akomolafe v Canada (Citizenship and Immigration)*, 2016 FC 472 [*Akomolafe*] at paragraph 21, it was reasonable for the Officer to conclude the way they did about Ms. Hassani's study plan, because she had not "sufficiently articulated the specific benefits to be accrued" from it (Respondent's Memorandum at para 26).

[35] With respect, I disagree. True, on this application for judicial review, it is not the Court's role to reassess the evidence and to determine whether Ms. Hassani's justification was sufficient or not. But, when determining the reasonableness of an administrative decision, the Court can certainly take note of the Officer's failure to provide a logical explanation or justification (*Seyedsalehi v Canada (Citizenship and Immigration)*, 2022 FC 1250 at paras 15–16). Even on a most generous interpretation of the Officer's Decision, I cannot identify a rationale or an evidentiary basis for the conclusion reached on Ms. Hassani's study plan. In her motivation letter, Ms. Hassani had unpacked several benefits of the Program — such as access to sufficient supplies and devices for capturing and editing photos as well as professional photography courses with no gender-based limits — that would allow her to progress along her career path and assist her in reaching her goal of having her own successful studio in Iran. This is a far cry from the situation in *Akomolafe* where the applicant, an experienced manager, only laid out vague reasons for his intended studies.

[36] A visa officer must be careful not to "foray into career counselling" (*Adom v Canada (Citizenship and Immigration)*, 2019 FC 26 at para 17) and not to speculate about the relevance of an applicant's study plan, especially when an applicant provided explanations that were not referenced by the officer in their reasons. In the present circumstances, I am not convinced that the Officer was alive to the representations made by Ms. Hassani in her study plan.

[37] In other words, the Decision does not meet the minimum requirements of "responsive justification", because Ms. Hassani had provided specific and important information that is directly relevant to the grounds on which the Decision rests (*Nesarzadeh v Canada (Citizenship*

and Immigration), 2023 FC 568 at para 13). Of course, the Officer did not have to accept everything put forward by Ms. Hassani in her application, but they were required to offer some explanation about how this information factored into their analysis. A reasonable decision must demonstrate that the decision maker engaged with the key evidence that is relevant given the legal framework that applies. That was not done here. At paragraph 102 of *Vavilov*, the Supreme Court held that the reviewing court "must be satisfied that 'there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived'". Here, there is simply no line of analysis to trace or to follow on the treatment of Ms. Hassani's study plan.

[38] In summary, on two key factors expressly singled out by the Officer in the Decision, and in their overall conclusion regarding the concern about Ms. Hassani not leaving Canada at the end of her stay, I find no evidence on the record and no rational basis to support them. The Officer failed to account for contradictory evidence and misapprehended some of it by not considering the particular context of Ms. Hassani's application for a study permit. Because of those omissions, the Decision does not bear the hallmarks of reasonableness, which are justification, transparency, and intelligibility (*Vavilov* at para 99). These errors lead me to "lose confidence in the outcome reached" by the Officer (*Vavilov* at para 106).

[39] I acknowledge that an administrative decision must not be assessed against a standard of perfection and that brief reasons are often the norm in the context of study permit applications. However, administrative decisions must still rely on an internally coherent reasoning (*Vavilov* at paras 91, 102). Reasons need not be comprehensive or perfect, but they need to be

comprehensible. It is crucial for an applicant, and the Court, to understand the basis on which an application has been refused and the reasons must reasonably justify the outcome (*Penez* at para 30). Here, the Decision fails to meet that threshold.

IV. **Conclusion**

[40] For the above-mentioned reasons, Ms. Hassani's application for judicial review is granted. The Decision is not based on an internally coherent and rational analysis, and does not constitute a reasonable outcome having regard to the legal and factual constraints to which the decision maker is subject and to the evidence. Therefore, the matter must be referred back to a new visa officer for redetermination.

[41] The parties proposed no question of general importance for certification and I agree that none arises in this case.

JUDGMENT in IMM-6712-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted, without costs.

2. The June 28, 2022 decision of the visa officer, denying Ms. Ghazal Hassani's study permit application, is set aside.

3. The matter is referred back to Immigration, Refugees and Citizenship Canada for redetermination on the merits by a different visa officer.

4. There is no question of general importance to be certified.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6712-22
STYLE OF CAUSE:	GHAZAL HASSANI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MAY 17, 2023
JUDGMENT AND REASONS:	GASCON J.
DATED:	MAY 24, 2023

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