

Federal Court



Cour fédérale

Date: 20230829

Docket: IMM-9483-22

Citation: 2023 FC 1169

Ottawa, Ontario, August 29, 2023

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

ALI ABESHLI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant Ali Abeshli applied for a study permit in order to attend a private high school in Toronto. At the time of the application he was 12 years old. He said he hoped to improve his English and eventually pursue postsecondary studies in animation.

[2] A visa officer [Officer] refused the application. The Officer was not satisfied that Mr. Abeshli would leave Canada at the end of his authorized stay. The Officer's primary concern pertained to the financial information submitted in support of the application.

[3] The *Immigration and Refugee Protection Regulations*, SOR/2002-227, provide in s 220:

An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to

(a) pay the tuition fees for the course or program of studies that they intend to pursue;

(b) maintain themselves and any family members who are accompanying them during their proposed period of study; and

(c) pay the costs of transporting themselves and the family members referred to in paragraph (b) to and from Canada.

À l'exception des personnes visées aux sous-alinéas 215(1)d) ou e), l'agent ne délivre pas de permis d'études à l'étranger à moins que celui-ci ne dispose, sans qu'il lui soit nécessaire d'exercer un emploi au Canada, de ressources financières suffisantes pour :

a) acquitter les frais de scolarité des cours qu'il a l'intention de suivre;

b) subvenir à ses propres besoins et à ceux des membres de sa famille qui l'accompagnent durant ses études;

c) acquitter les frais de transport pour lui-même et les membres de sa famille visés à l'alinéa b) pour venir au Canada et en repartir.

[4] The Officer's refusal letter stated:

- Your assets and financial situation are insufficient to support the stated purpose of travel for yourself (and any accompanying family member(s), if applicable).
- The purpose of your visit to Canada is not consistent with a temporary stay given the details you have provided in your application.

[5] According to the Officer's notes in the Global Case Management System [GCMS]:

I have reviewed the application. I have considered the following factors in my decision. I note the applicant provides their parent's Melli bank balance with an amount of 6 billion rial. Bank transaction history noted. Property [sic] deeds and titles noted as proof of funds. The Melli bank statement shows large, unexplained lump-sum 6 billion rial deposit with pre-existing low balances, which lends to the point that the bank account was inflated for the visa application, and was required to do so in order to meet financial establishment and sustainability for the first, and subsequent year(s) of studies. The presence of the unexplained lump-sum deposits does not satisfy me that the applicant will have access to the funds provided in support of the application. Applicant is a minor applying to come to Canada to pursue secondary studies. The applicant has paid their tuition to attend the intended DLI and provided a study plan. Taking the applicant's plan of studies into account, there is insufficient explanation or details given on how the proposed studies in Canada will be of benefit at this stage in PA's life. It refers to general advantageous comments regarding the value of international education in Canada and makes sweeping statements on how the education will improve the applicant's situation in Iran. Although the tuition has been paid, the applicant's family does not appear to be sufficiently well established that the funds provided will suffice in providing for the long term investment of education in Canada. 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.

[6] 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).

[7] 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).

[8] The Officer’s GCMS notes form a part of the decision under review (*Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 at para 5).

[9] Mr. Abeshli argues that the Officer failed to properly consider the evidence of the family’s financial situation. He maintains that the family had sufficient funds to support him in the first year of his studies in Canada even without the unexplained, large lump-sum transfers into his father’s bank account. The first year of tuition in the amount of \$14,500 CAD had already been paid. There was evidence of his father’s employment as a flight attendant with Iran Air, and proof of property ownership. If the large lump-sum deposits were disregarded, his father’s bank account would still contain the equivalent of \$10,000 CAD.

[10] Mr. Abeshli relies on *Henry v Canada (Citizenship and Immigration)*, 2017 FC 1039, where Justice Michel Shore found that a visa officer unreasonably failed to consider the considerable income of the applicant’s friend. However, in that case the applicant submitted proof of her friend’s annual income, supported by statutory declarations (at para 31). This established the sufficiency of funds to support the applicant’s proposed course of study. There were no lump-sum transfers of unknown origin, and no evident concerns about the applicant’s access to the funds declared.

[11] In this case, the letter from Iran Air regarding the father's income was unclear. Two columns of financial information were presented with significantly different totals. The bank statement showed deposits relating to salary in different amounts at irregular intervals. It appeared that the father was employed on a two-year contract. The Officer was given no guidance about how to interpret the financial information presented in support of the application.

[12] The Officer reasonably refused Mr. Abeshli's application for a study permit on the ground that there was insufficient evidence that "the funds provided will suffice in providing for the long term invest[ment] of education in Canada". As Justice Henry Brown observed in *Bestar v Canada (Citizenship and Immigration)*, 2022 FC 483, the onus was on the Applicant to make his case, and questions regarding the source of the family's funds should have been anticipated and addressed (at para 19). A visa officer may reasonably consider the amount and origin of funds when deciding whether an applicant will leave Canada at the end of his stay (*Kita v Canada (Citizenship and Immigration)*, 2020 FC 1084 at para 20).

[13] Mr. Abeshli provided "general advantageous comments regarding the value of international education in Canada". While it is perhaps unrealistic to expect a young boy to provide detailed reasons for wanting to pursue an education in Canada, the Officer's observation that Mr. Abeshli had offered only "sweeping statements on how the education will improve [his] situation in Iran" was well founded. The Officer reasonably concluded that "there [was] insufficient explanation or details on how the proposed studies in Canada will be of benefit at this stage in [his] life".

[14] The application for judicial review is therefore dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

“Simon Fothergill”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9483-22

STYLE OF CAUSE: ALI ABESHLI v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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AND OTTAWA, ONTARIO

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