Federal Court Cour fédérale

Date: 20230929

Docket: IMM-7857-22

Citation: 2023 FC 1318

Ottawa, Ontario, September 29, 2023

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

FARZANEH ALI ASKARI
TAHA SHEIKH GHASEMI
ARAD SHEIKH GHASEMI
ARMITA SHEIKH GHASEMI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of four decisions of a visa officer [the Officer] dated June 21, 2022, refusing their applications for temporary residence.

[2] The Primary Applicant [the PA], Farzaneh Ali Askari, is an Iranian citizen who applied for a study permit. Her husband, Taha Sheikh Ghasemi, applied for a work permit, and their two children applied for visitors' visas to accompany them [together, the Associate Applicants].

[3] The Officer refused all the applications on the basis that the PA failed to satisfy them that she would leave Canada at the end of her authorized stay, citing her lack of family ties in Iran and her study plan.

[4] This application only concerns the merits of the refusal of the PA's study permit application, as the results of the Associate Applicants' applications are dependent on hers.

[5] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, the Applicant has discharged her burden and demonstrated that the Officer's decision is unreasonable. For the reasons that follow, this application for judicial review is granted.

II. Facts

[6] On June 21, 2022, the Officer refused the PA's study permit application and her family members' related applications for work and temporary resident visas.

[7] The PA holds a bachelor's degree in Chemical Engineering with a specialization in Food Industry as well as a master's degree in Chemical Engineering with a specialization in Polymer Engineering.

[8] She aims to enhance her qualifications for a new senior position she was offered in Iran, at the Damavand Rehabilitation and Care Center, by studying for a Master of Administrative Science [MAS] in Global Health and Human Services Administration at the Fairleigh Dickinson University [FDU] in British Columbia, Canada.

[9] The Officer's decision was based on concerns about the PA's family ties in Iran and the purpose of their visit to Canada. Specifically:

a) The Officer believed that the presence of the PA's spouse and two dependent children in Canada would weaken their ties to their home country, as the motivation to return might diminish with their immediate family members residing in Canada.

b) The Officer questioned the reasonableness of the primary applicant's study plan, citing concerns about her employment and education history. The Officer found the chosen program to be redundant given the PA's reported scholarly and employment background, and he had reservations about the PA's language proficiency, suggesting potential difficulties in handling an English-language course load while studying abroad.

[10] The Applicants have provided substantial evidence to support their intention to return to Iran after the PA's studies, including strong family ties, employment offers, and other assets, including business ventures.

III. Relevant Legislation

[11] The *Immigration and Refugee Protections Regulations*, SOR/2022-227 [IRPR] provide:

Study Permits	**Permis d'études**
216 (1) Subject to subsections (2) and (3), an officer shall	**216 (1)** Sous réserve des paragraphes (2) et (3), l'agent

issue a study permit to a foreign national if, following an examination, it is established that the foreign national

délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

(a) applied for it in accordance with this Part;

a) l'étranger a demandé un permis d'études conformément à la présente partie;

(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

(c) meets the requirements of this Part;

c) il remplit les exigences prévues à la présente partie;

(d) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and

d) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);

(e) has been accepted to undertake a program of study at a designated learning institution.

e) il a été admis à un programme d'études par un établissement d'enseignement désigné.

Financial resources

Ressources financières

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

220 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) pay the tuition fees for the course or program of studies that they intend to pursue;	**a)** acquitter les frais de scolarité des cours qu'il a l'intention de suivre;
(b) maintain themself and any family members who are accompanying them during their proposed period of study; and	**b)** subvenir à ses propres besoins et à ceux des membres de sa famille qui l'accompagnent durant ses études;
(c) pay the costs of transporting themself and the family members referred to in paragraph (b) to and from Canada	**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.

IV. Issues and Standard of Review

[12] Having considered the parties' memoranda and oral arguments, the evidence and the applicable case law, this matter raises two main issues:

- Whether the decision of the Officer was reasonable.
- Whether the Officer breached the PA's right to procedural fairness.

[13] The standard of review applicable to the merits of the Officer's decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65) [*Vavilov*]. A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85); and that is justified, transparent and intelligible (*Vavilov* at para 99). The onus of demonstrating that a decision is unreasonable lies with the Applicant (*Vavilov* at para 100).

[14] On the procedural fairness issue, the standard of review applicable on that issue is subject to a "reviewing exercise… 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied" (*Aboudlal v Canada (Citizenship and Immigration)*, 2023 FC 689 at para 32 citing *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [CPRC] at para 54). As recently stated in *Caron v Canada (Attorney General)*, 2022 FCA 196 at paragraph 5 : "[w]hen engaging in a procedural fairness analysis, [the] Court must assess the procedures and safeguards required, and, if they have not been met, the Court must intervene" (see also *Mission Institution v Khela*, 2014 SCC 24 at para 79). The role of the reviewing court on procedural fairness issues is simply to determine whether the procedure that was followed was fair, having regard to the particular circumstances of the case: "The ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond" (As reiterated in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 56).

V. Analysis

A. *The Officer's decision was unreasonable*

[15] Under sections 216 and 220 of the IRPR, an officer must issue a study permit to a foreign national that demonstrates meeting certain criteria, including that they undertake a program of study at a designated learning institution, have sufficient financial resources without working to pay for tuition and maintain themselves, and will leave Canada by the end of the period authorized for their stay.

[16] In its decision dated June 21, 2022, the Officer refused the PA's study permit application because of their doubts that the Applicants will leave Canada after the end of the PA's course of study, as required under subsection 216(1)(b). The Officer's reasons to deny the PA's request for a student permit do not rely on other grounds than those established under ss. 216 and 220. The Officer's reasons therefore rely on the Applicants' failure, in their view, to demonstrate sufficient establishment in Iran, to satisfy the Officer that the Applicants will return at the end of the PA's authorized period of stay.

[17] The Officer justified their decision with the following reasons:

- You do not have significant family ties outside Canada;
- The purpose of your visit to Canada is not consistent with a temporary stay given the details you have provided in your application.

[18] In my view, the Officer's decision to refuse the PA's study permit application is not intelligible, transparent and justified, and consequently is unreasonable (*Vavilov* at paras 15, 98).

[19] The Applicants offered a highly comprehensive file on their intent to return to Iran, including the PA and her family's ties in Iran, banking information and substantial other assets in the country. The PA also exposed her reasons why she chose to go to Canada to complete an additional master's degree. The PA's husband further confirmed, in his *Statement of Purpose*, that his family and himself had no intention of remaining in Canada after the PA obtains her master's degree. The reasons the Applicants noted for wishing to return to Iran was their strong family ties and cultural attachment to Iran as well as their assets and other obligations that are left behind on a short-term basis.

[20] In their reasons, the Officer explained that the lack of significant family ties in Iran was mainly due to the fact that the PA's husband and children are travelling with her for the duration of her studies:

> The applicant does not have significant family ties outside Canada. PA will be accompanied by spouse and two dependent child. The ties to their home country are 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.

[21] The Officer's conclusion that the Applicants' family ties to Iran were weakened because the immediate family was all relocating to Canada is not *per se* unreasonable (*Hajiyeva v Canada (Citizenship and Immigration)*, 2020 FC 71). However, as stated in the decision *Iyiola v Canada (Citizenship and Immigration)*, 2020 FC 324 at para 20, it is unreasonable for a decision maker to cite family ties as a rationale for not being satisfied that an applicant will leave at the end of their authorized period of stay in Canada when no mention is made of those family members that remain in the country of residence; and no weighing is made of those considerations.

[22] As stated in *Vahdati v Canada (Citizenship and Immigration)*, 2022 FC 1083, at paragraphs 8, 10-11 [*Vahdati*], the problem is that the Officer ended their analysis after considering that family members would also join the PA, but failed to weigh this against the other factors included in the evidence such as that other family members remained in Iran, that no other family members were in Canada, and that other factors relevant to establishment in Iran existed, such as employment or assets in the country (see also *Seyedsalehi v Canada (Citizenship and Immigration)*, 2022 FC 1250 at paras 8, 10, 13).

[23] The Officer had to explain why the presence of some family members in Canada demonstrated that not sufficient family ties remained in the country of residence. It was incumbent on the Officer to assess and weigh the arguments of the parties on the family members remaining in Iran, and the relationship that existed between them. In this case, the Applicants noted that their parents and an older brother remained in Iran and they wished to return because of the emotional attachment (including the children who are emotionally attached to their grand-parents) and the support the Applicants will provide to their aging parents.

[24] The Officer's lack of consideration of the presence of significant family ties in Iran and the explanation by the Applicants as to why they intended to go back to Iran because of those family members (as well as their wish to raise their children in their home country to familiarize them to their culture), demonstrates a failure to meaningfully grapple with the evidence and key issues as presented by the Applicants, rendering the Officer's decision unreasonable.

[25] In this case, the Officer failed to provide any reason on their assessment and weighing of the contrary evidence provided by the Applicants. As I explained in *Ehigiator v Canada (Citizenship and Immigration)*, 2023 FC 308 at paragraphs 71-74 (see also *Vavilov* at para 126; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1998] FCJ No 1425 at para 15), a decision maker cannot selectively choose evidence and ignore or remain silent on other relevant evidence contradicting the decision maker's finding of fact (see *Rajput v Canada (Citizenship and Immigration)*, 2022 FC 65 at para 25). Instead, the decision maker must demonstrate that all of the evidence was considered and weighed, and explain why contradicting evidence was given no or little weight.

[26] I understand that in the context of a visa officer's decision, reasons will normally be brief because of the important volume of requests being made (*Hajiyeva v Canada (Citizenship and Immigration)*, 2020 FC 71 at para 6; *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at para 15; *Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552 at para 13). The decision in such context must be read in light of the record that was before the decision maker, including the evidence and the arguments of the parties. The Court must intervene, however, when the reasons contain a fundamental gap, such as the failure to assess and evaluate relevant evidence. Granting judicial review because the decision maker did not properly mention contradicting facts is appropriate when the Court cannot assess whether the decision maker meaningfully considered all of the key issues and evidence (*Vavilov* at para 94-96, 125-128).

[27] In this case, the Officer's reasons and notes fail to address why the evidence submitted by the Applicants on their attachment to their extended family, their business and employment, as well as banking, land and other assets in Iran, was insufficient to satisfy the Officer that the Applicants would return to Iran at the end of the PA's course of study, or to demonstrate sufficient establishment in Iran.

[28] In *Masouleh v Canada (Citizenship and Immigration)*, 2023 FC 1159, Justice Ahmed made a similar finding:

> [25] In my view, the Officer's refusal of the Principal Applicant's study permit application is unreasonable for failing to meaningfully grapple with the evidentiary record regarding the Applicants' family ties in Iran. […]
>
> [26] The Applicants submit that the Officer's findings regarding their family ties do not accord with the evidentiary record. In the GCMS notes for the refusal of the Principal Applicant's study permit application, the Officer found that the Principal Applicant

> failed to demonstrate that she is sufficiently established, and that her ties to Iran are weakened by her being accompanied by her husband and daughter.
>
> [27] The Applicants submit that they provided detailed information and evidence relating to their family, employment, and assets in Iran, demonstrating considerable establishment contrary to the Officer's assessment. The Applicants note that they provided evidence of assets in Iran and Family Information forms indicating multiple family members residing in Iran, including the Principal Applicant's widowed mother, her four siblings, and the Associate Applicant's aged mother. They do not have any family ties in Canada. The Applicants submit that in the absence of an explanation as to why their evidence demonstrating establishment in Iran is insufficient, the Officer's decision fails to accord with the record and is therefore unreasonable.
>
> [30] […] I do not find that the Officer's GCMS notes demonstrate a reasonable assessment of the Principal Applicant's evidence pertaining to her family ties and other aspects of the Applicants' establishment in Iran. The largely vague reasons are unclear as to how the Principal Applicant's ties to Iran are weakened by her being accompanied by her husband and 4-year-old child to the extent that she would not return there after her studies, particularly considering the evidence demonstrating that a majority of her and her husband's extended family reside permanently in Iran and they have financial assets in Iran.
>
> [Emphasis added]

[29] The Officer's decision is also unreasonable in relation to the assessment of the study plan, where the Officer opined that the degree for which the PA is coming to Canada "appears redundant" in light of her previous studies and employment experience.

[30] As held numerous times by the Court, it is not the role of the Officer to determine whether an additional degree is useful to the Applicant or not, without basing its decision on the evidence presented to them (*Seyedsalehi v Canada (Citizenship and Immigration)*, 2022 FC 1250 at paras 14-16; *Adom v Canada (Minister of Citizenship and Immigration)* 2019 FC 26, at

paragraphs 16, 19; *Al Aridi v Canada (Citizenship and Immigration)*, 2019 FC 381 at para 27; *Vahdati* at para 13-16). This case is not one where the applicant is seeking a diploma in an undergraduate program when the applicant already holds a master's degree in the same general field, or where there are inconsistencies between the study plan and the proposed diploma's utility given the applicant's existing academic and professional background (*Charara v Canada (Citizenship and Immigration)*, 2016 FC 1176 at paras 37-38). In this case, the master's program identified by the PA was different than the master's degree she already held, and was more tailored to Global Health and Human Services Administration while her previous master's degree was in Chemical Engineering. The Officer offers no reason supporting their conclusion that the degree appears "redundant" in relation to the PA's reported scholarly and employment history.

[31] Moreover, the PA explained in her *Statement of Purpose* that a master's degree would be beneficial to her, including for employment as a social, health and community service manager at her current employment, which was a higher position than what she occupied before. The PA explained in detail why she chose the specific program for which she was seeking the student permit, that other Iranian universities did not offer a similar program, and that experts in the field are highly in demand in Iran. Unfortunately, nothing in the Officer's reasons or notes indicate how this evidence was assessed in determining that the PA failed to satisfy them that she would leave at the end of her authorized stay, and why it was not sufficient to demonstrate sufficient establishment in Iran.

[32] Given my conclusion that the Officer's decision is unreasonable for failing to meaningfully grapple with the evidentiary record regarding the Applicants' establishment in Iran, I do not need to address the Applicants' argument that the Officer breached their right to procedural fairness.

VI. Conclusion

[33] The Officer's decision is unreasonable. The application for judicial review is granted.

[34] The parties do not propose a question for certification and I agree that none arises in the circumstances.

JUDGMENT in IMM-7857-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The matter will be remitted to a different decision maker for reconsideration.

3. There is no question for certification.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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