Federal Court Cour fédérale

Date: 20231106

Docket: IMM-7785-22

Citation: 2023 FC 1475

Ottawa, Ontario, November 6, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

MASOUMEH ZAREI
HAMED MOTAMEDI MANESH
BENITA MOTAMEDI MANESH
AVITA MOTAMEDI MANESH

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants are citizens of Iran. The principal applicant, Masoumeh Zarei, was accepted into a two-year post-baccalaureate diploma program in Technical Management and Services at Kwantlen Polytechnic University in British Columbia. She applied for a study permit to allow her to attend this program. She also applied for visas for her husband and their two young children so that they could be with her in Canada while she was studying. A visa officer

with Immigration, Refugees and Citizenship Canada (IRCC) refused the applications because the applicants had not established that they would leave Canada at the end of their authorized stay.

[2] The applicants now apply for judicial review of these decisions under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). The focus of this application is the refusal of the principal applicant's study permit application. The applicants submit that this decision is unreasonable in several respects. No independent grounds for review are raised challenging the refusals of the visa applications by her family members, which were entirely contingent on the success of the principal applicant's study permit application.

[3] As I will explain, I have not been persuaded that there is any reason to interfere with the decision refusing to grant the principal applicant a study permit. This application for judicial review will, therefore, be dismissed.

[4] The parties agree, as do I, that the substance of the officer's decision is to be reviewed on a reasonableness standard. 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" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision will be unreasonable when the reasons "fail to provide a transparent and intelligible justification" for the result (*Vavilov*, at para 136). To set aside the decision on the basis that it is unreasonable, the reviewing court must be satisfied that "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).

[5] As a preliminary matter, after leave was granted, the respondent filed an affidavit from a Program Advisor at IRCC who is fluent in both English and Persian/Farsi. According to the affiant, a document certified as an English translation of a Persian document included in the applicant's study permit application is not an accurate and complete translation. (The documents are found at pages 60 and 61 of the Certified Tribunal Record (CTR)). In my view, the discrepancies between the two documents suggest that the English document is actually the translation of a different document that somehow did not find its way into the application. The parties take the same view. Be this as it may, the respondent did not seek the admission of the affidavit as an exception to the general rule that only material that was before the original decision maker may be considered on an application for judicial review (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 17-20; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 13-28; *Sharma v Canada (Attorney General)*, 2018 FCA 48 at paras 7-9; and *Andrews v Public Service Alliance of Canada*, 2022 FCA 159 at para 18). Accordingly, I must assess the reasonableness of the decision on the basis of the information before the visa officer, including that the English document at page 60 of the CTR is, as the translator's certification states, a true translation of the Persian document at page 61 of the CTR.

[6] In *Nesarzadeh v Canada (Citizenship and Immigration)*, 2023 FC 568 at paras 5-9, Justice Pentney provided a helpful summary of the key principles that guide judicial review of study permit decisions. Drawing on this summary and the jurisprudence cited in *Nesarzadeh*, I would state these principles as follows:

- A reasonable decision must explain the result, in view of the law and the key facts.

- *Vavilov* seeks to reinforce a "culture of justification" requiring the decision maker to provide a logical explanation for the result and to be responsive to the parties' submissions.

- The administrative context in which the decision was made must be taken into account. Visa officers face a deluge of applications, and their reasons do not need to be lengthy or detailed. However, the reasons do need to set out the key elements of the officer's line of analysis and be responsive to the central aspects of the application.

- The onus is on the applicant to satisfy the officer that they meet the legal requirements for obtaining a study permit, including that they will leave Canada at the end of their authorized stay.

- Visa officers must consider the "push" and "pull" factors that could lead an applicant to overstay their visa and stay in Canada, or that would, on the other hand, encourage them to return to their home country when required to.

[7] In the present case, the officer refused the applications for two main reasons: first, the principal applicant had not provided details concerning how the proposed studies would benefit her career path or why Canadian studies, given their cost, were necessary or beneficial; and second, since the principal applicant's immediate family would be accompanying her to Canada, this weakened her ties to her home country and, as a result, her motivation to return. The officer concluded that the principal applicant had not established that she would depart Canada at the end of her authorized stay.

[8] The applicants challenge the decision in a number of respects, but they have not established that it is unreasonable. While the reasons are brief, they set out the key factors on which the officer relied.

[9] The applicants contend that it is not for a visa officer to assess the wisdom or advisability of a proposed course of study. Even if that is true as a general principle, this is not what the officer did here. Rather, the principal applicant herself sought to characterize the proposed course of studies as reasonable because it would help advance her career. Considering the information the principal applicant presented, it was not unreasonable for the officer to find that the principal applicant had failed to establish how this additional education would further her career given what she had already accomplished in her life. As the officer noted, the principal applicant provided only general statements about the value of this additional education. In finding her explanation wanting, the officer was judging the sufficiency of the information the principal applicant had provided, not the wisdom of her life choices.

[10] The applicants have not identified any relevant information the officer must have overlooked or misunderstood in order to reach the conclusion they did reasonably. While it is true that the officer did not mention every positive factor (e.g., the fact that the applicants had assets in Iran and a positive travel history), the failure to do so does not undermine the reasonableness of the decision. It was not unreasonable for the officer to conclude that they were insufficient to warrant a positive decision when considered in the context of the application as a whole. The applicants' submissions to the contrary effectively invite me to reweigh the evidence

and reach a different conclusion than the officer did. This is not the proper role of a Court conducting judicial review on a reasonableness standard.

[11] In sum, the officer explained the negative decision with reasons that are transparent, intelligible, and justified. While the applicants are undoubtedly disappointed with the officer's decision, they have not established that it is unreasonable.

[12] For the sake of completeness, I would note that, in their memorandum of argument, the applicants also challenged the fairness of the process by which the decision refusing the principal applicant's study permit was made. These arguments were not pressed at the hearing of this application. In any event, I am satisfied that the principal applicant knew the case she had to meet and had a full and fair chance to do so (*Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at para 56).

[13] Finally, neither party proposed a serious question of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-7785-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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