

Federal Court



Cour fédérale

Date: 20231127

Docket: IMM-10346-22

Citation: 2023 FC 1573

Ottawa, Ontario, November 27, 2023

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

ELIYA HOSSEINZADE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Eliya Hosseinzade, is a citizen of Iran who applied for a study permit that a visa officer [Officer] denied on the basis that the Applicant's proposed visit to Canada was not consistent with a temporary stay. She brings this judicial review application seeking to have the Officer's decision set aside.

[2] The determinative issue is the reasonableness of the decision, there being no circumstances here in my view that displace the presumptive reasonableness standard of review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 17, 25. The Applicant has not made out the assertion of procedural unfairness, the focus of her submissions being the reasonableness of the decision.

[3] A decision may be unreasonable, that is lacking justification, transparency and intelligibility, if the decision maker misapprehended the evidence before it. The party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Vavilov*, above at paras 99-100, 125-126.

[4] I am satisfied that the Applicant has met her onus by demonstrating that the Officer misapprehended or overlooked key evidence. For the more detailed reasons below, I therefore grant this judicial review application.

[5] See Annex “A” for relevant statutory provisions.

II. Analysis

[6] I find that the Officer misapprehended or disregarded the evidence in several ways, including the examples below. Further, the reasons do not convey how the Officer’s views would have changed had they considered central pieces of evidence.

[7] As a first example, the Officer found that there were programs available closer to the Applicant's residence with more competitive tuition fees. The Officer does not indicate, however, on what basis this finding was made. The Respondent submits that the Officer relied on their expertise regarding local educational programs, citing *Cayanga v Canada (Citizenship and Immigration)*, 2017 FC 1046 [*Cayanga*] at para 13 for the proposition that it was not unreasonable to consider the availability of similar programs at a lower cost, as this is simply one factor for an officer to consider.

[8] *Cayanga* relies, however, on *Zuo v Canada (Citizenship and Immigration)*, 2007 FC 88 [*Zuo*], in which Justice Pinard conducts a more nuanced analysis. Reading the whole of paragraph 23 of *Zuo*, the Court clarifies that the availability of less expensive, similar programs will not be necessarily determinative; if it were, most study permit applications would be denied. Justice Pinard notes that students may base their choices on more than a program's price.

[9] Thus, while it may not be unreasonable to consider the price of similar programs, it does not absolve the Officer from basing the finding on a holistic review of the record or from justifying the conclusion.

[10] Second, the Officer concluded that the benefits do not appear to outweigh the costs of the program. Again, the Officer does not grapple with the evidence. In my view, the Officer unreasonably discounted the Applicant's proposed salary increase and sizeable commission, which is conditional on the completion of her studies. She stated that these amounts would compensate the costs accrued in Canada and allow her to invest in her future. The Officer

focused unduly, however, on the costs of the Canadian program. The Applicant submitted that the Officer inappropriately was acting like a “money manager,” and I find that this characterization is apt in the circumstances.

[11] Third, the Officer stated that the proposed studies were not reasonable, given the Applicant’s work experience in a field consistent with the Applicant’s previous studies and the availability of similar programs in the Applicant’s home country. This Court has confirmed that an officer must assess both the level of the proposed study and its course content: *Fallahi v Canada (Citizenship and Immigration)*, 2022 FC 506 [*Fallahi*] at para 14. Further, it is a logical progression for applicants to pursue further studies in the same field as their careers, regardless of the level of prior education: *Monteza v Canada (Citizenship and Immigration)*, 2022 FC 530 [*Monteza*] at para 14.

[12] Here, the Applicant’s proposed Master of Business Administration degree is different from the previous Master’s Degree in Entrepreneurship Management she obtained in Iran, despite being at the same level. She has worked in the business field for eight years, and it is logical to obtain a related degree - especially with a job offer conditional on the completion of a Master’s degree in a related field. The Officer does not provide any analysis as to why the proposed studies are unnecessary in light of her previous studies: *Fallahi*, above at para 17.

[13] Similarly, I find that the Officer unreasonably concluded that the Applicant’s job offer does not mention any skills necessary to perform the job of “Chief Project Officer” that the Applicant may not possess already, based on her education and work experience. In my view, the

required skills are inherent in the lengthy description of duties, including, but not limited to: planning, implementing and maintaining a presence on social media; identifying market trends; taking responsibility of design, implementation, and measurement of various conversion rate optimization tests; and planning and implementing all web campaigns. The Officer does not engage with the job offer, however, nor explain the conclusion that the Applicant's prior work experience would provide the Applicant with all necessary skills.

[14] Ultimately, it is not known how the Officer weighed the positive factors in the application because no positive factors are mentioned: *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 24. The reasons focus on the negative aspects, and the Officer does not explain or justify why the Applicant's study plan does not make sense in light of the record. In the end, I find that the Officer's analysis is illogical when viewed in the context of the evidence before the Officer, thus warranting judicial intervention: *Monteza*, above at para 16.

III. Conclusion

[15] For the reasons above, I find that the decision refusing the Applicant's application for a study permit is unreasonable. I therefore grant this judicial review application. The decision is set aside, with the matter remitted to a different decision maker for reconsideration.

[16] Neither party proposed a question for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-10346-22

THIS COURT'S JUDGMENT is that:

1. The Applicant's judicial review application is granted.
2. The August 31, 2022 decision of the visa officer refusing the Applicant's application for a study permit is set aside.
3. The matter will be remitted to a different decision maker for reconsideration.
4. There is no question for certification.

"Janet M. Fuhrer"

Judge

Annex “A”: Relevant Provisions

Immigration and Refugee Protection Regulations, SOR/2002-227
Règlement sur l’immigration et la protection des réfugiés, DORS/2002-227

<p>Issuance of Study Permits Study permits</p> <p>216 (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national</p> <ul style="list-style-type: none"> (a) applied for it in accordance with this Part; (b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9; (c) meets the requirements of this Part; (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 (e) has been accepted to undertake a program of study at a designated learning institution. 	<p>Délivrance du permis d’études Permis d’études</p> <p>216 (1) Sous réserve des paragraphes (2) et (3), l’agent délivre un permis d’études à l’étranger si, à l’issue d’un contrôle, les éléments suivants sont établis :</p> <ul style="list-style-type: none"> a) l’étranger a demandé un permis d’études conformément à la présente partie; 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) il remplit les exigences prévues à la présente partie; 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) il a été admis à un programme d’études par un établissement d’enseignement désigné.
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FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10346-22

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CITIZENSHIP AND IMMIGRATION

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