

Federal Court



Cour fédérale

Date: 20231221

Docket: IMM-10345-22

Citation: 2023 FC 1745

Ottawa, Ontario, December 21, 2023

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

**Maya HABIBIPOUR
and
Elmira ALIPOURNEJATI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Maya Habibipour, a young girl seeking a study permit [Principal Applicant], and her accompanying parent, Elmira Alipournejati, are citizens of Iran. A visa officer [Officer] refused their applications for a study permit and temporary resident visa

[Decisions]. The Officer was not satisfied that the Applicants would leave Canada at the end of their stay.

[2] The Applicants seek judicial review of the Decisions, raising issues of reasonableness and procedural fairness in their efforts to have the Decisions set aside and the matters redetermined.

[3] A reasonable decision is one that exhibits the hallmarks of justification, transparency and intelligibility, and is justified in the context of the applicable factual and legal constraints: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 99. The party challenging an administrative decision has the burden of showing that it is unreasonable: *Vavilov*, above at para 100.

[4] Questions of procedural fairness attract a correctness like standard of review: *Benchery v Canada (Citizenship and Immigration)*, 2020 FC 217 at paras 8-9; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Vavilov*, above at para 77. The focus of the reviewing court is whether the process was fair in the circumstances: *Chaudhry v Canada (Citizenship and Immigration)*, 2019 FC 520 at para 24.

[5] I find that reasonableness is dispositive, with the Applicants satisfying their burden. As explained in greater detail below, the Decisions do not reflect that the Officer was alert to the Applicants' specific circumstances as disclosed by the evidentiary record. Consequently, the Decisions will be set aside and the matters remitted for redetermination by a different officer.

II. Analysis

[6] I find that the Officer's errors, when taken individually, may not warrant the Court's intervention. When the Decisions are considered holistically, however, I am satisfied that the cumulative errors in the study permit Decision in particular point to unreasonableness, in that they raise doubts regarding whether the Officer turned their mind to the evidence on record.

[7] The focus of this analysis is on the Decision rejecting the study permit application, because, as is evident from the Global Case Management System notes, the treatment of the temporary resident visa application depended on the outcome of the study permit application.

[8] Contrary to the Respondent's submissions, I am persuaded that the errors are not "merely superficial or peripheral to the merits," but rather they are significant errors: *Vavilov*, at para 100.

[9] The litany of errors raised by the Applicants includes the Officer's use of "boilerplate" or template language. While in itself not unreasonable, template language must reflect that the decision maker considered an applicant's specific facts and intelligibly describe a coherent and rational chain of analysis to survive a robust review: *Boukhanfra v Canada (Citizenship and Immigration)*, 2019 FC 4 at para 9.

[10] Here, the Officer questioned the Principal Applicant's evidence of "financial establishment and sustainability for the first, and subsequent year(s) of studies" and whether "the funds provided will suffice for the long term invest [sic] of education in Canada." The Principal

Applicant was accepted into a one-year study program at the primary level. The Officer referred, however, to “secondary studies.” Further, the Officer noted that the Principal Applicant would be accompanied by “immediate family members,” when only the Principal Applicant’s mother applied for a temporary resident visa. Her other family members, including the Principal Applicant’s father, would remain in Iran.

[11] Significantly, I find that the Officer’s financial analysis unreasonably premised on the Principal Applicant’s financial sufficiency beyond the one-year duration of the primary school program into which the Principal Applicant was accepted.

III. Conclusion

[12] Having considered the parties’ records and submissions, I conclude that the above errors demonstrate a lack of justification, transparency, and intelligibility, thus warranting the Court’s intervention. The Decisions will be set aside with the matters to be redetermined by a different officer.

[13] Neither party proposed a question for certification, and I agree that none arises in the circumstances.

JUDGMENT in IMM-10345-22

THIS COURT'S JUDGMENT is that:

1. The Applicants' judicial review application is granted.
2. The August 22, 2022 decisions of the visa officer refusing the Applicants' applications for a study permit and a temporary resident permit are set aside.
3. The matters will be remitted to a different officer for redetermination.
4. There is no question for certification.

"Janet M. Fuhrer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10345-22

STYLE OF CAUSE: MAYA HABIBIPOUR, AND, ELMIRA
ALIPOURNEJATI V THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: AUGUST 17, 2023

JUDGMENT AND REASONS: FUHRER J.

DATED: DECEMBER 21, 2023

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