

Federal Court



Cour fédérale

Date: 20240220

**Dockets: IMM-13135-22
IMM-13346-22
IMM-13136-22
IMM-13142-22**

Citation: 2024 FC 276

Ottawa, Ontario, February 20, 2024

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**MARYAM KOOCHAKI CHENANI
HANZALEH ELAHI RODPOSHTY
NIKYAR ELAHI RODPOSHTY
NILIYA ELAHI RODPOSHTY**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Ms. Maryam Koochaki Chenani (the “Principal Applicant”) seeks judicial review of the decision of a visa officer (the “Officer”), refusing her application for a work permit pursuant to the Temporary Foreign Worker Program.

[2] Mr. Hanzaleh Elahi Rodposhty is the husband of the Principal Applicant. He commenced an application for leave and judicial review in cause number IMM-13346-22, seeking judicial review of the refusal of his application for a work permit.

[3] Mr. Nikyar Elahi Rodposhty is a minor son of the Principal Applicant. In cause number IMM-13136-22, he seeks judicial review of the decision refusing his application for a temporary resident visa.

[4] Ms. Niliya Elahi Rodposhty is a minor daughter of the Principal Applicant. In cause number IMM-13142-22, she seeks judicial review of the decision refusing her application for a temporary resident visa.

[5] By Order issued on November 29, 2023, the proceedings on behalf of the Principal Applicant, her husband and children were consolidated. One record was filed on behalf of all Applicants and all applications were heard together.

[6] A separate Certified Tribunal Record was produced for each application for leave and judicial review.

[7] The dispositive issue in these applications is whether the Officer's decision was reasonable, in light of the evidence submitted.

[8] The decision is reviewable upon the standard of reasonableness, following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.).

[9] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”; see *Vavilov, supra*, at paragraph 99.

[10] The Officer decided that the Applicants had failed to provide evidence about their ability to support themselves in Canada. As well, the Officer expressed concerns about the abilities of the Principal Applicant to perform the duties of a Landscaping Supervisor.

[11] The Applicants argue that the Officer ignored evidence about the Principal Applicant’s education and experience, and her ability to perform the work for which she sought a work permit. As well, they submit that the Officer ignored the bank statements that were submitted on behalf of the Principal Applicant and her husband.

[12] The bank statements are included in the Certified Tribunal Records filed on behalf of the minor Applicants, they are not included in the Certified Tribunal Records filed on behalf of the Principal Applicant and her husband.

[13] In the hearing of these applications, Counsel for the Applicants noted that the Certified Tribunal Record for the Principal Applicant and her husband did not contain the bank statements.

[14] Counsel for the Respondent objected, saying that the Applicants had not raised this argument in the written argument.

[15] I advised that the alleged failure of the Applicants to address deficiencies in the Certified Tribunal Record would not be dispositive of the within application.

[16] The Certified Tribunal Records were prepared by employees and agents of the Respondent; the Respondent is responsible to ensure completeness of those records. The inclusion of financial information in the Certified Tribunal Records filed on behalf of the minor Applicants at the very least should have alerted the Officer to pay close attention to the evidence submitted.

[17] It appears that the Officer did not pay such attention, and that renders the decision unreasonable. The reasons of the Officer do not meet the requirements of “justification, transparency and intelligibility”.

[18] The problem here is less about deficiencies in the Certified Tribunal Records than it is about the manner in which the Officer handled the evidence submitted.

[19] In the result, the applications for judicial review will be allowed, the decisions will be set aside and the matters remitted to another officer for redetermination. There is no question for certification.

[20] These Reasons and Judgment will be filed in cause number IMM-13346-22, and placed on the files in causes numbered IMM-13135-22, IMM-13136-22 and IMM-13142-22.

JUDGMENT IN IMM-13135-22, IMM-13346-22, IMM-13136-22 AND IMM-13142-22

THIS COURT'S JUDGMENT is that the applications for judicial review are allowed, the decisions of the Officer are set aside and the matters are remitted to another officer for redetermination. There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: IMM-13135-22
IMM-13346-22
IMM-13136-22
IMM-13142-22

STYLE OF CAUSE: MARYAM KOOCHAKI CHENANI ET AL. v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: JANUARY 18, 2024

REASONS AND JUDGMENT: HENEGHAN J.

DATED: FEBRUARY 20, 2024

APPEARANCES:

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