Federal Court  Cour fédérale

Date: 20240403

Docket: IMM-7187-22

Citation: 2024 FC 515

Montréal, Québec, April 3, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

PARIA HEKMATIAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision dated June 15, 2022 by an Immigration Officer [Officer] denying a study permit [Decision]. The Officer was not satisfied that the Applicant would leave Canada at the end of the authorized study period based on the purpose of her visit not being consistent with a temporary stay in Canada.

[2] The Applicant alleges that the officer misapprehended or ignored the evidence before them and engaged in a microscopic examination of her application. Her application complied with the statutory requirements, and the officer ought to have granted her application for a study permit. The officer expressed concerns that the justification and study plan in the Applicant's current study permit application were inconsistent with two prior, refused study permit applications. The Applicant argues that the officer should have given her an opportunity to respond to their concerns, which she claims to be credibility findings, before making a decision.

[3] The Respondent argues that the Officer's conclusions are supported by the record before them and the Decision is reasonable. The crux of the decision is that the Applicant's documentation and information were vague and speculative. The Respondent alleges that the Applicant is seeking to have the Court reweigh the evidence. The Respondent further states that the arguments raised do not actually give rise to a procedural fairness issue.

[4] For the reasons set out below, the application for judicial review is dismissed. Based on the record and the applicable law, I find that the Decision was not unreasonable and that there was no breach of procedural fairness.

II. Issues and Standard of Review

[5] The issues I am to address are as follows:

a) Was the Decision rejecting the study permit application reasonable?
b) Was there a breach of procedural fairness?

[6] Both parties agree on the applicable standard of review.

[7] In respect of the merits of the Decision, the standard of review in matters related to study permits is reasonableness (*Hajiyeva v Canada (Citizenship and Immigration)*, 2020 FC 71 at para 4). The standard of review on the issue of procedural fairness is correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54, as cited in *Abdinur v Canada (Citizenship and Immigration)*, 2020 FC 880 at para 7; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

[8] The reasonableness standard of review finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 13).

[9] A reviewing court applying the reasonableness standard must focus on the decision actually made, including the reasoning process and the outcome. It does not ask what decision it would have made instead, does not attempt to ascertain the "range" of possible conclusions, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem (*Vavilov* at para 83).

[10] The decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker" (*Vavilov* at para 125).

[11] A reasonable decision is one 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. The reasonableness standard requires that a reviewing court defer to such a decision (*Vavilov* at para 85). Reasonableness review is not a "line-by-line treasure hunt for error" (*Vavilov* at para 102).

[12] A reviewing court "must bear in mind that the written reasons given by an administrative body must not be assessed against a standard of perfection. That the reasons given for a decision do "not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" is not on its own a basis to set the decision aside" (*Vavilov* at para 91). Moreover, "even where elements of the analysis are left out and, in the whole scheme of the things, the decision is not undermined as a whole and must stand" (*Vavilov* at para 122).

[13] The burden of proof lies with the party claiming that the decision is unreasonable. The party must prove to the reviewing court that the decision is so seriously flawed that it cannot be said to meet the requirements of justification, intelligibility and transparency (*Vavilov* at para 100).

III. Applicable Legislation

[14] Foreign nationals seeking to enter or remain in Canada as temporary residents must hold a visa or other documents issued under the Immigration and Refugee Protection Act [*IRPA*]. Section 216(1)(b) of the Immigration and Refugee Protection Regulations [*IRPR*] deals with applications for study permits. Foreign nationals must establish that they will leave Canada by

the end of the period authorized for their stay before a study permit may be issued. When this criterion is not met, an immigration officer will not issue a study permit.

[15] The onus is on the visa applicant to demonstrate that they meet the statutory requirements under the *IRPA* and *IRPR (Charara v Canada (Citizenship and Immigration)*, 2016 FC 1176 at para 36; *Rezaali v Canada (Citizenship and Immigration)*, 2023 FC 269 at para 12).

IV. Background

[16] The Applicant is a citizen of Iran, with an Associate Degree in Architecture, as well as Undergraduate and Graduate Degrees in Architectural Technology Engineering. She has previously been employed as a designer and supervisor with architecture and engineering companies. Since late 2020 and including the time she submitted her study permit application, the Applicant also worked at the Katibeh Hotel in Iran.

[17] On January 4, 2022, the Applicant applied for a study permit to allow her to pursue a Master of Business Administration [MBA] at University of Canada West [UCW] in Vancouver, British Columbia. UCW accepted the Applicant to their two-year MBA program on November 18, 2021.

[18] On June 15, 2022, the Officer refused the application as they were not satisfied the Applicant would leave Canada at the end of the authorized period. The Officer found the purpose of her visit was not consistent with a temporary stay given the details provided in her application.

V. Analysis

A. *The Decision is Reasonable*

[19] The Applicant asserts that she received a job offer as an accommodation manager with a higher salary, and that obtaining this position depends on having a graduate degree in management and administration. The Applicant explained that no relevant program exists in her country, and her research identified UWC as the best program for her needs.

[20] During the hearing, the Applicant contended that the Officer ignored the evidence submitted, which included a job offer from the Applicant's current employer, and focused only on her background in architecture.

[21] The Officer's notes in the Global Case Management System [Notes] setting out their review of the application stated, "considering the applicant's education and previous work experience management supervisor, I am not satisfied that the applicant would not have already achieved the benefits of this program. In light of the PA's previous study and current career, I am not satisfied that this is a reasonable progression of studies." The Notes do not reflect that the officer only considered her architectural background.

[22] The Applicant submitted that the hotel's job offer clearly stated that her proposed studies were required for the position of accommodation manager. The Applicant further submitted there was a clear difference between a reception manager and an accommodation manager that would warrant the need for further education.

[23] With respect, while the Applicant strenuously made these arguments at the hearing, the record does not support these assertions. The Applicant discussed at length why the two hotel management positions were different and why she required an MBA for the second management position. However, none of these statements on this issue were corroborated before the decision-maker. There is nothing here to suggest the officer misapprehended the evidence.

[24] The Applicant was already holding a management position with the hotel without an MBA. As such, it was open for the officer to consider whether there was sufficient evidence to demonstrate how or why the MBA was conditional for a different management position at the same organization. The documents authored by the hotel provided no explanation to this effect. There was also no evidence provided by the architecture firm where the Applicant was also employed confirming that an MBA was required for that role.

[25] The Applicant challenged the Officer's assessment of her study plan, arguing they were inserting themselves as a "career counsellor" and that this was an error.

[26] I disagree.

[27] Based on the record before them, it was open to the Officer to consider whether the Applicant already achieved the benefits of the intended course of study, and whether they are repetitive or inconsistent with their career path. The Applicant bears the onus to sufficiently explain the benefits of pursuing the program (*Rajabi v Canada (Citizenship and Immigration)* 2024 FC 371 at para 11). Furthermore, the Officer noted that the job offer did not guarantee

promotion, nor any need for the Applicant's proposed studies to obtain the promotion, other than her own vague and generalized statements in her application. It was open for the Officer to find that, in that context, the proposed course of study did not make sense in light of her previous education and work experience (*Amirhesari v Canada (Citizenship and Immigration)* 2024 FC 436 [*Amirhesari*] at para 4).

[28] I find no reviewable error in the manner in which the Officer appears to have assessed the Applicant's study permit application from the Notes. The Officer analyzed the record and found the study plan and supporting documentation to be wanting, vague and speculative.

[29] The Applicant is asking me to reweigh the evidence. That is not the role of this Court on judicial review.

B. *No breach of procedural fairness*

[30] The Applicant argued that the Officer made credibility findings with respect to the Notes identifying the Applicant's two previously denied applications for study permits and should have given her an opportunity to respond.

[31] The Respondent argues that procedural fairness falls on the lower end of the spectrum in the context of temporary resident visa applications and remains contextually driven. Given the significant volume of visa applications that an immigration officer must process, the duty of procedural fairness is lessened because it would otherwise "unduly encumber efficient administration" (*Anand v Canada (Citizenship and Immigration*), 2019 FC 372 at paras 34-35,

37; *Singh v Canada (Citizenship and Immigration)*, 2015 FC 115 at para 25). The Applicant's case did not give rise to any procedural obligations on the part of the Officer to follow up with her or to identify concerns with her application. As such, they allege there is no procedural fairness issue.

[32] Having reviewed the record and the Decision, while the Officer refers to inconsistencies in the Applicant's previous study permit applications, the Officer's concerns focused on the Applicant's study plan, and the information and documentation that the Applicant submitted in support of the current application.

[33] Procedural fairness does not arise whenever an officer has concerns that an applicant could reasonably have anticipated (*Singh v Canada (Citizenship and Immigration)*, 2012 FC 526 at para 52). The onus remains on applicant to present all the information necessary to support a convincing application (*Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at paras 35, 37).

[34] In the case of documents submitted in support of their application, an applicant is deemed to be aware of the content and the decision-maker is not required to provide said applicant with an opportunity to improve their evidence (*Hakimi v Canada (Citizenship and Immigration)*, 2015 FC 657 at para 22; *Poon v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16766 (FC), [2000] FCJ No 1993 at para 12).

[35] There is no obligation for a visa officer to inform an applicant of concerns they have which arise directly from the requirements of the application (*Singh v Canada (Citizenship and Immigration)*, 2022 FC 855 at para 22). An applicant's failure to provide adequate, sufficient, or credible proof with respect to their visa application does not trigger a duty to inform the applicant in order for them to submit further proof to address the finding of the officer with respect to the inadequacy, deficiency, or lack of credibility (*Liu v Canada (Citizenship and Immigration)* 2006 FC 1025 at para 16).

VI. Conclusion

[36] For above reasons, this application for judicial review is dismissed. The Applicant has not demonstrated any error in the Decision which renders it unreasonable, or that the Decision was not justified, transparent, and intelligible. There has been no breach of procedural fairness.

[37] The parties confirmed that there was no question of general importance to certify, and I agree none arises.

JUDGMENT in IMM-7187-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There are no questions for certification.

"Phuong T.V. Ngo"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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