Federal Court  Cour fédérale

Date: 20240429

Docket: IMM-12841-22

Citation: 2024 FC 819

Toronto, Ontario, May 29, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

PEYMAN MOHEBBAN
DAYANA MOHEBBAN
NEDA TORTATIAN
ANDIYA MOHEBBAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family of four who sought to come to Canada to enable the Principal Applicant – Mr. Peyman Mohebban – to pursue his Masters in Business Administration. As such, the family submitted applications for temporary residence in Canada. An Immigration Officer [the

Officer] rejected the applications for temporary residence, finding that they had not established that they would leave Canada at the end of their stay.

[2] For the reasons that follow, this application for judicial review is dismissed.

II. Background Facts

[3] The Applicants are citizens of the Islamic Republic of Iran. The Principal Applicant has a Bachelor's Degree in Planning and Systems Analysis in Industrial Engineering from the Islamic Azad University in Iran and a Master of Science in Construction Management from the Grenoble Graduate School of Business in France. He is currently the Head of Systems Analysis and Energy at the National Iranian Gas Company [NIGC] where he has been employed since October 7, 2000.

[4] Tetsaco International and Control [Tetsaco] is a private company that cooperates on some projects with NIGC. Tetsaco offered the Principal Applicant a position as a part-time Marketing Manager upon his return to Iran. The Principal Applicant also asserts that he is being considered for a promotion to Director of Engineering at NIGC upon his return.

[5] The Principal Applicant applied for a Master of Business Administration [MBA] at the New York Institute of Technology which, despite its name, is located in Vancouver. He was admitted into the program on April 28 2022, and made an initial tuition deposit payment of $7,751.85. The overall tuition fees for the program are $54,975 United States dollars [USD].

[6] The Principal Applicant subsequently applied for a study permit to allow him to pursue his MBA studies in Canada. To accompany him for the expected two-year duration of his studies, his

spouse, Neda Torbatian [the Associate Applicant] applied for a work permit; his daughter, Dayana Mohebban applied for a study permit; and his second daughter, Andiya Mohebban, applied for a Visitor Visa.

III. Decision under Review

[7] On January 3 2023, their applications for temporary residence in Canada were refused. In the decision letters, the Officer stated that the Principal Applicant had failed to establish that he would leave Canada at the end of his studies, due to the following factors: 1) his assets and financial situation were insufficient to support the stated purpose of travel; 2) he did not have significant family ties outside Canada; and 3) the purpose of the Principal Applicant's visit to Canada was not consistent with a temporary stay given the details provided in his application.

[8] In supporting notes entered into the Global Case Management System [GCMS], which form a part of the reasons for decision, the Officer further noted, with respect to the availability of sufficient funds:

> No detail bank statement/transaction submitted to check movement of funds on the account. In the absence of satisfactory documentation showing the source of these funds, I am not satisfied the PA has sufficient funds for the intended purpose.

[9] The Officer further notes that the Principal Applicant's motivation to return to Iran would diminish since his spouse and two dependent children would be accompanying him to Canada. Additionally, the Officer considered the Principal Applicant's desire to pursue an MBA in Canada illogical, noting that he already holds a Masters in Construction Management. The Officer also observed that the letter of offer submitted by the Principal Applicant was for part-time work and

called into question whether international studies were required. The Officer concluded that the proposed course of study was unreasonable considering the high cost of international education in Canada. Together, these factors led the Officer to find that the Applicants had not established that they would depart Canada at the end of the period authorized for their stay.

IV. Issues

[10] Over the course of these proceedings, both parties have focused their submissions on the decision denying the Principal Applicant's study permit application, as the other family members' applications were predicated on his plan to attend school in Canada. As such, the issues that arise on this judicial review relate to this decision.

[11] The Applicants have raised various substantive and procedural issues on judicial review. Expressed on a general level, the issues to consider on judicial review are as follows:

1. Did the Officer reject the Applicants' applications in a manner that was procedurally unfair?
2. Was the Officer's decision to refuse the applications reasonable?

V. Legislative Framework

[12] Paragraph 20(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] provides that a foreign national wishing to enter or remain in Canada as a temporary resident must establish that they hold a visa or other document prescribed by the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] and will leave Canada by the end of the period authorized for their stay.

[13] Foreign nationals wishing to study in Canada must obtain a study permit to enter the country. The following sections of the IRPR are relevant to the case at bar:

Study permits

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

(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.

[...]

Financial resources

220 An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to

(a) pay the tuition fees for the course or program of studies that they intend to pursue;

Permis d'études

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 :

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.

[...]

Ressources financières

220 À l'exception des personnes visées aux sous-alinéas 215(1)d) ou e), l'agent ne délivre pas de permis d'études à l'étranger à moins que celui-ci ne dispose, sans qu'il lui soit nécessaire d'exercer un emploi au Canada, de ressources financières suffisantes pour :

a) acquitter les frais de scolarité des cours qu'il a l'intention de suivre;

(b) maintain themself and any family members who are accompanying them during their proposed period of study; and	**b)** subvenir à ses propres besoins et à ceux des membres de sa famille qui l'accompagnent durant ses études;
(c) pay the costs of transporting themself and the family members referred to in paragraph (b) to and from Canada.	**c)** acquitter les frais de transport pour lui-même et les membres de sa famille visés à l'alinéa b) pour venir au Canada et en repartir.

VI. Standard of Review

[14] The fairness concerns raised by the Applicants are to be reviewed on a standard approximating the correctness standard: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43. That is to say, no deference is owed to the Officer on questions related to the fairness of the proceedings under judicial review.

[15] On the substance of the Officer's decision, there is no dispute between the parties that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at para 25 [*Vavilov*]).

[16] A reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it: *Vavilov* at para 15. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

[17] In *Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552, at paragraph 13, this court recently described the reasonableness standard in the context of visa office decisions, as follows:

> The standard of review applicable to a review of a visa officer's decision to refuse a study permit application is that of reasonableness…While it is not necessary to have exhaustive reasons for the decision to be reasonable given the enormous pressure on visa officers to produce a large volume of decisions each day, the decision must still be based on an internally coherent and rational chain of analysis and be justified in relation to the facts and law that constrain the decision maker…It must also bear "the hallmarks of reasonableness — justification, transparency and intelligibility" [citations omitted].

VII. Analysis

A. *The Officer's Decision was Fair*

[18] It is well established that the level of procedural fairness owed to study permit applicants falls at the low end of the spectrum: *Nourani v Canada (Citizenship and Immigration)*, 2023 FC 732 at para 50; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 517 at para 12.

[19] The Applicants argue that the Officer breached their rights to procedural fairness by failing to provide adequate reasons for the decision, by making an implicit credibility finding, by failing to allow the applicants to respond to their concerns, and by breaching the doctrine of legitimate expectations, by ignoring the evidence in the application.

[20] Counsel for the Applicants made essentially identical arguments in another matter that recently came before this court: *Amiri v Canada (Citizenship and Immigration)*, 2023 FC 1532 [*Amiri*]. In *Amiri*, Justice Ahmed succinctly considered, and rejected, these arguments as follows:

> [25] I agree with the Respondent. The Applicants do not point to any evidence or jurisprudence to suggest that the Officer made an implicit credibility finding. Nowhere in the decision did the Officer maintain that the truth of the evidence or the Applicants' statements were doubted. Rather, in both decisions the Officer found that the evidence led to the conclusion that the Applicants would not leave at the end of the period authorized for their stay. As such, the Officer was not under a duty to inform the Applicants of concerns or considerations before rejecting their claims (*Kumar v Canada (Citizenship and Immigration)*, 2020 FC 935 at paras 18-19).
>
> [26] Furthermore, the Respondent is correct that the doctrine of legitimate expectations is irrelevant. The question of whether the Officer considered all of the evidence in a decision is a question relating to the reasons and conclusions of the decision itself, rather than the procedural steps followed by the officers throughout the applications. This consideration is reviewed for its reasonableness (*Aje v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 811 at paras 11-12). There has been no breach of procedural fairness.

[21] I agree with Justice Ahmed's reasoning in *Amiri* and find that it is directly applicable to the present case. I would add the following. First, where some reasons for decision have been provided, the question of adequacy is no longer considered a matter of fairness. Rather, assessing adequacy goes to the *content* of the reasons provided and, as such, it calls for substantive review on the reasonableness standard: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14.

[22] Second, here, as in *Amiri*, there is no indication that the Officer questioned the Applicants' credibility. A finding that an applicant has inadequately documented their financial background is not, absent other commentary from the decision-maker, a credibility finding.

[23] Third, while there are circumstances that require an officer to reach out to an applicant to share a concern - for example, where they wish to rely on information not in the record, or where an officer identifies a credibility concern - this is not the situation that arises in this case. This court

has often found that visa officers have no legal obligation to do what the Applicant suggests was necessary; that is, officers are not obliged to "seek to clarify a deficient application, to reach out and make the applicant's case, to apprise an applicant of concerns relating to whether the requirements set out in the legislation have been met, or to provide the applicant with a running score at every step of the application process": *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 38; *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at para 16.

[24] As a result of the above, I see no merit in the Applicants' suggestion that the decisions rejecting their applications were procedurally unfair.

B. *The Officer's Decision was Reasonable*

[25] In the context of study permits, applicants must satisfy an officer that they meet the requirements of the legislative regime; most notably that they will leave Canada at the end of their period of authorized stay: IRPR paragraph 216(1)(b); *Patel v Canada (Citizenship and Immigration)*, 2017 FC 570 at para 12.

[26] Applicants must also demonstrate that they have sufficient and available financial resources to fund their studies. This is a determinative consideration, and is not a matter of discretion: an officer "shall not" issue a study permit unless they are satisfied of the Applicant's financial resources: IRPR section 220. Moreover, applicants have a fundamental duty to provide sufficient evidence to support a study permit application: *De La Cruz Garcia v Canada (Citizenship and Immigration)*, 2016 FC 784 at paras 8-12; *Bestar v Canada (Citizenship and Immigration)*, 2022 FC 483 at para 12).

[27] While the Officer's decision in this case does raise some concerns, I have concluded that the Officer reasonably found that the Applicants failed to establish that they had sufficient and available financial resources to fund the Principal Applicant's studies. As this is a determinative issue, the reasonableness of this aspect of the decision dictates that this application must be dismissed.

[28] To demonstrate their financial resources, the Applicants submitted bank statements for both the Principal and Associate Applicants, land transfer and title documents, pay slips, a car deed, and a tuition deposit receipt for $7,751.85 from the New York Institute of Technology. The Applicants argue that, cumulatively, the financial information they provided satisfied the requirements of section 220 of the IRPR and it was unreasonable for the Officer to find otherwise. For the below reasons, I disagree.

[29] The Officer did not express specific concerns with the quantity of funds set out in the documents, but rather with the lack of detailed bank statements and transactions to verify the movement of funds on the account. In the absence of satisfactory documentation showing the source and stability of these funds, the Officer concluded that the Applicants had failed to meet the requirements of section 220 of the IRPR. In oral argument, the Applicants stated that the bank statements they provided were for accounts similar to a Guaranteed Investment Certificate (GIC), which do not permit regular transactions. As such, the Applicants assert that the Officer required of them an impossibility. I do not accept this argument.

[30] Related to the requirements of section 220 of the IRPR, officers must conduct an analysis about the source, origin, nature, and stability of applicants' funds to determine if they are able to

defray the cost of their stay in Canada: *Aghvamiamoli v Canada (Citizenship and Immigration)*, 2023 FC 1613 [*Aghvamiamoli*] at para 28. It may be that the bank accounts for which the Applicants provided statements do not have detailed daily transactions. If they did not, however, it was incumbent on the Applicants to provide statements from accounts that do contain such transactions. The Applicants are both professionals with regular income; they presumably have expenses that are paid from bank accounts and salaries that are paid into them. The Applicants did not provide any information related to such accounts, and nor did they provide any explanation to the Officer as to the nature of the accounts for which they did provide information.

[31] In the absence of such information, it was reasonable for the Officer to conclude that the Applicants had not met the requirements of section 220 of the IRPR. As the Respondent points out, this is all the more the case, given that the costs for the Principal Applicant's MBA program were significant and exceeded the Applicants' combined bank assets. Tuition for the program is $54,975 USD, of which the Applicants had only paid a nominal $7,751.85 deposit.

[32] I find that the Applicant is asking the court to arrive at a different conclusion on the very evidence that the Officer considered and found to be insufficient. This is, at root, a request for the Court to reweigh the evidence adduced by the Applicants; which, as I recently noted in a similar case, is not the role of the Court on judicial review: *Mohammadi v Canada (Citizenship and Immigration)*, 2024 FC 598, at para 16.

[33] Moreover, though this information is not contained in the record, the public instructions applicable to those applying for study permits ask applicants to provide, amongst other things, copies of bank statements spanning several months as proof of financial support. In several recent

decisions, this Court has dismissed applications for judicial review where visa officers have denied study permits to applicants who had not adhered to these instructions: *Aghvamiamoli*; *Salamat v Canada (Citizenship* and Immigration), 2024 FC 545; *Najaran v Canada (Citizenship and Immigration)*, 2024 FC 541; *Sani v Canada (Citizenship and Immigration)*, 2024 FC 396 [*Sani*]; *Abdisoufi v Canada (Citizenship and Immigration)*, 2024 FC 164.

[34] The conditions set out at section 220 of the IRPR are mandatory and go beyond merely paying the tuition fees for the intended program of studies; they must be met in order for an officer to approve a study permit application: *Sani* at paras 25, 33. For the reasons set out above, I find the Officer's conclusions in this aspect of the decision are reasonable. This finding is determinative of this application for judicial review. As Justice Régimbald stated in *Aghvamiamoli (at para 36):*

> Nevertheless, even if the Officer's decision is unreasonable in relation to their conclusions on the significance of the Applicant's ties to Iran, or on his study plan, on which I do not need to conclude, the Officer's decision is reasonable in relation to the lack of financial support. That consideration, on its own, is sufficient to justify the Officer's decision to refuse the Applicant's application for a study permit.

VIII. Conclusion

[35] For all of these reasons I find that the Officer who rendered the decision in this matter did not breach the duty of fairness, and that the decision itself was reasonable.

[36] No question of general importance was proposed and I agree none exists.

JUDGMENT in IMM-12841-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified for appeal.

"Angus Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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