

Federal Court



Cour fédérale

Date: 20240605

Docket: IMM-9304-22

Citation: 2024 FC 846

Ottawa, Ontario, June 5, 2024

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

SHIMA SAFAEIAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Ms. Shima Safaeian (the “Applicant”) seeks judicial review of the decision of an officer (the “Officer”) refusing her application for a study permit.

[2] There are two preliminary matters to be addressed.

[3] First, the Applicant has incorrectly named the “Minister of Immigration Refugees and Citizenship Canada” as the respondent. There is no such Minister and the style of cause will be amended to show the “Minister of Citizenship and Immigration” as the respondent (the “Respondent”).

[4] Second, by letter dated April 5, 2024, Counsel for the Applicant advised that neither she nor any lawyer would appear upon the hearing of the application for judicial review scheduled for April 11, 2024.

[5] Directions were issued, inviting a position from Counsel for the Respondent.

[6] Submissions and responding submissions were filed, pursuant to Directions issued by the Court.

[7] Counsel for the Applicant explained her position in a letter dated April 9, 2024, as follows:

To clarify, the Applicant is not requesting the Court to conduct the hearing based solely on written submissions. Instead, the purpose of our communication is to advise the Respondent and the Court, as a courtesy, that the Applicant will not be attending the hearing. The Applicant does not oppose the Respondent’s right to attend and present oral arguments. The Applicant’s position and arguments have already been conveyed in the materials filed.

The decision not to attend the hearing is based on instructions provided by the Applicant, stemming from legal costs and financial constraints beyond counsel’s control. Nonetheless, the Applicant wishes to have her matter evaluated by an independent authority outside the IRCC and, regrettably, has no alternative but to proceed without attendance.

We understand that no formal motion was necessary, as no special relief was requested from the Applicant. Such hearings with the Applicant's absence on notice have previously been conducted by Judges of this Court without the need for formal motions.

We acknowledge the Respondent's concerns regarding the timing. However, in previous instances where non-attendance was communicated to the court, there were no issues raised by the Court Registrar, no formal requests for letters or motions were made, and the matters were appropriately disposed of by the Court. The Applicant is currently unclear about the Respondent's position in this matter.

The Applicant is not able to attend. The Respondent may attend and present oral arguments as desired. The Applicant has no objection to the Respondent being present. Rule 38 of the Federal Courts Rules allows the Court to proceed with a hearing when a party is not in attendance and has been duly notified. The Applicant will respect any fair and rightful disposition by the Court.

[8] Rule 38 of the *Federal Courts Rules*, SOR/98-106 (the "Rules") provides as follows:

Absence of party

38 Where a party fails to appear at a hearing, the Court may proceed in the absence of the party if the Court is satisfied that notice of the hearing was given to that party in accordance with these Rules.

Absence d'une partie

38 Lorsqu'une partie ne comparait pas à une audience, la Cour peut procéder en son absence si elle est convaincue qu'un avis de l'audience lui a été donné en conformité avec les présentes règles.

[9] In my opinion, Rule 38 grants a discretion, to the Court, about proceeding with a hearing in the absence of Counsel.

[10] I repeat: the discretion lies with the Court, and not with a party.

[11] In this case, the hearing proceeded without Counsel appearing for the Applicant. The Court had issued a number of Directions dealing with the letter submitted by Counsel for the Applicant on April 5.

[12] Rule 3 of the Rules is relevant and provides as follows:

General principle

3 These Rules shall be interpreted and applied

(a) so as to secure the just, most expeditious and least expensive outcome of every proceeding; and

(b) with consideration being given to the principle of proportionality, including consideration of the proceeding's complexity, the importance of the issues involved and the amount in dispute.

Principe general

3 Les présentes règles sont interprétées et appliquées :

a) de façon à permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible;

b) compte tenu du principe de proportionnalité, notamment de la complexité de l'instance ainsi que de l'importance des questions et de la somme en litige.

[13] Time was required to deal with the communications from Counsel. The hearing date was set out in the Leave Order that was issued on January 16, 2024. No notice was given about proceeding on the basis of the written submissions of the Applicant until her Counsel sent the letter of April 5.

[14] Considering these circumstances, and in the exercise of my discretion about the processes of the Court, the hearing proceeded as scheduled on April 11, 2024.

[15] I turn now to the substance of this application for judicial review.

[16] The Applicant is a citizen of Iran. On June 9, 2022, she submitted an application for a study permit to pursue studies in Canada in e-commerce and online business.

[17] The Officer denied the application, on the ground that he or she was not satisfied that the Applicant would leave Canada at the end of the period authorized for her stay.

[18] The Applicant now argues that the Officer breached her right to procedural fairness by failing to give her the opportunity to address concerns about the purpose for her application, that is that the Officer did not believe that she would leave Canada at the end of her studies.

[19] The Applicant argues that the Officer failed to consider the evidence and ignored her family and economic ties to Iran.

[20] The Applicant further submits that the decision is unreasonable, on a number of grounds, including the reliance on Chinook 3+ and the failure to consider her family and economic ties to Iran.

[21] The Respondent contends that there was no breach of procedural fairness, that the Officer was concerned with the sufficiency of the evidence submitted by the Applicant, and not its credibility. The Officer was not obliged to raise any concerns with the Applicant.

[22] The Respondent also argues that the decision is reasonable, that the Applicant's argument related to Chinook 3+ amounts to "baseless musings".

[23] I agree with the submissions of the Respondent that there was no breach of procedural fairness arising from the manner in which the Officer assessed the Applicant's application. The Applicant was aware of the need to submit evidence in support of her request for a study permit, including evidence to show that she would leave Canada at the end of any authorized stay.

[24] I also agree with the submissions of the Respondent that family and economic ties to Iran were not a basis of the Officer's decision. In any event, the Applicant's arguments ignore the presumption that a decision maker has considered all the evidence, even if that evidence is not mentioned.

[25] The Officer, not the Court, was mandated to weigh the evidence. I am satisfied that the decision meets the applicable standard of review, that is reasonableness.

[26] There is no basis for judicial intervention and the application for judicial review will be dismissed. There is no question for certification.

JUDGMENT IN IMM-9304-22

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification. The style of cause is amended to show the "Minister of Citizenship and Immigration" as the Respondent.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9304-22

STYLE OF CAUSE: SHIMA SAFAEIAN v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 11, 2024

REASONS AND JUDGMENT: HENEGHAN J.

DATED: JUNE 5, 2024

APPEARANCES:

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