

Federal Court



Cour fédérale

Date: 20240621

Docket: IMM-13522-22

Citation: 2024 FC 961

Montréal, Quebec, June 21, 2024

PRESENT: Mr. Justice Gascon

BETWEEN:

ELHAM KHOSHFAM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Elham Khoshfam, is a citizen of Iran. She seeks judicial review of a decision rendered on December 22, 2022 [Decision], by an immigration officer at the Embassy of Canada in Ankara, Turkey [Officer]. The Decision dismissed Ms. Khoshfam's application for a temporary permit to pursue studies in Canada, which she had submitted on April 12, 2022 [Application]. The Officer found that Ms. Khoshfam's Application did not meet the requirements

set out in subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, and that she was not a *bona fide* visitor to Canada. The Officer was not convinced that Ms. Khoshfam would leave Canada and return to Iran at the end of her studies for two reasons: 1) because of her limited employment possibilities in her country of residence; and 2) because the Officer deemed the purpose of her visit inconsistent with a temporary stay.

[2] Ms. Khoshfam submits that the Decision is unreasonable because the Officer ignored contradictory evidence and facts that, if properly considered, would not have led to the refusal of her study permit. Consequently, she contends that the Decision does not bear the hallmarks of reasonableness, namely, justification, transparency, and intelligibility.

[3] For the following reasons, the application for judicial review will be dismissed. Despite the able submissions made by counsel for Ms. Khoshfam at the hearing, I find that the Officer's conclusions are based on the evidence before them, and I am not persuaded that the Officer's analysis is not reasonable given the factual circumstances of the case. Ms. Khoshfam has not shown any serious shortcoming in the Decision that would justify the intervention of this Court.

II. Background

A. *The factual context*

[4] Ms. Khoshfam is a 42-year-old Iranian citizen. She currently resides with her parents in Tehran, Iran. Her brother and sister also currently reside in Iran.

[5] Ms. Khoshfam completed her secondary school and pre-university education in Iran. In 2003, she completed an associate's degree in computer applications at the Islamic Azad University in Meymeh, Iran. In 2006, she also obtained a bachelor's degree in computer engineering specialized in software engineering at the University College of Nabi Akram in Tabriz, Iran. Since then, she has completed numerous courses in various programs and obtained several certificates in this field.

[6] Ms. Khoshfam has worked in the field of digital marketing since 2016. She currently holds a project-based position as the Digital Marketing Manager of Khaneman Azar Co. in Iran. She has been employed there since 2021, where her responsibilities consist of "optimizing and updating the online marketing strategies" of the firm. In 2021, she was employed at Ahanj Tavata Construction Co. as a media relation expert. From 2020 to 2021, she was employed at Mojrian Tarh Azar Co., as an online marketing strategist. In 2020, she worked at Heram Shakt Civil Co. in the field of digital marketing. From 2017 to 2020, she was employed at Valean Darou as a media relation expert. Finally, from 2016 to 2017, she worked at the Iran-Italy Chamber of Commerce, in digital marketing.

[7] Prior to her career in digital marketing, Ms. Khoshfam worked in the information technology field. From 2012 to 2015, she worked at TTBP Consultant Engineering Co. as an IT manager. She was also in charge of testing software at Dana Pardaz Qeshm Co. from 2010 to 2012, and was employed at Asia Mega Electronic Engineering and Commercial Co., where she operated as a networking expert. Her first job was at Roham Datak Data Transfer Co., where she worked in 2007 after completing her bachelor's degree.

[8] Within the context of her current Application, Ms. Khoshfam applied for a Master's in Business Administration [MBA] at University Canada West located in Vancouver, British Columbia. On December 1, 2021, she was admitted to the MBA program to begin her studies in the spring of 2022.

[9] As stipulated in her acceptance conditions, Ms. Khoshfam prepaid a portion of her total tuition fees, which amounts to \$7,882.50. She was also awarded a scholarship of \$9,720 under the university's Middle East Regional Grant.

B. *The procedural history*

[10] Before submitting her Application, Ms. Khoshfam had submitted a prior study permit application on July 4, 2021, which was refused on October 21, 2021. This earlier application was rejected on the grounds that her choice of program was not compelling, that there were limited employment prospects for her in Iran, that she was not well established in Iran, and that the employment conditions in Iran were not favourable to her proposed study plan.

[11] On April 12, 2022, Ms. Khoshfam submitted her current Application. This is the second time Ms. Khoshfam has contested the decision made by the Canadian authorities through an application for leave and judicial review [ALJR] before this Court. The first ALJR was commenced on June 22, 2022. On September 1, 2022, Ms. Khoshfam discontinued that ALJR on consent, as both parties agreed the matter ought to be remitted for redetermination to a new visa officer.

[12] The matter was subsequently sent to the Officer for redetermination. The Officer, upon reviewing her Application in light of the terms of the discontinuance, once again refused to grant the requested study permit. Ms. Khoshfam then submitted another ALJR contesting the second refusal decision, which is the Decision currently being challenged before the Court.

C. *The Decision*

[13] The Decision takes the form of a standard letter where the Officer indicates that he was not satisfied that Ms. Khoshfam would leave Canada at the end of her stay. The Decision also includes the Officer's notes located in the Global Case Management System [GCMS].

[14] In their reasons, the Officer notes that they have reviewed the case and the documentation on file, including both the new submissions and previous documents submitted by Ms. Khoshfam. They also reference having considered the previous decision maker's concerns, the updated acceptance letter submitted by Ms. Khoshfam for the 2023 winter semester, and Ms. Khoshfam's proof of funds.

[15] Ultimately, the Officer concluded that the purpose of the visit does not appear to be reasonable, in view of the fact that it is not clear how Ms. Khoshfam can leave her job in Iran for about two (2) years, and whether her employment will be available to her upon her eventual return. Moreover, the Officer noted that while Ms. Khoshfam indicates the contemplated MBA will offer her a competitive advantage in Iran in the field of digital marketing, she is already engaged in this field of work and there is limited evidence of how the MBA will benefit her career path further. The Officer further observed that similar programs are available to Ms. Khoshfam in Iran for more competitive tuition fees.

D. *The standard of review*

[16] There is no dispute that, when reviewing a visa officer's factual assessment of an application for a student visa and an officer's belief that an applicant will not leave Canada at the end of his or her stay, the standard of review is reasonableness (*Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 11; *Kavugho-Mission v Canada (Citizenship and Immigration)*, 2018 FC 597 at para 8; *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 12 [*Penez*]; *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at paras 12–13). This is confirmed by the Supreme Court of Canada's landmark decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], where the Court established a presumption that the standard of reasonableness is the applicable standard in all judicial reviews of the merits of administrative decisions (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [*Mason*]).

[17] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision 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; *Mason* at para 64). The reviewing court must therefore ask whether the “decision bears the hallmarks of reasonableness—justification, transparency and intelligibility” (*Vavilov* at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 15, 95, 136).

[18] Such a review must include a rigorous and robust evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a “reasons first” approach and begin its inquiry by examining the reasons provided with “respectful attention,” seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13), without “reweighing and reassessing the evidence” before it (*Vavilov* at para 125).

[19] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are “sufficiently serious shortcomings” (*Vavilov* at para 100).

III. Analysis

[20] Ms. Khoshfam submits that the Decision is unreasonable as the Officer ignored contradictory evidence and facts that, if properly considered, could not have led to the refusal of her study permit.

[21] With respect, I am not persuaded by Ms. Khoshfam’s arguments.

[22] As highlighted by the respondent, the Minister of Citizenship and Immigration [Minister], the Officer carefully reviewed the materials before them and concluded that Ms. Khoshfam would not materially benefit from the proposed study plan. The Officer provided robust reasons, which detail that Ms. Khoshfam is already working in the field she intends to

study in, that, since she already is a manager in digital marketing, it is unclear how she can leave her job and whether she will have a job upon her return, and that alternative programs exist for her in Iran that would be more economically viable for her.

[23] I accept that a different officer could have reached a conclusion more favourable to Ms. Khoshfam in light of the circumstances of her Application. However, this is not what I have to determine. Ms. Khoshfam has failed to satisfy the Officer that her proposed study plan would benefit her in any way, and I cannot say that, in view of the evidence on the record, it was unreasonable for the Officer to conclude that Ms. Khoshfam would not return to Iran at the end of her studies due to her limited employment possibilities and to the fact that the purpose of her visit appeared inconsistent with a temporary stay.

A. *The applicable law governing the review of visa officers' decisions*

[24] It is not disputed that a study permit applicant bears the burden of satisfying a visa officer that they will leave Canada at the end of their authorized stay (*Penez* at para 10). To this effect, visa officers have a high level of expertise and a wide discretion in assessing the evidence to determine whether this requirement is met, and their decisions are entitled to deference (*Nimely v Canada (Minister of Citizenship and Immigration)*, 2020 FC 282 at para 7 [*Nimely*]; *Penez* at para 10).

[25] Moreover, visa officers are not required to provide extensive reasons for their decision in view of the large number of decisions they are required to process (*Nimely* at para 7; *Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596 at paras 10–11).

B. *The Decision is reasonable*

[26] Ms. Khoshfam first takes issue with the fact that a settlement was reached to allow her file to be studied by a different officer, and that the second Officer used similar reasons to conclude that her study permit Application should be rejected. However, as the Minister correctly notes, the fact that there was a settlement further to a previous ALJR was not a guarantee that the study permit would be issued to Ms. Khoshfam. It was only a guarantee that the Application would be studied again by another Officer who would make their own assessment of all of the evidence. Moreover, the fact that the “limited employment possibilities” was a motive used in the previous refusal does not mean that it could not also be a legitimate motive of refusal in this Decision.

[27] In this case, Ms. Khoshfam is an experienced professional already working in the field of work in which she says she wants to improve her employment possibilities. However, she has not satisfied the Officer that she will either be able to return to her current job upon the completion of her studies, or find other work in Iran in her field. I find nothing unreasonable about this conclusion. It was open to the Officer to require that Ms. Khoshfam satisfactorily demonstrate her employment opportunities upon her return to Iran and in the present case, she failed to meet this burden. It bears reminding that in the context of a study permit application, it is the applicant who bears the burden of satisfying a visa officer that they will leave Canada at the end of their authorized stay (*Penez* at para 10).

[28] Secondly, Ms. Khoshfam claims the Officer did not consider the specifics of the MBA program related to digital marketing in which she is accepted in Canada, and which she alleges

would benefit her in Iran. Although she indicates that a MBA would open new doors to her, the Officer notes that she is already working in the administration field as a Digital Marketing Manager, even though she has no official master's degree. No meaningful evidence was provided to illustrate how Ms. Khoshfam's new study plan would translate into employment opportunities in Iran. Ms. Khoshfam has not satisfied the Officer that this new MBA would benefit her such that it would increase her opportunities of work. Indeed, she is already exercising a position in her chosen field of study. Again, I am not persuaded that such a reasoning by the Officer is not intelligible, transparent and justified.

[29] Thirdly, Ms. Khoshfam claims that the Officer did not consider the fact that the program she wants to follow is not available in Iran and that the purpose of her visit in Canada was to obtain qualifications she could not obtain in her country. However, upon reviewing the Officer's notes, it is abundantly clear the Officer did consider Ms. Khoshfam's arguments to this effect. Indeed, the Officer acknowledged the difference in the contemplated program in Canada but concluded that the benefits for Ms. Khoshfam did not outweigh the costs in the context of her economic background, prior studies, and career plans. The Officer specifically noted that the University of Tehran offers a comparable MBA program at a much lower cost.

[30] In a similar case, Justice Christine M. Pallotta noted that in light of cost-benefit factors made by a visa officer related to the high cost of international study in Canada weighed against the potential career and employment benefits, as well as cheaper local options for similar courses of study, it is possible to understand an officer's concern about the reasonableness of the proposed course of study (*Zeinali v Canada (Citizenship and Immigration)*, 2022 FC 1539 at para 13). As the Minister mentioned, if an applicant does not satisfy the Officer that the planned

studies will bring something substantial to their career, the Officer might not be satisfied of the real purpose of the planned study visit to Canada. Here, it is unclear what Ms. Khoshfam stands to gain from completing the MBA, given she is already working as a manager in her chosen field. Moreover, the uncertainty as to whether she will have a job to return to upon the completion of her studies further bolsters the Officer's conclusions.

[31] Again, I appreciate that the opposite conclusion advocated by Ms. Khoshfam might be a reasonable one. However, I cannot agree with her contention that the Officer did not engage with the evidence and was not responsive to it, and that the conclusion they reached was not reasonable.

[32] Finally, Ms. Khoshfam claims that there are multiple positions in the marketing field in Iran that require courses not offered in MBA programs in Iran, and that these positions are an improvement over her current position in terms of salary and benefits. However, there was no evidence supporting that claim before the Officer. A simple allegation is not evidence. Therefore, it was not unreasonable for the Officer to conclude that there was "limited evidence" on that issue.

[33] Regrettably, Ms. Khoshfam's submissions boil down to a request to reweigh the evidence, something the Court cannot do on an application for judicial review (*Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 at para 39, citing *Kanhasamy v Canada (Citizenship and Immigration)*, 2014 FCA 113 at para 99). Ms. Khoshfam's mere disagreement with the Officer's conclusions and weighing of evidence are not grounds justifying the intervention of the Court.

[34] Visa officers have a wide discretion in assessing the evidence to decide whether an application has met the requirements for a study permit, and their decisions are entitled to deference (*Nimely* at para 7). Here, the reasons demonstrate that the Officer weighed the evidence and considered multiple factors before concluding that Ms. Khoshfam had not met her burden. Indeed, the Officer was alive to the details of her Application.

[35] Ms. Khoshfam has not identified any factual inaccuracies in the GCMS notes, and contrary to her assertions, the reasons are not arbitrary or unconnected to her study permit Application such that they raise a suspicion that the Officer did not review it. In the case at bar, the Officer's notes instead demonstrate that the Officer read and understood Ms. Khoshfam's Application, and I cannot qualify the conclusions they have drawn as unreasonable.

[36] The party challenging an administrative decision must satisfy the reviewing court that "any shortcomings or flaws relied on... are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). In this case, the Officer's chain of analysis and reasoning can be followed without a decisive flaw in rationality or logic. The reasons provide a transparent and intelligible justification for the Decision (*Vavilov* at paras 81, 136). At paragraph 102 of *Vavilov*, the Supreme Court held that the reviewing court "must be satisfied that 'there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived.'" I conclude that this is the case here.

IV. Conclusion

[37] For all of these reasons, this application for judicial review is dismissed as Ms. Khoshfam has not demonstrated that the Officer's Decision is unreasonable.

[38] There are no questions of general importance to be certified.

JUDGMENT in IMM-13522-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed, without costs.
2. There is no question of general importance to be certified.

“Denis Gascon”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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