Federal Court  Cour fédérale

Date: 20250716

Docket: IMM-5744-24

Citation: 2025 FC 1269

Ottawa, Ontario, July 16, 2025

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

ABBAS BALAEI PAKDEHI,
ARTIN BALAEI PAKDEHI,
NIKI BALAEI PAKDEHI AND
NEDA ABDOLMALEKI DARANI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is a judicial review of a Visa Officer's decision dated February 6, 2024, refusing the application for a work permit of Mr. Abbas Balaei Pakdehi under the International Mobility Program as an Intra-Company Transferee [sometimes referred to as "ICT"], under administrative

code C61. The Officer determined that Mr. Pakdehi's work permit application had not met the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], because the Officer was not satisfied that Mr. Pakdehi had demonstrated (1) that he comes within the exceptions of subsection 205(a) of the IRPR; and (2) that a qualifying company relationship exists as required by the C61 Intra-Company Transferee category.

[2] As a result, the Officer also refused the application for an open work permit under paragraph 205(c)(ii) of the IRPR of Mr. Pakdehi's spouse, Neda Abdolmaleki Darani, and the application for Temporary Resident Visas [TRVs] of their children, Artin Balaei Pakdehi and Niki Balaei Pakdehi, as accompanying family members under subsection 179(b) of the IRPR.

[3] On judicial review before this Court, Mr. Pakdehi raises three issues with the Officer's decision:

a. Did the Officer breach Mr. Pakdehi's procedural fairness?

b. Was the Officer's decision refusing Mr. Pakdehi's work permit unreasonable?

c. Was the Officer's decision to refuse the remainder of the open work permit and TRV applications unreasonable?

[4] First, Mr. Pakdehi submits that the Officer failed to provide a properly justified decision. According to Mr. Pakdehi, the issue lies within the definition of "owned" and "controlled", and the Officer merely being concerned with Mr. Pakdehi's 66% of ownership of the Iranian Company and 100% of the Canadian Affiliate, thus failing to provide an analysis on why that means that no ownership and control exist.

[5] Second, Mr. Padkehi submits that the Officer breached his procedural fairness because they imposed eligibility criteria not part of the legislative requirements or the IRCC's publicly accessible Guidelines titled *Intra-company transferees (ICT) – [R205(a) – C61, C62, C63] – Canadian interests – International Mobility Program* [IRCC Guidelines]. According to Mr. Pakdehi, the Officer consequently did not act within Mr. Pakdehi's legitimate expectations.

[6] In response, The Minister of Citizenship and Immigration submits that the Officer's decision is reasonable and justified. The Officer refers to the business plan summarizing the ownership in question and what is a qualifying relationship, and specifically what is an "affiliate". The Officer then sets out clearly why, based on the documents before them, the eligibility criteria was not met. The Minister submits that the Officer should not be expected to grapple with an unknown interpretation. The Minister advances that it is not Mr. Pakdehi's role to supplement or to provide his own interpretation and say that it is the preferable one to the Officer's. Finally, the Minister's position is that a plain reading of the definition of "affiliate" demonstrates that there is an eligibility criterion that includes a consideration of ownership and control by the same group of individuals.

[7] For the reasons that follow, I dismiss the application for judicial review. The Officer reasonably assessed Mr. Pakdehi's application and justified why Mr. Pakdehi does not qualify under the C61 Intra-Company Transferee category. Moreover, Mr. Pakdehi did not establish that there was a breach of his right to procedural fairness.

II. Legal Framework

[8] Paragraphs 179(b)(ii) and 200(1)(b) of the IRPR, and subsections 205(a) and (c) of the IRPR sets out that:

Issuance	**Délivrance**
179 An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national	**179** L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
[…]	[…]
(b) will leave Canada by the end of the period authorized for their stay under Division 2; […]	**b)** il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2; […]
Work permits	**Permis de travail — demande préalable à l'entrée au Canada**
200 (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that	**200 (1)** Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis :
[…]	[…]
(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9; […]	**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; […]
Canadian interests	**Intérêts canadiens**
205 A work permit may be issued under section 200 to a foreign	**205** Un permis de travail peut être délivré à l'étranger en vertu de l'article 200 si le travail pour lequel le permis est demandé

national who intends to perform work that	satisfait à l'une ou l'autre des conditions suivantes :
(a) would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents;	**a)** il permet de créer ou de conserver des débouchés ou des avantages sociaux, culturels ou économiques pour les citoyens canadiens ou les résidents permanents;
[…]	[…]
(c) is designated by the Minister as being work that can be performed by a foreign national on the basis of the following criteria, namely, […]	**c)** il est désigné par le ministre comme travail pouvant être exercé par des étrangers, sur la base des critères suivants : […]
(ii) limited access to the Canadian labour market is necessary for reasons of public policy relating to the competitiveness of Canada's academic institutions or economy; or […]	**(ii)** un accès limité au marché du travail au Canada est justifiable pour des raisons d'intérêt public en rapport avec la compétitivité des établissements universitaires ou de l'économie du Canada; […]

[9] According to the publicly accessible IRCC Guidelines, to be eligible in the Intra-Company Transferee program under subsection 205(a) of the IRPR, all applicants must:

> Eligibility
>
> […]
>
> - be transferring to a Canadian enterprise that
>   - has the qualifying relationship of parent, subsidiary, branch, or affiliate of their current employer
>   - is actively engaged in the business in respect of which the offer is made

[10] These same Guidelines include the requirements to be met of a Multi-National Corporation [sometimes referred to as "MNC"] and *Terms and definitions related to temporary residents*, which define an "affiliate" as:

> a) one of two subsidiaries, both of which are owned and controlled by the same parent or individual; or
>
> b) one of two legal entities, owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each company.

III. Decision Under Review

[11] On February 6, 2024, Immigration, Refugees and Citizenship Canada [IRCC] issued the Officer's decision to refuse Mr. Pakdehi's work permit application. In that letter, the Officer found that they were not satisfied that Mr. Pakdehi met the requirements of the IRPA and the IRPR based on the following ground:

> Mr. Pakdehi has not demonstrated that he comes within the exceptions of subsection 205(a) of the IRPR nor that the eligibility requirements of the C61 Intra-Company Transferee category are met.

[12] The relevant Global Case Management System [GCMS] notes are part of the Officer's decision (*Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para 44 [*Baker*]) and are reproduced below:

> Applicant is requesting a three year work permit to establish NIK CASPIAN WINDOW in Vancouver, BC as it's CEO. Documents in this category are limited to one year.
>
> Qualifying company relationship - A summary:

- Authorized rep identifies the qualifying company relationship between Pouyan Kar Nik Caspian Company (Iran) and Nik Caspian Window Inc. (Canada) as "affiliates".

- Supporting documents describe the ownership of Pouyan Kar Nik Caspian Company (Iran) as follows: Jahanshah Balai Pakd[e]hi, owns 33.34% of the company, the Applicant owns 66%, and Ms. Mahtab Balai Pakd[e]hi owns the remaining 0.66% of the Iranian company's shares.

- Incorporation agreement states that the authorized share structure of Nik Caspian Window Inc (Canada) has an unlimited number of Class A shares. The client is listed as the Incorporator, and it is stated that as of 2022/12/08 he is the holder of 100 A Shares.

- Notice of shareholding & Central Securities Register for the Canadian company identifies both the applicant and Pouyan Kar Nik Caspian Company Ltd (Iran) as each holding 100 A Shares.

- The business plan summarizes the ownership of the Canadian company as follows: "Mr. Pakdehi owns 100% of NIK CASPIAN WINDOW INC." The business plan goes on to say that "Mr. Pakdehi will personally invest a total of $140,000 into NIK CASPIAN WINDOW. The Company will finance all investments from the Applicant's personal funds, without any loans from financial institutions."

- I am not satisfied that the foreign and Canadian companies share a qualifying relationship as affiliates based on the ownership structures identified in the supporting documents because within the context of intra-company transferees, affiliate means (see glossary):

- one of two subsidiaries, both of which are owned and controlled by the same parent or individual; or

- one of two legal entities, owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each company

- The business plan also addresses the ownership of NIK CASPIAN WINDOW INC stating that "Mr. Pakdehi" owns 100% of the Canadian company and that this enterprise will be financed by this individuals personal funds. This information does not suggest that an alternate qualifying company relationship (as per the general ICT requirements) exists.

> Intra-company transferees may apply for work permits under the general provision if they are currently employed by a multi-national company and seeking entry to work in a parent, a subsidiary, a branch, or an affiliate of that enterprise. Based on the information provided by the applicant in the supporting documents, I am not satisfied that the applicant comes within the exceptions of R205(a) nor that a qualifying company relationship exists as required in the ICT category.
>
> Application refused.

[13] On the same date, February 6, 2024, IRCC issued three other letters of refusal. The Officer found that, as Mr. Pakdehi's work permit was refused, his wife, Neda Abdolmaleki Darani, was not eligible for a work permit under paragraph 205(c)(ii) of the IRPR, and their children, Artin Balaei Pakdehi and Niki Balaei Pakdehi, were not eligible for TRVs as accompanying family members under subsection 179(b) of the IRPR.

IV. Standard of Review

[14] The parties agree that the merits of the decision are reviewable on the presumptive standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]) and that the issue of procedural fairness is determined on the basis that approximates correctness review (*Vavilov* at paras 16-17).

[15] To avoid intervention on judicial review, the decision must bear the hallmarks of reasonableness – justification, transparency, and intelligibility (*Vavilov* at para 99). A reasonable decision will always depend on the constraints imposed by the legal and factual context of the decision under review (*Vavilov* at para 90).

[16] The Court must avoid reassessing and reweighing the evidence before the decision maker; however, a decision may be unreasonable, if the decision maker "fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at paras 125-126). The reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up" (*Vavilov* at para 104).

[17] The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

[18] On the other hand, breaches of procedural fairness in administrative contexts have been considered reviewable on a correctness standard or subject to a "reviewing exercise … 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]).

[19] The duty of procedural fairness "is 'eminently variable', inherently flexible and context-specific"; it must be determined with reference to all the circumstances, including the non-exhaustive list of factors stated in *Baker* at paragraphs 22 and 23 (*Vavilov* at para 77).

[20] In sum, the focus of the reviewing court is whether the process was fair. In the words of the Federal Court of Appeal, the ultimate or fundamental questions are:

> [56] No matter how much deference is accorded administrative tribunals in the exercise of their discretion to make procedural choices, the ultimate question remains **whether the applicant knew the case to meet and had a full and fair chance to respond**. It would be problematic if an a priori decision as to

> whether the standard of review is correctness or reasonableness generated a different answer to what is a singular question that is fundamental to the concept of justice—**was the party given a right to be heard and the opportunity to know the case against them?** Procedural fairness is not sacrificed on the altar of deference.
>
> (*Canadian Pacific* at para 56, emphasis added.)

V. Analysis

A. *Did the Officer breach Mr. Pakdehi's procedural fairness?*

[21] Relying on *Serhii v Canada (Citizenship and Immigration)*, 2016 FC 841, Mr. Pakdehi submits that the Officer imposed a percentage of ownership that was not made available to the Applicants. Mr. Pakdehi submits that the C61 Guidelines and the legislative requirements make no mention of any eligibility requirements disqualifying him on the basis of being the 100% shareholder in the Canadian Affiliate Company and the 66% owner of the Iranian Company, as he owns and controls both companies. Mr. Pakdehi argues that his legitimate expectation was breached.

[22] The Minister argues that Mr. Pakdehi couches his disagreement with the Officer's findings as they relate to the meaning of "MNC" and "affiliate", taking issue with the Officer's application of the eligibility requirements to his application, which is not a procedural fairness issue but a substantive one. The Minister submits that Mr. Pakdehi argues that his legitimate expectation was breached because a specific result was not reached.

[23] I disagree with Mr. Pakdehi and agree with the Minister.

[24] The Supreme Court of Canada in *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 (CanLII), [2013] 2 SCR 559 [*Agraira*] held that the doctrine of legitimate expectations cannot give rise to substantive rights (*Agraira* at para 97). For the same reasons as referenced by Justice Little in *Saloni v Canada (Citizenship and Immigration)*, 2021 FC 474:

> [36] **The doctrine of legitimate expectations does not assist the applicant in this case**. In law, a legitimate expectation must be based on a clear, unambiguous and unqualified representation to the applicant about the administrative process (i.e., the procedures) that the decision maker would follow: see *Canada (Attorney General) v Mavi*, 2011 SCC 30, [2011] 2 SCR 504 (Binnie J.), at para 68; *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559 (LeBel J.), at para 95. Legitimate expectations may also arise from similarly clear, unambiguous and unqualified representations that a certain result will be reached, in which case more onerous procedures must be followed before backtracking or coming to a contrary result: *Baker*, at para 26; *Agraira*, at para 94. […]
>
> [Emphasis added.]

[25] In the case at bar, there was no clear, unambiguous and unqualified representation to Mr. Pakdehi about the administrative process, which the Officer did not follow. Moreover, IRCC's Guidelines do not guarantee the substantive outcome that Mr. Pakdehi be issued a work permit regardless of the number of individuals owning and controlling the legal entities at issue and regardless of the percentage of shares owned by this group of individuals.

[26] Mr. Pakdehi also relies on *Kaur v Canada (Citizenship and Immigration)*, 2013 FC 1023 at paragraphs 19-21, in which the Court held that "the respondent did not allow the applicant to be heard" (*Kaur* at para 21). However, Mr. Pakdehi does not explain how this decision applies to his case or how his right to be heard was breached.

[27] The parties agree that the level of procedural fairness afforded in work permit applications is at the lower end of the scale and that an applicant must know the case they have to meet (*Wang v Canada (Citizenship and Immigration)*, 2021 FC 1002 at para 34; *Alabi v Canada (Citizenship and Immigration)*, 2018 FC 1163 at para 26).

[28] As pointed out by the Minister, there is no obligation on the Officer to afford an applicant the opportunity to clarify or supplement a deficient work permit application or to provide them with a "running score" of the weaknesses in their application (*Baybazarov v Canada (Citizenship and Immigration)*, 2010 FC 665, as cited in *Kong v Canada (Citizenship and Immigration)*, 2017 FC 1183 at para 29). The onus is not on the Officer to take additional steps to address or satisfy outstanding concerns (*Igbedion v Canada (Citizenship and Immigration)*, 2022 FC 275 at para 16).

[29] In this case, the Officer did not have any concerns about Mr. Pakdehi's credibility, or the veracity of the documents submitted in support of his application. In the circumstances of this case, I find that the Officer was not required to inform Mr. Pakdehi of the evidence on the record upon which he relied upon to demonstrate Mr. Pakdehi's ineligibility namely, the evidence that the company he was transferring to in Canada was not an "affiliate" or an MNC of the company he worked for in Iran.

B. *Was the Officer's decision refusing Mr. Pakdehi's work permit unreasonable?*

[30] Mr. Pakdehi submits the legal requirements are that he owns *and controls* the two legal entities, and because he owns and controls both the Canadian and the Iranian companies, there is

a qualifying relationship between the two entities. Mr. Pakdehi submits that the Officer did not consider the evidence of his increased share in the Iranian Company.

[31] Mr. Pakdehi also submits the Officer failed to justify how he does not qualify for a C61 work permit (*Azizulla v Canada (Citizenship and Immigration)*, 2021 FC 1226 at paras 21-22). While the Officer was not obligated to refer to all the evidence in making its decision, Mr. Pakdehi submits that the Officer must explain why the decision was reached despite the significant or critical evidence contradicting the conclusion (*Thavaratnam v Canada (Citizenship and Immigration)*, 2022 FC 967 at paras 18-19; *Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596 at para 17; *Lakhanpal v Canada (Citizenship and Immigration)*, 2021 FC 694 at para 27). While the GCMS notes mention aspects of his application, Mr. Pakdehi asserts the GCMS notes fail to connect to the Officer's finding that there is no qualifying company relationship, as required in the C61 Intra-Company Transferee category.

[32] The Officer was not satisfied that the foreign and Canadian companies share a qualifying relationship as affiliates based on the ownership structures identified in the supporting documents because within the context of intra-company transferees, affiliate means:

> - one of two subsidiaries, both of which are owned and controlled by the same parent or individual; or
>
> - one of two legal entities, owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each company

[33] At the hearing, counsel for the Applicants conceded that the Iranian Company and the Canadian Affiliate Company are "two legal entities." As a result, the application definition of

affiliates is: “one of two legal entities, owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each company.”

[34] The onus was on Mr. Pakdehi to demonstrate that the Iranian and Canadian legal entities were owned and controlled *by the same group of individuals* and that *each individual* owned and controlled approximately the same share or proportion of each company.

[35] As mentioned by the Officer, the Iranian Company is owned by Mr. Pakdehi (who owns 66%) and another two individuals owning respectively 33.34% and .66%. Also, the Officer mentions that the Canadian Affiliate Company is owned 100% by Mr. Pakdehi. Given the Iranian and Canadian companies are not “owned and controlled by the same group of individuals”, it was not unreasonable for the Officer to find that the Iranian and Canadian companies did not meet the affiliate definition.

[36] In addition, since there are a different number and group of individuals owning the Iranian and Canadian companies, it was not unreasonable for the Officer to find that the requirement in the definition that “each individual owning and controlling approximately the same share or proportion of each company” was likewise not met by Mr. Pakdehi.

[37] While the decision could have been clearer, the Officer developed sufficient reasoning to allow me to understand their decision and assess whether, as a whole, it was reasonable (*Vavilov* at para 85). Mr. Pakdehi must overcome a high bar to establish that the decision is unreasonable.

Here, Mr. Pakdehi failed to establish that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

C. *Was the Officer's decision to refuse the remainder of the open work permit and TRV applications unreasonable?*

[38] The purpose of Ms. Darani's work permit application and the dependent children's TRV applications were to accompany Mr. Pakdehi to Canada should his work permit application have been successful. Considering my finding of the reasonability of the refusal of Mr. Pakdehi's work permit application, the purpose of his family's visit was no longer valid.

[39] For completeness, I confirm that the decisions of the Officer to deny Ms. Darani's and the dependent children's applications was also not unreasonable, because they were no longer eligible after Mr. Pakdehi's refusal as the purpose of their trip no longer existed (*Sadeghieh v Canada (Citizenship and Immigration)*, 2024 FC 442 at para 35).

VI. Conclusion

[40] The Officer's decision that no qualifying company relationship exists does not raise a procedural fairness issue.

[41] The Officer reasonably considered that Mr. Pakdehi owned 66% of the Iranian company but only 100% of the Canadian company and was not satisfied that these legal entities shared a

qualifying relationship as “affiliates” based on their ownership structures because each individual did not own and control approximately the same share or proportion of both the Iranian and Canadian companies. Given the evidence before the Officer, its decision bears the hallmarks of reasonableness – justification, transparency, and intelligibility.

[42] The Application for judicial review is dismissed, with the Court noting that neither party proposed a question of general importance for certification.

JUDGMENT in IMM-6744-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified.

"Ekaterina Tsimberis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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