

**Date: 20090818**

**Dockets: IMM-434-09  
IMM-437-09**

**Citation: 2009 FC 837**

**Winnipeg, Manitoba, August 18, 2009**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**SAMAYEH GROOHI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**AND BETWEEN:**

**FATEMEH GROOHI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicants in files IMM-434-09 and IMM-437-09, Samayeh Groohi and Fatemeh Groohi respectively, are sisters whose applications for temporary resident visas were refused by a visa officer at the Embassy of Canada in Tehran, on the same day, and on the same grounds. They were seeking the visas in order to visit their brother in Canada. They are seeking judicial review of the refusals.

[2] While some facts relating to each are unique, they were heard together and the same legal argument was made by counsel for both applicants and the respondent. Accordingly, these reasons apply to both applications and will be filed in each of the two Court files IMM-434-09 and IMM-437-09.

### ***Background***

[3] The applicants are Iranian nationals. Samayeh Groohi is a married woman, 25 years of age, who works as an occupational therapist at a private clinic in Tehran. Her younger sister, Fatemeh Groohi, is a fourth year architecture student in Hamedan. She is 22 years old. Their brother, Bahram Groohi is a medical doctor practicing in Manitoba. He is a convention refugee and has status in Canada as a permanent resident. He has sworn affidavits in support of each of his sister's application.

[4] Bahram Groohi initially invited his sisters and parents to visit him in Winnipeg in 2007. He was in contact with the Embassy of Canada in Tehran to indicate that he would accept financial and medical responsibility for his family members over the course of the planned visit. The two sisters,

along with their parents, filed visa applications. The parents were granted visitor visas, but the sisters were not.

[5] The sisters' visa applications were initially refused on July 31, 2007, on the basis that in the visa officer's estimation, both sisters had "weak ties" to Iran and were unable to show that they would leave Canada at the end of an authorized stay. The officer's brief decision in each was identical, as follows:

APPLICANT IS NOT ESTABLISHED IN HER LIFE,  
PROFESSIONALLY, PERSONALLY, FINANCIALLY. NO  
REAL TIES TO IRAN.

I AM NOT SATISFIED THAT THE APPLICANT IS A GENUINE  
TEMP RESIDENT. APPLICATION REFUSED.

[6] The sisters brought applications for review of the refusals, which applications were granted on consent by Justice Layden-Stevenson, "upon counsel for the respondent advising the Court that the visa officer's finding that the applicant[s] had weak ties to Iran [were] not sustainable on the reasons provided" (Court Files IMM-4035-07 and IMM-4037-07). Both visa applications were remitted to a different visa officer for redetermination.

[7] The applications were reopened on December 23, 2008. The Computer Assisted Immigration Processing System (CAIPS) notes in the certified records indicate that on the same day, the applications were again refused.

[8] The CAIPS notes relating to Sameyeh Groohi read as follows:

BASED ON INFO ON FILE, PA WENT ONCE TO AZERBAIJAN. NO SIGNIFICANT TRAVEL HISTORY. INTENTS (*sic*) TO VISIT BROTHER IN CDA FOR 3 MONTHS. BASED ON FOSS, HOST LANDED AS CRR. PA IS MARRIED. NO CHILDREN. SISTER ACCOMPANYING. 1 BROTHER OUT OF 3 IN CDA. PA HAS LIMITED FAMILY TIES TO IRAN.

BASED ON INFO ON FILE, PA IS THERAPIST IN A PRIVATE CLINIC.

BASED ON INFO ON FILE, SPOUSE HAS SAME EMPLOYMENT.

BASED ON INFO ON FILE, PA AND SPOUSE HAVE \$500 OF INCOME PER MONTH AT THE PRIVATE CLINIC. SPOUSE APPEARS TO HAVE A SECOND EMPLOYMENT WITH ALSO \$500 PER MONTH – APPEARS THAT PA AND SPOUSE HAVE AN ANNUAL INCOME OF APPROX \$18000. BASED ON BANK STATEMENT ON FILE, PA HAS LOW SAVINGS AND SHE OPENED HER BANK ACCOUNT 1 WEEK BEFORE SHE APPLIED FOR TRV.

PA HAS MODEST INCOME AND SAVINGS.

PA AND HER SPOUSE DON'T APPEAR WELL-ESTABLISHED FINANCIALLY IN IRAN.

AP HAS LIMITED PROFESSIONAL AND FINANCIAL TIES TO IRAN.

[9] The CAIPS notes relating to Fatemeh Groohi record the following:

NO APPARENT TRAVEL HISTORY.

INTENTS (*sic*) TO VISIT BROTHER IN CDA FOR 3 MONTHS.

HOST LANDED AS CRR.

PA IS SINGLE. NO CHILDREN. SISTER ACCOMPANYING. 1 BROTHER OUT OF 3 IN CDA.

PA HAS LIMITED FAMILY TIES TO IRAN.

PA IS STUDENT. PA IS UNEMPLOYED. PA HAS NO INCOME.

PA LIVES WITH HER PARENTS. DOES NOT APPEAR TO HAVE ANY ASSETS.

PA HAS MODEST SAVINGS – BANK STATEMENT SHOWS THAT CREDIT TURNOVER DOES NOT MATCH WITH DEBIT TURNOVER.

PA HAS NO PROFESSIONAL OR FINANCIAL TIES TO IRAN.

[10] In both cases, the CAIPS notes end with the following remark:

BASED IN INFO ON FILE, PA FAILED TO SATISFY ME THAT SHE IS A BF TEMPORARY VISITOR AND WILL LEAVE CDA WHEN REQUIRED AND THAT SHE IS ADEQUATELY ESTABLISHED WITH INCENTIVE & TIES TO ENCOURAGE HER EVENTUAL RETURN TO IRAN.

[11] Both sisters received form letters dated December 23, 2008, indicating that the visa officer concluded as she did based on a consideration of the applicants' travel history, family ties to Canada and country of residence, current employment situation, and personal assets and financial status.

### *Issues*

[12] Counsel for the applicants raised six issues on these applications: that the officer failed to consider dual intent in section 22 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27; that the applicants had a legitimate expectation that the visa officer would balance the factors that favour the application as well as those that do not, which expectation was not met; that the decision of the visa officer was discriminatory as it was based on family status, marital status and wealth; that the visa officer ignored the objective of the Act to foster family unity; that the visa officer,

having made an adverse credibility finding, was required to conduct a personal interview of the applicants; and that the consent Judgment issued in the previous case of both applicants created an issue estoppel such that the visa officer could not make a finding that they had insufficient ties to Iran. The applicants further submit that the decisions are perverse and capricious based on the facts before the visa officer and accordingly are not reasonable.

[13] In my view, the six legal issues raised by the applicants need not be determined. I have found that both decisions are unreasonable and both must be set aside.

### *Analysis*

[14] These applications must succeed based simply on the absence of any true analysis of the evidence by the visa officer. It is trite law that simply listing a series of factors, and stating a conclusion, is generally insufficient to meet the test of reasonableness, the reason being that it is impossible for a reviewing Court to appreciate and assess the train of thought or logical process engaged in by the decision-maker. That is exactly the shortcoming the records disclose here.

[15] That there should be such an absence of any reasoning is all the more surprising given the history of these applications for a temporary resident visa. One might have expected the visa officer to react with somewhat less apparent indifference to the applications given that these applications had already been sent back for a new determination on consent. Further, it may be inferred through the visa officer's silence that she never bothered to check the content of the Court Orders. Had she done so, she would have been aware of the determination that in both cases findings of weak ties to

Iran were not sustainable on the reasons provided. She might have considered providing more fulsome reasons in consequence. As it stands, she did not. In fact, I am hard pressed to say that any meaningful reasons were provided by the visa officer.

[16] I fully accept and endorse the proposition that the visa officer's decision as to whether an applicant has satisfied him or her that the applicant will not overstay the visit to Canada is not one requiring a detailed and lengthy analysis. However, where the officer concludes, as here, that the applicant has failed to satisfy the officer of that essential fact, the applicant is entitled to know the facts which the officer considered, the weight accorded those facts, and the reasoning of the officer as to why the applicant failed to meet the burden. In these decisions there is almost a complete lack of any explanation of the reasoning process in which the officer engaged. One example serves to illustrate this.

[17] The officer finds that both applicants have "limited family ties to Iran" (emphasis added). Both applicants have two parents, two brothers, and a sister living in Iran. One sister has a husband living in Iran, the other sister lives with her parents. Their only immediate family member not living in Iran is the one brother in Canada who is hoping to have his sisters arrive in Winnipeg for a visit. The visa officer provides no reasoning to show the Court how she arrived at a conclusion, based on these facts, that they had "limited" family ties to Iran. If anything, on those facts, they had limited family ties to Canada.

[18] I am also of the view that the visa officer considered irrelevant facts. Had the officer provided some reasoning we could have seen why she thought those facts were relevant. Having failed to do so, the Court can only conclude on the face of the decision that they are irrelevant to the issue before the officer. There is at least one instance of an irrelevant consideration evident in each decision.

[19] With respect to the married sister, Samayeh Groohi, the visa officer states that her spouse “doesn’t appear well-established financially in Iran” but offers no explanation as to how this fact is relevant. Is the officer of the view that the applicant wife may choose not to return to him after her visit because he is not financially well-off? If so, it is a finding made without evidence and is a stereotypical view of marriage between those not well-off.

[20] Similarly, irrelevant evidence was considered in the application of Fatemeh Groohi. The officer notes that she has modest savings and then observes that her “bank statement shows that credit turnover does not match with debit turnover.” The document in question from the Bank Melli Iran is a report on the applicant’s short term profit bearing time investment certificate. It shows a “credit turnover” from 17.08.2006 to 02.07.2007 of Rls.63,932,716 and a debit turnover for the same period of 29,390,000, leaving a balance of 34,542,716.

[21] There is no issue with the accuracy of the mathematical calculation of the balance in that account – and it is a positive balance. What the document shows is that she deposited more in the relevant period than she withdrew. I should have thought that this was a positive factor. The only



relevant fact from this document is that she had assets. I cannot but think that the officer simply misunderstood this document but without any explanation as to why she thought it relevant to note that the credit turnover does not match with the debit turnover, the applicant and this Court is left to speculate.

[22] Accordingly, these decisions are quite simply unreasonable as defined by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9. They are quashed and the applications for temporary resident visas are remitted to an officer who has had no previous role in these applications for determination. In all of the circumstances, this is to be done as quickly as possible after giving the applicants an opportunity to provide such further information as they think appropriate; this is warranted given the time that has passed since the initial applications. There is no question certified.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The applications for judicial review in both files IMM-434-09 and IMM-437-09 are allowed.
2. The applicants' applications for a temporary resident visa is remitted to a visa officer who has had no previous role in these applications for determination, to be made as soon as possible after giving the applicants an opportunity to provide such further information as they think appropriate; and
3. No question is certified.

“Russel W. Zinn”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-434-09

**STYLE OF CAUSE:** SAMAYEH GROOHI v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**DOCKET:** IMM-437-09

**STYLE OF CAUSE:** FATAMEH GROOHI v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Winnipeg, Manitoba

**DATE OF HEARING:** August 18, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Zinn J.

**DATED:** August 18, 2009

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