

Federal Court



Cour fédérale

**Date: 20161130**

**Dockets: IMM-1723-16  
IMM-1724-16**

**Citation: 2016 FC 1327**

**Ottawa, Ontario, November 30, 2016**

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

**Docket: IMM-1723-16**

**BETWEEN:**

**KHERAD, FATEMEH JAVDAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**Docket: IMM-1724-16**

**AND BETWEEN:**

**SHAKERI, HASSAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

## **JUDGMENT AND REASONS**

### I. Nature of the Matter

[1] This is an application for judicial review by the Applicants pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision rendered by an officer of the Visa Section [Officer] of the Embassy of Canada in Abu Dhabi, United Arab Emirates [UAE] dated March 21, 2016, wherein the Officer, pursuant to paragraph 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], refused the Applicants' application for temporary visa on the basis that he was not satisfied they would leave Canada at the end of an authorized stay.

### II. Facts

[2] The Applicants, a husband (IMM-1724-16, aged 54) and his wife (IMM-1723-16, aged 50), are citizens of Iran and currently reside in Dubai, UAE. They are parents of four children, aged 19, 15, 12 and 9, who are Iranian citizens and enrolled in school in Dubai.

[3] On August 14, 2009, the male Applicant's first application for permanent residence in the investor class was denied because he had failed to provide required documents.

[4] On May 7, 2014, the male Applicant's second application for permanent residence in the Immigrant Investor Program was terminated when the program closed following the federal *Economic Action Plan* of 2014.

[5] On March 16, 2015, the male Applicant applied to the Quebec Investor Program.

[6] On February 15, 2016, the male Applicant was summoned to an interview scheduled to take place in Montréal on April 13, 2016.

[7] On or about March 6, 2016, the Applicants submitted an application to the Embassy of Canada in Abu Dhabi for a temporary resident visa, in order to attend an interview in Montréal.

### III. Decision

[8] On March 21, 2016, the Officer denied the Applicants' temporary resident visa application on the grounds that he was not satisfied that they would leave Canada at the end of the allowed stay, considering their travel history and the purpose of their visit. Regarding the male Applicant, the Global Case Management System [GCMS] further states the Officer's following reasons:

Refused. PA was refused previously in 2010 in the NV category. He is not a resident of the UAE but is here on a tourist visa to apply to TR to visit Quebec. No ties to UAE. Not satisfied he is a BF visitor.

### IV. Issues

[9] This matter raises the following issues; all of which will be considered below:

1. Is the application for judicial review moot?
2. Did the Officer's decision breach the Canada-Quebec Accord?
3. Did the Officer err in failing to consider all the evidence provided by the Applicants?

[10] The applicable standard of review for a visa officer's decision in this case is reasonableness. Given the expertise of the visa officers and the discretionary nature of the decisions, the Court should show deference in reviewing such decisions.

#### V. Relevant Provisions

[11] Sections 11(1) and 22 of the IRPA, and section 179 of the IRPR find application in the case before the Court:

##### **Application before entering Canada**

**11 (1)** A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

##### **Temporary resident**

**22 (1)** A foreign national becomes a temporary resident if an officer is satisfied that the foreign national has applied for that status, has met the obligations set out in paragraph 20(1)(b), is not inadmissible and is not the subject of a declaration made under subsection 22.1(1).

##### **Dual intent**

**(2)** An intention by a foreign national to become a permanent resident does not preclude them from becoming

##### **Visa et documents**

**11 (1)** L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

##### **Résident temporaire**

**22 (1)** Devient résident temporaire l'étranger dont l'agent constate qu'il a demandé ce statut, s'est déchargé des obligations prévues à l'alinéa 20(1)b), n'est pas interdit de territoire et ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1).

##### **Double intention**

**(2)** L'intention qu'il a de s'établir au Canada n'empêche pas l'étranger de devenir résident temporaire sur preuve

a temporary resident if the officer is satisfied that they will leave Canada by the end of the period authorized for their stay.

**Temporary Resident Visa  
Issuance**

**179** An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national

- (a) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class;
- (b) will leave Canada by the end of the period authorized for their stay under Division 2;
- (c) holds a passport or other document that they may use to enter the country that issued it or another country;
- (d) meets the requirements applicable to that class;
- (e) is not inadmissible;
- (f) 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
- (g) is not the subject of a declaration made under subsection 22.1(1) of the Act.

qu'il aura quitté le Canada à la fin de la période de séjour autorisée.

**Visa de résident temporaire  
Délivrance**

**179** L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

- a) l'étranger en a fait, conformément au présent règlement, la demande au titre de la catégorie des visiteurs, des travailleurs ou des étudiants;
- b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;
- c) il est titulaire d'un passeport ou autre document qui lui permet d'entrer dans le pays qui l'a délivré ou dans un autre pays;
- d) il se conforme aux exigences applicables à cette catégorie;
- e) il n'est pas interdit de territoire;
- f) 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);
- g) il ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi.

VI. Submissions of the Parties

A. *Submissions of the Applicants*

[12] The Applicants submit that the decision rendered by the Officer does not meet the standard of reasonableness. They argue that the Officer failed to take into consideration all the evidence provided before refusing the visa and; thus, his decision lacked adequate reasons. He concluded that they had no ties in the UAE, although the principal Applicant has been working for the same company in Dubai for 20 years; and, had provided detailed evidence from his employer. He also ignored the fact that their four children would remain in Dubai. He failed to address the purpose of the visa application, namely to attend an interview scheduled in Montréal in the context of the Quebec Investor Program.

[13] The Applicants further submit that the Officer's decision is in breach of the Canada-Quebec Accord. The Officer refused to issue a temporary resident visa notwithstanding the Applicants' fulfillment of Quebec's selection requirements, although there was no evidence of his inadmissibility.

B. *Submissions of the Respondent*

[14] First, the Respondent submits the application is moot, considering that the purpose for the temporary resident visa was to attend an interview on April 13, 2016, and that, since there was no evidence that the interview was postponed, at the time of submission of the files to the Federal Court.

[15] Second, the Respondent argues there was no breach of the Canada-Quebec Accord. The federal government has the jurisdiction to admit or reject immigrants after they have met the Quebec selection criteria.

[16] Third, the Respondent claims that the Officer's findings and decision were reasonable. The Officer's inference that the Applicants could decide to stay in Canada after their visa expire was justified by the Applicants' only travel outside UAE and Iran, their lack of ties to UAE, and their past attempts at obtaining permanent residence in Canada.

## VII. Analysis

### A. *Is the application for judicial review moot?*

[17] As per *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342, the Court must determine if the case raises a live issue, and if not, if it should exercise its discretion to hear the case.

[18] The Court is satisfied that there is still a live controversy and that the application is therefore not moot. The Applicants' intention of seeking a temporary resident visa to set another interview and to visit Canada has not been set aside. As pointed out by the Applicants, the Officer's decision could affect further visa requests negatively.

B. *Did the Officer's decision breach the Canada-Quebec Accord?*

[19] The Canada-Quebec Accord reflects the provincial jurisdiction to select the immigrants whom the federal government would admit on its territory. The federal visa officer is not bound by the Quebec Investor Program in order to authorize visitors to Canada upon summon to an interview (*Biao v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 43; *Qing v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1224).

[20] Immigration is a shared jurisdiction between the federal and provincial governments. It is within its jurisdiction for Quebec to select immigrants on its territory; and, thus, to reach its immigration objectives; however, the federal government has exclusive jurisdiction regarding admissibility determination pursuant to Canadian legislation. It is of great importance that each level of government fulfills its constitutional role.

C. *Did the Officer err in failing to consider all the evidence provided by the Applicants?*

[21] The Court finds the Officer erred by ignoring evidence contradictory to his conclusion. As recorded to the GCMS, the Officer's findings do not fulfill the standard of reasonableness.

[22] The Officer is not satisfied that the Applicants would leave Canada at the end of a stay because they lack ties to the UAE, but fails to address the fact that they would be leaving behind them four children of school age and to specify the implication of the male Applicant which he has with the company, where he has been employed for 20 years.



[23] In light of the reasons provided by the Officer, the Court cannot conclude that the decision rendered is reasonable.

VIII. Conclusion

[24] The application for judicial review is granted. The decision is set aside, and the matter is returned to a different officer for redetermination.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review be granted.

The decision is set aside, and the matter is returned to a different officer for consideration anew.

There is no serious question of general importance to be certified.

"Michel M.J. Shore"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1723-16

**STYLE OF CAUSE:** KHERAD, FATEMEH JAVDAN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**AND DOCKET:** IMM-1724-16

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CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** NOVEMBER 21, 2016

**JUDGMENT AND REASONS:** SHORE J.

**DATED:** NOVEMBER 30, 2016

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