

Federal Court



Cour fédérale

Date: 20181214

Docket: IMM-2412-18

Citation: 2018 FC 1267

Toronto, Ontario, December 14, 2018

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

HALIMA JALILI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of the decision [the Decision] of a Visa Officer [the Officer] at the Embassy of Canada in Abu Dhabi, United Arab Emirates, dated May 4, 2018, refusing the Applicant's application for a temporary resident visa [TRV] pursuant to s 11(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 and s 179 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[2] As explained in more detail below, this application is allowed, because I have found that the Officer's Decision is unreasonable in its consideration of the Applicant's personal ties to her country of residence.

II. Background

[3] The Applicant, Halima Jalili, is a citizen and resident of Afghanistan. She is a widow and lives in Kabul with her two daughters and three grandchildren. Ms. Jalili is currently a stay-at-home caregiver for those grandchildren. Her biological son, Mahboob Salam, lives in Etobicoke, Ontario, with his family. Mr. Salam was born in Afghanistan in 1977 and was later adopted in that country. He and his adoptive family moved to Canada in 2000, and he became a Canadian citizen in 2016. His adoptive parents are deceased. In 2013 he travelled back to Afghanistan and met his biological mother, Ms. Jalili. According to Mr. Salam, he and his family have since developed a close relationship with Ms. Jalili; they speak on the phone and message frequently, and Mr. Salam sends Ms. Jalili money monthly.

[4] Mr. Salam invited Ms. Jalili to come to Canada so that he could spend more time with her and so that she could meet his children. As a result, she applied for a TRV in January 2018. This application was refused in February 2018, based on insufficient documentation of Mr. Salam's income and assets and a lack of proof of compliant medical insurance having been submitted in support of the application.

[5] Ms. Jalili then submitted another application for a TRV, which included a letter of invitation from Mr. Salam stating that he would support Ms. Jalili while she was in Canada and

detailing the reason for her visit. The application also included Mr. Salam's financial and employment information, as well as submissions which explained Ms. Jalili's ties to Afghanistan and a letter from her daughters in support of those submissions. In the Decision dated May 4, 2018 that is the subject of this application for judicial review, the Officer refused Ms. Jalili's second TRV application.

III. The Officer's Decision

[6] In the letter refusing Ms. Jalili's application, the Officer stated that he or she was not satisfied that Ms. Jalili would leave Canada at the end of her stay as a temporary resident. The letter states that, in reaching this decision, the Officer considered several factors including: (a) family ties in Canada and in country of residence; (b) purpose of visit; (c) current employment situation; and (d) personal assets and financial status. In the Global Case Management System [GCMS] notes that provide reasons for, and are considered to form part of, the Decision, the Officer states as follows:

Pa is applying to visit her biological son. Submissions reviewed. Apparently, host was adopted by another family with whom he immigrated to Canada. Pa therefore is not a family member as adoption severs such ties and could not be sponsored as an FC. Pa's ties to Afghanistan are weak, both from a financial and personal point of view; there is insufficient information to conclude that pa has strong financial and/or personal ties to Afghanistan. I have also taken into consideration the current political, economic and security situation in Afghanistan; ties would not be strong enough to home country and there would be incentive to remain in Canada. I am not satisfied the applicant would be a genuine visitor and leave Canada at the end of authorized stay. Refused.

IV. Issues and Standard of Review

[7] The issues, as identified by the Applicant, are as follows:

A. Did the Officer err in refusing to assess the purpose of the Applicant's visit?

B. Did the Officer err by ignoring evidence?

[8] The parties agree, and I concur, that the applicable standard of review is reasonableness.

V. Analysis

[9] My decision to allow this application for judicial review turns on the Officer's consideration of Ms. Jalili's personal ties to Afghanistan.

[10] I accept the Respondent's submissions that Ms. Jalili bore the onus of establishing that she would leave Canada by the end of the requested period of stay (see *Rahman v Canada (Minister of Citizenship and Immigration)*, 2016 FC 793 at para 16). I also accept the Respondent's position that reasons for refusing an applicant for a TRV may be succinct and that, as a result of the applicable standard of review, a visa officer's decision is entitled to considerable deference.

[11] However, as submitted by Ms. Jalili, a request for a visa to permit a visit to close family members is not to be summarily dismissed and, although reasons for the decision may be most succinct, they must nevertheless be transparent, intelligible and therefore reasonable (see

Guillermo v Canada (Minister of Citizenship and Immigration), 2017 FC 61 at paras 8-10).

While a visa officer is not required to refer to every piece of evidence in a decision on a visa application, silence on evidence pointing to the opposite of the officer's conclusion supports an inference that the contradictory evidence was overlooked (see *Balepo v Canada (Minister of Citizenship and Immigration)*, 2016 FC 268 at para 17, relying on *Cepeda-Gutierrez v Canada (Minister of Citizenship & Immigration)*, [1998] FCJ No 1425 (Fed TD)).

[12] In my view, the Decision suffers from the difficulties addressed in that jurisprudence. The Decision turns significantly on the Officer's conclusion that Ms. Jalili has weak financial and personal ties to Afghanistan. However, in relation to her personal ties, Ms. Jalili emphasizes that she has lived in Afghanistan throughout her life and currently lives with her two daughters and three grandchildren, for whom she has had responsibility as a caregiver for close to a decade, those children now being ages eight, six and two. Ms. Jalili's role as her grandchildren's caregiver is supported by the letter from her daughters submitted with her TRV application. Against that backdrop, it is difficult to understand the basis for the Officer's conclusion that Ms. Jalili has weak personal ties to Afghanistan. This is not to say that the nature of her ties to Afghanistan mandated any particular result in her TRV application. However, as they point to a conclusion contrary to that of the Officer, the absence in the Decision of any reference to, or analysis of, the nature of Ms. Jalili's family relationships and caregiver role in Afghanistan supports the inference that these details were overlooked.

[13] Based on this analysis, I find that the Decision is unreasonable, and this application for judicial review must be allowed and the matter returned to a different visa officer for

redetermination. It is therefore unnecessary for the Court to consider the other arguments raised by the Applicant.

[14] No question for certification for appeal was proposed by either party, and none is stated.

JUDGMENT in IMM-2412-18

THIS COURT'S JUDGMENT is that this application for judicial review is allowed and this matter is returned to a different visa officer for redetermination. No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2412-18

STYLE OF CAUSE: HALIMA JALILI v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 12, 2018

JUDGMENT AND REASONS SOUTHCOTT J.

DATED: DECEMBER 14, 2018

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