Federal Court  Cour fédérale

Date: 20220408

Docket: IMM-5728-21

Citation: 2022 FC 511

Ottawa, Ontario, April 8, 2022

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

ROSHA FARNIA
AND
VIDA HONARVAR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, a mother and daughter who are both citizens of Iran, seek judicial review of a decision by a visa officer [the Officer] denying their applications for, respectively, a temporary resident visa and a study permit [the Decision]. As explained in more detail below,

this application for judicial review is dismissed, because the Applicants' arguments do not undermine the reasonableness of the Decision or establish that the Officer breached obligations of procedural fairness.

II. **Background**

[2] The first Applicant, Rosha Farnia [the Minor Applicant], is 16 years old. On or about June 8, 2021, she submitted an application for a study permit to pursue Grade 11 studies at Newtonbrook Secondary School in Toronto, Ontario. The second Applicant is her mother, Vida Honarvar [the Adult Applicant], who submitted an application for a temporary resident visa, in order to accompany the Minor Applicant.

[3] On July 6, 2021, an immigration officer [the Officer] made the Decision under judicial review, denying both Applicants' applications. A letter to the Minor Applicant conveyed that her application was refused, because the Officer was not satisfied that she will leave Canada at the end of her stay, based on: (a) her family ties in Canada and in her country of residence; and (b) the purpose of her visit. The Officer's analysis is set out in Global Case Management System [GCMS] notes as follows:

> I have considered the positive factors outlined by the Applicant, including statements or other evidence. Applicant is a minor applying to come to Canada to pursue primary/secondary studies. The applicant has paid their tuition to attend the intend DLI and provided a study plan. However, I have given less weight to the positive factors, for the following reasons: Taking the applicant's plan of studies into account, Study plan submitted is vague and does not outline a clear career/educational path for which the sought educational program would be of benefit. It refers to general advantageous comments regarding the value of international education in Canada and makes sweeping statements

> on how the education will improve the applicant's situation in Iran. Although the tuition has been paid, the applicant's family does not appear to be sufficiently well established that the proposed studies would be a reasonable expense. The funds provided possess limited documentation concerning the source of supporting funds. On balance, the PA has failed to satisfy me that the course of study is reasonable given the high cost of international study in Canada when weighed against the local options available for similar studies, and the PA's personal circumstances. application refused

[4] Similarly, a letter to the Adult Applicant conveyed that her application was refused, because the Officer was not satisfied that she will leave Canada at the end of her stay, again based on: (a) her family ties in Canada and in her country of residence; and (b) the purpose of her visit. The Officer's analysis of the Adult Applicant's application is set out in the GCMS notes as follows:

> I have considered the positive factors outlined by the applicant, including statements or other evidence. However, I have given less weight to the positive factors, for the following reasons: The PA's plan of entry into Canada is based on being an accompanying family member of an applicant's whom has applied for a study permit. The family member's study permit has been refused. I have considered the applicant's purpose of travel, family ties, travel history and funds available for stated purpose. When I consider these elements and balance them against the current economic and security situation in Iran and how it relates to the applicant, I am not satisfied that the applicant is a genuine visitor who would leave Canada at the end of her authorized state. For the reasons above, I have refused this application.

[5] The Applicants now seek judicial review of the Decision.

III. **Issues and Standard of Review**

[6] The Applicants' arguments raise the following issues for the Court's consideration:

A. Was it reasonable for the Officer not to be satisfied that the Applicants would leave Canada at the end of their authorized stay?

B. Were the Applicants denied procedural fairness in the Officer's consideration of their applications?

[7] As suggested by the articulation of the first issue, it is subject to the standard of reasonableness. The standard of correctness applies to the second issue, related to procedural fairness.

IV. **Analysis**

A. *Was it reasonable for the Officer not to be satisfied that the Applicants would leave Canada at the end of their authorized stay?*

[8] As explained by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 85-86, a reasonable decision is one that is based on an internally coherent and rational chain of analysis, justified in relation to the facts and law constraining the decision-maker, such that reasonableness review is concerned with the justification, transparency and intelligibility of the decision.

(1) Conclusion that the Applicants will not leave Canada

[9] In challenging the reasonableness of the Decision, the Applicants argue that the Officer provided no rationale or justification for concluding that the Applicants would not leave Canada at the end of their stay.

[10] I find little merit to this submission. The combination of the letter conveying the Decision and the GCMS notes identify the Officer's reasoning, demonstrating that the Officer's conclusion was based on the Applicants' failure to present a career/educational plan for which the proposed educational program in Canada would be of benefit, the Applicants' family ties in Canada and Iran, and the Applicants' level of establishment in Iran combined with the cost of the proposed educational program in Canada. However, it remains necessary to consider the reasonableness of these elements of the Officer's reasoning, each of which the Applicants challenge. I will therefore turn to these arguments.

(2) Family ties

[11] First, the Applicants submit that the Officer disregarded their substantial family ties in Iran. They submit that they have a very large extended family, noting that, while the Adult Applicant will accompany the Minor Applicant to Canada, the Minor Applicant's father and sibling will not accompany them.

[12] In support of this submission, the Applicants refer to the Adult Applicant's statement, in her affidavit filed in support of their application for judicial review, that she will accompany her

daughter to Canada and stay with her for a few months. While this affidavit was not before the Officer, I accept that the Adult Applicant also stated in her letter in support of the study permit and temporary resident visa applications that she would not be able to stay in Canada for more than five months. Neither the affidavit nor this letter provide details surrounding extended family. However, the application materials before the Officer identify that the Adult Applicant's mother, brother and son live in Iran, as well as the fact that the Adult Applicant's spouse (the Minor Applicant's father) is deceased and that the Adult Applicant's sister lives in Canada.

[13] While the Decision references family ties as one of the grounds underlying the rejection of the applications, it does not set out an express analysis of the details of the ties in Canada and Iran. As indicated in the authorities upon which the Applicants rely, it can be a reviewable error if an officer fails to consider particularly strong family ties in an applicant's home country (see, e.g., *Raymundo v Canada (Citizenship and Immigration)*, 2018 FC 759 at para 13) or arrives at an unintelligible decision as to how such ties are outweighed by family ties in Canada (see, e.g., *Balepo v Canada (Citizenship and Immigration)*, 2016 FC 268 at para 16).

[14] However, I agree with the Respondent's submission that, on the facts of the case at hand, with the Minor Applicant's father being recently deceased and the intention that she would come to Canada with her mother, leaving behind within her nuclear family only one adult brother, this aspect of the Decision is intelligible.

(3) Career and educational path

[15] The Applicants argue that, in finding that the study plan is vague and does not outline a clear career/educational path for which the educational program sought in Canada would be of benefit, the Officer disregarded substantial evidence submitted with their applications and therefore lacks justification, transparency and intelligibility. They rely on authorities in which officers' analyses of proposed educational and career plans have been found unreasonable, including *Adom v Canada (Citizenship and Immigration)*, 2019 FC 26 [*Adom*] at para 16, in which the Court found that an officer reviewing an application for a study permit unreasonably assumed the role of a career counsellor.

[16] In responding to these arguments, the Respondent submits that, against the particular factual backdrop of this application, the Officer's analysis is intelligible. The Respondent emphasizes that the Minor Applicant was 15 years old at the time of her application, seeking a study visa to pursue Grade 11 of high school in Canada. Her mother's support letter explains her daughter's interest in biology and refers to Canadian high schools having laboratories and other facilities that advantageously focus on experimental science. The letter also refers to Canada having a top ranked education system and to beneficial aspects of the educational environment at Newtonbrook Secondary School in particular. In the GCMS notes, the Officer characterizes this study plan as vague, referring to it making general advantageous comments regarding the value of international education in Canada and sweeping statements on how this education will improve the Minor Applicant's situation in Iran.

[17] I agree with the Respondent's submission that, on the particular facts of this case, the Decision is intelligible and does not offend the Court's jurisprudence. The Officer has explained the reasoning underlying the Decision, and there is no basis for the Court to find that the Officer overlooked the information presented by the Applicants or that the Officer's conclusions are inconsistent with that information.

[18] In relation to *Adom*, I read that authority as turning on the particular facts and decision under review in that case, not as suggesting a general principle precluding a visa officer from assessing an applicant's proposed courses of study in Canada in the context of their broader educational and career paths. In the case at hand, I find nothing objectionable in such an assessment informing the determination that the Officer was required to make, as to whether the Applicants had established that they would leave Canada at the end of their stay, as required by ss 179(b) and 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

(4) Establishment in Iran / Expense of Canadian study

[19] The GCMS notes state the Officer's conclusion that, although the Minor Applicant's tuition has been paid, her family does not appear to be sufficiently well established that the proposed studies would be a reasonable expense, particularly when weighed against the cost of local options for similar studies. In challenging the reasonableness of this conclusion, the Applicants refer to the Minor Applicant's schooling to-date in Iran, the Adult Applicant's continued employment in Iran, and the Adult Applicant's financial circumstances. In relation to finances, the Applicants emphasize the availability of sufficient money in the Adult Applicant's

bank account to fund the Minor Applicant's Grade 11 studies, as well as the Adult Applicant owning property in Iran.

[20] The Decision does not set out a detailed analysis of the Applicants' finances or other elements of establishment in Iran and, as with other arguments canvassed above, the absence of a detailed analysis could in some cases represent a reviewable error if, taking into account the legal and factual background, that absence renders the Decision unintelligible. However, I agree with the Respondent's submission that this aspect of the Decision is reasonable when considered in the context of the information before the Officer.

[21] Based on the Officer's reference to the tuition already having been paid, I agree with the Respondent's submission that the Officer's analysis focused upon information the Applicants provided surrounding the Adult Applicant's savings and the costs that would be incurred in connection with the Minor Applicant's studies. The application indicated that the cost of the studies would total $28,000, including $16,000 in tuition that had already been paid. The application describes the available funds as the Adult Applicant's savings of $63,201, a figure that is consistent with the bank records indicating $47,201 remaining in the account following payment of the tuition.

[22] As the Respondent submits, these figures represent almost half the Adult Applicant's savings being consumed with one year of high school education for the Minor Applicant, plus the additional cost the Adult Applicant would incur while staying in Canada herself. I appreciate that the application also included information about property in Iran and the Adult Applicant's

employment, which the Applicants emphasize would continue to generate additional funds. However, in focusing upon the Adult Applicant's savings and questioning whether the cost of the proposed studies would therefore represent a reasonable expense, the Officer's concerns are sufficiently intelligible to withstand reasonableness review.

[23] I have considered the Applicants' reliance on jurisprudence to the effect that it can be a reviewable error for a visa officer to focus upon the cost of education in Canada, in comparison to less expensive local programs, when this is a cost the particular applicant is prepared to incur. I note in particular the conclusion in *Motala v. Canada (Citizenship and Immigration)*, 2020 FC 726 [*Motala*], that an officer erred in referring to the high cost of a year in a Canadian high school for an international student and the availability of less expensive courses, when incurring that cost was a choice the student's parent was able to support (at paras 15-17).

[24] However, *Motala* turned on the officer having made a bald statement referring to the high cost of the Canadian program and the availability of less expensive local courses, without any indication why the officer considered the cost of the program to be unreasonable in the applicant's circumstances. *Motala* is distinguishable from the case at hand, in which I have found that component of the Officer's analysis intelligible.

(5) Conclusion on the reasonableness of the Decision

[25] Having considered the Applicants' argument surrounding the reasonableness of the Decision, I find no basis for the Court to intervene. I will therefore turn to the Applicants' procedural fairness argument.

B. *Were the Applicants denied procedural fairness in the Officer's consideration of their applications?*

[26] The Applicants argue the principles of procedural fairness required the Officer to send them a procedural fairness letter or afford them an opportunity for an interview, to give them a chance to respond to the Officer's concerns prior to making a decision on their applications. They rely in particular on *Yaqoob v Canada (Citizenship and Immigration)*, 2015 FC 1370 [*Yaqoob*] at para 12, in which the Court identified a procedural fairness requirement of this nature where the applicant's credibility was a central issue in the decision under review. The Applicants argue that the Officer's concerns, that the Minor Applicant is not a *bona fide* student and will not leave Canada at the end of her stay, represent credibility concerns of the sort that invoke the duty of fairness.

[27] I accept the principle identified in *Yaqoob*. However, it has no application in the case at hand. In *Yaqoob*, the Court concluded that the officer was concerned that the applicant was not telling the truth about aspects of her application. There is no comparable credibility concern evidenced by the Decision currently under review. Rather, the Decision was based on the statutory requirements of the *IRPR*, including the onus imposed by the legislation upon the Applicants to establish that they will leave Canada at the end of their authorized period of stay.

[28] I therefore find no breach of the duty of procedural fairness in the case at hand.

V. **Conclusion**

[29] Having found no reviewable error in the Decision, this application for judicial review must be dismissed. Neither party proposes any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-5728-21

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5728-21
STYLE OF CAUSE:	ROSHA FARNIA AND VIDA HONARVAR V THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HEARD VIA VIDEOCONFERENCE
DATE OF HEARING:	MARCH 30, 2022
JUDGMENT AND REASONS:	SOUTHCOTT J.
DATED:	APRIL 8, 2022

APPEARANCES:

Ramanjit Sohi	FOR THE APPLICANTS
Aminollah Sabzevari	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Raman Sohi Law Corporation Surrey, British Columbia	FOR THE APPLICANTS
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT