

Federal Court



Cour fédérale

Date: 20220725

**Dockets: IMM-5165-21
IMM-5166-21**

Citation: 2022 FC 1098

Ottawa, Ontario, July 25, 2022

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

MAHTAB KHANLAR MOTLAGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mahtab Khanlar Motlagh is a citizen of Iran. She seeks judicial review of a decision by a visa officer [Officer] to refuse her request for a study permit to pursue a Master's degree in Education at Lakehead University, Ontario.

[2] The primary reason for the refusal was the Officer's finding that Ms. Motlagh's study plan was unreasonable given her employment and education history. The Officer was not satisfied that Ms. Motlagh would leave Canada as required by s 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, made under the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[3] Ms. Motlagh requested reconsideration of the Officer's decision, but this too was refused.

[4] The brief reasons provided by the Officer do not permit this Court to understand the rationale for rejecting Ms. Motlagh's request for a study permit. The application for judicial review of the initial refusal (IMM-5166-21) is therefore allowed. The application for judicial review of the refusal of the reconsideration request (IMM-5165-21) is dismissed on the ground that it is moot.

II. Background

[5] Ms. Motlagh is 35 years old. She is married with two children. She is a permanent employee of the Iranian Ministry of Education, and her husband is a permanent employee of the Iranian Oil Ministry.

[6] Ms. Motlagh holds a Master's degree in Mathematics from a university in Iran. She has worked as a high school math teacher since 2011.

[7] In her application for a study permit, Ms. Motlagh stated that she wished to attend Lakehead University for the research opportunities it would offer. She said that her proposed course of study would allow her to pursue her career as a teacher more competently and effectively. She expressed interest in educational sociology and philosophy, and possibly career guidance counselling.

[8] Ms. Motlagh said the following about the availability of comparable academic programs in Iran:

Unfortunately, our educational system in Iran is a bit old-school compared to the education standards of many countries with the top educational systems in the world. However, in recent years the ministry of education and many institutions have tried to upgrade the educational standards by raising awareness about different aspects of teaching and education, like personal differences, implementing new methods and techniques in teaching and learning, and designing more research-based curriculums. Even in universities efforts have been made to put more emphasis on research rather than just theoretical aspects of education which promises a better future in the field.

[9] Ms. Motlagh identified several reasons why she intended to return to Iran at the end of her studies: her husband and two children, both of whom are under 12, reside there, as do her extended family and friends. Her husband and children would not accompany her during her studies. She and her husband own two residential properties, a car and stocks.

[10] Ms. Motlagh submitted the deeds of the two properties, related lease contracts, bank statements, documents confirming stock ownership by her husband, permanent employment

certificates for both her husband and herself, a certificate confirming a leave of absence from teaching, and a certificate of school enrollment for her son.

[11] The Officer refused Ms. Motlagh's application for a study permit on June 3, 2021. The Officer's notes in the Global Case Management System [GCMS] read as follows:

I have reviewed the application. The study plan does not appear reasonable given the applicant's employment and education history. I note that: - the client's previous studies were in an unrelated field - the client has previous studies at a same academic level [as] the proposed studies in Canada[.] Taking the applicant's plan of studies into account, the applicant's family does not appear to be sufficiently well established that the proposed studies would be a reasonable expense. Chosen program at such expense appears illogical or redundant in light of the PA's reported scholarly history. 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 potential career/employment benefits, the local options available for similar studies, and the PA's personal circumstances. Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

[12] The Officer's GCMS notes of the refusal of the reconsideration request state only that "there was neither error in fact nor law in the previous decision and [...] the applicant did not submit compelling new information to warrant re-opening the application".

III. Issue

[13] The sole issue raised by this application for judicial review is whether the Officer's decisions were reasonable.

IV. Analysis

[14] The Officer's decisions are subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only where "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).

[15] The criteria of "justification, intelligibility and transparency" are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[16] The Officer's GCMS notes form a part of the decisions under review (*Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 at para 5).

[17] Ms. Motlagh says that her study plan was reasonable on its face, and the Officer failed to provide a sufficient justification for concluding that it was not (citing *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7). Ms. Motlagh relies on Justice Nicholas McHaffie's decision in *Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596 [Afuah], where he held that a visa officer should provide sufficient reasons, however brief, to support a rejection of a study plan (at para 10).

[18] The Court must be able to ascertain why the officer considered the study plan to be unreasonable, beyond simply identifying issues such as previous study and work experience and locally available alternatives. A reference to “locally available alternatives” should be substantiated by the record (*Afuah* at paras 12-15).

[19] Ms. Motlagh says there was nothing to indicate that her study plan was “so extraordinary as to be beyond the realm of possibility” (citing *Bao v Canada (Citizenship and Immigration)*, 2008 FC 282 at para 7). Given the explanation provided in her application, the Officer’s conclusion that her choice of program was illogical lacks intelligibility and does not permit Ms. Motlagh to understand why the decision was made.

[20] Ms. Motlagh also argues that the Officer’s finding that her family “does not appear to be sufficiently well established” to incur the expense of the proposed program was not supported by the evidence, given the documentation she submitted.

[21] In *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 [*Aghaalikhani*], Justice Denis Gascon overturned a refusal of a study permit because “there was simply nothing on the facts before the Officer to suggest that [the applicant] would stay in Canada illegally at the end of his authorized period of study”. Rather, the evidence pointed in the opposite direction. Justice Gascon rejected the visa officer’s reliance on locally available alternatives for study without evidence of similar programs in the country of origin (*Aghaalikhani* at paras 19-21).

[22] I agree with the Respondent that the procedural requirements of decisions respecting study permits are “relaxed” and fall at the lower end of the spectrum (*Li v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 791 at para 50). However, as Justice Alan Diner explained in *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at paragraph 17, significant operational pressures and resource constraints cannot exempt decisions from being responsive to the factual matrix put before visa officers: “Failing to ask for basic responsiveness to the evidence would deprive reasonableness review of the robust quality that *Vavilov* requires at paras 13, 67 and 72”.

[23] In this case, the brief reasons provided in the GCMS notes do not permit this Court to understand the Officer’s rationale for rejecting Ms. Motlagh’s request for a study permit. Her application included a detailed explanation of why she wished to pursue further studies in the field of education. Given her lengthy employment as a high school teacher, it is unclear why the Officer considered this to be “illogical or redundant”.

[24] The Officer referred to the availability of local alternatives for study, despite Ms. Motlagh’s description of the outmoded educational standards of Iranian institutions compared with those elsewhere in the world. As in *Aghaalikhani*, this aspect of the Officer’s decision was unsupported by evidence.

[25] While the estimated cost of Ms. Motlagh’s program of study at Lakehead University was high compared to the family’s income and saved assets, she provided evidence of their capacity to meet the expenses for at least the first year.

V. Conclusion

[26] The application for judicial review of the Officer's initial refusal of Ms. Motlagh's request for a study permit (IMM-5166-21) is allowed, and the matter is remitted to a different visa officer for redetermination.

[27] The application for judicial review of the Officer's refusal of the reconsideration request (IMM-5165-21) is dismissed on the ground that it is moot.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review of the Officer's initial refusal of the Applicant's request for a study permit (IMM-5166-21) is allowed, and the matter is remitted to a different visa officer for redetermination.
2. The application for judicial review of the Officer's refusal of the reconsideration request (IMM-5165-21) is dismissed on the ground that it is moot.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: IMM-5165-21
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STYLE OF CAUSE: MAHTAB KHANLAR MOTLAGH v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE BETWEEN TORONTO
AND OTTAWA, ONTARIO

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APPEARANCES:

Daniel Kingwell FOR THE APPLICANT

Asha Gafar FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mamann, Sandaluk and Kingwell FOR THE APPLICANT
LLP

Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario