Federal Court  Cour fédérale

Date: 20221109

Docket: IMM-3062-22

Citation: 2022 FC 1530

Toronto, Ontario, November 9, 2022

PRESENT: Madam Justice Go

BETWEEN:

FOROOZAN AZIZI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Foroozan Azizi [Applicant] is a 29-year-old citizen of Iran. The Applicant obtained a Bachelor's degree in Electrical Engineering – Electronics in Iran in January 2017. She applied for a Master's of Business Administration – International Business [MBA] at Trinity Western University and received a Letter of Acceptance on November 22, 2021. The Applicant has been

employed by MH Control Industrial Group since January 2017, and has held the position of Electronics Manufacturing Project Supervisor since February 2019.

[2] The Applicant applied for a study permit in December 2021 with a study plan [Study Plan]. The Applicant submitted proof that her employer granted her a two-year leave of absence to continue her education, evidence of her family relationships in Iran, as well as proof of her family's willingness and ability to contribute financially to her studies in Canada.

[3] By a decision dated February 2, 2022 an officer with Immigration, Refugees and Citizenship Canada's Case Processing Centre [Officer] refused the Applicant's application for a study permit, as the Officer was not satisfied that the Applicant would leave Canada at the end of her stay, as stipulated in s. 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*], based on her family ties in Canada and Iran, and on the purpose of her visit [Decision].

[4] The Applicant seeks judicial review of the Decision, arguing that it was unreasonable and the Officer breached their duty of procedural fairness.

[5] For the reasons set out below, I find the Decision unreasonable and I grant the application.

II. Preliminary Issues

[6] The Application Record before this Court contains a set of written submissions purportedly prepared by the Applicant's previous legal representative in support of the Applicant's study permit application. The parties agree that these written submissions were not before the Officer and I will not consider them.

[7] It would appear that instead of filing submissions on behalf of the Applicant, her previous legal representative mistakenly filed written submissions with respect to another client with the same last name as part of the Applicant's study permit application. The written submissions of this other client are therefore included in the Certified Tribunal Record. At the hearing, I notified the parties of my intention to issue an order redacting all materials concerning an individual not related to the matter at hand. The parties raised no objection and I will so order.

III. Issues and Standard of Review

[8] The Applicant raises two issues: (1) the Decision was unreasonable; and (2) the Officer breached their duty of procedural fairness by making adverse credibility findings without giving the Applicant an opportunity to respond.

[9] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[10] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker"

(*Vavilov* at para 85). The onus is on the Applicant to demonstrate that the decision is unreasonable (*Vavilov* at para 100).

[11] The Applicant submits breaches of procedural fairness are reviewed for correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 55; *Mission Institution v Khela*, 2014 SCC 24 at para 79).

IV. Analysis

[12] The Officer's reasons are recorded in their Global Case Management System [GCMS] notes:

> I note that, the applicant's proposed studies are not reasonable, as the applicant indicates previous education of a Bachelors' degree in Electrical Engineering-Electronics in Iran.
>
> The applicant has been employed as an Electronics Engineering Project Assistant and a Electronics Manufacturing Project Supervisor since 2017.
>
> 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's proposed studies are not reasonable given their career path
>
> Client Explanation letter reviewed. The applicant does not demonstrate to my satisfaction compelling reasons for which such an educational program would be of benefit. I am not satisfied that the applicant would leave Canada at the end of their stay as a temporary resident,
>
> I note that: - the applicant is single, mobile, not well established and has no dependents. The applicant has not demonstrated sufficiently strong ties to their country of residence.

> The purpose of visit does not appear reasonable given the applicant's socio-economic situation and therefore I am not satisfied that the applicant would leave Canada at the end of the period of authorized stay.
>
> [Emphasis added]

[13] The determinative issue, in my view, is the reasonableness of the Decision. In particular, I conclude the Officer's reasoning with regard to the Applicant's Study Plan lacks the requisite transparency, intelligibility and justification.

[14] As a starting point, I acknowledge, as the Respondent submits, that a visa officer's decision is owed a high level of deference and the Court must not reweigh or reassess evidence on judicial review.

[15] The Respondent cites several cases to support their position that as long as the evidence has been properly examined, the question of weight remains entirely within the officer's expertise: *Monteza v Canada (Citizenship and Immigration)*, 2022 FC 530 at para 8; *Abbas v Canada (Citizenship and Immigration)*, 2022 FC 378 [*Abbas*] at para 29; *Musasiwa v Canada (Citizenship and Immigration)*, 2021 FC 617 at para 22; *Nimely v Canada (Citizenship and Immigration)*, 2020 FC 282 at para 7.

[16] I note that none of the above-cited passages state that as long as the evidence has been properly examined, the question of weight remains entirely within the officer's expertise. What they indicate is that the standard of review is reasonableness, reasons need not be extensive, and

visa officers are owed considerable deference on evidentiary issues given their expertise and the demands on their time. I have no intention of departing from these established principles.

[17] In this case, however, I find the Officer did not properly examine the evidence before concluding that the Applicant's Study Plan "does not appear reasonable given the applicant's employment and education history."

[18] In addition to the Study Plan, the Applicant also submitted educational certificates, proof of employment, an employer reference letter, evidence of her financial ability to study in Canada, as well as proof of her family ties in Iran, in support of her application for a study permit.

[19] Specifically, the Study Plan explained that the Applicant's employer granted her a leave of absence and that she intends to return to Iran after completing her studies to take up an offer of employment with her employer as an Engineering Service Project Manager. The Study Plan also explained, under a heading titled "How Can an MBA Degree Improve My Career Prospects", why the Applicant chose her program of study, what skills and knowledge she would gain, and how the program of study would benefit her career prospects. The Officer's reasons did not refer to these explanations and were not responsive to the evidence.

[20] As Justice Russell noted in *Mahida v Canada (Citizenship and Immigration)*, 2019 FC 423 at para 26:

> [26] The Officer simply does not engage with this evidence or explain what is inadequate about the explanation. The application

> makes it very clear that her current MBA helped her to gain entry into the field where she wants to work but it is not sufficient to allow her to progress. This is why she is pursuing further education now and not earlier. The explanation is detailed and entirely logical and the Officer's response lacks any kind of justification, transparency or intelligibility.

[21] I find a similar conclusion can be drawn in this case. Contrary to the Officer's findings that the Applicant's proposed program of study do not align with her career path and educational background, I agree with the Applicant that her Study Plan explained how the MBA degree would assist with her employer's plan to expand their services internationally and that the program of study would provide her with the skills and knowledge related to international business and management she would require for the anticipated position upon her return to Iran. None of these explanations were mentioned in the Decision.

[22] I reject the Respondent's submission that the Officer reasonably found the Applicant's Study Plan unreasonable, given the Applicant's financial situation, as the proposed MBA is expensive. With respect, the Officer made no comment about the cost of the MBA program and did not offer it as the basis for rejecting the Applicant's study permit application, other than a vague reference to the Applicant's "socio-economic situation" which may or may not be related to the cost of the MBA program. The Respondent's argument amounts to an attempt to bolster the Officer's reasoning. For the same reason, I also reject the Respondent's submission that the reference letter from Applicant's employer indicates only that the Applicant has taken a two-year vacation to continue her education in an "M.Sc degree" and that the employer will be glad to use her expertise after she finishes her studies. The Officer made no reference to these concerns in

their GCMS notes and it is inappropriate for the Respondent to offer them up as reasons for refusal after the fact.

[23] The Respondent further submits the Officer reasonably refused the Applicant's application because they were not satisfied the Applicant would leave Canada at the end of her stay. Applicants, the Respondent argues, bear the onus of rebutting the presumption that they are seeking to immigrate permanently to Canada (*Danioko v Canada (Minister of Citizenship and Immigration)*, 2006 FC 479 at para 15; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 517 at para 13). To satisfy an officer that they will leave Canada, an applicant cannot simply assert that they will do so; the evidence on the record needs to satisfy the officer that the applicant will leave Canada.

[24] The Respondent also submits that an applicant's intention to leave Canada must be "established" and the *Immigration and Refugee Protection Act*, SC 2001, c 27 and *IRPR* do not leave the officer much room to grant the applicant the benefit of the doubt (*Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 [*Chhetri*] at para 9; *Abbas* at paras 20-21; *Hashem v Canada (Citizenship and Immigration)*, 2020 FC 41 at para 31).

[25] Finally, the Respondent contends an officer is entitled to weigh factors including the applicant's stated purpose for wanting to come to Canada, their compelling reasons for wanting to study or pursue a particular course of studies in Canada, and their ties to their home country (*Chhetri* at para 14; *Roopchan v Canada (Citizenship and Immigration)*, 2021 FC 1342 at paras 14-19).

[26] I take no issue with the general propositions behind the Respondent's arguments. It is the applicability of these propositions in light of the record and the Decision before me that is in dispute. Given the Officer's failure to engage with the evidence concerning the Applicant's stated purpose of her study, which forms a central part of the Officer's finding that the Applicant would not leave Canada at the end of her stay, this matter should be sent back for redetermination.

[27] As I find the Decision to be unreasonable, I need not address the Applicant's procedural fairness argument.

V. Conclusion

[28] The application for judicial review is granted.

[29] There is no question for certification.

JUDGMENT in IMM-3062-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. Within one month of this judgment, the Tribunal shall file a redacted public version of the Certified Tribunal Record with pages 63-66 (which contain written submissions relating to another applicant) being redacted. Until the revised Certified Tribunal Record is filed, the existing Certified Tribunal Record shall remain confidential.
3. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3062-22
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