Federal Court  Cour fédérale

Date: 20221116

Docket: IMM-1427-22
IMM-1428-22

Citation: 2022 FC 1562

Ottawa, Ontario, November 16, 2022

PRESENT: The Honourable Mr. Justice Pentney

Docket: IMM-1427-22

BETWEEN:

ARKAN HASHEMI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-1428-22

BETWEEN:

ASHKAN HASHEMI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants are twins from Iran, who wanted to come to Canada to complete their high school education. They hope to pursue university studies at a Canadian university (to study architecture and medicine, respectively).Their applications for student visas were refused. The Applicants seek judicial review to overturn these decisions.

[2] The Applicants submitted separate applications for judicial review because they submitted individual study permit applications. Given the similarities between the cases, they were heard together, and a copy of these reasons will be placed in both files. For ease of reference, I will refer to the Applicants by their first names: Arkan (whose case is Court File Number: IMM-1427-22), and Ashkan (whose case is Court File Number: IMM-1428-22).

[3] For the reasons set out below, the applications are allowed. Although I do not accept several of the Applicants' arguments about the various deficiencies in the decision, I do agree that the refusal decision is not reasonable because it is not responsive to their main explanation for wanting to come to Canada to finish high school.

I. Background

[4] The Applicants completed their Grade 11 studies in Iran, and both applied to complete Grade 12 in Canada. While their personal statements accompanying their applications differ in some respects, it is evident that they intended for their applications to be considered together and their applications share many commonalities. Both refer to having a good friend who came to

Canada and told them about the high quality of the education system and more generally, the lifestyle in Canada. It is worth examining each of the Applicants' rationales, since this sets the framework for reviewing the Officer's decision.

[5] In his application, Ashkan says that he "came up with the idea of immigration many years ago" but was not sure where he wanted to go until one of his close childhood friends immigrated to Canada. This friend told him many things about his education and personal life here: "He said that students and teachers are very friendlier (sic) there and they also focus on essential subjects which are considerably helpful for every person's life." Ashkan's friend also described life in Canada, including that "talking to new friends who speak in English and French was beneficial…"

[6] Ashkan says that the most important reason to come to Canada to study "is that studying in a foreign country enables me to become independent and start a challengeable life. Another benefit could be that I can gain precious knowledge [from] elite Canadian colleges and universities." He states that he has a passion for biology and chemistry and would like to study medicine in university.

[7] For his part, Arkan states that he was "studying mathematics in one of the best high schools in Tabriz called Allame. But now I'm trying to prepare myself to welcome new challenges then I can be accepted from one of the best high schools and after that a good university in Canada." He refers to the close friend in Canada "who told us about the benefits of living there such as good educational facilities which prepare us to study at the top

universities…" He says that he and his brother have been studying in Iran for eleven years, and now they have decided to continue their studies and "become familiar [with] studying with new teachers and students who are very friendly." He says their friend described many advantages of living in Canada. Arkan says that after graduating high school he wants to study architecture at university.

[8] The final point about both letters is that they are twins who clearly intend to stay together. Arkan clearly expresses this point in his letter: "We are twins and both of us will travel to Canada if you give us [a] visa. Being far from each other is impossible for us. We are half of each other."

[9] Both Applicants were accepted into the Grade 12 "science stream" program at North Star Academy in Laval, Quebec. They paid $10,000 towards their tuition (full fees for the year amounted to $25,800), and they then submitted their applications for a study visa.

[10] On January 4, 2022, the Visa Officer (the Officer) refused their applications, stating, "I am not satisfied that you will leave Canada at the end of your stay… based on your family ties in Canada and in your country of residence… [and] based on the purpose of your visit." The Officer cited subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 in relation to both grounds of refusal.

[11] The Officer's notes in the Global Case Management System (GCMS) set out the rationale for the refusal:

> I have reviewed the application. I am not satisfied that the applicant would leave Canada at the end of their stay as a temporary resident, I note that: - the client is single, mobile, is not well established and has no dependents I note that the applicant has paid their tuition to attend the intend DLI. However, based on the financial documents submitted, I am not satisfied that the applicant has sufficient funds to [successfully] study in Canada. Applicant is a minor, 17 years old, applying to come to Canada to study grade 12 at North Star Academy Laval. The purpose of the visit itself does not appear to be reasonable, in view of the fact that similar programs are available closer to the applicant's place of residence for a fraction of the cost. 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 Applicants ask the Court to overturn the decision, claiming a denial of procedural fairness and arguing that the decision is unreasonable. As explained below, I find the decision to be unreasonable and thus it is not necessary to address the procedural fairness argument, other than to indicate that I did not find it persuasive.

II. Issues and Standard of Review

[13] The determinative issue in this case is whether the decision is reasonable, within the framework of analysis set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[14] Under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at para 2). The burden is on the Applicant to satisfy the Court "that any shortcomings or flaws relied

on… are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33). The *Vavilov* framework is intended to reinforce a "culture of justification" in public administration (see paras 2 and 14). In part, it seeks to accomplish this by requiring decision makers to be responsive to the main arguments brought forward by the parties (*Vavilov* at paras 125-128).

III. Analysis

[15] The Officer bases their refusal on two grounds: (a) the family ties in Canada and Iran; and (b) the purpose of the visit, within which the primary issue appears to have been the "local options" available to the Applicants at a lower cost, as well as the family's financial situation. These are the grounds cited in support of the overall conclusion that the Applicants would not leave Canada at the end of their authorized stay.

[16] The Applicants challenge the Officer's findings on each of these grounds, claiming that the Officer based the decision on unfounded generalizations not supported by the evidence, and failed to meaningfully grapple with the positive aspects of the application. The Applicants assert that these errors are central to the Officer's decision and therefore support overturning the decision. I will review the Applicants' primary arguments in turn, after a short discussion of the key elements of the legal framework that applies to student visa cases.

[17] The starting point for reasonableness review under *Vavilov* is the legal framework that governs the decision. A failure to apply key elements of that may be fatal to a decision. In this case, the Applicants were seeking a temporary resident visa for study purposes.

[18] The onus is on the Applicants to establish that they meet the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and the *Immigration and Refugee Protection Regulations*, SOR/2022-227 [the *Regulations*]. Pursuant to paragraph 216(1)(b) of the *Regulations*, an officer shall not issue a study permit to a foreign national if they are not satisfied that the foreign national will leave Canada by the end of the period authorized for their stay.

[19] In *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872, Justice Rennie stated:

> [14] The focus must, therefore, be on the strength of ties to the home country. Visa officers must assess the strength of the ties that bind or pull the applicant to their home country against the incentives, economic and otherwise, that might induce the foreign national to overstay. In this sense the relative economic advantage is a necessary component of the decision, but it is not the only part of the analysis. It is only through objective evidence of countervailing strong social and economic links to the home country that the onus to establish an intent to return be discharged.

[20] This passage was recently cited with approval by Justice Andrew Little in *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at para 23. It is an apt summary of how the legal framework that guides a visa officer is actually applied in practice. The question in this case is whether the Officer's reasons are reasonable insofar as they applied this legal framework to the key facts of the case.

[21] As noted earlier, the decision letter refers to two grounds for the refusal: the Applicants' family ties, and the purpose of their visit.

[22] On the family ties ground, the Applicants argue that the Officer is clearly mistaken because they have no family ties in Canada. All of their relatives and friends (aside from the one friend in Canada) are in Iran, and they have every reason to return there. The Respondent acknowledged that the Applicants' family was in Iran, but pointed out that they both expressed a desire to stay together and that, if they stayed in Canada, they would therefore have each other.

[23] I am not persuaded by the Respondent's explanation for the Officer's conclusion on the family ties ground. There is no indication in the decision letter or the notes that the Officer considered the presence of both twins in Canada as a compelling factor; indeed, there is virtually no discussion of the family ties element in the Officer's notes.

[24] Regarding the purpose of the visit, the Applicants advance several arguments. On the reference to local options available at a lower cost, the Applicants assert that it is an unjustified assumption. They submit that there is no evidence in the record to support the Officer's finding. The Applicants point to the case law that has found such a deficiency to be grounds for overturning the refusals of student visas (*Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at paras 21-22; *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 20; *Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596 at para 15).

[25] I am not persuaded that this is a reversible error in this case. The Applicants are high school students. They completed Grade 11 in Iran, and did not assert that they would be unable to finish high school there. That is the basis for the Officer's conclusion on this point, and it is both logical and grounded in the evidence. Each case must be examined on its own facts, and this case is not akin to the cases cited by the Applicants. The Officer was not referring to an unknown university or college program said to be available to a claimant, nor was the Officer making a substantive comparison between different programs. Instead, the Officer based this conclusion on the evidence that the Applicants were able to complete Grade 11 in Iran, and did not assert that Grade 12 was not available there. The Officer's conclusion on this point is a reasonable finding based on the evidence.

[26] The Applicants also assert that the Officer erred in their observations regarding the family's financial situation and the Officer's finding that "I am not satisfied that the [Applicants have] sufficient funds to [successfully] study in Canada" flies in the face of the evidence. Among other evidence, they provided a bank account statement showing approximately $454,000 CAD, as well as evidence that they had each already paid almost half of the fees for their one-year Grade 12 program. At the hearing, the Respondent indicated they were no longer asserting that this aspect of the Officer's reasoning was justified or justifiable, and so it is not necessary to say more on this point at this juncture.

[27] The Applicants' main argument was that the overall purpose of their visit was made clear by their application: they wanted to come to Canada to finish high school so that they could then pursue university studies here. That was the purpose of their visit, and they had every reason to

return to Iran once they were finished their studies; all of their family and other ties were in Iran. In addition, the Applicants contend that their application explained the benefits of studying in Canada. They said they would gain by having to face new challenges, as well as receiving a better quality of education here, and living away from their family would enable them to become more independent. Based on all of this, the Applicants say the Officer's finding that "the purpose of their visit itself does not appear to be reasonable" is not justified.

[28] The Respondent submits that the Officer's reasoning is clear, from a review of the decision letters and the GCMS notes. The Respondent argues that the Officer's "central concern was that the program(s) did not make sense from an educational perspective." The onus was on the Applicants to satisfy the Officer that they would leave at the end of their study permit, and the documentation they provided simply failed to meet that burden (*citing Roopchan v Canada (Citizenship and Immigration)*, 2021 FC 1342, at paras 14-19, and *Farnia v Canada (Citizenship and Immigration)*, 2022 FC 511 at para 16). The Respondent notes that the Applicants did not explain why they could not complete their high school in Iran, nor why they could not pursue university studies there. They also did not explain why they had chosen to study at North Star Academy.

[29] The Respondent contends that the Officer's multiple concerns led to their conclusion that the Applicants were using a study permit as a means to facilitate entry to Canada rather than for educational advancement. This finding was open to the Officer to make, and the Respondent argues that the Applicants have not demonstrated its unreasonableness.

[30] Despite the able submissions of Respondent's counsel, I am unable to conclude that the Officer's decision is reasonable. Two of the main grounds the Officer cited in support of the conclusion about the purpose of the visit are either tenuous (family ties) or completely unfounded (financial means). Moreover, while I accept that the Applicants' study plan is not particularly persuasive, they do provide some reasons as to why they want to come to Canada to finish high school and the Officer's reasons do not grapple with these.

[31] The Respondent's explanation for the refusal may point out why it is justifiable in light of the record; however, that is not the approach under reasonableness review according to *Vavilov*. Instead, reading the reasons as a whole, and in light of the record, the question is whether the outcome is *justified*, in light of the law and the facts and with regard to the submissions advanced by the parties. (*Vavilov* at para 86). In this case, the Respondent asks the Court to fill in too many blanks in the reasons.

[32] I agree with the Respondent that the crux of the Officer's decision is that the Applicants' study plan did not make sense. However, the Officer fails to respond to the Applicants' reasons for wanting to come to Canada, and this failure strikes at the heart of the decision. While the Officer does not need to deal with every argument advanced nor every piece of evidence submitted, they are required to explain their reasoning concerning matters that are central to the claim. I an unable to discern why the Officer rejected the Applicants' submissions about why they believed that coming to Canada was advantageous.

[33] The Respondent argued that the Officer found the key elements of their study plan to be too vague, and that there were other flaws in their applications: including that they did not explain why they chose North Star Academy, nor why they wanted to pursue university studies in Canada rather than Iran, and they did not indicate an intention to return to Iran at the end of their studies. All of these factors, according to the Respondent, are reflected in the record and thus implicitly underlie the Officer's conclusion. The difficulty with this is that it is not what the Officer's reasons say, nor is it evident from the Officer's notes.

[34] I find that this makes the entire decision unreasonable. A main reason for the refusal set out in the decision letters is that the Officer was not satisfied that the Applicants would leave Canada at the end of their stay, based on the purpose of their visit. The only purpose of their visit was to study in Canada. As the GCMS notes make clear, the Officer cast doubt over the authenticity of the Applicants' stated purpose, largely because the expense was not seen to be justified when a comparable program was available in Iran. The Applicants explained – albeit imperfectly and quite generally – why they thought finishing high school in Canada was important, because it would provide a better quality of education in an enriching environment, and would improve their chances of being admitted to a Canadian university. The Officer failed to engage with the Applicants' stated reason for their choice to finish high school in Canada.

[35] This Court has repeatedly confirmed that deference is owed to a Visa Officer's decisions, and in light of the volume of visa applications to be processed, an Officer's reasons do not need to be lengthy or detailed (*Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552 at para 13, cited with approval in *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at para

15). However, the reasons do need to set out the key elements of the Officer's line of analysis and be responsive to the core of the claimant's submissions on the most relevant points (*Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 17, cited with approval in *Motlagh v Canada (Citizenship and Immigration)*, 2022 FC 1098 at para 22). I find that the decision in this case falls short of that standard, and thus is not reasonable when measured against the *Vavilov* framework.

[36] For these reasons, the applications for judicial review are allowed. The matters are remitted for reconsideration by a different officer.

[37] There is no question of general importance for certification.

[38] A copy of this Judgment and Reasons will be placed in each file.

JUDGMENT in IMM-1427-22 and IMM-1428-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed, and the matter is remitted for reconsideration by another officer.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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