Federal Court Cour fédérale

Date: 20221206

Dockets: IMM-1101-22
IMM-1102-22

Citation: 2022 FC 1685

Ottawa, Ontario, December 6, 2022

PRESENT: Madam Justice Sadrehashemi

Docket: IMM-1101-22

BETWEEN:

SADA KHEZERLOUY AGHDAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-1102-22

AND BETWEEN:

SANAZ MOUSAVI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Sada Khezerlouy Aghdam ("the Minor Applicant") and Sanaz Mousavi (the Minor Applicant's mother) applied to come to Canada temporarily. The Minor Applicant applied for a study permit ("Study Permit") to study at a public, junior high school in Prince Edward Island [PEI] and his mother applied for a temporary resident visa ("Visitor Visa") to accompany her son. Both applications were refused by an Officer at the Immigration, Refugees and Citizenship Canada [IRCC] Case Processing Centre in Ottawa ("Officer").

[2] The Applicants challenge both of these decision in two separately-filed but related applications for judicial review. On June 23, 2022, this Court ordered that both judicial reviews, file IMM-1101-22 and file IMM-1102-22, be heard together on November 30, 2022.

[3] The parties agree that the Minor Applicant's mother's Visitor Visa refusal is wholly based on the Officer's decision to refuse the Minor Applicant's Study Permit. If I find that the Study Permit refusal is unreasonable, it follows that the Visitor Visa determination is also unreasonable.

[4] I agree with the Applicants that the Officer's determination with respect to the Applicants' economic resources is unreasonable. This finding is a key basis for refusing the Study Permit and therefore both applications need to be sent back to be redetermined.

[5] For the reasons below, I grant both judicial reviews.

II. Background

[6] The Applicants are citizens of Iran. The Minor Applicant is 12 years old. The Minor Applicant's mother is a physician and assistant professor of gynecology in Iran. Her husband is also a physician and an assistant professor. On January 26, 2022, the Minor Applicant applied for a study permit to attend a public school in Charlottetown, PEI. The application provided that he would live with his guardian, a family friend, in PEI for the duration of the school year. The Minor Applicant's mother filed a related Visitor Visa in order to accompany her son to Canada, help him get settled, and then return to Iran.

[7] From 2017 to February 2, 2022, the Minor Applicant and his mother held multi-entry visitor visas for Canada. The Minor Applicant's mother has previously traveled to Canada in 2018. At the time the Officer was considering these applications, she had an application for permanent residence under the PEI Provincial Nominee Program's business impact category in process.

[8] On February 2, 2022, the Officer refused the Study Permit and Visitor Visa applications because they were not satisfied that the Applicants would leave Canada at the end of their stay

given the purpose of their visit (*Immigration and Refugee Protection Regulations*, SOR/2002-227, s 216(1)). In the Officer's reasons, the principal basis for the refusal was limited to the following:

> The purpose of visit does not appear reasonable given the applicant's socio-economic situation. Based on the documentation on file in support of the parent's level of economic establishment and considering the purpose of the visit, I do not consider that the proposed studies in Canada is a reasonable or affordable expense.

III. Issue and Standard of Review

[9] The only issue on judicial review is whether the Officer's determination that they were not satisfied that the Applicants would leave Canada at the end of their period of authorization is reasonable. Both parties agree that the applicable standard of review is reasonableness. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

IV. Analysis

[10] The Officer's key finding was that, given the Applicants' "socio-economic situation," the proposed studies were not a "reasonable or affordable expense." In coming to this conclusion, the Officer does not engage with the evidence provided by the Applicants. The evidence before the Officer included: letters of employment for the Minor Applicant's parents; bank statements, including a lengthy history of transactions, from both parents showing a high levels of savings;

and proof of title deeds to multiple properties. The Minor Applicant's parents had already paid his first year tuition in full.

[11] It is unclear how the Officer came to the conclusion that because of the Applicants' "socio-economic situation" the program of study was not a "reasonable or affordable expense." There is no explanation for this finding given the evidence in the record. There needs to be a "rational chain of analysis" so that a person impacted by the decision can understand the basis for the determination (*Vavilov* at para 103; see also *Patel v Canada (Minister of Citizenship and Immigration)*, 2020 FC 77 at para 17; *Samra v Canada (Minister of Citizenship and Immigration)*, 2020 FC 157 at para 23; and *Rodriguez Martinez v Canada (Minister of Citizenship and Immigration)*, 2020 FC 293 at paras 13–14).

[12] The Respondent argues that the Officer's determination that the program of study was not a reasonable expense is based on their view that there were more affordable local options available. Leaving aside the Applicants' arguments on whether the Officer reasonably raised local options, the Officer's determination was, in any case, predicated on their view of the Applicants' "socio-economic situation." The Officer failed to explain what they meant by the Applicants' "socio-economic situation" or how their view of the evidence led them to the conclusion that the program of study was not "reasonable or affordable" for the Applicants.

[13] The applications for judicial review are granted. Neither party raised a question for certification and I agree that none arises.

JUDGMENT IN IMM-1101-22 AND IMM-1102-22

THIS COURT'S JUDGMENT is that:

1. The Study Permit and Visitor Visa decisions of IRCC dated February 2, 2022 are set aside;

2. The matters are sent back to be redetermined by a different decision-maker at IRCC;

3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-1101-22 AND IMM-1102-22
DOCKET:	IMM-1101-22
STYLE OF CAUSE:	SADA KHEZERLOUY AGHDAM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-1102-22
STYLE OF CAUSE:	SANAZ MOUSAVI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	NOVEMBER 30, 2022
JUDGMENT AND REASONS:	SADREHASHEMI J.
DATED:	DECEMBER 6, 2022

APPEARANCES:

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Samson Rapley	FOR THE RESPONDENT

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