Federal Court  Cour fédérale

Date: 20221208

Docket: IMM-2742-22

Citation: 2022 FC 1698

Ottawa, Ontario, December 8, 2022

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

MOHAMMAD ALMASI GILAVAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, a 20-year-old citizen of Iran, seeks judicial review of the decision of a visa officer [Officer] dated February 2, 2022 [Decision] refusing the Applicant's study permit application pursuant to subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] on the grounds that the Officer was not satisfied that he

would leave Canada at the end of his stay based on his family ties in Canada and in his country of residence, and on the purpose of his visit.

[2] For the reasons that follow, the application for judicial review is granted.

II. Background

[3] In September 2021, the Applicant was accepted into a two-year diploma program in Information Technology with Co-op, Software Development Concentration: Graphic and Web Development at the Institute of Technology Development of Canada Information Technology [the Program]. The Applicant previously earned a High School Diploma in Experimental Science at the Shohadaye Hasteie High School in 2020.

[4] In December 2021, the Applicant submitted an application for a study permit for the co-op portion of the Program. At that time, the Applicant had already commenced his studies remotely due to the COVID-19 pandemic.

[5] The application included a letter of motivation as well as documentation outlining the Applicant's family information and proof of funds. The estimated tuition for one academic year was reported to be $12,000.00 and the Applicant had prepaid the tuition fees in full. He also secured a scholarship in the amount of $8,150.00.

[6] On February 2, 2022, a decision letter was sent to the Applicant informing him the application was refused. The Officer's reasons are recorded in their Global Case Management System [GCMS] notes as follows:

> I have reviewed the application. I have considered the positive factors outlined by the applicant, including statements or other evidence. The applicant is 20, applying for an Information Technology with Co-op diploma at the Institute of Technology Development of Canada. No study plan provided, purpose is unclear. 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. Bank statement provided does not include a summary of transactions, therefore unable to confirm the provenance of the funds. Proof of IELTS or other proof of ESL not provided. According to documentation provided in the application, it appears the client has started their studies remotely in the fall of 2021. I note that the applicant has started their studies remotely at a Canadian DLI without obtaining a valid study permit. 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. 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.

III. Analysis

[7] A visa officer must issue a study permit to a foreign national if the criteria set out in subsection 216(1) of the IRPR are established. However, the onus is on the applicant to satisfy the visa officer that they meet the criteria, including that they will not remain in Canada once the study permit expires: IRPR, s 216(1)(b); *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 10 [*Solopova*]).

[8] The Applicant contends that the Decision does not comply with the requirements of procedural fairness and that it is unreasonable. I will deal with each issue in turn.

A. *Whether the Officer breached the duty of procedural fairness?*

[9] Breaches of procedural fairness have been considered on a correctness standard or subject to review "best reflected in the correctness standard, even though, strictly speaking, no standard of review is being applied": *Canadian Pacific Railway Company v Canada (Attorney General),* 2018 FCA 69 at para 54. The focus of the reviewing court is essentially, whether the procedure followed by the decision maker was fair having regard to all of the circumstances.

[10] The Applicant submits that the Officer breached the duty of procedural fairness in this case; however, the argument is vague and undeveloped. The Applicant claims that if the Officer had any credibility concerns because of the Applicant's age and lack of dependants, then the Officer had the duty to give the Applicant an opportunity to respond to those concerns. In not doing so, the Officer is said to have breached procedural fairness owed to the Applicant. I disagree.

[11] As was stated in *Solopova* at para 38:

> It is well established that a visa officer has no legal obligation to seek to clarify a deficient application, to reach out and make the applicant's case, to apprise an applicant of concerns relating to whether the requirements set out in the legislation have been met, or to provide the applicant with a running score at every step of the application process. […]

[12] The Applicant has failed to establish any unfairness on the part of the Officer. A visa officer has broad discretion to weigh the evidence submitted in making a decision. To arrive at his findings, the Officer was entitled to consider all of the factors — including the Applicant's ties to Iran — that could prompt him to stay or leave Canada at the end of his study permit.

[13] The Officer did not raise any credibility concerns in their GCMS notes, nor did the Officer base their decision on stereotypes or generalizations, as the Applicant suggests. While the Applicant may disagree with the Officer's findings, his arguments go to the reasonableness of the Decision and have nothing to do with procedural fairness.

B. *Whether the Officer's decision was reasonable?*

[14] The substance of a decision on a study permit application is reviewed on a reasonableness standard. A reasonable decision is one 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 (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 85). 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). A reasonable decision is justified in light of the facts and "the reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at para 126).

[15] The Applicant submits that the Decision is neither intelligible nor reasonable when read in conjunction with the evidence provided. Although I do not accept several of the Applicant's

arguments about the various deficiencies in the Decision, I find that the Officer's treatment of the Applicant's family ties to be unreasonable for essentially the same reasons as those stated by Madam Justice Vanessa Rochester in *Hasanalideh v Canada (Citizenship and Immigration)*, 2022 FC 1417.

[16] As noted earlier, the decision letter refers to two grounds for the refusal: 1) the Applicant's family ties in Canada and in his country of residence, and 2) the purpose of his visit.

[17] The refusal letter sets out a boilerplate statement that the Officer is not satisfied that the Applicant will leave Canada at the end of his stay "based on [his] family ties in Canada and in [his] country of residence." The Officer's GCMS notes, which form part of the Decision, are meant to explain the Officer's findings. However, no such explanation is offered on the record before me.

[18] While the Officer states that they considered the "positive factors" outlined by the Applicant, the factors are not identified anywhere in the Officer's notes and there is no indication how the Officer weighed them. In particular, there is no mention of the Applicant's family at all, despite the fact the Family Information Form submitted by the Applicant shows that he resides with his parents and two siblings in Iran. Moreover, there is no indication that the Applicant has any family or other close connections in Canada. Presumably, these factors would work in the Applicant's favour.

[19] The Respondent submits that a list of family members says nothing meaningful about the Applicant's ties to them and that it would have been simple for him to provide a few sentences on this topic. While that may be, the Officer does not express any view regarding the sufficiency of the Applicant's evidence relating to his family. Indeed, there is virtually no analysis of the Applicant's family ties element in the Officer's notes.

[20] If the Officer had any concerns about the Applicant's family ties in Iran, they should have stated this clearly, even with brief reasons, and so the Decision could be reviewed in a more meaningful way. As noted recently by Mr. Justice Nicholas McHaffie, "[e]ven where the obligation to give reasons is minimal, the Court cannot be left to speculate as to the reasons for a decision, or attempt to fill in those reasons on behalf of a decision-maker where they are not clear from the decision read in light of the record": *Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596 at para 17.

[21] I find that the Officer failed to provide justified, intelligible, and transparent reasons for concluding that the Applicant did not demonstrate sufficiently strong ties to Iran. This shortcoming in addressing one of only two main reasons given by the Officer was sufficiently central to render the entire Decision unreasonable and warrants referring the matter back for reconsideration.

[22] Given my conclusion above, it is unnecessary to address the Applicant's submissions regarding the other alleged errors in the Officer's assessment of his application. However, I wish to make clear that my decision should not be construed as endorsing the Applicant's position that

the Officer improperly relied on stereotypes or broad generalization when they observed that the Applicant is "single, mobile, […] and has no dependents." These are demonstrably correct statements about the Applicant and relevant to the issuance of a study permit. The fact that the Applicant is unattached and able to travel freely and easily is part of the constellation of factors that the Officer was required to consider in assessing a student visa application. As stated by Mr. Justice Donald Rennie in *Chhetri v Canada (Citizenship and Immigration),* 2011 FC 872 at para 14: "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."

[23] That said, this Court has repeatedly cautioned that an applicant's lack of a dependant spouse or children, without any further analysis, should not necessarily be considered a negative factor in assessing a study permit application (*Barril v The Minister of Citizenship and Immigration*, 2022 FC 400 [*Barril*] at para 20; see also *Seyedsalehi v Canada (Citizenship and Immigration)*, 2022 FC 1250 at para 11; *Onyeka v The Minister of Citizenship and Immigration*, 2009 FC 336 at para 48). Otherwise, this would disqualify many, if not most, students from being granted a study permit (*Barril* at para 20).

IV. Conclusion

[24] For the reasons above, the application for judicial review is allowed. The matter is referred back for reconsideration by a different visa officer.

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

JUDGMENT IN IMM-2742-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The matter is remitted to a different officer for reconsideration.

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

"Roger R. Lafrenière"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2742-22
STYLE OF CAUSE:	MOHAMMAD ALMASI GILAVAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	PETER A. ALLARD SCHOOL OF LAW UNIVERSITY OF BRITISH COLUMBIA VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	OCTOBER 31, 2022
JUDGMENT AND REASONS:	LAFRENIÈRE J.
DATED:	DECEMBER 8, 2022

APPEARANCES:

Samin Mortazavi	FOR THE APPLICANT
Philippe Alma	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Pax Law Corporation Vancouver, British Columbia	FOR THE APPLICANT
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT