Federal Court  Cour fédérale

Date: 20221215

Docket: IMM-3381-22

Citation: 2022 FC 1738

Ottawa, Ontario, December 15, 2022

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

MOHAMMADMATIN HASSANPOUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a visa officer [Officer] decision dated February 7, 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]. The Officer was not satisfied the Applicant would leave Canada at the end of his stay

based on (a) his family ties in Canada and in his country of residence and (b) the purpose of his visit.

[2] For the reasons that follow, I find the Decision to be unreasonable. The application is accordingly granted.

II. Background

[3] The Applicant is a citizen of Iran. In January 2022, he applied for a study permit to complete his Grade 12 education at Victoria International Education [VIE] with a start date of April 1, 2022 [the Program]. At the time of his application, the Applicant was 17 years old, single and had no dependants.

[4] The application includes a letter of motivation drafted by a representative of the Applicant, proof of means of financial support, a Family Information Form, and a custodianship declaration for minors studying in Canada. The letter of acceptance guarantee issued by VIE indicates that the estimated tuition fee for the Program is $15,000.00. The Applicant prepaid a tuition fee deposit of $8,825.00.

[5] The Officer's reasons for refusing the study permit application are set out 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 17, applying to study at the Victoria International Education - Uplands Campus. 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. Motivation to pursue studies in Canada does not seem reasonable given that a comparative course is offered in their home country for a fraction of the cost. 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. Proof of IELTS or other proof of ESL not provided. Recent education transcripts not provided. 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. Issues and Standard of Review

[6] The Applicant submits in his further memorandum of argument that there was a breach of procedural fairness by the Officer; however, the argument was not developed, nor pursued at the hearing.

[7] The standard of review for a visa officer's decision is reasonableness: *Hajiyeva v Canada (Citizenship and Immigration)*, 2020 FC 71 at para 4. The determinative issue in this case is whether the Officer's decision is reasonable within the framework of analysis set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[8] 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 (*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).

IV. Statutory Framework

[9] The Applicant must establish that they meet the requirements of the IRPR to be issued a study permit. Paragraph 216(1)(b) of the IRPR requires a study permit applicant to establish that they will leave Canada by the end of the period authorized for their stay. It is well accepted that an applicant for a study permit bears the burden of satisfying the visa officer that he or she will not remain in Canada once the visa has expired: *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 10.

[10] Visa officers have a wide discretion in their assessment of the application and the Court ought to provide considerable deference to an officer's decision given the level of expertise they bring to these matters: *Nimely v Canada (Citizenship and Immigration)*, 2020 FC 282 at para 7.

V. Analysis

[11] The Officer bases their refusal on various grounds: (a) the Applicant's family ties in Canada and Iran; (b) the purpose of the visit; (c) the availability of local educational options in Iran at a lower cost; (d) the Applicant's socio-economic situation; (e) the Applicant's failure to provide proof of IELTS or other proof of ESL; (f) the Applicant's failure to provide recent

education transcripts; and (g) the overall conclusion that the Applicant would not leave Canada at the end of his authorized stay.

[12] The Applicant submits that the Decision does not meet the hallmarks of reasonableness: justification, transparency, and intelligibility. The Applicant's main arguments are that the Officer based their decision on stereotypes or broad generalizations, the Officer used bald statements to reverse-engineer a refusal, there is a deficiency of evidence to support the Officer's findings, and the Officer failed to meaningfully grapple with the positive aspects of the application, which point to an opposite conclusion.

[13] While I do not agree with all of the arguments raised by the Applicant, I find that the reasons provided by the Officer lack justification and transparency and therefore do not meet the *Vavilov* framework of reasonableness.

[14] I preface my analysis by noting that several of the Applicant's arguments do not directly challenge the Officer's reasoning, but instead criticize the Officer due to the brevity of the Decision and their failure to elaborate on various points or address certain evidence. By way of example, the Applicant argues that the Officer states the Applicant is "not well established" without providing an explanation of what constitutes "establishment," or the Officer's refusal is based on the availability of local alternatives without naming specific local alternatives, which they allege makes the decision unreasonable.

[15] In assessing the reasonableness of a decision, the reviewing court must bear in mind that perfection is not the applicable standard, nor is it the task of the court to reweigh and reassess the evidence before the decision maker: *Vavilov* at para 125. Moreover, "not every flaw or shortcoming in a decision will render the decision as a whole unreasonable": *Metallo v Canada (Citizenship and Immigration)*, 2021 FC 575 at para 26.

A. *The Applicant's family ties and establishment in Iran*

[16] The Applicant challenges the Officer's Decision to refuse the application based on the Applicant's "family ties in Canada" and in his country of residence, arguing that the Officer does not elaborate on this reasoning in their GCMS notes. The Applicant submits the Officer does not address contradictory evidence showing that the Applicant has strong family ties in Iran and no apparent family ties in Canada.

[17] Although I am not persuaded that the evidence before the Officer demonstrates that the Applicant's ties to his family are strong, as asserted by the Applicant, I find that the Officer's failure to even mention the fact that the Applicant has parents and a sibling in Iran to be problematic. As I recently stated in *Gilavan v Canada (Citizenship and Immigration)*, 2022 FC 1698 [*Gilavan*] at para 20:

> [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 […]

[18] The Applicant next argues that the Officer made a bald statement that the Applicant was "not well established" to reverse engineer a refusal. He argues it is unclear what the term means

or how the Officer reached this conclusion. Ironically, despite arguing that the phrase “not well established” is unclear, the Applicant proceeds to argue that he is well established.

[19] The Applicant argues that the Officer wrongly stereotyped the Applicant based on his statement that the Applicant is single, mobile and has no dependants. I disagree. These are demonstrably true facts and relevant personal factors that could be considered by the Officer as part of the overall analysis, as they contribute towards showing the Applicant’s establishment, or lack thereof, in Iran. As was 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.”

[20] However, this Court has repeatedly recognized that an applicant’s lack of a dependent spouse or children, without any further analysis, should not be considered a negative factor on a study permit application. Otherwise, this would preclude many students from being eligible: *Onyeka v Canada (Citizenship and Immigration)*, 2009 FC 336 at para 48; *Obot v Canada (Citizenship and Immigration)*, 2012 FC 208 at para 20; *Iyiola v Canada (Citizenship and Immigration)*, 2020 FC 324 at para 20.

[21] There was evidence before the Officer that the Applicant has two parents and one sibling who reside in Iran who will not be accompanying him, and that he is dependent on his parents for financial and economic support. In light of this evidence, albeit scant, it was incumbent on the Officer to explain on what basis they drew a negative inference from the Applicant’s family

ties in Iran. This shortcoming was sufficiently central to render the entire Decision unreasonable and warrants referring the matter back for reconsideration.

[22] While this finding is determinative of the application, there are other arguments advanced by the Applicant on which I will comment.

B. *The availability of similar programs at lower cost*

[23] The Applicant argues that the Officer erred by considering the availability of equivalent local programs for less cost. The Applicant submits it is his choice to decide how much he wants to invest in his education to better his life. He points out that many international students are willing to pay exorbitant fees to attend higher-ranked educational institutions, even though there may be local options available for similar studies.

[24] While that may be, it remains that it was open to the Officer to consider the availability of local alternatives for lesser cost when assessing the study permit application. Although this fact will not necessarily be determinative, it is simply another factor to be considered by a visa officer in assessing an applicant's motives for applying for a study permit: *Zuo v Canada (Citizenship and Immigration)*, 2007 FC 88 at para 23.

[25] The Applicant also argues that the Officer's Decision was unreasonable because they did not specifically list the local alternatives. I am not satisfied that the Officer was required to do so in the particular circumstances of this case. In so concluding, I adopt the reasoning of Mr. Justice William Pentney in *Soltaninejad v Canada (Citizenship and Immigration)*, 2022 FC 1343 at

paras 14-15, which involved a similar fact situation. Justice Pentney concluded that it was not a reversible error for the officer to fail to list Grade 12 programs in Iran.

C. *Fettering of discretion*

[26] In the GCMS notes, the Officer states: “Proof of IELTS or other proof of ESL not provided.” IELTS is an English language test for study, migration or work. ESL is the acronym for English as a Second Language.

[27] The Applicant submits that the legislation does not require the Applicant to submit proof of language scores or previous education transcripts to meet the requirements of paragraph 216(1)(e) of the IRPR. He claims that the Officer fettered their discretion when they required such proof. The Applicant contends it is clear that VIE is confident that the Applicant’s previous education and grades are sufficient, and he is able to handle the English-language course load, otherwise VIE would not have admitted him. I disagree.

[28] This Court has consistently held that it is open to a visa officer to assess an applicant’s ability to complete their studies as part of the determination process. This assessment can include evaluating whether an applicant has sufficient English-language skills or academic ability to complete their chosen program of study.

[29] Moreover, subsection 216(1) of the IRPR is not the sole source of requirements that an individual applying to study in Canada must comply with to receive a study permit. Applicants must also comply with all relevant policies, guidelines, and directions. In this case, a country-

specific document checklist was created by the Ankara Visa Office (IMM-5816) to guide applicants in Iran who wished to apply for a study permit. It should be noted that this particular policy was not raised in argument or considered by the Court in *Gilavan*.

[30] While IMM-5816 states that prospective applicants from Iran must include the listed documentation, including proof of English language ability and their educational history as part of their application, on a practical level, an applicant's failure to provide all the documents listed will not result in an automatic dismissal of an application. The officer has the discretion to ignore the requirement, reach out to the applicant to request they provide the missing documents, or negatively weigh the failure to provide the documentation when assessing the application.

[31] The onus was on the Applicant to put his best foot forward by providing all relevant supporting documentation and sufficient credible evidence in support of his application. The onus did not shift to the Officer to interview the Applicant or take other steps to satisfy their concerns arising from the documents he did not furnish.

D. *The Applicant's compliance with Canadian law*

[32] The Applicant's final argument is that, in concluding they were "not satisfied that the applicant will depart Canada at the end of the period authorized for their stay," the Officer found without evidence that the Applicant could not be trusted to comply with Canadian law. I disagree. The Applicant does not cite any portion of the Refusal letter or GCMS notes where the Officer is alleged to have reached such a conclusion.

[33] There is a difference between the Applicant failing to provide evidence sufficient to meet their burden and an Officer making an unjustified negative conclusion about the Applicant's trustworthiness.

[34] It was the Applicant's duty to present a convincing case with evidence and demonstrate to the Officer that he will comply with the legislative requirements. The Applicant does not benefit from the presumption of being a *bona fide* student. The onus is on him to demonstrate through evidence that he would leave Canada by the end of the period authorized for his stay.

VI. Conclusion

[35] I find that the Decision lacks a coherent chain of analysis or explanation linking the information submitted by the Applicant about his family ties to Iran to the Officer's conclusion that he would not leave Canada at the end of his stay. In short, the Officer failed to properly engage with the evidence before them. As a result, the application is granted and the Decision is referred back for redetermination.

[36] The letter of acceptance guarantee issued by VIE states that the letter expires one month after the start date of the Program. At the hearing, the parties were invited to make submissions on the utility of referring the matter for redetermination since the guarantee offered by VIE expired on May 1, 2022, but declined to do so. In my view, the Applicant should be allowed to update his information to provide for a meaningful review. However, I will leave it to the parties to determine how best to proceed.

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

JUDGMENT IN IMM-3381-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The matter is referred back for redetermination by a different visa officer.

3. No question of general importance is certified.

"Roger R. Lafrenière"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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