

Federal Court



Cour fédérale

Date: 20230104

Docket: IMM-7576-21

Citation: 2023 FC 17

Ottawa, Ontario, January 4, 2023

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

ZEYNAB KHANSARI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms Zeynab Khansari is an Iranian citizen. She applies under section 72 of the *Immigration and Refugee Protection Act* SC 2001, c 27 [IRPA] for judicial review of the October 6, 2021 decision of a visa officer [Officer] rejecting her application for a student permit.

[2] For the reasons set out below, I am persuaded the decision is unreasonable. The Application is granted.

II. Background

[3] The Applicant was accepted to undertake studies toward a post-degree diploma in Business Administration in April 2020 at Langara College in Vancouver. The Applicant reports that it is her intent to pursue an English as a Second Language [ESL] course followed by the two-year diploma program at Langara College.

[4] The Applicant's application for a study permit was refused in August 2020. The visa officer was not satisfied the Applicant would leave Canada at the conclusion of her stay, citing the Applicant's family ties in Canada and Iran, travel history and the purpose of the visit. An application for leave and for judicial review of the negative decision was successful on consent and the matter was remitted for reconsideration.

[5] In the reconsideration process, the Applicant was asked to file an original letter of acceptance from Langara College, proof of funds and proof of tuition paid. Langara College issued an updated acceptance letter to the Applicant and the requested documents were uploaded.

III. Decision under review

[6] On reconsideration, the application was again refused. As in the initial decision, the Officer concluded the Applicant failed to establish she would leave Canada at the end of her

stay, once again citing the Applicant's family ties in Canada and Iran, the purpose of her visit, her travel history, as well as her personal assets and financial status.

[7] The Officer's Global Case Management System [GCMS] notes serve as reasons. They are brief and for ease of reference I have reproduced them in full:

I have reviewed the application for redetermination. In my review of the application I have noted the applicant (PA) applied for a SP on 2020/05/25 and the application was refused based on purpose of visit, family ties and travel history on 2020/08/18. After re-opening the application, PA was given 30 days to provide any documentation to address the concerns based on the original refusal grounds: R216(1) - Purpose of visit, travel history and family ties. I have considered the positive factors outlined by the applicant, including tuition fees paid, statements or other evidence, however, I have given less weight to the positive factors, for the following reasons: Client is coming for ESL followed by two year post degree diploma in Business Admin. Client has a Bachelor in Business management and Masters in psychology. Applicant also has extensive experience in management. Considering applicant's education and work experience, I am not satisfied that applicant would not have already achieved the benefits of this program. In light of the PA's previous study and current career, I am not satisfied that this is a reasonable progression of studies. PA will be accompany by two dependent child. Although PA's spouse remains in home country, it would appear, with accompanying dependent children, that the PA has more ties to Canada than home. Although the tuition has been paid, the applicant's family does not appear to be sufficiently well established that the proposed studies would be a reasonable expense. The bank statement provided consists of a variety of lumps sums deposited within a six month timeframe of the PA potential travel/international education. I am not satisfied the PA has sufficient funds for the intended purpose. I have noted that the applicant has some travel history. However the travel history is insufficient to build a track record of international travel that would count as a positive in my assessment. In view of the foregoing reasons, I consider that the incentive to remain in Canada may outweigh the applicant's ties to their country of residence. For this reason, 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.

IV. Issues and Standard of Review

[8] The Applicant argues the decision is unreasonable, that there was a breach of fairness and that the Officer acted in bad faith. I am of the view that the bad faith argument is best considered in addressing the fairness issue. I have framed the issues raised as follows:

- A. Is the Officer's decision unreasonable?
- B. Was there a breach of procedural fairness?

[9] The refusal of the study permit on the basis that the Officer was not satisfied the Applicant would leave Canada is to be reviewed against the standard of reasonableness (*Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 11; *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at para 14 [*Ocran*]; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 [*Vavilov*]).

[10] Although a visa officer's reasons need not be exhaustive, to be reasonable the decision must be supported by an internally coherent and rational chain of analysis that is justified in light of both the facts and the applicable law. The "hallmarks of reasonableness – justification transparency and intelligibility" must be reflected in the decision (*Vavilov* at paras 85, 99).

[11] In considering the issue of fairness, a reviewing court must ask whether the procedure was fair having regard to all of the circumstances. The focus is on the nature of the rights involved and the consequences for the affected parties. Ultimately, a reviewing court must consider whether a party knew the case to be met and had a full and fair chance to respond.

While strictly speaking no standard of review is applied, the correctness standard best reflects the Court's review role in this context (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56).

V. Analysis

A. *Was the decision reasonable?*

(1) Position of the parties

[12] The Applicant submits the Officer erred by:

- A. Ignoring her ties to Iran and finding, without explanation, that she is not well established in Iran. She submits her husband, parents and five siblings reside in the country, along with extended family, friends and in-laws. The Applicant also has strong professional ties to Iran, as she owns a real estate brokerage and business with her husband. By contrast, the Applicant has no family, economic or professional ties to Canada.
- B. Concluding that she has already achieved the benefits of the proposed program of study. The Langara College program is a “post-degree diploma,” which suggests a higher educational level than the Applicant’s Business degree. She submits her Master’s degree is in an unrelated field and her employment experience is unrelated to the proposed program of study. The Applicant provided evidence that she intends to pursue this program because she and her husband want to expand their business activities in Iran.

- C. Expressing dissatisfaction with the sufficiency of funds to support her studies. The Applicant submits she provided a number of financial documents demonstrating sufficient funds. The Officer did not explain why this documentation was insufficient and ignored that she has paid her first-year tuition fees. The Applicant further submits the Officer erred in reaching the subjective finding that the proposed studies would not be a reasonable expense.
- D. Drawing a negative inference based on the Applicant's limited travel history.

[13] The Respondent submits the Applicant is effectively asking that the Court reweigh the evidence. The Respondent argues the Officer reasonably concluded:

- A. The Langara College program would not be of benefit to the Applicant because of her prior education and work history.
- B. The Applicant would have stronger ties to Canada than Iran because she would be accompanied by her two children.
- C. The proposed studies would not be a reasonable expense based on the family's level of establishment in Iran, and the Applicant has not demonstrated sufficient funds to undertake the proposed studies based on unexplained lump sum deposits to the Applicant's accounts.

[14] The Respondent acknowledges the Officer erred by listing the Applicant's travel history as a reason for refusal but submits this error does not render the entire decision unreasonable.

(2) The Officer's decision is unreasonable

[15] Although a visa officer's decision need not be lengthy or detailed to be reasonable, it must, as noted above, acknowledge and address key evidence and demonstrate a logical chain of analysis in support of the findings reached. The GCMS notes fall short of this threshold.

[16] First, the GCMS notes incorrectly state the Applicant was given the opportunity to provide documentation to address the concerns that were the grounds for the original refusal – the purpose of her visit, her travel history and her family ties. The letter sent to the Applicant only asked her to provide a limited set of documents: her proof of acceptance to an educational institution, proof of funds, and proof that her first year of tuition was paid. Although I find no fault with the Officer having limited the Applicant's opportunity to submit new evidence, the Officer was obviously mistaken about what new evidence had been requested and submitted by the Applicant. This raises the question of whether the Officer overlooked or misapprehended evidence. While this error alone does not warrant the court's intervention, it is one of many errors that taken together have convinced me that the Officer's decision is unreasonable.

[17] In addressing the Applicant's family ties, the Officer concluded "[a]lthough PA's spouse remains in home country, it would appear, with accompanying dependent children, that the PA has more ties to Canada than home." This conclusion is reached without reference to the Applicant's evidence that in addition to her husband, her parents and five siblings remain in Iran and that she has significant financial and property ties to Iran.

[18] I do not take issue with the Respondent's view that it was appropriate for the Officer to consider that the Applicant's two children would accompany her to Canada when assessing the strength of ties to Canada as opposed to the Applicant's home country. However, where there are significant family ties in Canada and the home country, this Court has recognized that the absence of a transparent and intelligible analysis to support a finding of "more ties to Canada than home" allows a court to conclude that the finding is unreasonable (*Balepo v Canada (Citizenship and Immigration)* 2016 FC 268 at para 16).

[19] The Officer's conclusions that the Applicant had not demonstrated sufficient funds for the purpose of the visit, and that the proposed studies would not be a reasonable expense based on her establishment in Iran, appear to be based on concerns that the Applicant's bank statements show a variety of recent lump sum deposits. The Applicant explained a number of these lump sum deposits but the Officer did not refer to the explanations provided. The Respondent argues that not all of the lump sum deposits were addressed in the Applicant's submissions and that, in the absence of an explanation for each of the deposits, the Officer's finding was reasonable. I disagree. It was for the Officer, not the Respondent, to explain why the lump sum deposits remained a concern in light of the Applicant's explanations.

[20] It is not disputed that the Officer's refusal on the grounds of travel history was also an error as the Applicant's limited travel history was at worst a neutral factor (*Ocran* at paras 47–48).

[21] The Officer's findings relating to the Applicant's financial circumstances, ties to Iran versus Canada and travel history are fundamental elements of the overall decision. Having concluded the Officer's findings in each of these areas is unreasonable and noting the misapprehension of the nature of submissions requested and received during the reconsideration, I am satisfied that intervention is warranted.

VI. No breach of procedural fairness

[22] Having concluded the decision is unreasonable, I will only briefly address the issue of fairness.

[23] The Applicant argues the Officer failed to reconsider the study permit application but instead reconsidered the refusal decision and failed to view or recognize that the original decision had been quashed. I am not convinced that this is the case.

[24] In the GCMS notes, the Officer acknowledges the history of the study permit application and the notes commence by stating, "I have reviewed the application for redetermination." The Officer clearly understood that what was being redetermined was the original application.

[25] In undertaking the redetermination, the Officer was not prevented from providing the Applicant with the opportunity to submit additional documentation. In doing so, there is nothing in the record to suggest the Officer acted in bad faith or that the process was unfair. The Officer's incorrect statement in the GCMS notes relating to the extent of the further submissions

requested and received does not raise an issue of fairness, but instead has been considered as part of my reasonableness analysis above.

[26] The Applicant also seeks costs in this matter arguing that special reasons exist as required by Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22.

[27] The Applicant acknowledges that the “special reasons” threshold is high and relies principally on the Officer’s alleged bad faith to support its position. The Applicant has not demonstrated bad faith in the decision-making nor any other special reason for departing from the general rule that costs are not to be awarded in immigrations matters.

VII. Conclusion

[28] I am satisfied the Applicant has demonstrated serious shortcomings in the Officer’s decision for the reasons set out above. The Application is therefore granted.

[29] The parties have not identified a question of general importance for certification, and I am satisfied none arises.

[30] There shall be no award of costs.

JUDGMENT IN IMM-7576-21

THIS COURT'S JUDGMENT is that:

1. The Application is granted.
2. The matter is returned for redetermination by a different decision maker.
3. No question is certified.
4. No costs.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7576-21

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