Federal Court  Cour fédérale

Date: 20230303

Docket: IMM-3437-22

Citation: 2023 FC 294

Ottawa, Ontario, March 3, 2023

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

TABASOM MOHAMMADAGHAEI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Tabasom Mohammadaghaei (the "Applicant") seeks judicial review, pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], of a decision (the "decision") of an immigration officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC"), dated February 11, 2022 by which the Officer refused her entry to Canada on a study permit. The Officer was not satisfied the Applicant would leave Canada at the end of her

stay, as set out in section 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[2] The Applicant challenges the decision on the grounds that the Officer's decision was unreasonable, the reasons are inadequate and there was a breach of procedural fairness.

[3] For the reasons that follow, I grant the application for judicial review.

II. Facts

[4] The Applicant is an 18-year-old female citizen of Iran who sought a study permit to advance her education in Canada by pursuing Grade 12 studies as a full-time student at the William Academy (the "Academy" or "School"), a private school in Cobourg, Ontario.

[5] This is the Applicant's second attempt at obtaining a permit to study in Canada. Her first attempt, on December 2, 2021, was refused by letter dated December 13, 2021. This first refusal was based on the purpose of her visit and lack of travel history. Despite this refusal, the Applicant enrolled as a full-time student at the Academy in January 2022, studying online (grade 12 advanced functions and English Second Language). She is required, however, to be physically present at the School, at some point, to complete her high school qualification.

[6] The Applicant received a conditional letter of acceptance from the School on August 16, 2021 and an official letter of acceptance on November 8, 2021 for the January 2022 to December 2022 school year. The conditional acceptance letter indicates that the tuition for the academic

year is $23,250.00 CAD, and that the Applicant was awarded an Entrance Scholarship of $10,000 CAD. The official letter of acceptance confirms that the Applicant paid $10,100 CAD in fees, which would leave a balance owing of $3,150 CAD after credit for the scholarship and amounts paid.

[7] The Applicant's parents will not be accompanying her to Canada. The Applicant will be residing in a student dormitory on campus. Because the Applicant was under 17 years of age when she applied, a custodian (Ping Lu) was appointed for her, during her stay in Canada. The Applicant does not appear to have any ties to Canada and her lack of travel history stems from the fact that, according to her counsel, "[s]he is too young to accumulate a significant travel record on her own". The Applicant says she has a "very large extended family" in Iran. This statement, however, is unsupported by the evidence, her parents being the only two family members mentioned in the application record.

[8] The Applicant's parents are sponsoring her education in Canada and have signed an undertaking to pay all her expenses. The Applicant's mother, Ms. Azita Mohammadiroudbari, has the equivalent of $30,457 CAD in her bank account. No bank account statement was provided for the Applicant's father, Shahram Mohammadaghaee. He has been employed on a contractual basis as an accountant at a hospital in Iran since 2002 and receives a monthly salary of 200,023,452 RLS, which is equivalent to approximately $6,400 CAD or $76,000/year CAD). The Applicant's parents have set aside $28,000 CAD for the cost of her studies in Canada. Evidence of other assets owned by the Applicant's mother include a title deed for an apartment unit in Tehran and another apartment in Babol, Iran. The Applicant's father owns 100 shares of a

residential apartment in Tehran, purchased in June 2020. There is no evidence of the current value of these shares.

[9] This application for judicial review relates to the second study permit refusal, dated February 11, 2022.

III. Decision under Review

[10] The Applicant's refusal letter is brief. It contains, among others, the following observation: "[…] I am not satisfied you will leave Canada […] based on your family ties in Canada […]". The Officer's Global Case Management System (GCMS) notes are detailed and are set out below:

> "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 William Academy. Proof of IELTS or other proof of ESL not provided. Recent education transcripts not provided. 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. Applicant provided a confirmation of enrollment indicating the start of their Canadian studies virtually prior obtaining the proper documentation. No study permit or AIP letter previously issued to grant them authorization to start their international studies. 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".

IV. Relevant Provisions

[11] The relevant statutory and regulatory provisions are sections 30(1) and 30 (1.1) of the *IRPA* and section 216(1) of the *IRPR*. They are reproduced as follows:

***Immigration and Refugee Protection Act*, SC 2001, c 27**	***Loi sur l'immigration et la protection des réfugiés*, LC 2001, c 27**
Work and Study in Canada	**Études et emploi**
30 (1) A foreign national may not work or study in Canada unless authorized to do so under this Act.	**30 (1)** L'étranger ne peut exercer un emploi au Canada ou y étudier que sous le régime de la présente loi.
Authorization	**Autorisation**
(1.1) An officer may, on application, authorize a foreign national to work or study in Canada if the foreign national meets the conditions set out in the regulations	**(1.1)** L'agent peut, sur demande, autoriser l'étranger qui satisfait aux conditions réglementaires à exercer un emploi au Canada ou à y étudier.
***Immigration and Refugee Protection Regulations*, SOR/2002-227**	***Règlement sur l'immigration et la protection des réfugiés*, DORS/2002-227**
Study Permits	**Permit d'études**
216 (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national:	**216 (1)** Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

(a) applied for it in accordance with this Part;	**a)** l'étranger a demandé un permis d'études conformément à la présente partie;
(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	**b)** il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;
(c) meets the requirements of this Part;	**c)** il remplit les exigences prévues à la présente partie;
(d) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and	**d)** s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);
(e) has been accepted to undertake a program of study at a designated learning institution.	**e)** il a été admis à un programme d'études par un établissement d'enseignement désigné.

V. Issues and Standard of Review

[12] The Applicant essentially raises two issues. The first is whether the Officer's decision meets the hallmarks of reasonableness; namely, whether it is intelligible, transparent and justified. The second issue is whether the Officer breached procedural fairness.

[13] The presumptive standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], at para 23). None of the exceptions to the presumptive standard apply in the circumstances (*Vavilov*, at paras 17 and 25). Therefore the question is whether the Officer's reasoning and the outcome of the decision, were based on an inherently coherent and rational analysis that is justified in light of legal and factual constraints

(*Vavilov* at para 85). Reviewing courts must bear in mind the principle that the exercise of public power must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to it (*Vavilov* at para 95). To set aside a decision, a reviewing court must be convinced that there are sufficiently serious shortcomings in the decision, such that any superficial or peripheral flaw will not suffice to overturn the decision (*Vavilov* at para 100). Importantly, a reviewing court must consider the decision as a whole, and must refrain from conducting a line-by-line search for error (*Vavilov* at paras 85 and 102).

[14] With respect to procedural fairness, the parties agree that on judicial review, the standard of review is correctness. The question to be determined is whether the process and procedures adopted met the level of fairness required, in all of the circumstances; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 517 at para 5, citing *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at paras 33–56; *Elson v Canada (Attorney General)*, 2019 FCA 27 at para 31.

VI. Submissions of the Parties

[15] The Applicant contends that the Officer's decision lacks intelligibility as it is based upon inferences, unsupported by the evidence. According to the Applicant, this error applies with equal force to the reasonableness of her proposed studies, the purpose of the visit and the Officer's conclusion regarding her lack of ties to Iran. With respect to procedural fairness, the Applicant contends the Officer denied her a meaningful opportunity to respond before he made a final decision regarding her application.

[16] The Respondent contends the Officer's decision was reasonable in that it was "based on an internally coherent and rational chain of analysis" that was justified in relation to the facts and relevant law (citing *Vavilov*, at paras 10, 85 and 99; *Lingepo v Canada (Citizenship and Immigration)*, 2022 FC 511 at para 13; and, *Musasiwa v Canada (Citizenship and Immigration)*, 2021 FC 617 at para 22). The Minister observes that officers have a wide discretion in their assessment of the evidence. He says that the Court ought to provide officer's with "considerable deference" given their expertise.

[17] With respect to procedural fairness, the Respondent contends that there was no breach. The Minister asserts that the Applicant simply failed to discharge the burden placed upon her. This does not result in any duty to advise her of shortcomings in her application.

VII. Analysis

Is the decision under review intelligible, transparent and justified?

[18] Unfortunately, the Officer's reasons demonstrate he considered matters irrelevant to the issue before him, and, that he made at least one serious factual error, which may have affected the result. I consider the accumulation of these errors renders the decision unintelligible and unjustified.

[19] The Officer considers that the Applicant's status as a single, mobile young woman and lacking dependants, to be negative factors. I ask rhetorically, what 17 or 18 year old student would not be single? What 17 or 18 year old student would have dependants? And finally, what

17 or 18 year old would not be relatively mobile? Those characteristics, we hope, are some of the advantages of youth. They are also, we expect, characteristics of many who wish to study in Canada. While those factors may have some influence upon one's desire to remain in Canada, they may with equal force, militate in favour of a desire to return to one's homeland or visit some other destination. Being single, mobile and lacking dependants makes many things possible – not just remaining, contrary to the law, in Canada. While I am hesitant to say this negative observation is entirely irrelevant, it should at least have been tempered by the observation that the Applicant shares those characteristics with hundreds, or even thousands, of other applicants. Given the huge numbers of study permit applicants who share those characteristics, one would expect some explanation as to why such characteristics render this Applicant more likely to violate Canadian law.

[20] The Officer also considers negatively the fact that the Applicant did not obtain a study permit prior to commencing her online courses. I know of no Canadian law which requires foreign nationals studying online, from their home country, or any other place for that matter, to acquire a Canadian temporary resident visa before commencing such studies. This consideration by the Officer was, with respect, irrelevant.

[21] The Officer also considers negatively the fact the Applicant did not provide proof of English Second Language testing in the form of the standardized International English Language Testing System (IELTS) or some other recognized testing method. English language testing was not a requirement of the School. In fact, the School specifically stated that testing would be carried out upon arrival in Canada. Importantly, the online courses currently being taken by the

Applicant include English language training. Given the requirements of the School and the lack of any legislation or regulation in Canada requiring proof of ESL testing prior to commencing studies in Canada, I consider the Officer's observation in this regard to be irrelevant.

[22] The Officer concludes the proposed course of study is unreasonable given the Applicant's socio-economic situation. The Applicant appears to be an only child. There is no mention of any siblings in her application. Her parents are both gainfully employed. Her parents demonstrated sufficient savings to finance this one year of education abroad. The Applicant obtained a $10,000 scholarship, which financed nearly one-half of her tuition. These factors lead me to question the intelligibility of the Officer's conclusion that a year of study in Canada is not reasonable from a socio-economic perspective.

[23] In the refusal letter, the Officer states, based upon the Applicant's family ties in Canada that he is not satisfied she will leave Canada at the end of her stay. There is no evidence the Applicant has family in Canada. The observation by the Officer appears to be a clear factual error – or worse – the Officer may be confusing this Applicant with another who has family ties in Canada.

[24] As I consider the observations set out in paragraphs 19 to 23 above, I am unable to conclude the Officer's decision is justified and intelligible. While it may be transparent, in that the Officer clearly states why he refuses the application, the reasons lack justification and intelligibility.

VIII. Conclusion

[25] I grant the application for judicial review and refer the matter to a different Officer for re-determination. Neither party proposed a question for certification for consideration by the Federal Court of Appeal and none appears from the record.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is allowed. The matter is remitted to a different officer for redetermination.

2. As the present matter raises no serious question of general application, and none was proposed by either party, there is no question for certification for the Federal Court of Appeal.

3. All without costs.

"B. Richard Bell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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