Federal Court  Cour fédérale

Date: 20230426

Docket: IMM-6385-21

Citation: 2023 FC 606

Ottawa, Ontario, April 26, 2023

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

ALI ASGHARI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Ali Asghari [Applicant] seeks judicial review of a visa officer's [Officer] August 30, 2021 decision refusing his application for a study permit [Decision]. The Officer was not satisfied that he met the requirements under subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*], based on his personal assets and financial status, family ties in Canada and Iran, and purpose of visit.

[2] The Decision was unreasonable. The application for judicial review is allowed.

II. Background

[3] The Applicant is a 33-year-old married citizen of Iran with no dependants. In 2012, the Applicant obtained a Bachelor of Civil Engineering at Shomal University. In 2014, he obtained a Master of Civil Engineering at Semnan University.

[4] In 2018, the Applicant incorporated Ejaz Sakhte Datis [Company] in Iran, where he serves full-time as Managing Director. Since December 2020, the Applicant has also been employed part-time as a Site Manager with Fares Technology Kish Company [FTKC] in Iran. The Applicant secured an Offer of Continued Employment with FKTC following the completion of his proposed studies.

[5] On July 30, 2021, the Applicant was admitted to the University of New Brunswick [UNB] to complete a two-year Master of Business Administration. The estimated tuition fee for each academic year is $32,000, and annual living expenses are estimated at $23,000.

[6] On or about August 7, 2021, the Applicant applied for a study permit. The Applicant's spouse submitted an open work permit application in order to accompany the Applicant to Canada.

III. The Decision

[7] The Officer refused the Applicant's study permit application, having not been satisfied that the Applicant would leave Canada at the end of their stay based on his personal assets and financial status, family ties in Canada and Iran, and the purpose of his visit.

[8] The Officer's Global Case Management System notes, which form part of the reasons for the Decision, are reproduced in their entirety below:

> I have reviewed the application. Taking the applicant's plan of studies into account, the documentation provided in support of the applicant's financial situation does not demonstrate that funds would be sufficient or available. I am not satisfied that the proposed studies would be a reasonable expense. I am not satisfied that the applicant would leave Canada at the end of their stay as a temporary resident, I note that: -the client is married or has dependents or states to have close family ties in their home country, but is not sufficiently established. PA will be accompanied by spouse. The ties to their home country are weaken with the intended travel to Canada involving their immediate family, as the motivation to return will diminish with the applicant's immediate family members residing with them in Canada. The study plan does not appear reasonable given the applicant's employment and education history. I note that: -the client's previous studies were in an unrelated field -the client has previous studies at a same academic level than the proposed studies in Canada Considering applicant's education and previous work experience in the same field, 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. Applicant had initially applied to a program and was refused. In current application PA applied to a different program and/or different institution. Educational goals in Canada are not consistent from one application to another with no explanation provided. Chosen program at such expense appears illogical or redundant in light of the PA's reported scholarly history. On balance, the PA has failed to satisfy me that the course of study is reasonable given the high cost of international study in Canada when weighed against the potential career/employment benefits, the local options available for similar studies, and the PA's personal circumstances. 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. Issues and Standard of Review

[9] After reviewing the submissions of the parties, the issues are best characterized as:

1. Was the Decision reasonable?
2. Was there a breach of procedural fairness?

[10] The Applicant submits that the merits of an administrative decision attracts a reasonableness standard of review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]). The Applicant also submits that breaches of procedural fairness attract either a standard akin to correctness or have no standard of review (*Mission Institution v Khela*, 2014 SCC 24 at para 79 [*Khela*]; *Canadian Pacific Railway Company v Canada (AG)*, 2018 FCA 69 at para 55 [*CP Railway*]; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at 837-41 [*Baker*]).

[11] The Respondent agrees that the merits of an administrative decision are subject to a reasonableness review. When conducting a reasonableness review, courts should exercise restraint and "not be too hasty to find material flaws" (*Hamid v Canada (Citizenship and Immigration)*, 2022 FC 886 at para 13). Rather, courts should intervene only when necessary to "safeguard the legality, rationality, and fairness of the administrative process" (*Vavilov* at para 13).

[12] I agree with the parties that the merits of the Decision are subject to a reasonableness review. In the present matter, the presumption of reasonableness is not rebutted by the exceptions outlined in *Vavilov* (at paras 16-17).

[13] A reasonableness review requires a court to consider both the underlying rationale and the outcome of the decision in assessing whether the decision, as a whole, bears the hallmarks of reasonableness – justification, transparency, and intelligibility (*Vavilov* at paras 15, 99). A reasonable decision must be based on internally coherent and rational chain of analysis that is "justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at paras 85, 99). However, a reviewing court must refrain from reweighing and reassessing the evidence considered by the decision-maker (*Vavilov* at para 125). Where the reasons of the decision-maker allow a reviewing Court to understand why the decision was made and determine whether the decision falls within the range of acceptable outcomes, the decision will be reasonable (*Vavilov* at paras 85-86). Conversely, a decision will be unreasonable where there are shortcomings in the decision that are sufficiently central or significant (*Vavilov* at para 100). The burden to demonstrate such unreasonableness rests with the party challenging the decision (*Vavilov* at para 100).

[14] The standard of review for procedural fairness is essentially correctness (*Khela* at para 79; *CP Railway* at paras 49, 54). The Court has no margin of appreciation or deference on questions of procedural fairness. Rather, when evaluating whether there has been a breach of procedural fairness, a reviewing court must determine if the procedure followed by the decision-maker was fair, having regard to all the circumstances (*CP Railway* at para 54; *Baker* at 837-41).

V. Analysis

A. *Was the Decision reasonable?*

(1) Applicant's Position

[15] There is nothing to suggest that the Applicant would not leave Canada at the end of his authorized stay (*Cervjakova v Canada (Citizenship and Immigration)*, 2018 FC 1052 at para 12 [*Cervjakova*]). Findings made without regard to the material before the decision-maker must be set aside on judicial review.

(a) *Family ties*

[16] First, the Officer failed to provide any explanation to substantiate their bald statement that the Applicant was "not sufficiently established" in light of the facts and evidence. Findings of insufficiency must be explained, even where the obligation to provide reasons is minimal (*Opakunbi v Canada (Citizenship and Immigration)*, 2021 FC 943 at para 12 [*Opakunbi*]; *Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596 at para 17; *Vavilov* at paras 86, 96).

[17] The Officer also failed to grapple with evidence supporting the Applicant's strong family and professional ties in Iran (*Seyedsalehi v Canada (Citizenship and Immigration)*, 2022 FC 1250 at para 9 [*Seyedsalehi*]). Where an officer ignores relevant evidence or arbitrarily disregards evidence pointing to an opposite conclusion, the Court may intervene (*Kheradpazhooh v Canada (Citizenship and Immigration)*, 2018 FC 1097 at para 18 [*Kheradpazhooh*]; *Balepo v Canada (Citizenship and Immigration)*, 2016 FC 268 at paras 15-

16). Further, relevant ties to an applicant's home country support the finding that they would return to their home country following the end of their authorized stay in Canada (*Rodriguez-Martinez v Canada (Citizenship and Immigration)*, 2020 FC 293 at para 15 [*Rodriguez-Martinez*]). Here, the record before the Officer clearly illustrated that the Applicant and his spouse have parents and siblings who reside in Iran and will not be accompanying them to Canada, the Applicant has no family ties in Canada, and the Applicant has a stable employment history and secured an Offer of Continued Employment with his current employer.

[18] Third, the Officer failed to justify why the Applicant's family ties to Iran would be weakened because of his accompanying spouse, given the three aforementioned considerations. Instead, the Officer applied a broad generalization in reaching their conclusion (*Vahdati v Canada (Citizenship and Immigration)*, 2022 FC 1083 at para 10 [*Vahdati*]). Moreover, subparagraph 205(c)(ii) of the *IRPR* effectively instructs officers to ignore, in favour of public policy, an applicant's weakened ties to their home country due to an accompanying family member.

(b) *Personal assets and financial status*

[19] The Officer improperly failed to explain why the evidence advanced by the Applicant was insufficient (*Ayeni v Canada (Citizenship and Immigration)*, 2019 FC 1202 at para 28; *Opakunbi* at para 12). Further, the Applicant has sufficient funds to study in Canada as an international student. The Applicant was only required to advance evidence of sufficient funds for the first year of their proposed studies (*Cervjakova* at para 14). The Applicant satisfied this requirement, having advanced various bank statements of funds totalling $87,175.22 CAD.

[20] Further, it is the Applicant's choice to decide how to invest in their education to better their lot in life. It is unreasonable for an Officer to raise suspicions merely because an individual places great value on higher education (*Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552 at paras 17-18).

(c) *Purpose of visit*

[21] The Officer's conclusion that the Applicant already achieved the benefits of the proposed studies was based on factual findings that are unsupported by the evidence (*Fallahi v Canada (Citizenship and Immigration)*, 2022 FC 506 at para 17). The Officer unreasonably assumed the role of a career counsellor (*Adom v Canada (Citizenship and Immigration)*, 2019 FC 26 at paras 16-17). As set out in the record before the Officer, the Applicant's purpose of study concerns both career advancement and business expansion opportunities. Specifically, the Applicant provided evidence of his Offer of Continued Employment, whereby the employer agreed to contract projects to the Applicant's Company upon his return to Iran. This evidence directly contradicts the Officer's conclusion.

[22] Second, the Officer's conclusions as to the Applicant's prior and intended studies are contradictory and unintelligible (*Vavilov* at paras 103-04). The Officer first notes that the Applicant's "previous studies were in an unrelated field" to the proposed studies. Subsequently, however, the Officer concludes that the "[A]pplicant's education and previous work experience [are] in the same field", rendering the proposed studies redundant. Jurisprudence clearly states that "programs cannot be unrelated and, at the same time, redundant" (*Vahdati* at paras 14-15).

[23] Lastly, although the Applicant's studies may be at a similar academic level to their previous studies, the Officer was required to consider the differences between both programs (*Barril v Canada (Citizenship and Immigration)*, 2022 FC 400 at para 26).

(2) Respondent's Position

[24] The Applicant simply disagrees with the Decision and improperly asks this Court to reweigh the evidence, which is not the function of judicial review.

[25] The onus is on the Applicant to rebut the legal presumption that any person seeking to enter Canada will remain in Canada as an immigrant (*Danioko v Canada (Minister of Citizenship and Immigration)*, 2006 FC 479 at para 15; *Hamid v Canada (Citizenship and Immigration)*, 2022 FC 886 at para 18). The Officer could not grant a study permit because the Applicant did not meet the statutory requirements regarding sufficient and available funds. Either of these two findings are sufficient to dismiss this application.

(a) *Family ties*

[26] The Officer reasonably found that the Applicant's family ties to Iran would be diminished by his spouse accompanying him to Canada, as the Applicant's immediate family would be in Canada. The cases cited by the Applicant are distinguishable from the present case, as the Officer noted that the Applicant "states to have close family ties in [Iran]."

(b) *Personal assets and financial status*

[27] The Officer was required to refuse the study permit application given the Applicant's failure to meet the statutory requirements set out under sections 216(1)(b) and 220 of *IRPR* (*Ibekwe v Canada (Citizenship and Immigration)*, 2022 FC 728 at para 31 [*Ibekwe*]). Section 220 of *IRPR* imposes an obligation on the Applicant to establish sufficient and available resources, without working in Canada, to pay the entire tuition for the program of studies, the total costs of maintenance for himself and his spouse during the entire proposed study period, and the travel expenses to and from Canada. These requirements are supported by the jurisprudence (*Ibekwe* at para 29). In the present matter, the Applicant's proposed studies were two (full-time) to four (part-time) years in length. The estimated expenses for the program totalled $54,000 per year: $32,000 for tuition, $17,000 CAD for room and board, and $5,000 CAD for other expenses. The Applicant advanced various bank statements of funds totalling $87,175.22 CAD. Accordingly, there was no error in the Officer's finding.

(c) *Purpose of visit*

[28] It was open to the Officer to find that the Applicant's proposed studies were unreasonable. The Applicant previously studied in Iran at the same academic level, the Applicant's educational goals were inconsistent between applications, and the high cost of international study appeared unreasonable given the Applicant's personal circumstances.

[29] The Officer did not assume the role of career counsellor. Rather, the Officer was required to assess the Applicant's study plan with a view to whether the Applicant would leave Canada at the end of their stay, as required by paragraph 216(1)(b) of *IRPR* (*Farnia v Canada (Citizenship and Immigration)*, 2022 FC 511 at paras 15, 18). This necessarily included consideration of the

second proposed Master's degree at a high financial cost for which the Applicant had not demonstrated sufficient funds.

[30] Second, the Officer's conclusions as to the Applicant's prior and intended studies were not contradictory. Rather, the Officer found that the proposed studies at such an expense appeared either "illogical or redundant" in light of the Applicant's education history.

(3) Conclusion

[31] I find that the Decision was unreasonable. An officer is presumed to have considered all of the evidence and need not refer to every piece of evidence. However, where an officer is silent on evidence clearly pointing to the opposite conclusion, "the Court may intervene and infer that the [decision-maker] overlooked the contradictory evidence when making its finding of fact" (*Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 28 [*Solopova*]). I am of the view that this occurred in the present case.

(a) *Family ties and establishment*

[32] The Officer erred in its consideration of the Applicant's establishment in Iran. I agree with the Applicant that the Officer did not intelligibly explain why, in their view, the Applicant was not sufficiently established in Iran. I further agree that the Officer failed to grapple with evidence supporting the Applicant's economic ties in Iran.

[33] I accept that the Officer's notes acknowledge the Applicant's family ties. The Officer states, "the [Applicant] is married or has dependents or states to have close family ties in their home country, but is not sufficiently established." However, similarly to *Rodriguez-Martinez*, this excerpt does not sufficiently engage with the evidence concerning the Applicant's establishment in Iran based on his close family in Iran (at para 15). Even when read in light of the record, the Court is left to speculate as to how the Officer arrived at this conclusion (*Vavilov* at para 103).

[34] Further, the Decision clearly illustrates that the Officer was silent on evidence pointing to the conclusion (*Kheradpazhooh* at paras 18-20). For instance, the Officer disregarded evidence of the Applicant's assets, Company, and employment history in Iran, including his Offer of Continued Employment with his current employer upon his return to Iran. This is similar to *Seyedsalehi*, where this Court found it unreasonable for the officer to focus on certain establishment factors to the exclusion of other relevant evidence, "in the absence of a description or discussion of what would be considered 'sufficient'" (at para 22).

[35] For these reasons, I am of the view that the Decision is not reflective of an internally coherent or rational chain of analysis justified in relation to the facts and the law (*Vavilov* at para 85). This is sufficient to dispose of this application. The remaining submissions on the merits of the Decision need not be considered.

B. *Was there a breach of procedural fairness?*

[36] In light of my determination that the Decision was unreasonable, it is not necessary to consider the submissions concerning the breach of procedural fairness.

VI. Conclusion

[37] For the foregoing reasons, the application for judicial review is allowed. The Decision is not justified, transparent, or intelligible.

[38] The parties do not propose a question for certification and I agree that none arise.

JUDGMENT in IMM-6385-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is remitted to a different officer for re-determination.
2. There is no question of general importance for certification.
3. There is no order as to costs.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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