Federal Court  Cour fédérale

Date: 20230828

Docket: IMM-2609-22

Citation: 2023 FC 1159

Ottawa, Ontario, August 28, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

NEDA NIKSERESHT MASOULEH
SEYEDNASER HODAEI
NELINSADAT HODAEI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision of a visa officer (the "Officer") of Immigration, Refugees and Citizenship Canada dated March 2, 2022, refusing the Principal Applicant's study permit application pursuant to subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[2] The Applicants also seek judicial review of the Officer's adjoining refusals of the Associate Applicant's work permit application and Minor Applicant's temporary resident visa ("TRV") application. Given that the latter two decisions contain the same factual scenario, evidence, and decision-maker, and rely on the refusal of the Principal Applicant's study permit application, the Applicants seek judicial review of the three refusals in conjunction, pursuant to Rule 302 of the *Federal Courts Rules*, SOR/98-106 (the "*Rules*").

[3] The Officer refused the Principal Applicant's study permit application on the basis that she failed to satisfy them that she would leave Canada at the end of her stay, citing the purpose of her visit and her family ties in Canada and in Iran. The Officer refused the Associate Applicant's work permit application and Minor Applicant's TRV application on the basis of family ties and because the Principal Applicant's study permit application had been refused.

[4] The Applicants submit that the Officer unreasonably assessed the evidence, specifically relating to the Applicants' family ties and the Principal Applicant's study plan, and that all three of the Officer's refusals are therefore unreasonable. The Applicants further submit that the Officer breached procedural fairness by failing to provide the Principal Applicant with an opportunity to respond to the Officer's credibility concerns.

[5] For the reasons that follow, I find that the Officer's decision is unreasonable. This application for judicial review is therefore granted.

II. Facts

A. *The Applicants*

[6] Neda Nikseresht Masouleh (the "Principal Applicant") is a 37-year-old citizen of Iran. Her husband, Seyednaser Hodaei (the "Associate Applicant"), and their daughter (the "Minor Applicant") are also citizens of Iran.

[7] In January 2022, the Principal Applicant applied for a study permit to pursue further studies in Canada. At the same time, the Associate and Minor Applicants applied for a work permit and TRV, respectively, to accompany the Principal Applicant to Canada.

[8] In 2006, the Principal Applicant began a career in the insurance industry as a supervisor at an insurance company in Tehran. In 2015, the Principal Applicant completed a Bachelor of Science in Insurance Management from the University of Applied Science in Technology in Tehran. Since 2014, the Principal Applicant has been employed as an Insurance Manager at two separate companies.

[9] The Principal Applicant had previously applied for a study permit to pursue a degree in marketing, but this application was refused. The Principal Applicant's Statement of Purpose submitted as part of the underlying study permit application mistakenly refers to a marketing degree. The Principal Applicant submits that this was an error resulting from the similar materials submitted in support of both study permit applications.

[10] In December 2021, the Principal Applicant was accepted into the Master of Business Administration ("MBA") program at the University of Canada West ("UCW") in Vancouver, British Columbia, scheduled to begin in the spring of 2022. She paid $7,900 CAD towards her tuition and received financial aid from UCW in the amount of $9,720 CAD. She applied for a study permit to pursue these studies.

[11] The Principal Applicant's study permit application was refused in a decision dated March 2, 2022. The Associate and Minor Applicants' applications were also refused in separate decisions rendered on the same day.

B. *Decisions under Review*

[12] The Officer's decision to refuse the Principal Applicant's study permit application, and the accompanying refusals of the Associate and Minor Applicants' applications, are largely contained in their Global Case Management System ("GCMS") notes, which form part of the reasons for the decisions.

[13] The Officer was not satisfied that the Principal Applicant would leave Canada at the end of her stay. The GCMS notes state:

> I have reviewed the application. 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 and dependent child. 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. PA is applying to study MBA, previously obtained Bachelors in Insurance Management and currently employed as head of insurance. 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. Study plan provided is for different program/ institution and does not outline a clear career path for which the sought educational program would be of benefit. 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. The PA has not demonstrated to my satisfaction being a genuine student that is actively pursuing studies and as such, I have concerns that the PA may be seeking entry for reasons other than educational advancement. 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.

[14] In the accompanying decisions to refuse the Associate Applicant's work permit application and the Minor Applicant's TRV application, the Officer reiterated the same reasons for refusal, stating that his ties to his home country are weakened by the Applicants' intended travel to Canada as a family. The Officer also stated that the work permit application was refused on the basis that the Principal Applicant's study permit application had been denied. The GCMS notes for these two accompanying refusals contain the same reasons.

III. Preliminary Issue

[15] The Applicants seek judicial review of all three refusals in a singular application, pursuant to Rule 302 of the *Rules*. The Respondent does not oppose this request. The Respondent agrees that the circumstances of each decision are the same, and the Associate and

Minor Applicants' applications were refused as a result of the refusal in the Principal Applicant's study permit application.

[16] I agree. It would not be an expeditious or a focused use of the Court's resources for the Applicants to seek judicial review of each of the underlying decisions individually, given the circumstances of this case. My analysis will primarily focus on the Principal Applicant's study permit decision, upon which the other two decisions rely.

IV. Issues and Standard of Review

[17] This application for judicial review raises the following issues:

A. *Whether the decisions are unreasonable.*

B. *Whether there was a breach of procedural fairness.*

[18] I agree with the parties that the appropriate standard of review for the Officer's refusal of the study permit application is reasonableness, in accordance with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paragraphs 16-17. This is consistent with this Court's jurisprudence reviewing decisions on study permit applications: *Nia v Canada (Citizenship and Immigration)*, 2022 FC 1648 at para 17; *Noulengbe v Canada (Citizenship and Immigration)*, 2021 FC 1116 at para 7; *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 11; *Kavugho-Mission v Canada (Citizenship and Immigration)*, 2018 FC 597 at para 8.

[19] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 ("*Canadian Pacific Railway Company*") at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35)).

[20] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole is one that is 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[21] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

[22] Correctness, in contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company* at para 54).

V. Analysis

[23] The Applicants submit that the Officer's decision to refuse the Principal Applicant's study permit was based on the erroneous finding that the Principal Applicant would not leave Canada on the basis of her family ties and an unreasonable assessment of her study plan. The Applicants submit that the refusals of the Associate and Minor Applicants' applications are unreasonable due to the unreasonableness of the Officer's decision to refuse the Principal Applicant's study permit application.

[24] The Applicants further submit that the Officer breached procedural fairness by failing to provide the Principal Applicant the opportunity to respond to credibility concerns, despite making a negative credibility finding in the final decision.

[25] In my view, the Officer's refusal of the Principal Applicant's study permit application is unreasonable for failing to meaningfully grapple with the evidentiary record regarding the Applicants' family ties in Iran. Finding this error sufficient to render the decision unreasonable and warrant this Court's intervention, I do not address the allegation regarding the Officer's assessment of the purpose of the visit or the procedural fairness issue.

[26] The Applicants submit that the Officer's findings regarding their family ties do not accord with the evidentiary record. In the GCMS notes for the refusal of the Principal Applicant's study permit application, the Officer found that the Principal Applicant failed to demonstrate that she is sufficiently established, and that her ties to Iran are weakened by her being accompanied by her husband and daughter.

[27] The Applicants submit that they provided detailed information and evidence relating to their family, employment, and assets in Iran, demonstrating considerable establishment contrary to the Officer's assessment. The Applicants note that they provided evidence of assets in Iran and Family Information forms indicating multiple family members residing in Iran, including the Principal Applicant's widowed mother, her four siblings, and the Associate Applicant's aged mother. They do not have any family ties in Canada. The Applicants submit that in the absence of an explanation as to why their evidence demonstrating establishment in Iran is insufficient, the Officer's decision fails to accord with the record and is therefore unreasonable.

[28] The Respondent submits that the Applicants bear the onus to make submissions such that the evidence regarding the Applicants' establishment in Iran is clearly before the Officer. The Respondent submits that the Applicants' counsel's submissions in support of the study permit application state that the Principal Applicant wishes to study in Canada while her husband and daughter remain in Iran. The Respondent further notes that other aspects of the Applicants' ties in Iran, such as the Principal Applicant's mother's reliance on her, was not included as part of the counsel's submissions. The Respondent submits that the Officer's failure to mention the presence of other family members in Iran does not equate to the finding that the Officer's

decision does not accord with the evidence. The Respondent contends that the Officer reasonably found that the Principal Applicant being accompanied by her husband and daughter weakened her motivation to return to Iran after her studies.

[29] I disagree with the Respondent. Firstly, the Applicants' counsel is not required to explicitly mention all pieces of relevant evidence in their submissions provided in support of the study permit application in order for the Officer to consider this evidence. If the evidence is put to the officer in the application, the officer has a duty to properly consider it and render a decision that accords with that evidence (*Vavilov* at para 126). A decision-maker is presumed to have considered all the evidence unless the contrary is shown, and the expectation that counsel's submissions must include specific mention of which evidence the Officer must consider places an additional burden on the Applicants where one does not exist (*Shahrezaei v Canada (Citizenship and Immigration)*, 2023 FC 499 at para 17, citing *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 28).

[30] Secondly, I do not find that the Officer's GCMS notes demonstrate a reasonable assessment of the Principal Applicant's evidence pertaining to her family ties and other aspects of the Applicants' establishment in Iran. The largely vague reasons are unclear as to how the Principal Applicant's ties to Iran are weakened by her being accompanied by her husband and 4-year-old child to the extent that she would not return there after her studies, particularly considering the evidence demonstrating that a majority of her and her husband's extended family reside permanently in Iran and they have financial assets in Iran.

[31] I turn to this Court's decision in *Iyiola v Canada (Citizenship and Immigration)*, 2020 FC 324 ("*Iyiola*"), where the applicant's study permit application was refused on the basis, in part, that he demonstrated insufficient family ties in Nigeria and therefore failed to satisfy that he would return to Nigeria at the end of his stay (at para 7). In reviewing the visa officer's assessment of the applicant's family ties, my colleague Justice Fuhrer found the following:

> [20] As noted above, the High Commission's decision indicates concern that Mr. Iyiola may not leave Canada at the end of his authorized period of stay; Mr. Iyiola bore the onus of satisfying the visa officer in this regard: IRPA s 20(1)(b). Regarding Mr. Iyiola's family ties in Canada and in Nigeria, he has five other family members in Nigeria, including his parents with whom he lives with, none of which was mentioned in the GCMS notes; given this, it would have been unreasonable without further analysis to presume an older brother in Canada would be a more significant pull factor: *Obot v Canada (Citizenship and Immigration)*, 2012 FC 208 [*Obot*] at para 20. Accordingly, I find it unintelligible that there was no explanation whatsoever by the High Commission, nor by the visa officer in the GCMS notes, about the family ties in Nigeria and how these were assessed in the context of Mr. Iyiola's family ties in Canada. […]
>
> [Emphasis added]

[32] In the recently decided case of *Sadeghinia v Canada (Citizenship and Immigration)*, 2023 FC 107 ("*Sadeghinia*"), this Court applied the above reasoning in *Iyiola* to a scenario that is analogous to the case at hand. In *Sadeghinia*, the applicant's study permit application was refused on the basis of her family ties and the purpose of her visit (at para 5). On review, this Court relied on the finding in *Iyiola* and determined that the officer's decision lacked "consideration of the Applicant's substantial family ties in Iran and lack of ties in Canada" (*Sadeghinia* at para 18).

[33] The same reasoning is applicable to the Applicants' case. The Officer's GCMS notes lack any explanation of the Principal Applicant's family ties in Iran and how they were assessed in the context of her lack of family ties in Canada, beyond her husband and minor child, who will be accompanying her for the duration of her studies. Although the Officer is not required to mention every piece of evidence, a failure to mention evidence that clearly contradicts the Officer's finding supports the inference than it was overlooked (*Balepo v Canada (Citizenship and Immigration)*, 2016 FC 268 at para 17, citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425).

[34] This Court's analysis of the study permit refusal in *Vahdati v Canada (Citizenship and Immigration)*, 2022 FC 1083 ("*Vahdati*") is also instructive. The situation in *Vahdati*, which is highly analogous to the case at hand, involved an Iranian applicant whose study permit application was also refused on the basis of her family ties and the purpose of her visit (at para 4). Regarding the visa officer's assessment of the applicant's family ties, specifically the officer's finding that the applicant's ties to Iran were weakened by her being accompanied by her spouse, my colleague Justice Strickland found the following at paragraphs 10 and 11:

> [10] In my view, while it may be relevant to consider that the Spouse intends to accompany the Applicant to Canada (*Balepo v Canada (Citizenship and Immigration)*, 2016 FC 268 at paras 15-16), and, even if it is reasonable to infer from this that the Applicant's family ties to Iran may be weakened, the problem in this case is that the Visa Officer ended their analysis there. The Visa Officer did not weigh this against: (1) the fact that all of the other members of the Applicant's and her Spouse's families will remain in Iran; (2) the fact that the Applicants have no family members in Canada; or (3) the other evidence in the record relevant to establishment such as the letter from the Applicant's employer. I agree with the Applicant that in this case the Visa

> Officer seems to have simply applied a broad generalization in reaching their finding as to a lack of establishment.
>
> [11] I also do not agree with the submission of the Respondent, when appearing before me, that the Visa Officer's generic statement that "[…] the client is married or has dependents or states to have close family ties in their home country, but is not sufficiently established" serves to demonstrate that the Visa Officer considered and weighed the Applicant's actual family ties or other evidence speaking to establishment. And while the Respondent, in its written submissions, asserts that the fact that the Spouse intends to give up his employment in Iran and apply to accompany her to Canada "[…] seems to go against the Applicant's statement that she and her husband intend to return to Iran once she completes her degree", much like the Visa Officer's reasons, the basis of this assertion is unclear – beyond the mere fact of the intended accompaniment.

[35] The same reasoning can be applied to the Principal Applicant's case. The Officer's analysis of her family ties is not unreasonable solely because it considers the accompaniment by her husband and child, but because the analysis ends there (*Vahdati* at para 10). There is no indication that the Officer weighed this factor against the Family Information forms submitted as part of the application, the evidence of assets in Iran, or the lack of any other family ties in Canada beyond her husband and child. Beyond the fact of the intended accompaniment, the Officer's reasons fail to establish a clear line of analysis between the conclusion and the evidence, rendering the decision unreasonable (*Vavilov* at para 102).

[36] The Officer's finding that the Principal Applicant failed to satisfy that she would return to Iran at the end of her stay because she did not demonstrate establishment in Iran is not justified, intelligible or transparent (*Vavilov* at para 86). The finding that the study permit refusal is unreasonable leads to the finding that the other two refusals are founded on unreasonable bases.

For these reasons, I find that all three decisions underlying this application for judicial review are unreasonable.

VI. Conclusion

[37] This application for judicial review is granted. The Officer's assessment of the Principal Applicant's family ties is sufficient to render the study permit refusal unreasonable, thereby rendering all three decisions unreasonable. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-2609-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted. The decision under review is set aside and the matter remitted back for redetermination by a different officer.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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