Federal Court  Cour fédérale

Date: 20230925

Docket: IMM-10555-22

Citation: 2023 FC 1292

Vancouver, British Columbia, September 25, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

SHAYAN AZIMI
SOMAYEH HANAFI
ARSHAN AZIMI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Shayan Azimi ("Principal Applicant"), his mother Somayeh Hafani, and his brother Arshan Azimi (collectively the "Applicants") seek judicial review of a decision of a visa officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC") dated August 8, 2022, refusing their applications for a study permit and visitor visas.

[2] The Officer was not satisfied that the Principal Applicant would leave Canada at the end of his stay, as per section 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("IRPR") and that the other two Applicants, whose applications were wholly dependent on the Principal Applicant, would leave at the end of their stay as per section 179(b) of the *IRPR*.

[3] The Applicants submit that the Officer breached procedural fairness and rendered an unreasonable decision without regard for the evidence of the purpose of the Principal Applicant's trip, the reasons for pursuing education in Canada, finances and assets, and family ties.

[4] For the reasons that follow, I find that the Officer's decision is reasonable, being justified in light of the factual and legal constraints that bear upon it. This application for judicial review is dismissed.

II. **Facts**

A. *The Applicants*

[5] The Principal Applicant is an 8-year-old citizen of Iran. His mother and brother are 41-year-old and 4-year-old citizens of Iran, respectively. They live in Tehran.

[6] The Principal Applicant sought to attend Grade 2 at a Toronto District School Board ("TDSB") elementary school in Toronto, Ontario.

[7] On December 29, 2021, the Applicants received a letter of acceptance from the TDSB. The tuition for the first academic year was $16,000 CAD, which the Applicants paid in advance.

[8] On June 7, 2022, the Principal Applicant's study permit application was submitted.

B. *Decision under Review*

[9] In a letter dated August 8, 2022, the Officer refused the Applicants' study permit and visitor visa applications. The Officer's decision is largely contained in the Global Case Management System ("GCMS") notes, which form part of the reasons for the decision.

[10] The GCMS notes for the Principal Applicant's application state:

> I have reviewed the application. I have considered the following factors in my decision. The applicant is a minor, 7 year old Iranian national, applying to come to Canada to study grade 2 at TDSB Elementary School. The purpose of the visit itself does not appear to be reasonable. Insufficient documentation has been provided in support of the applicant. 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. Based on the documentation on file in support of the parent's level of economic establishment and considering the purpose of the visit, I do not consider that the proposed studies in Canada is a reasonable or affordable expense. There is limited evidence in banking activity to track the provenance of available funds. The ties to Iran are weaken with the intended travel to Canada by the client as the travel involves their immediate family; mother and brother. The motivation to return will diminish with the applicant's immediate family members residing with them in Canada. 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.

[11] As the other Applicants were seeking entry to accompany the Principal Applicant, whose study permit application had been refused, the Officer refused the other Applicants' visitor visa applications.

III. **Issues and Standard of Review**

[12] The issues raised in this application for judicial review are whether the Officer's decision is reasonable and procedurally fair.

[13] The standard of review for the merits of the Officer's decision is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) ("*Vavilov*"). I agree.

[14] I find that 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). I find that this conclusion accords with the Supreme Court of Canada's decision in *Vavilov* (at paras 16-17).

[15] 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).

[16] 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) ("*Mason*"). While a decision-maker is not required to respond to every line of argument or mention every piece of evidence, a decision's reasonableness may be called into question where the decision exhibits a "failure to meaningfully grapple with key issues or central arguments" (*Vavilov* at para 28).

[17] 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).

IV. **Analysis**

[18] The Applicants submit that the Officer's decision is procedurally unfair for failing to make the Applicants aware of the Officer's concerns prior to rendering the decision and not providing an opportunity to respond to these concerns. The Applicants also submit that the decision is unreasonable with regards to the evidence of the purpose of the Principal Applicant's trip, the reasons for pursuing education in Canada, the Applicants' finances, and the Applicants' family ties. I disagree. The Officer's decision is justified in light of the factual and legal constraints that bear upon it (*Vavilov* at paras 99-101) and procedurally fair.

A. *Procedural Fairness*

[19] The Applicants submit that the Officer breached procedural fairness by not making the Applicants aware of the Officer's concerns prior to rendering the decision, and not providing an opportunity to respond to these concerns despite using extrinsic evidence and making credibility findings.

[20] The Respondent submits that the Officer's decision is procedurally fair, as the Officer did not have to provide an opportunity to respond, being unconcerned with credibility and not using extrinsic evidence to make the decision.

[21] I agree with the Respondent. The Applicants do not provide any evidence to support their contentions that the Officer made credibility findings or used extrinsic evidence in making the decision. The Applicants were therefore not entitled to an opportunity to respond to these

concerns, nor were the Applicants entitled to be told about the concerns the Officer may have had prior to rendering the decision.

B. *Reasonableness*

[22] The Applicants submit that the Officer's decision about the Principal Applicant is unreasonable in several regards. The Applicants maintain that the Officer: 1) ignored evidence that contradicts the conclusion about the Principal Applicant's reason to visit Canada; 2) provided no rationale or justification, with regard to the evidence, for the conclusion that the Principal Applicant's purpose of visit was inconsistent with a temporary stay; 3) contradicts the decision's own conclusion about the purpose for the visit in light of acknowledging the Principal Applicant sought to go to Grade 2 in Canada; 4) disregarded the evidence showing the Principal Applicant's motivation to study in Canada and not Iran; 5) made unreasonable findings about the cost of international studies in Canada for the Applicants; and 6) drew inaccurate and unjustified conclusions about the Applicants' economic establishment and family ties in Iran and Canada. Finally, the Applicants submit that the Officer's finding that the Applicants would stay in Canada beyond their authorized period of stay is not based on any evidence and therefore lacks justification, transparency, and intelligibility.

[23] The Respondent submits that the Officer's decision is reasonable, as the Principal Applicant's study plan is unduly vague and generalized for the purposes of being granted a study permit, the Officer reasonably found that the Applicants' ties to Iran are limited, and the Officer reasonably found that the evidence of personal assets and financial support did not establish that the Applicants had sufficient funds available for the proposed education.

[24] I agree with the Respondent. I find that the Officer's conclusion about the Principal Applicant's educational goals is justified in light of the factual and legal constraints that bear upon this issue (*Vavilov* at paras 99-101). As my colleague Justice Rochester held, applicants must convince an officer of the merits of their study plan, providing sufficient information about the benefits of the program they wish to pursue (*Mehrjoo v Canada (Citizenship and Immigration)*, 2023 FC 886 ("*Mehrjoo*") at paras 12, 15). It is not enough to provide general assertions about how the proposed program would benefit an applicant (*Mehrjoo* paras 12-13). The Officer was entitled to find that insufficient documentation was provided in support of the Principal Applicant's educational studies. The record reflects a vague and generalized study plan and the Applicants do not provide meritorious submissions or point to specific evidence that the Principal Applicant entering the second grade at a TDSB would benefit him, aside from general assertions that this education is a logical continuation and reasonable for his education and history as he prepared to enhance his career. I therefore see no reason to interfere with the Officer's findings in light of this jurisprudence and evidence.

[25] Furthermore, the Applicants' reliance upon jurisprudence with purportedly similar facts, where an officer's decision was found to be unreasonable, is misplaced. These cases involved Grade 11 or Grade 12 students seeking education that would support their applications to Canadian universities (*Nouri v Canada (Citizenship and Immigration)*, 2023 FC 1240 at para 8; *Hashemi v Canada (Citizenship and Immigration)*, 2022 FC 1562 at paras 1, 4). Here, a child seeks to enter Grade 2, and the Officer makes no reviewable error in concluding that the motivation to pursue one year of primary school education is unreasonable in light of this jurisprudence and the evidence provided (*Vavilov* at paras 99-101).

[26] The Officer's chain of analysis about why the Applicants' $43,371 is insufficient to cover the total expenses for the Principal Applicant's first year of study is rational (*Vavilov* at para 85). The Officer did not err by finding that there was limited evidence to track the provenance of available funds (*Roodsari v Canada (Citizenship and Immigration)*, 2023 FC 970 at para 33). The Applicants claim that paying tuition shows intention to study (*Iyiola v Canada (Citizenship and Immigration)*, 2020 FC 324) and that Officers should not be determining how much money an applicant ought or ought not to be spending on education (*Caianda v Canada (Citizenship and Immigration)*, 2019 FC 219 at para 5; *Liu v Canada (Citizenship and Immigration)*, 2001 FCT 1262 at para 16). However, the Officer's conclusion that the proposed studies in Canada were not a reasonable or affordable expense is premised upon the provenance of the Applicants' funds; as such, the Applicants misconstrue the Officer's reasoning and fail to make any submissions demonstrating how the Officer's reasoning about the provenance of the funds is unreasonable. The burden to demonstrate unreasonableness is on the party challenging the decision (*Vavilov* at para 100) and in this regard, the Applicants have failed to discharge their burden.

[27] Furthermore, I agree with the Respondent that the Officer's conclusion about the Applicants' diminished family ties in Iran was reasonable in light of the evidence and context of the decision. Three of the four of the Applicants' immediate family members sought to travel to Canada together, with one family member remaining in Iran. The Officer was entitled to weigh this fact amongst the others and conclude that the ties to Iran are weakened. I adopt the reasoning of my colleague Justice Pamel in *Sayyar v Canada (Citizenship and Immigration)*, 2023 FC 494, where he found that an officer was entitled to consider two spouses seeking to

come to Canada together as reducing the pull factors for returning to their country of origin, when examined in the context of the overall assessment by the visa officer (at para 16). The same reasoning applies here: in the overall assessment by the Officer, considering evidence of motivation to study, financial assets, and family ties, the Officer reasonably found that the presence of three out of four immediate family members in Canada would reduce the motivation for returning to Iran. I see no error in this assessment that warrants this Court's intervention.

V. **Conclusion**

[28] This application for judicial review is dismissed. The Officer's decision is reasonable in relation to the legal and factual constraints that bore upon it and shows rational analysis. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-10555-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10555-22
STYLE OF CAUSE:	SHAYAN AZIMI, SOMAYEH HANAFI AND ARSHAN AZIMI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 21, 2023
JUDGMENT AND REASONS:	AHMED J.
DATED:	SEPTEMBER 25, 2023

APPEARANCES:

Ramanjit Sohi	FOR THE APPLICANTS
Richard Li	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Raman Sohi Law Corporation Barrister and Solicitor Surrey, British Columbia	FOR THE APPLICANTS
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT