Federal Court  Cour fédérale

Date: 20231030

Docket: IMM-8089-22

Citation: 2023 FC 1436

Ottawa, Ontario, October 30, 2023

PRESENT: Mr. Justice McHaffie

BETWEEN:

SARA MOMENI AND HAMED ABBASIAN

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Sara Momeni applied for a study permit to pursue a two-year co-op program in Interactive Media Design at Algonquin College. Her husband, Hamed Abbasian, applied for a work permit to accompany Ms. Momeni during her studies. The applications were refused on June 11, 2022, because a visa officer was not satisfied the couple would leave Canada at the end of their authorized stay. They now seek judicial review of those refusals.

[2] The visa officer's reasons for refusing Ms. Momeni's application for a study permit, as set out in the Global Case Management System (GCMS), read as follows, in their entirety:

> I have reviewed the application. [Principal Applicant (PA)] is applying to study diploma in Interactive Media Design. Previously obtained Bachelors in Software Engineering and currently employed as Digital Marketing team leader. The client has previous studies at a higher academic level than the proposed studies in Canada. Considering applicant's education and previous 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. 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.

[3] Mr. Abbasian's work permit application was refused because of the outcome of Ms. Momeni's application. The determination of this application for judicial review therefore hinges on the refusal of Ms. Momeni's study permit application.

[4] Ms. Momeni challenges both the merits of the visa officer's decision on her study permit application and the fairness of the process by which it was reached. In my view, the former issue is determinative. On this issue, the parties agree that the officer's decision is reviewable on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 517 at paras 6–10. A reasonable decision 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. In applying the reasonableness standard, the Court cannot simply reach its own decision on the matter. Rather, the Court can only interfere with an administrative

decision where it contains sufficiently serious shortcomings that it cannot be said to exhibit the requisite degree of justification, intelligibility, and transparency: *Vavilov* at para 100.

[5] In *Nesarzadeh*, Justice Pentney recently reviewed the various principles set out in the many decisions of this Court with respect to judicial review of study permit decisions: *Nesarzadeh v Canada (Citizenship and Immigration)*, 2023 FC 568 at paras 5–9. I adopt his clear statement of these principles, which I reproduce here without reference to the underlying cases and legislation:

- A reasonable decision must explain the result, in view of the law and the key facts.
- *Vavilov* seeks to reinforce a "culture of justification" requiring the decision-maker to provide a logical explanation for the result and to be responsive to the parties' submissions, but it also requires the context for decision-making to be taken into account.
- Visa Officers face a deluge of applications, and their reasons do not need to be lengthy or detailed. However, their reasons do need to set out the key elements of the Officer's line of analysis and be responsive to the core of the claimant's submissions on the most relevant points.
- The onus is on the Applicant to satisfy the Officer that they meet the requirements of the law that applies to consideration of student visas, including that they will leave at the end of their authorized stay.
- Visa Officers must consider the "push" and "pull" factors that could lead an Applicant to overstay their visa and stay in Canada, or that would encourage them to return to their home country.

[6] Applying these principles in the present case, and reviewing the visa officer's decision in light of the record before them, I conclude that the reasons for decision do not meet the requisite

standard of justification, transparency, and intelligibility. In particular, I conclude that the combination of the visa officer's brief and conclusory assessment of Ms. Momeni's study plan and their lack of reference to any other relevant factor leaves both the applicants and the Court with an insufficient explanation and justification of the officer's decision. In other words, the decision does not set out the key elements of the officer's line of analysis and does not respond to the core of the applicants' submissions on the most relevant points.

[7] As reproduced above, the visa officer's decision rests entirely on their assessment of Ms. Momeni's study plan, and in particular on their findings that (i) Ms. Momeni had previously obtained a higher academic degree (a bachelor's degree in software engineering) than the proposed studies in Canada (a post-secondary diploma); and (ii) in light of her prior education and work experience, Ms. Momeni would have already achieved the benefits of the Canadian study program. These factors led the officer to conclude that the Canadian program was not a "reasonable progression of studies," which in turn led to them not being satisfied that Ms. Momeni would leave Canada at the end of her authorized stay.

[8] There is no question that the reasonableness and sufficiency of an applicant's study plan is an important element in assessing whether they will leave Canada by the end of their authorized stay: see, *e.g., Sayyar v Canada (Citizenship and Immigration)*, 2023 FC 494 at paras 18–21. In assessing Ms. Momeni's study plan, however, the officer does not respond to her explanation for why she wanted to pursue the Canadian diploma program despite having a bachelor's degree, and how it would help her career. Ms. Momeni's study plan described the particular skills she hoped to gain from the program, which were more related to digital

marketing than software engineering. She also stated that her employer in Iran had committed to give her a new position upon completion of her studies. The officer neither referred nor responded to either her explanation or the employment offer in their assessment: see, *e.g.*, *Oudah v Canada (Citizenship and Immigration)*, 2021 FC 1043 at para 14. Nor did the officer refer to other factors put forward by Ms. Momeni as motivating her return to Iran, including assets in Iran and her elderly parents. In my view, the cumulative effect of these lacunae renders the decision unreasonable.

[9] For clarity, this is not to say that an officer is invariably required to refer to every possible "push" or "pull" factor in their decision. An officer is presumed to have considered all of the evidence, and a decision will not be unreasonable simply because it does not mention a minor issue raised by a party: *Vavilov* at paras 127–128; *Kheradpazhooh v Canada (Citizenship and Immigration)*, 2018 FC 1097 at para 18; *Nesarzadeh* at para 7. There may be circumstances where an officer considers one factor to be determinative of the application. However, the reasons read as a whole must make it clear that this is the nature of the decision and the conclusion must be justified in the circumstances. In the present case, the brief assessment of the study plan and the lack of reference to any other aspect of the application leads me to "question whether the decision maker was actually alert and sensitive to the matter before" them: *Vavilov* at para 128.

[10] I agree with Ms. Momeni that this distinguishes the matter from *Sayyar*, relied on by the Minister. The officer's reasons in that case expressly considered the applicant's explanation for their proposed course of study, finding it unsatisfactory: *Sayyar* at paras 5, 18, 20. They also

considered the applicant's offer of employment and other factors such as financial capacity and ties to Iran: *Sayyar* at paras 4, 11, 14, 17. Justice Pamel found that the officer had appropriately weighed the factors and upheld the decision as reasonable. The officer in this case did not present an explanation and justification of the nature set out in *Sayyar*.

[11] The Minister also sought to highlight weaknesses in Ms. Momeni's study plan, citing its vagueness, a lack of details regarding comparable programs in Iran, and alleged shortcomings in the employment offer. I agree with Ms. Momeni that such arguments go beyond simply reading the officer's reasons in light of the record to create new reasons for the decision that were not given by the officer. Such new reasons cannot sustain a flawed decision on judicial review: *Vavilov* at paras 94–96.

[12] I therefore conclude that the officer's decision must be set aside and that Ms. Momeni's study permit application must be remitted for redetermination by a different officer. Given my conclusion that the decision was unreasonable, I need not address the applicants' argument that the process leading to the decision was unfair. Since Mr. Abbasian's related work permit application was refused in light of the refusal of Ms. Momeni's study permit application, it must also be set aside and remitted for redetermination.

[13] Neither party proposed a question for certification. I agree that none arises in the matter.

JUDGMENT IN IMM-8089-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed. The decisions of June 11, 2022, refusing the study permit application of Sara Momeni and the work permit application of Hamed Abbasian, are set aside and those applications are remitted for redetermination by a different officer.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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