Federal Court  Cour fédérale

Date: 20231116

Docket: IMM-9116-22

Citation: 2023 FC 1521

Ottawa, Ontario, November 16, 2023

PRESENT: Madam Justice Azmudeh

BETWEEN:

PARISHAD BANAEI ARANI

Applicant

and

MINISTER OF IMMIGRATION AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Parishad Banaei Arani **[the** "**Applicant**"**]**, is seeking a Judicial Review under section 72(1) of the Immigration and Refugee Protection Act **[IRPA]** concerning the rejection of their Study Permit application for Canada. The Judicial Review is granted for the following reasons.

[2] The Applicant is an 18-year-old Iranian citizen who applied for a study permit to attend a three-year program in Computer Systems Technology at Mohawk College in Ontario, Canada.

[3] The Applicant completed high school in the school year 2021-2022 and obtained a high school diploma. Her high school education was in the field of Experimental Sciences.

[4] The Applicant submitted her application for a study permit on June 13, 2022, with the intended study period from September 1, 2022 to December 30, 2025. However, the immigration Officer (the "Officer") who reviewed the application, refused it on July 22, 2022. The Applicant's lack of significant family ties outside Canada was cited as the reason for the refusal. In their Global Case Management System ("GCMS") notes which constitute the reasons, the Officer also cited additional reasons on doubting the Applicant's study plan and that bank statements provided did not include transactions to track the provenance of available funds. The Officer's analysis of the Principal Applicant's application is set out in the GCMS notes as follows:

> I have reviewed the application. I have considered the following factors in my decision. The applicant is 18 year old Iranian national. The applicant is requesting a study permit to attend college Advance Diploma in Computer Systems Technology-Software Development at Mohawk College. The applicant completed High School in 2022. PA and Rep provided a generalized explanation and did not provide details on how the proposed studies would benefit PA's career path or why Canadian studies, at a high tuition, were necessary and beneficial. Therefore, I am not satisfied the motivation to pursue this particular program, at this point in time in Canada, is reasonable. Bank statements provided do not include banking transactions to track the provenance of available funds. I have concerns that the ties to Iran are not sufficiently great to motivate departure from Canada. The applicant is unmarried, mobile and unemployed which reduces ties to homeland. 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.

II. Issues and Standard of Review

[5] This Application for Judicial Review raises two main issues:

A. *Was the Officer's decision unreasonable?*

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

[6] The Applicant has not presented a case on a potential breach of procedural fairness, so I will not address it.

[7] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65, at paras 12-13 and 15 **[*Vavilov*]**; *Mason v Canada (Citizenship and Immigration),* 2023 SCC 21, at paras 8, 63 **[*Mason*]**.

[8] I have started by reading the reasons of the decision-maker in conjunction with the record that was before them holistically and contextually. As guided by *Vavilov,* at paras 83, 84 and 87, as the judge in reviewing court, I have focused on the reasoning process used by the decision-maker. I have not considered whether the decision-maker's decision was correct, or what I would do if I were deciding the matter itself: *Vavilov,* at para 83; *Canada (Justice) v D.V.,* 2022 FCA 181, at paras 15, 23.

[9] A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision-maker: *Vavilov,* esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v Canadian Union of Postal Workers,* 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61; *Mason,* at paras 8, 59-61, 66.

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.

III. Legislative Overview

[10] The following sections of the Immigration and Refugee Protection Act, SC 2001, c 27 **[IRPA]** are relevant:

Application for judicial review	**Demande d'autorisation**
72 (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is, subject to section 86.1, commenced by making an application for leave to the Court.	72 (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est, sous réserve de l'article 86.1, subordonné au dépôt d'une demande d'autorisation.
Application	Application
(2) The following provisions govern an application under subsection (1):	(2) Les dispositions suivantes s'appliquent à la demande d'autorisation :
(a) the application may not be made until any right of appeal that may be provided by this Act is exhausted;	a) elle ne peut être présentée tant que les voies d'appel ne sont pas épuisées;
(b) subject to paragraph 169(f), notice of the application shall be served on the other party and the application shall be filed in the Registry of the Federal Court ("the Court") within 15 days, in the case of a matter arising in Canada, or within 60 days, in the case of a matter arising outside Canada, after the day on which the applicant is notified of or otherwise becomes aware of the matter;	b) elle doit être signifiée à l'autre partie puis déposée au greffe de la Cour fédérale — la Cour — dans les quinze ou soixante jours, selon que la mesure attaquée a été rendue au Canada ou non, suivant, sous réserve de l'alinéa 169f), la date où le demandeur en est avisé ou en a eu connaissance;
	c) le délai peut toutefois être prorogé, pour motifs valables, par un juge de la Cour;

(c) a judge of the Court may, for special reasons, allow an extended time for filing and serving the application or notice;

(d) a judge of the Court shall dispose of the application without delay and in a summary way and, unless a judge of the Court directs otherwise, without personal appearance; and

(e) no appeal lies from the decision of the Court with respect to the application or with respect to an interlocutory judgment.

d) il est statué sur la demande à bref délai et selon la procédure sommaire et, sauf autorisation d'un juge de la Cour, sans comparution en personne;

e) le jugement sur la demande et toute décision interlocutoire ne sont pas susceptibles d'appel.

[11] The following sections of the Immigration and Refugee Protection Regulations, SOR/2002-227 **[IRPR]** are also relevant**:**

Study permits

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

(a) applied for it in accordance with this Part;

(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

(c) meets the requirements of this Part;

(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

(e) has been accepted to undertake a program of study at a designated learning institution.

[…]

Permis d'études

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) l'étranger a demandé un permis d'études conformément à la présente partie;

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) il remplit les exigences prévues à la présente partie;

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) il a été admis à un programme d'études par un établissement d'enseignement désigné.

Acceptance letter

219 (1) A study permit shall not be issued to a foreign national unless they have written documentation from the designated learning institution where they intend to study that states that they have been accepted to study there.

[…]

Financial resources

220 An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to

(a) pay the tuition fees for the course or program of studies that they intend to pursue;

(b) maintain themself and any family members who are accompanying them during their proposed period of study; and

(c) pay the costs of transporting themself and the family members referred to in paragraph (b) to and from Canada.

Conditions — study permit holder

220.1 (1) The holder of a study permit in Canada is subject to the following conditions:

(a) they shall enroll at a designated learning institution and remain enrolled at a designated learning institution until they complete their studies; and

(b) they shall actively pursue their course or program of study.

[…]

Acceptation par l'établissement

219 (1) Le permis d'études ne peut être délivré à l'étranger que si celui-ci produit une attestation écrite de son acceptation émanant de l'établissement d'enseignement désigné où il a l'intention d'étudier.

[…]

Ressources financières

220 À l'exception des personnes visées aux sous-alinéas 215(1)d) ou e), l'agent ne délivre pas de permis d'études à l'étranger à moins que celui-ci ne dispose, sans qu'il lui soit nécessaire d'exercer un emploi au Canada, de ressources financières suffisantes pour :

a) acquitter les frais de scolarité des cours qu'il a l'intention de suivre;

b) subvenir à ses propres besoins et à ceux des membres de sa famille qui l'accompagnent durant ses études;

c) acquitter les frais de transport pour lui-même et les membres de sa famille visés à l'alinéa b) pour venir au Canada et en repartir.

Conditions — titulaire du permis d'études

220.1 (1) Le titulaire d'un permis d'études au Canada est assujetti aux conditions suivantes :

a) il est inscrit dans un établissement d'enseignement désigné et demeure inscrit dans un tel établissement jusqu'à ce qu'il termine ses études;

b) il suit activement un cours ou son programme d'études.

IV. Analysis

A. *Was the Officer's decision reasonable?*

[12] On a study permit application, the Applicant must establish that they meet the requirements of the IRPA" and the IRPR. Visa officers have a wide discretion in their assessment of the application and the Court ought to provide considerable deference to an Officer's decision given the level of expertise they bring to these matters. The onus is on the Applicant who seeks temporary entry to Canada to establish and satisfy a visa officer that they will leave Canada at the end of the authorized period of stay requested.

[13] In addition, in assessing the reasonableness of the decision, the Court recognizes that the high volume of visa decisions and the narrow consequences of a refusal are such that extensive reasons are not required: *Vavilov* at paras 88, 91; *Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552 at para 13; *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at paras 9, 16 **[*Yuzer*]**; *Wang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1298 at paras 19–20. Nonetheless, the reasons given by the Officer must, when read in the context of the record, adequately explain and justify why the application was refused: *Yuzer* at paras 9, 20; *Hashemi v Canada (Citizenship and Immigration)*, 2022 FC 1562 at para 35 **[*Hashemi*]**; *Vavilov* at paras 86, 93–98.

V. Family Ties

[14] Visa officers "must assess the strength of the ties that bind or pull the Applicant to their home country against the incentives, economic and otherwise, that might induce the foreign national to overstay": *Hashemi* at para 19; *Rivaz v Canada (MCI)*, 2023 FC 198 at para 21-22; *Ali v Canada (MCI)*, 2023 FC 608 at paras 9-11; *Zeinali v Canada (Citizenship and Immigration)*, 2022 FC 1539 **[*Zeinali*]**at para 20; *Hassanpour v Canada (Citizenship and Immigration)*, 2022 FC 1738 at para 19; *Nesarzadeh v Canada (Citizenship and Immigration)*, 2023 FC 568 at paras 16-18; *Hassani v Canada (Citizenship and Immigration)*, 2023 FC 734 at para 20; *Chhetri v Canada (Citizenship and Immigration), 2011 FC 872* at para 14.

[15] In this particular case, the Applicant is an 18-year old woman who proposes to come to Canada by herself leaving the rest of her family, including parents and younger brother, behind in Iran. The Officer cites being "unmarried, mobile and unemployed" as factors that reduce her family ties to Iran.

[16] The evidence in the record directly contradicts the Officer's conclusion on family ties. There were contrary evidence on the family ties that the Officer did not analyse, including on how no family member would accompany the Applicant to Canada and that her entire family, including parents and brother continued to live in Iran. The Applicant had also provided evidence on her relationship with her grandparents and the fact that they lived in the same building. By not engaging with the contrary evidence in any way, the Officer made an arbitrary decision (*Seyedsalehi v Canada (Citizenship and Immigration)*, 2022 FC 1250).

[17] Also, if the Officer expects an 18 year old with clear professional ambitions to be married or employed, they should provide some rational basis for those expectations. The Officer's conclusion as to the Applicant's family ties in Canada and Iran is vague and unfounded,

amounting to a significant and reviewable error (*Rahmati v Canada (Citizenship and Immigration)*, 2021 FC 778 at para 18). Further, even if the Applicant did have strong family ties in Canada, which she does not, this, in and of itself, should not warrant a refusal (*Bteich v Canada (Citizenship and Immigration)*, 2019 FC 1230 at para 34).

VI. Study Plan

[18] The Officer also questioned the Applicant's motivation and purpose to study in Canada. The Officer stated that the Applicant's representative had provided generalized explanation and did not provide detail on how the proposed studies would benefit her career. He also questioned the rational of paying a high tuition fee at a Canadian institution.

[19] The Applicant had submitted detailed corroborating documents with which the Officer chose not to engage. These included a "Letter of Explanation" where she provided information on her background, language proficiency, travel history, career prospects and educational goal, why she had chosen to study in Canada as opposed to Iran or other countries, information on financial support and ties to Iran.

[20] Under the heading "My career prospects and educational goal", the 18-year old Applicant provides a detailed window on her interest in technology, including emerging technologies, and how the desired program would prepare her for better career opportunities in Iran. The Applicant had provided an example of a desirable job offer at an Iranian company that matched her desire. At the hearing, counsel for the Respondent questioned whether she would even qualify for that job offer, and how this was speculative. I find that if the Applicant's reference to an example of a job offer, and how she refers to it in her letter, demonstrate her serious engagement with her

education and career path, rather than expecting to respond to a job offer posted several years prior to the completion of her program. I find it was the Officer, and not the Applicant, who provided a “generalized explanation”, much like a boilerplate without engaging with the Applicant’s evidence. This makes the decision arbitrary, devoid of a rational chain of reasoning.

VII. Funds

[21] The Applicant had provided evidence of her father employment, bank accounts, payment of a substantial part of the tuition fee to Mohawk College, and evidence on the sale of real estate with the intention to use the funds to finance her studies. The Officer did not question the availability of funds but how the absence of banking transactions would question the provenance of available funds was an issue.

[22] At the hearing, Counsel for the Respondent argued that the real estate sale called for full payment to be made in three instalments, and therefore, it would be a speculation that its funds would be available to the Applicant. I cannot substitute counsel’s reasoning for what may or may not have been considered by the Officer. I agree with counsel for the Applicant that it was not the availability of funds, but its provenance, that the Officer had questioned. The Applicant had provided evidence on her father’s bank account, employment and property sale. The Officer did not comment on their credibility and it is not clear on why they questioned their provenance because they did not engage with the financial evidence on file.

[23] What the Officer considers a high cost of studying in Canada alone should not raise suspicion in an application. If an Applicant has demonstrated the financial means to afford the proposed course of study, or provided evidence on its benefit, it is not up to the Officer to assess

the value the individual has placed on pursuing higher education in Canada; the cost becomes the Applicant's individual choice: see *Caianda v Canada (MCI)*, 2019 FC 218 at para 5; *Rajasekharan v Canada (MCI)*, 2023 FC 68; *Khosravi v Canada (MCI)*, 2023 FC 805 at para 10.

[24] It is the Officer who must provide adequate reasoning based on the evidence when concluding that the benefits do not outweigh the high costs of study. A bald statement concluding that education in Canada is expensive, without further analysis, is not sufficient: see *Yuzer v Canada (MCI)*, 2019 FC 781 at para 21, *Afuah v Canada (MCI)*, 2021 FC 596 at para 15. I understand that it is open to an Officer to question the disproportionately high cost of an Applicant's proposed studies where there is insufficient evidence of potential career and employment benefits: *Singh v Canada (Citizenship and Immigration), 2022 FC 1745* at paras 20-21*; Zeinali* at paras 12-19; *Barot v Canada (Citizenship and Immigration)*, 2023 FC 284 at para 44, and that the onus remains on the Applicant to provide evidence to the benefits of the proposed course of study. However, in this case, the Officer dismissed the Applicant's evidence on available funds and the benefit of their studies without engaging with their evidence. The lack of analysis and engagement with potentially contrary evidence renders the decision arbitrary.

VIII. Conclusion

[25] The Officer's decision is unreasonable, as it does not exhibit the requisite degree of justification, intelligibility, and transparency. The application for judicial review is granted and the decision set aside.

[26] Neither party proposed a question for certification and I agree that none arises in this matter.

JUDGMENT IN IMM-9116-22

THIS COURT'S JUDGMENT is that

1. The Judicial Review is granted. The matter is remitted for redetermination by a different Officer.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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