

Federal Court



Cour fédérale

Date: 20240209

Docket: IMM-263-22

Citation: 2024 FC 207

Toronto, Ontario, February 9, 2024

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

SAHAR KARAMI ZENDEHDEL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of a visa officer [Officer] of Immigration, Citizenship and Refugees Canada [IRCC], conveyed by letter dated November 24, 2022, refusing the Applicant's application for a work permit [Decision].

[2] As explained in greater detail below, this application is dismissed, because the Applicant's arguments do not undermine the reasonableness of the Decision.

II. Background

[3] The Applicant is a citizen of Iran, who applied for a work permit to work as president of a business of which she is the sole shareholder. The Applicant's business plan was to provide both information technology [IT] and digital marketing services, on an integrated basis, to medium and large-sized businesses.

[4] The Applicant's work permit application was submitted under paragraph 205(a) of the *Immigration and Refugee Protection Regulations*, SOR/200–227 [*Regulations*], which allows for issuance of a work permit to a foreign national who intends to perform work that would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents. The parties' materials indicate that IRCC refers to such applications using the administrative code "C11". Such applications are exempt from the requirement to obtain a Labour Market Impact Assessment (LMIA).

[5] The November 24, 2022 letter conveying the Decision refusing the work permit application stated that the Officer was not satisfied that the Applicant would leave Canada at the end of her stay, based on the following factors:

- A. The purpose of the Applicant's visit to Canada was not consistent with a temporary stay given the details provided in the application;
- B. The compensation (monetary or otherwise) indicated in the Applicant's job offer and her assets and financial situation

were insufficient to support the stated purpose of travel;
and

- C. The Officer was not satisfied there was documentary evidence to establish that the Applicant met the exemption requirements of “C11 Significant benefit – Entrepreneurs/self-employed under R205(a)”.

[6] The Certified Tribunal Record in this matter includes Global Case Management System [GCMS] notes, which form part of the reasons for the Decision and include the following excerpt dated November 24, 2022:

PA seeks WP under C11 WP – Self-Employed/Entrepreneur.

Applicant is requesting work permit as Chief Executive Officer for IT AND AD SOLUTIONS, to start new business in Toronto, ON for 3 years under C11/Entrepreneurs exemption. The summary indicates there [sic] goal is to provide a new and a better way for businesses to ensure collaboration between digital marketing and IT functions, with a view to serve medium and large-sized businesses.

The onus is on the applicant to provide sufficient documentation that they meet the requirements and standards of the work permit category. However, the overall application package lacks clear and compelling documentation to justify a C11 LMIA-exempt work permit issuance.

Submissions failed to demonstrate that the applicant is establishing a viable business. There is very limited information provided about the company in the business plan, such as but not limited to PA’s investment details. I note there is to be a loan of \$200,000 K, however, applicant has not provided sufficient evidence of available funds, including Canadian funds, that will cover all expenses in the initial stages and beyond in order for the company to stay afloat and continue doing business in Canada.

The business plan appears unrealistic considering the already competitive and crowded market in this area of focus and in this particular part of Canada.

Staff planning is unrealistic given PAs financial situation. I also note that it appears that the PA does not intend to initially draw a salary

I am not satisfied that the applicant has provided sufficient evidence to show that they will be providing a service that will create general economic stimulus or advancement in this industry. After review of the documentation before me, I am not satisfied that there are sufficient reasons to grant the issuance of a C11 significant benefit work permit. I am not satisfied that there are significant economic, social or cultural benefits to Canadians pursuant to R205(a). REFUSED

III. Issues and Standard of Review

[7] In accordance with the applicable standard of review, the parties' submissions require that the Court determine whether the Decision is reasonable.

[8] The Applicant's former counsel, who prepared the Memorandum of Facts and Arguments in support of leave, also raised procedural fairness arguments in those written submissions. However, at the hearing of this application, I understood that the Applicant's new counsel was not pursuing those arguments. For the sake of good order, I note that, based on the parties' written submissions, the Applicant's procedural fairness arguments would not have succeeded.

IV. Analysis

[9] In broad strokes, the Applicant submits that the Decision is unreasonable, because the Officer's reasons lack the required justification, transparency, and intelligibility, including because the Officer ignored or misapprehended material evidence.

[10] Before turning to the evidence that the Applicant argues was overlooked or misunderstood, I will address the Applicant's submission that the Decision is overall unintelligible, because the Officer's reasons do not allow the Court to understand the basis for the Decision.

[11] I find little merit to this argument. As the Respondent submits, it is apparent from the GCMS notes that the Officer was principally concerned about the financial viability of the Applicant's business and concluded that she had not provided sufficient evidence to demonstrate such viability. Based thereon, the Officer was not satisfied that the business would generate the benefits contemplated by paragraph 205(a) of the *Regulations*. As explained in *Khan v Canada (Citizenship and Immigration)*, 2023 FC 52 at paragraph 14, the requirement to give reasons in visa cases is typically minimal, in recognition of the high volume of applications that these officers are required to process. In my view, the GCMS notes amply demonstrate the Officer's reasoning.

[12] That said, it is of course available to the Applicant to establish that the Officer's reasoning ignored, overlooked or misapprehended evidence that formed part of the application.

Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration), (1998) 157 FTR. 35 (TD) [*Cepeda-Gutierrez*] guides the Court in the consideration of such arguments.

Administrative decision-makers are not required to refer to every piece of evidence that is contrary to their finding and to explain how they dealt with it. However, the more important the evidence that is not mentioned specifically and analysed in the decision-maker's reasons, the more willing a Court may be to infer from the silence that an erroneous finding of fact was made without regard to the evidence (at paras 16-17).

[13] The Applicant argues that the Officer overlooked or misunderstood the evidence as to the nature of her business model. As noted earlier in these Reasons, the Applicant's business plan explained that her firm provided both IT and advertising management services, so as to ensure collaboration between digital marketing and IT functions. However, I find no basis to conclude that the Officer misunderstood this business concept or any innovation represented thereby, as the GCMS notes expressly describe the Applicant's goal as the provision of a new and better way for businesses to ensure collaboration between digital marketing and IT functions.

[14] The Applicant also submits that the Officer ignored or misapprehended evidence related to the business's financial circumstances. The Applicant notes the Officer's focus on a \$200,000 loan that was referenced in her application but submits that, in finding she had not provided sufficient evidence of available funds to cover businesses expenses, the Officer does not mention the value of real estate and cash held in her bank account.

[15] In the Memorandum of Fact and Arguments and the Memorandum of Reply, filed in support of the Applicant's leave application, the Applicant's former counsel refers repeatedly to her visa application including a copy of the deed for a piece of real estate in Iran worth over \$1 million, which would be used for the development of her intended business. However, that deed states the value of that property in Iranian rial, which the Respondent submits translates into approximately CDN \$40-45,000. In oral submissions before the Court, the Applicant's new counsel confirmed that the Respondent's calculation is correct.

[16] The Respondent also points to an unsigned letter from the Applicant in her visa application, in which she states that her application includes proof of ownership to show that she owns properties in Iran and that she will have to return to Iran after setting up a business at the end of her work permit. The Respondent argues that it is inconsistent with that assertion, which relies on the real estate in Iran to satisfy the Officer that the Applicant would leave Canada at the end of her work permit, to also argue that the same property can serve as a source of funding for her business.

[17] The Applicant's counsel notes that the Applicant's letter references "properties" in Iran, and counsel disputes the Respondent's contention that the property identified by deed in the application is the same property as that upon which the Applicant relied to demonstrate her intention to return to Iran. I struggle with the Applicant's position on this point, as the letter states that the application includes documentation intended to demonstrate ownership of properties in Iran, and her counsel has not identified any other such documentation in the record. However, regardless of that point, the Applicant's counsel also confirmed that there is nothing in

the visa application that suggests an intention to rely upon the property, for which the deed is provided, as a source of funding for business. As such, I find no basis for a conclusion that the Officer should have taken this property into account in analysing the financial viability of the business.

[18] In relation to the bank account, I accept that the visa application included documentation of a bank account in the Applicant's name with an Iranian rial figure translating into approximately CDN \$40,000. The Officer does not mention this evidence. However, the Respondent notes that the Applicant's business plan includes the projection of a loss of over \$290,000 for fiscal 2022 and therefore argues that, even taking into account the \$200,000 loan and the funds in the bank account, the business would still be operating at a loss of approximately \$50,000.

[19] The Officer's reasons do not reference the financial projections in the Applicant's business plan, and I am conscious that the Court's review of the reasonableness of the Decision must focus upon the justification provided by the Officer. However, in applying the *Cepeda-Gutierrez* principles, it is necessary for the Court to assess the extent to which the evidence that the Applicant argues was overlooked contradicts the Officer's conclusion, in this case the conclusion that the Applicant failed to demonstrate that she was establishing a financially viable business. In that respect, the financial analysis contained in the Respondent's submission represents an appropriate response to the Applicant's argument, as it demonstrates that the \$40,000 bank account figure would not support a conclusion different from that reached by the Officer. As such, I do not find that the bank account evidence was overlooked.

[20] The Applicant also relies on evidence of her tax filings with the Canada Revenue Agency, demonstrating that her business, which was operational and generating revenue for one month in the 2021 taxation year, produced gross income of approximately \$28,000 and net income of approximately \$8000. She argues that these figures are inconsistent with a conclusion that the business was not viable, suggesting that this financial evidence was ignored.

[21] Again applying *Cepeda-Gutierrez*, and considering the record as a whole, which includes the Applicant's own projection of a loss of over \$290,000 in fiscal 2022 as identified by the Respondent (as well as a loss of \$208,000 for the following fiscal year and profitability only thereafter), I cannot conclude that the gross and net income information for one month of operations is sufficiently inconsistent with the Officer's conclusions to find that this evidence was ignored or misunderstood.

[22] The Applicant also challenges the intelligibility of the Officer's concern that her staffing plan was unrealistic and that the Applicant personally did not intend to initially draw a salary. However, the Officer expressly describes the staffing plan as being unrealistic because of the Applicant's financial situation. This explanation is intelligible and relies on the Officer's analysis of the financial viability of the business. As explained above in these Reasons, the Applicant's arguments have not convinced me that such analysis is unreasonable. I similarly read the point about the Applicant intending not to draw a salary as contributing to the Officer's concern as to the business's financial viability.

[23] Having considered the Applicant's arguments, I find no basis to conclude that the Decision is unreasonable. As such, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-263-22

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-263-22

STYLE OF CAUSE: SAHAR KARAMI ZENDEHDEL v. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ON

DATE OF HEARING: FEBRUARY 7, 2024

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: FEBRUARY 9, 2024

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