

Federal Court



Cour fédérale

Date: 20240312

Docket: IMM-12891-22

Citation: 2024 FC 371

Ottawa, Ontario, March 12, 2024

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

**MOHAMMAD RAJABI and
FARNAZ JOUDIFAR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of the decision of a visa officer [Visa Officer] refusing the study visa application of Mohammad Rajabi [Applicant] and the related work permit application of his spouse, Farnaz Joudifar [Spouse].

[2] The Applicant and his Spouse are citizens of Iran. The Applicant was conditionally admitted into a two-year Master's Administration [MA] degree in Leadership, Business at

Trinity Western University [TWU] in Langley, British Columbia. His letter of acceptance from TWU states that his admission to the MA program is conditional upon his successful completion of the TLC Pre-Graduate Studies program in preparation for graduate level studies.

[3] By letter dated December 1, 2022, the Visa Officer refused the Applicant's study permit application on the basis that the Officer was not satisfied the Applicant would leave Canada at the end of his stay, as required by paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRP Regulations]. This determination was based on two factors: the Applicant's lack of significant family ties outside Canada; and, the purpose of his visit to Canada being inconsistent with a temporary stay given the details the provided in his application. His Spouse's application for a work permit under paragraph 200(1)(b) of the IRP Regulations was correspondingly refused.

[4] The Global Case Management System [GCMS] notes for the decision regarding the Applicant, which form a part of the reasons for the decision that is the subject of this application for judicial review, state as follows:

I have reviewed the application. I have considered the following factors in my decision. PA will be accompanied by spouse. The ties to their home country are weakened 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 Masters in Leadership. Previously obtained MBA and currently employed as Deputy CEO. Study plan reviewed. Considering applicant's education and extensive work experience, I fail to see how the proposed program adequately demonstrates a logical progression of studies/career. It is unclear why PA would choose to study if already obtained extensive experience in relevant field and what advantages will be gained by the PA from the chosen program of study. Offer noted, no indication of why additional or

international education is required for the promotion. In light of the PA's previous study and current career, their motivation to pursue studies in Canada at this point does not seem reasonable. 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.

[5] As framed by the Applicant, this application for judicial review gives rise to two issues. The first is whether the Visa Officer's decision is reasonable. The standard of review for that issue, which is concerned with the merits of the Visa Officer's decision, is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 23, 25). The second is whether the Visa Officer breached the duty of procedural fairness. Questions of procedural fairness are reviewed on a correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79 and in *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). If the court is satisfied that the procedure was not fair, the application should be allowed (*Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at para 56).

Reasonableness of the Decision

Positions of the Parties

[6] The Applicant submits that the Visa Officer unreasonably refused his application on the basis of the Applicant's purpose of his visit to Canada. He asserts that this is because he met the applicable statutory requirements and provided evidence that he would depart at the end of his visit and that his only purpose in coming to Canada was to study. The Applicant further submits that the Visa Officer's findings regarding the Applicant's family ties in Iran were unreasonable.

He submits that he had demonstrated significant ties to and establishment in Iran, and that the Visa Officer “exceeded their authority” in finding his motivation to study unreasonable.

Additionally, the Applicant asserts that the Visa Officer erred in finding the Applicant to not be a genuine student in light of his motivation to study in Canada.

[7] The Respondent submits that the Visa Officer’s decision is reasonable, the Applicant failing in his onus to satisfy the Visa Officer that he met all of the statutory requirements for a study permit. The Respondent further submits that the Applicant’s arguments amount to an invitation for the Court to reweigh the evidence, which is not the Court’s role on judicial review. The Respondent submits that the Visa Officer reasonably assessed evidence of the Applicant’s family ties, his Statement of Purpose, including his Certificate of Employment Verification [Employment Letter], and all other evidence provided to support his application.

Analysis

i. Purpose of Visit

[8] The Applicant’s submission in support of this study permit application included his Statement of Purpose. This indicates that the Applicant already holds an MBA earned at Eastern Mediterranean University in Cyprus in 2016. He previously obtained a bachelors degree in Industrial Engineering. Since 2016, he has held the position of Deputy Chief Executive Officer [CEO] of Aria Park Mehtab Co. [Aria]. His Statement of Purpose does not describe what Aria does, but states that the Applicant’s duties there include short-term, medium-term, and long-term

planning with the board of directors, as well as communication with foreign companies, and participation in various domestic and foreign conferences.

[9] In his Statement of Purpose the Applicant also indicates that he applied to the TWU MA program because it provides a leadership model that emphasizes people, teamwork and results-oriented applications, and because “[t]his program will prepare professionals to adapt to the business sector’s increasing demands and rapidly changing priorities.” The Applicant further indicates that program courses such as Leadership Foundations, Strategic Leadership, Organizational Behavior, and Leading Change and Innovation courses will undoubtedly assist him in gaining practical insights and the skills necessary to form, direct, and evaluate individual and team activity with integrity. He states that “[t]his program will teach learners how to apply leadership principles as a community builder who unites people around a compelling vision of leadership and results-oriented change and gain a leadership perspective that promotes mission and vision.” The Applicant adds that he applied to TWU because its program “technically does not exist” in Iran and it fills a knowledge gap.

[10] Given the Applicant’s education and work experience, the Visa Officer found that the Applicant had not demonstrated how the proposed MA program demonstrated a logical progression of his studies and his career, nor was it apparent to the Visa Officer what advantage pursuing this program would afford the Applicant. The Visa Officer noted that the Employment Letter did not indicate why the additional international course of study was required for the potential promotion to CEO and Chairperson of Aria. This lead the Visa Officer to question the Applicant’s motivation in pursuing the proposed studies.

[11] The Applicant submits that it was not open to the Visa Officer to suggest that a proposed course of study is not reasonable due to costs or because it would not further his career (references including *Al Aridi v Canada (Citizenship and Immigration)*, 2019 FC 381 at para 27 and *Lui v Canada (Citizenship and Immigration)*, 2001 FCT 1262 at para 16). Conversely, the Respondent submits that it is open to a visa officer to consider whether an applicant has already achieved the benefits of the intended study program (*Borji v Canada (Citizenship and Immigration)*, 2023 FC 339 [*Borji*] at para 17; *Rezaali v Caanda (Citizenship and Immigration)*, 2023 FC 269 [*Rezaali*] at paras 29-32).

[12] I agree with the Respondent that it is open to a visa officer, when assessing the purpose of an applicant's visit, to consider whether the applicant has already achieved the benefits of the intended course of study (*Borji* at para 17) and whether the proposed course of studies are repetitive and inconsistent with their career path (*Rezaali* at paras 29-31; see also *Rashid v Canada (Citizenship and Immigration)*, 2023 FC 1277 [*Rashid*] at para 14, citing *Khosravi v Canada (Citizenship and Immigration)*, 2023 FC 805 [*Khosravi*] at para 9). Further, the onus is on the Applicant to sufficiently explain the benefits of pursuing the program (*Mehrjoo v Canada (Citizenship and Immigration)*, 2023 FC 886 at para 12, citing *Charara v Canada (Citizenship and Immigration)*, 2016 FC 1176 at para 36).

[13] Here, the Employment Letter states that the promotion is offered in consideration of the Applicant's services as an efficient employee since 2016 — not because of expanded or improved skills arising from his proposed course of studies. Furthermore, while the position will be open to the Applicant "after" completing the program at TWU, it does not appear to make this

program conditional for the Applicant to be promoted. It also does not explain why the proposed studies are necessary for the position of CEO, other than the stated belief of the author that by completing the proposed study program the Applicant “will take a great step in line with the realisation of the purposes of the company and our prospects.” And while the Applicant states in his Statement of Purpose that the job offer increases his salary, benefits, credibility and job security, the Employment Letter does not offer an increase in salary or benefits nor does it address job security.

[14] With respect to career advancement, in his Statement of Purpose the Applicant states that he has been offered a higher position in the same field provided he holds “credible knowledge and expertise.” Yet he has been the Deputy CEO of Aria for six years and, as indicated above, his Employment Letter does not base the promotion to CEO on new skills to be gained from the proposed course of study, but rather on his past performance.

[15] Further, the Applicant’s Statement of Purpose makes only very general descriptive statements about the proposed MA program and offers nothing specific about how that program will expand or improve on the Applicant’s existing skill set. The Applicant’s description of why he requires the new course of studies is also very general, stating that as CEO he should promote the highest standards of integrity, probity and corporate governance, and that he will be responsible for similarly conducting the affairs “of the Group.” He also states that he needs to improve his qualifications and skills regardless of his prior experience because the new role requires him to take on more administrative, decision-making and supervision responsibilities. He does not elaborate on this.

[16] In my view, the Visa Officer's reasons clearly indicate that they considered the information provided by the Applicant and reasonably concluded the Applicant had not provided a sufficient and reasonable explanation as to why the proposed course of study, in his particular circumstances, was not redundant or how it would advance his existing career. This finding was reasonable, based on the record before the Visa Officer. The Statement of Purpose failed to demonstrate that the second MA is required for the promotion to CEO or that it will advance the Applicant's existing skill set. Nor does it demonstrate that a "knowledge gap" exists or how this would be filled by the proposed course of studies. Accordingly, the Applicant failed to meet his burden of establishing the purpose of his visit (see *Rezaali* at para 32) and, therefore, that he would leave Canada at the end of an authorized stay.

ii. Family Ties

[17] The Visa Officer also found that because the Spouse will accompany the Applicant to Canada, the ties to their home country of Iran would be weakened "as the motivation to return will diminish with the applicant's immediate family members residing with them in Canada."

[18] The record indicates that the Applicant's parents and three sisters live in Iran, as do his Spouse's parents and her two sisters. In his Statement of Purpose, the Applicant states that he has an emotional attachment to his parents and siblings, that as the youngest child he feels a greater moral responsibility for his parents; and, that his parents-in-law do not have a son so he also supports them. His spouse states that her emotional attachment to her parents and family is substantial and that she is responsible for her parents' well-being. There is no evidence that the Applicant and his Spouse have any family members in Canada.

[19] When appearing before me, the Respondent conceded that this information was not mentioned and that the reasons did not demonstrate that the Visa Office weighed this against the fact that the Applicant's Spouse will accompany him to Canada. However, the Respondent asserted that while this may have been an error, the Visa Officer ultimately found that this factor would only diminish the Applicant's motivation to return to Iran and that the primary and determinative finding was the Visa Officer's conclusion regarding the purpose of the visit. I agree. The finding that the Applicant did not provide a sufficient basis to support the stated purpose of his visit, to obtain a second MA, was in and of itself determinative and sufficient on its own to deny the study visa.

[20] Having reached this conclusion, it is not necessary for me to address the other issues raised by the Applicant with respect to the reasonableness of the Visa Officer's decision. I would observe, however, that many of the Applicant's arguments mischaracterize the Visa Officer's reasons for finding that the Applicant would not leave at the end of the authorized period of stay and then assert that the Visa Officer erred by ignoring evidence with respect to the Applicant's own characterization of the Visa Officer's reasons.

No Breach of Procedural Fairness

[21] The Applicant provides lengthy written submissions asserting that the Visa Officer's decision is procedurally unfair on the basis that the Visa Officer failed to provide adequate reasons, made implicit credibility findings without allowing the Applicant to respond to the Visa Officer's concerns, and breached the "duty of legitimate expectations" by ignoring the evidence in the application. These submissions appear to follow a standard form or largely generic

arguments utilized by Applicant's counsel in study visa applications for judicial reviews (see for example, court file number IMM-10688-22) and were not pursued when the Applicant appeared before me. In my view, these arguments are without merit.

[22] First, the Applicant asserts that the Visa Officer failed to explain how they reached their findings with respect to the Applicant's establishment in Iran, his plan of studies and other matters (that the Visa Officer failed to provide "adequate right reasons") and failed to consider evidence that contradicts their conclusion (which the Visa Officer did not). These arguments are a question of the reasonableness of the decision (*Vavilov* at paras 15, 125-126) — not an issue of procedural fairness.

[23] Second, the Applicant submits that it is trite law that when a visa officer has concerns arising from an application, they are under a duty to bring this to the attention of the applicant and permit them to address the issue before making a determination. But this is not the current state of the jurisprudence concerning study permits application. Current case law is clear that study permit decisions attract a low level of procedural fairness and officers do not have to seek out additional information to assuage concerns arising on the face of an application (see, for example, *Patel v Canada (Citizenship and Immigration)*, 2020 FC 517 at para 12 citing *Li v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 791 at paras 45 to 50; *Singh v Canada (Citizenship and Immigration)*, 2012 FC 526 at para 34, *Hakimi v Canada (Citizenship and Immigration)*, 2015 FC 657 at para 14, and *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at paras 36- 37; *Ibekwe v Canada (Citizenship and Immigration)*, 2022 FC 728 at para 16).

[24] As stated in *Aghvamiamoli v Canada (Citizenship and Immigration)*, 2023 FC 1613:

[20] An officer is not normally obliged to notify an applicant of the weaknesses in their application, by way of a fairness letter or an interview, when the concerns relate to the applicant's own evidence in an attempt to meet statutory requirements. The officer is entitled to draw an adverse conclusion on the evidence filed without bringing the potential adverse conclusion to the applicant's attention for a rebuttal (*Gomes v Canada (Citizenship and Immigration)*, 2020 FC 451 at paras 20-21; *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 33).

[25] Put otherwise, "where a concern arises directly from the requirements of the legislation or related regulations, a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns" (*Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24, cited in *Talpur v Canada (Citizenship and Immigration)*, 2012 FC 25 at para 21). Here the Visa Officer's concerns arose directly from paragraph 216(1)(b) of the IRP Regulations, being whether the Applicant would leave Canada at the end of an authorized stay. The Visa Officer found that the Applicant would not, based on a lack of significant family ties outside Canada and the purpose of his visit. The Visa Officer therefore did not breach procedural fairness by not seeking out further information from the Applicant nor by not raising concerns with him about his application.

[26] Third, nothing in the Visa Officer's reasons or the record supports the Applicant's allegation that the Visa Officer made an implicit credibility finding. The Visa Officer did not question the authenticity or credibility of the documents submitted by the Applicant in support of his application, rather, the Visa Officer's determination was based on the sufficiency of the evidence, not credibility (see *Amiri v Canada (Citizenship and Immigration)*, 2023 FC 1532 [Amiri] at para 25). Similarly, there is no basis for the assertion that the Visa Officer "probably"

relied on unspecified extrinsic evidence, that they formed a negative personal opinion about the Applicant's intention, or that the decision was personal to the Visa Officer.

[27] Finally, the Applicant's reliance on the doctrine of legitimate expectations is similarly misconceived and unfounded. The Applicant's written submission was that by ignoring evidence, the Visa Officer "breached their duty of legitimate expectation". However, as above, whether the Visa Officer ignored evidence or rendered a decision that is unjustified in relation to factual constraints are concerns about the reasonableness of the decision (*Vavilov* at paras 101, 125-126; *Amiri* at para 26, citing *Aje v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 811 at paras 11-12), not procedural fairness.

Conclusion

[28] For all of these reasons, I find that the decision was reasonable and that there was no breach of the duty of fairness.

JUDGMENT IN IMM-12891-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;
2. There shall be no order as to costs; and
3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12891-22

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THE MINISTER OF CITIZENSHIP AND
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