

Federal Court



Cour fédérale

Date: 20240424

Docket: IMM-13439-22

Citation: 2024 FC 620

Toronto, Ontario, April 24, 2024

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

SEYED AMIR HOSSAIN GHODSI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of an officer [Officer] of Immigration, Refugees and Citizenship Canada at the Embassy of Canada in Ankara, Turkey, dated November 17, 2022, wherein the Officer concluded that the Applicant, a citizen of Iran, had failed to meet the criteria for the issuance of a work permit under the C12 Labour Market Impact Assessment [LMIA] exemption for managerial/executive intra-company transferees pursuant to

subsection 205(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations] and the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicant is a shareholder and managing director of an Iranian company (incorporated in 1992) that produces edible phosphates on an industrial scale. In 2021, the company decided to expand overseas and incorporated a Canadian branch. The Board of Directors chose the Applicant to oversee the expansion and sought to have the Applicant hold a similar position in Canada (as executive director) for an initial, temporary period of one year. The Applicant's wife (who runs a separate business) and daughter were to remain in Iran.

[3] By letter dated November 17, 2022, the Officer refused the Applicant's work permit application on the basis that the Officer was not satisfied that the Applicant would leave Canada at the end of his stay. The Officer based his assessment on the following factors:

- You were not able to demonstrate that you will be able to adequately perform the work you seek.
- The purpose of your visit to Canada is not consistent with a temporary stay given the details you have provided in your application.
- The compensation (monetary or other) indicated in your job offer and your assets and financial situation are insufficient to support the stated purpose of travel for yourself (and any accompanying family member(s), if applicable).
- You have not demonstrated that you meet the eligibility requirements as an intra-company transferee in the C12 Specialized Knowledge category under R205(a).

[4] The Global Case Management System [GCMS] notes, which form part of the reasons, state:

[Applicant] is applying for a one-year [work permit] under LMIA exemption C12.

[Applicant] wants to come to Canada as an intra-company transferee in the position of Executive Director, earning 52,000CAD.

[Applicant] does not have a very strong travel history with multiple refusals from both Canada and the United-States of America.

Website provided by [Applicant] to company does not exist.

[Applicant] provided payslips of current job in country of residence. I noted that [Applicant] is not very well established in country of residence based on [Applicant's] financial assets. Taking the applicant's proposed employment into account, the documentation provided in support of the applicant's financial situation does not demonstrate that the applicant is sufficiently established that travelling to Canada for the proposed employment would be a reasonable expense. The applicant appears to have economic motives to remain in Canada.

[Applicant] has not demonstrate [sic] enough evidence to justify LMIA exemption under C12. I am not satisfied that the company-employee relation is established.

[5] The sole issue for determination on this application is whether the Officer's decision was unreasonable. The parties agree, and I concur, that the applicable standard of review is that of reasonableness. When reviewing for reasonableness, the Court must take a "reasons first" approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8]. 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 [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently

serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418 at para 11].

[6] A visa officer's assessment for a temporary work permit requires a balancing of many factors. Discretionary decisions of this type are thus entitled to a high degree of deference since they usually involve questions of fact and relate to a visa officer's recognized expertise [see *Singh v Canada (Citizenship and Immigration)*, 2017 FC 894 at paras 15-16; *Portillo v Canada (Citizenship and Immigration)*, 2014 FC 866 at para 17; *Ngalamulume v Canada (Citizenship and Immigration)*, 2009 FC 1268 at para 16; *Talpur v Canada (Citizenship and Immigration)*, 2012 FC 25 at para 19; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 517 at para 6].

[7] Although a visa officer's duty to provide reasons when evaluating a temporary resident visa application is minimal, the visa officer must nonetheless provide adequate reasons that justify their decision [see *Singh v Canada (Citizenship and Immigration)*, 2009 FC 621 at para 9].

[8] While the Applicant asserts that the Officer's decision was unreasonable on a number of grounds, I find that the Officer's flawed reasons related to their determination that the Applicant had not established that he was sufficiently established in Iran, coupled with the Officer's error as to the nature of the application and lack of clarity in their reasons related thereto, are sufficient to render the decision unreasonable.

[9] On the issue of establishment, the Applicant asserts that the Officer misapprehended the evidence related to the Applicant's establishment in Iran. The Officer held that the Applicant's

financial assets do not support that he is very well-established in Iran and that “[t]aking the applicant’s proposed employment into account, the documentation provided in support of the applicant’s financial situation does not demonstrate that the applicant is sufficiently established that travelling to Canada for the proposed employment would be a reasonable expense.” The Officer provides no justification for this determination in the GCMS notes which is problematic given that the Applicant had provided appraisals of two properties he owns in Iran showing these properties have a value of over \$2,000,000 CAD, bank statements showing the equivalent of \$64,098 CAD in the account and evidence that the Applicant had been employed with the company since 2010 (and had been the managing director since 2016). I find that the Officer’s failure to address this evidence, which directly contradicts the Officer’s determination, renders the Officer’s decision unreasonable [see *Pirzada v Canada (Citizenship and Immigration)*, 2023 FC 835 at para 30, citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 at para 15; *Vavilov, supra* at para 128].

[10] While the Respondent has raised a number of arguments regarding the establishment evidence provided by the Applicant, none of these arguments are grounded in the Officer’s reasons. It is not open to the Respondent to buttress the decision-maker’s reasons and substitute its own justification for an outcome that is based on an unreasonable chain of analysis [see *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1645 at para 23, citing *Vavilov, supra* at para 96].

[11] With respect to the nature of the application, the Officer’s letter states that the Applicant failed to demonstrate that he met the eligibility requirements for the specialized knowledge category and that he had not demonstrated that he would be able to adequately perform the work he seeks. However, the Applicant did not assert that he had any specialized knowledge. To the

contrary, his application clearly indicated that he was applying as an executive or manager after having acted as the managing director of the company in Iran since 2016. I find that a review of the GCMS notes provides insufficient clarity as to whether the Officer actually assessed the application based on the criteria for the specialized knowledge category or the managerial/executive category. The error in the Officer's letter and lack of clarity in their reasons also render the decision unreasonable.

[12] Having found the decision to be unreasonable, the decision shall be set aside and the matter remitted to a different officer for redetermination.

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

JUDGMENT in IMM-13439-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the Officer's decision dated November 17, 2022, is hereby set aside. The Applicant's work permit application shall be remitted for redetermination by a different officer.
2. There is no question for certification.

"Mandy Ayles"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13439-22

STYLE OF CAUSE: SEYED AMIR HOSSAIN GHODSI v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: AYLEN J.

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