

Federal Court



Cour fédérale

Date: 20240528

Docket: IMM-3113-24

Citation: 2024 FC 806

Ottawa, Ontario, May 28, 2024

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

**FATEMEH MOHAMMADESMAEILTABARNESHELI
AND AMIN TAVAKOLIAN**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of an immigration officer that denied the application for a study permit of the Applicant, Mr. Tavakolian, together with a related application for an open work permit from his spouse, the Associate Applicant, Ms. Mohammadesmaeiltabarnesheli.

[2] Both applicants are citizens of Iran. The Applicant is 33 years old and the Associate Applicant is 35 years old. The applicants were married in 2020.

[3] The applicants applied for judicial review of decisions by a visa officer dated February 28, 2023, refusing their applications (Decisions) under subsections 216(1) and 205(c)(ii) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]

[4] The applicants request that the Court set aside the Decisions as unreasonable, applying the principle in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[5] For the reasons that follow, the application is granted.

I. Facts

[6] The Applicant obtained a Bachelors degree in Industrial Engineering specializing in System Analysis from the Khaje Nasir Toosi University of Technology in Tehran, Iran in May 2014. The Associate Applicant obtained a Masters of Information Technology degree from the Islamic Azad University in Tehran, Iran in September 2017.

[7] The Applicant's family owns a spare auto parts manufacturing business in Iran where he is a part of the management team. The Associate Applicant is also works for the family business.

[8] The Applicant received a letter of acceptance for admission to University Canada West (UCW) in the Masters of Business Administration program (MBA) on February 6, 2023. The Applicant submitted his study permit application under subsection 216(1) of the *IRPR* on February 9, 2023. The Associate Applicant's application for an open work permit under paragraph 205(c)(ii) of the *IRPR* was filed shortly thereafter.

[9] The Applicant paid a tuition deposit of \$7,900 CAD to UCW and received financial aid of \$9,720 CAD.

II. The Decisions under review

[10] By letter dated February 28, 2023, the Applicant's request for a study permit and the Associate Applicant's request for an open work permit were refused because the officer was not satisfied that they would leave Canada at the end of their stay as required by subsection 216(1) of the *IRPR*, based on the purpose of their visits.

[11] In the Global Case Management System (GCMS) notes for the Applicant dated February 28, 2023, the officer notes that the Applicant's "assets and financial situation are insufficient," the Applicant had a "large gap" in his studies, and the study plan was "vague and does not outline a clear career/educational path for which the sought educational program would be of benefit."

[12] In the GCMS notes for the Associate Applicant dated February 28, 2023, the officer noted that "economic conditions and employment prospect in her home country," "travel history," and "economic and family ties" did not satisfy the conditions for temporary entry.

[13] The applicants commenced their applications for leave and judicial review of the decisions on March 7, 2023. On March 24, 2023, the applicants made an informal request to consolidate the applications for judicial review. On March 30, 2023, leave for consolidation was granted by Order of Associate Judge Milczynski.

III. Issues

[14] The following two issues are raised in this application:

1. Was the officer's decision to refuse the Applicant's study permit unreasonable?

2. Was the officer's decision to refuse the Associate Applicant's open work permit unreasonable?

[15] The parties submitted, and I agree that that standard of review applicable to a visa officer's refusal of a study permit application and the corresponding spousal application for an open work permit is reasonableness (*Vavilov* at paras 10, 23; *Barot v Canada (Citizenship and Immigration)*, 2023 FC 284 [*Barot*] at para 11).

[16] Reasonableness review is a deferential standard, and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Vavilov* at paras 12–15). The starting point for a reasonableness review is the reasons for decision. The reasons are reviewed holistically and contextually, in conjunction with the record before the decision maker. Reasonable decisions are internally coherent, follow a rational chain of analysis, and are justified in relation to the facts and law (*Vavilov* at paras 91–97, 105–106).

[17] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (*Vavilov* at para 100).

[18] Section 216 of the *IRPR* sets out that an officer shall issue a permit to a foreign national if, following an examination, certain criteria are satisfied. Similarly, paragraph 205(c)(ii) of the *IRPR* sets out that an officer may issue a permit to a foreign national who intends to perform work that satisfies certain criteria set out in the *Immigration and Refugee Protection Act*, SC 2001, c 27.

IV. Analysis

A. *Was the officer's decision to refuse the Applicant's study permit unreasonable?*

[19] Section 216 of the *IRPR* sets out that an officer shall issue a study permit to a foreign national if, following an examination, certain criteria are satisfied. The onus is on the applicant to satisfy the officer that they will not remain in Canada following the expiration of their visa (*Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 10; *Nourani v Canada (Citizenship and Immigration)*, 2023 FC 732 at para 14).

[20] Section 220 of the *IRPR* sets out that an officer shall not issue a study permit to a foreign national unless they have sufficient financial resources, without working in Canada, to pay tuition fees, maintain themselves and any accompanying family members, and pay transportation costs to and from Canada.

[21] The Applicant argues that the officer's decision was not reasonable, as the reasons are inadequate, unintelligible, and do not adequately address all the evidence before the officer.

[22] The officer's reasons can be broken into two broad categories: (i) the sufficiency of the study plan and (ii) the Applicant's financial means.

(1) Sufficiency of the study plan

[23] The officer notes a "large gap" in the Applicant's studies; his original degree, a Bachelors in Industrial Engineering obtained in 2014, and the proposed plan of study, to pursue an MBA. The officer also questions the utility of the MBA in relation to the study plan's stated objectives.

[24] As recently noted by this court in *Ali v Canada (Citizenship and Immigration)*, 2023 FC 608 at paragraph 13:

There is no question that a visa officer reviewing a study permit application is permitted, and even required, to review any study plan an applicant has submitted in assessing whether they are satisfied the applicant will leave Canada by the end of the period authorized for their stay. Concerns or flaws in the reasonableness or rationality of a study plan may lead a visa officer to conclude the applicant has not demonstrated they are a bona fide student who intends to and is capable of pursuing a course of studies. However, such reasoning must be adequately articulated and should not amount to mere “career counselling” focused on the “value of learning” to an applicant.

[Emphasis added.]

[25] The Applicant submitted that the decision was unreasonable because it lacked transparency, intelligibility, justification, and because the officer relied on “boilerplate” statements. The officer’s GCMS notes that form part of the decision state: “I note a large gap in studies. Study plan submitted is vague and does not outline a clear career/educational path for with the sought educational program would be of benefit.”

[26] The Applicant’s study permit application includes evidence as to how the proposed study plan links up with plans to expand the family business. The officer’s reasons do not address this evidence in a manner that permits this Court to understand how the study plan was wanton or deficient.

[27] I agree that officers are not required to respond to every argument or piece of evidence advanced in an application or make an explicit finding on each element; however, the reasons must demonstrate that the officer “meaningfully grapple[d]” with key issues or central arguments

raised (*Vavilov* at para 128). The officer's reasons with respect to the sufficiency of the study plan did not meet the standard for proper reasons as set out in *Vavilov*.

[28] The officer's failure to address the contradictory evidence related to the Applicant's study plan makes the decision unreasonable (*Vavilov* at paras 127–128, *Rodriguez Martinez v Canada (Citizenship and Immigration)*, 2020 FC 293 at paras 15–16). The Applicant's Decision, read with the GCMS notes and the application record, absent a clear reference to this contradictory evidence, is impossible to understand. In my opinion, the officer failed to regard the factual constraints in the matter, as required by *Vavilov*.

(2) Financial means

[29] The Applicant once again submitted that the decision was unreasonable because it lacked transparency, intelligibility, justification, and because the officer relied on “boilerplate” statements. Further, the officer does not address contradictory financial evidence submitted in the study permit application.

[30] The Respondent noted in oral submissions that this was the focus of the officer's decision. They argued that as the Applicant failed to demonstrate that he satisfies the criteria set out at section 220 of the *IRPR*, the officer properly denied the application for a study permit.

[31] In their written submissions, the Respondent has illustrated how the Applicant's financial information illustrated a shortfall of approximately \$27,860 CAD. However, I note that it is not for counsel for the Minister to develop reasons that buttress and bolster a visa officer's decision (*Namin v Canada (Citizenship and Immigration)*, 2022 FC 1706 at para 17).

[32] The officer's GCMS notes only state that, "the applicant's assets and financial situation are insufficient to support the stated purpose of travel for the applicant (and any accompanying family member(s), if applicable)."

[33] I note that pursuant to section 220 of the *IRPR*, where an applicant does not demonstrate adequate financial resources, an officer has no discretion and must deny the study permit application (*Ohuaregbe v Canada (Citizenship and Immigration)*, 2023 FC 480 at para 23).

[34] Officers may require proof of sufficient funds for the entirety of an academic program. Officers must be "satisfied as to the source, nature and stability of those funds" and "determine the likelihood of future income and the ability to pay for subsequent years of education and living expenses" (*Sani v Canada (Citizenship and Immigration)*, 2024 FC 396 at paras 13–32).

[35] An officer's financial analysis justification "may be concise and simple so long as it is responsive to the evidence" (*Ibekwe v Canada (Citizenship and Immigration)*, 2022 FC 728 at para 28, citing *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 17).

[36] In the present matter, the officer's reasons are not intelligible or responsive to all of the financial evidence set out in the Applicant's study permit application. The reasons set out in the GCMS do not provide a "modicum of clarity" to permit this Court to understand how the Officer reached their decision (*Ogbuchi v Canada (Citizenship and Immigration)*, 2016 FC 764 at para 13, citing *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[37] In response to questions about the sufficiency of the officer's reasons, the Respondent indicated that "the record spoke for itself." However, it is not the role of the Court in a judicial

review to review or reweigh the evidence (*Khan v Canada (Citizenship and Immigration)*, 2023 FC 52 at paras 19–21).

[38] In my opinion there is insufficient analysis provided in the officer's reasons that would justify or explain their decision. As such, the officer's conclusion lacks transparency, intelligibility, and justification and is unreasonable.

B. *Was the officer's decision to refuse the Associate Applicant's open work permit unreasonable?*

[39] Paragraph 205(c)(ii) of the *IRPR* states that to be granted an accompanying spousal open work permit, an applicant must be the spouse of a foreign national who holds a valid study permit or is provisionally approved for a study permit.

[40] In the context of the officer's decision to reject the Applicant's application for a study permit, the officer reasonably rejected the Associate Applicant's application for an open work permit.

[41] However, given that I have found that the officer's reasons for rejecting the Applicant's study permit were unreasonable, the accompanying spousal work permit application should also be referred back to Immigration, Refugees and Citizenship Canada (IRCC) for reconsideration.

[42] The parties did not pose any questions for certification, and I agree that there are none.

JUDGMENT in IMM-3113-23

THIS COURT'S JUDGMENT is that:

1. The applications for judicial review are granted.
2. The Applicant's application for a study permit shall be remitted back to the IRCC for reconsideration by a different officer.
3. The Associate Applicant's application for an open work permit shall be remitted back to the IRCC for reconsideration by a different officer.
4. There shall be no order as to costs.
5. No question is certified.

“Julie Blackhawk”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3113-23

STYLE OF CAUSE: MOHAMMADE SMAEIL TABARNESHELI ET AL. v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 13, 2024

JUDGMENT AND REASONS: BLACKHAWK J.

DATED: MAY 28, 2024

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