

Federal Court



Cour fédérale

Date: 20240606

Docket: IMM-2201-23

Citation: 2024 FC 856

Ottawa, Ontario, June 6, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

**PARVIZ KASHEFI AND
ZAHRA SOLTANPOOR KHAZAEI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Parviz Kashefi and Zahra Soltanpoor Khazaei, seek judicial review of the refusal of their applications for temporary resident visas (“TRV”). They are a married couple who wanted to come to Canada to visit their daughter and her family as well as their son and his child.

[2] The Officer denied their visa application based on their family ties outside Canada and the overall purpose of their visit.

[3] The Applicants argue that the decision is unreasonable, because the Officer's reasons failed to explain the reasoning process that resulted in the refusal of their applications. I agree. The reasons provided by the Officer are simply too generic to meet the standard of responsive justification demanded by *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[4] The Applicants are a retired couple who live in Iran. They have one child in Iran, and their respective families also live there. The Applicants' daughter obtained refugee status in Canada, and was then granted permanent resident status. She has a child who is in Canada. The Applicants' son is in Canada on a work permit, and he also has one child who is in Canada.

[5] The Applicants applied for TRVs in September 2022, explaining that they wanted to come to Canada to visit their children and grandchildren because they had not seen them in three years. They committed to following all public health and quarantine guidelines, and had purchased health insurance for the duration of their stay. They provided undertakings to support the financial costs of their trip, and submitted financial documentation showing they had over \$38,000 CAD available for this purpose, and that their annual incomes totalled approximately

\$133,000 CAD. In addition, they provided evidence that both of their children were employed in Canada. The Applicants promised to leave Canada at the end of their authorized stay.

[6] The Officer denied their requests. The decision letter stated the Officer was not satisfied they would leave Canada at the end of their stay based on the following factors: “You do not have significant family ties outside Canada” and “[t]he purpose of your visit to Canada is not consistent with a temporary stay given the details you have provided in your application.” The Officer’s notes in the Global Case Management System (“GCMS”) mentions four elements; the pertinent extracts from the notes are set out below:

- “...travel history is not sufficient to count as a positive factor”;
- “Client is applying to visit child [sic] ... Given family ties or economic motives to remain in Canada, the applicant’s incentives to remain in Canada may outweigh their ties to their home country”
- “The purpose of the ... visit ... is not consistent with a temporary stay given the details provided in the application. The purpose of visit does not appear reasonable given applicant’s socio-economic situation.”

[7] The Officer refused the applications based on a weighing of all of these factors. The Applicants seek judicial review of this decision, arguing it is unreasonable because: (a) the form letter did not explain the reasoning and they should not have to seek judicial review to obtain the

rationale for the refusal; (b) the Officer failed to explain why their applications were refused, in light of all of the evidence they submitted.

[8] The substance of the Officer's reasons are set out above. No details specific to the Applicants' case are omitted from the summary above, because none are included in the reasons themselves. While it may be possible to construct a perfectly reasonable set of reasons to justify the refusal of the TRV, in light of the particular circumstances of the Applicants, the Officer did not do that. Instead, a generic form letter was sent, and the GCMS notes do not add meaningful details to explain the result.

[9] A few examples will be sufficient to demonstrate the inadequacy of the Officer's reasons. First, in assessing a TRV application an Officer is required to assess the factors that might encourage the person applying to want to stay in Canada, as well as the factors that might pull them back to their home country (often referred to as "push and pull factors"). Family connections in Canada and the country of origin are obviously relevant to this assessment.

[10] Here, the Applicants are a retired couple in receipt of pensions in Iran. They have a son and other family members living in Iran. Their daughter and son, as well as their grandchildren, live in Canada. This is all set out in the Applicants' TRV application, and the Officer must be presumed to have been aware of it. An assessment of the family dimension of the push and pull

factors could lead an Officer to wonder if the Applicants wanted to settle in Canada to be closer to their children and grandchildren. That might not have been an unreasonable assessment, on the evidence.

[11] The problem here is that there is no mention of any of the facts listed in the previous paragraph that can be found in the decision letter or GCMS notes. Instead, the only mention of family ties is the following equivocal statement: “Given family ties or economic motives to remain in Canada, the applicant's incentives to remain in Canada may outweigh their ties to their home country.” (emphasis added). The Officer does not find that the family ties weigh in favour of denying the TRV; no finding on this issue is made at all.

[12] The Officer’s statements regarding the other ground of refusal is equally opaque: “The purpose of visit does not appear reasonable given the applicant’s socio-economic situation...” It is not possible to glean from the record any further explanation about which aspects of the Applicants’ social or economic situation lead the Officer to conclude that they will not leave Canada at the end of their authorized stay. The GCMS notes are silent on the point. At the hearing, the Applicants speculated that the Officer’s concerns may have related more to the situation in Iran, but acknowledged that this was pure conjecture given the ambiguity of the language in the GCMS notes. The Officer simply failed to explain, even in a few words, what this line of analysis refers to or how it justifies the result.

[13] A core underlying objective of the *Vavilov* framework of judicial review is to encourage administrative decision-makers, like the Visa Officer, to justify their decisions with reasons that demonstrate an engagement with the particular circumstances of each case, considered in light of the legal framework that applies. The Supreme Court of Canada speaks about a “culture of justification.” In my view, the Officer’s decision in this case falls short because it does not show an actual engagement with the specific situation of these particular Applicants.

[14] In finding the decision unreasonable, I want to underline several points. First, the context for the decision is important. This Court has often acknowledged that reasons in TRV cases can be brief, because Officers face a deluge of cases and in view of the interests of the individuals affected by such decisions. Second, in making such decisions, Officers can bring their expertise concerning country conditions and many other factors to bear in exercising the wide discretion afforded to them by the law. It would have been reasonable for the Officer’s assessment of the socio-economic situation of the Applicants to be informed by such knowledge; but that needed to be explained, if even briefly. Finally, visa officers exercise broad discretion under the law, and the onus lies with the Applicants to demonstrate that they will leave Canada at the end of their authorized stay. Decisions on TRV applications deserve deference in view of the breadth of the Officer’s discretion. My decision in this case should not be interpreted as questioning any of these principles.

[15] In the end, TRV decisions must demonstrate an engagement with the specific facts of the case, and provide sufficient detail to justify the result. Short, focused and clear reasons will be sufficient, and not every detail needs to be addressed.

[16] For the reasons set out above, however, I find that the Officer's reasons in this particular case fall short of the mark. The decision is unreasonable and therefore the application for judicial review will be granted.

[17] In light of my conclusion on the first issue, it is not necessary to address the other argument advanced by the Applicant in any detail. I will simply note that there may be legitimate questions to be asked about the extent to which the current practice of providing "standard form" decision letters devoid of any meaningful details is consistent with *Vavilov*'s call for a "culture of justification."

[18] For the reasons set out above, the application for judicial review will be granted. The decision will be quashed and remitted back for reconsideration by a different officer. In light of the passage of time, the Applicants shall be granted the opportunity to provide updated submissions, should they wish to do so. There is no question of general importance for certification.

JUDGMENT in IMM-2201-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The decision dated January 12, 2023 is hereby quashed and set aside.
3. The matter is remitted back for reconsideration by a different officer. The Applicants shall be provided the opportunity to provide updated submissions should they wish to do so.
4. There is no question of general importance for certification.

"William F. Pentney"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE: PARVIZ KASHEFI AND ZAHRA SOLTANPOOR
KHAZAEI v THE MINISTER OF CITIZENSHIP AND
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