Federal Court  Cour fédérale

**Date: 20240605**

**Docket: IMM-4696-23**

**Citation: 2024 FC 848**

**Toronto, Ontario, June 5, 2024**

**PRESENT: The Honourable Mr. Justice A. Grant**

**BETWEEN:**

**ROYA MOHAMMADHOSSEINI**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Applicant seeks judicial review of a decision by an officer at Immigration, Refugees and Citizenship Canada [the Officer] denying her application for a study permit. The permit was refused because the Officer was not satisfied that she would leave Canada at the end of her stay. This finding was based on three factors. First, the Officer found that the Applicant's assets and financial situation were insufficient to support the purpose of her travel to Canada; second, the

Officer found that the Applicant does not have significant family ties outside of Canada; and third, the purpose of the Applicant's visit to Canada was not considered consistent with a temporary stay.

[2] For the reasons that follow, I dismiss this application for judicial review. While aspects of the decision are questionable, the Officer's assessment of the financial information submitted by the Applicant was reasonable.

## II. Background

[3] The Applicant has a Bachelor's Degree in Software Computer Engineering from Islamic Azad University Yasuj, where she studied from 2009 to 2013. She has also acquired two certificates in dress design and has worked at Nazli Dress Design and Sewing Maison as the Head of the Clothes Design Section since September 2019.

[4] The Applicant applied for admission into a Master's program in Leadership and Business at Trinity Western University [TWU]. She was accepted into the program in November 2022, and made an advance tuition payment of $9,990 CAD.

[5] Following her admission into TWU, the Applicant applied for a study permit in March 2023. In this application, she indicated that her husband and daughter would accompany her to Canada for her studies. The Applicant's extended family all live in Iran.

[6] The Applicant also provided financial documentation in an attempt to establish that she had sufficient funds to support herself during her studies. This documentation included bank

statements for herself, her husband, and her brother who had agreed to ‘sponsor’ her studies. The Applicant also provided property and automobile deeds, a deed of sale on a property, and letters from her and her husband’s employers.

## III. Decision under Review

[7] The Applicant’s study permit application was denied in a letter from Immigration, Refugees and Citizenship Canada [IRCC] dated March 24, 2023. The substance of the letter states:

> I am not satisfied that you will leave Canada at the end of your stay as required…I am refusing your application because you have not established that you will leave Canada, based on the following factors:
>
> - 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 do not have significant family ties outside Canada.
> - The purpose of your visit to Canada is not consistent with a temporary stay given the details you have provided in your application.

[8] On the question of the Applicant’s financial resources, the Officer also stated in the Global Case Management System [GCMS] notes, which form part of the decision:

> I note multiple property deeds and titles are provided, however, no banking transaction history to show regular intervals of deposits into the applicant's accounts from said properties. Bank balance statements provided; large balances noted, no transaction history. I have concerns that the property documents are for demonstration purposes only and are not reflective of the applicants (sic) legitimate financial resources. Taking this into account, alongside the applicant's plan of studies into account and banking records provided, I find the applicant's financial situation does not demonstrate that funds would be sufficient or available for tuition, living expenses and travel.

[9] In the GCMS notes, the Officer also observed that the Applicant intended to travel to Canada with her husband and child and, as a consequence, found that she would not have significant family ties outside of Canada.

[10] With respect to the Applicant's intended course of study, the Officer found that the TWU program was in an unrelated field to her previous studies, and that her employment and educational history "demonstrate an inconsistent career progression."

## IV. Issues

[11] The Applicant has raised a number of issues on judicial review. These issues go to both the fairness of the process that led to the negative decision, and the substance of the decision itself. As such, I will consider the issues as follows:

1. Did the Officer reject the Applicant's application in a manner that was procedurally unfair?
2. Was the substance of the Officer's decision reasonable?

## V. Standard of Review

[12] Courts do not defer to administrative decision-makers on the question of whether a particular decision was rendered fairly. A court assessing a procedural fairness argument is required to ask whether the procedure was fair having regard to all of the circumstances. A different way to say this is that the fairness concerns raised by the Applicant will be reviewed on a standard approximating the correctness standard: *Canadian Pacific Railway Company v*

*Canada (Attorney General)*, 2018 FCA 69 at para 54, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43.

[13] On the substance of the Officer's decision, there is no dispute between the parties that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at para 25 [*Vavilov*]).

[14] A reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it: *Vavilov* at para 15. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

[15] In *Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552, at paragraph 13, this court recently described the reasonableness standard in the context of visa office decisions, as follows:

> The standard of review applicable to a review of a visa officer's decision to refuse a study permit application is that of reasonableness…While it is not necessary to have exhaustive reasons for the decision to be reasonable given the enormous pressure on visa officers to produce a large volume of decisions each day, the decision must still be based on an internally coherent and rational chain of analysis and be justified in relation to the facts and law that constrain the decision maker…It must also bear "the hallmarks of reasonableness — justification, transparency and intelligibility" [citations omitted].

## VI. Legislative Framework

[16] Paragraph 20(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] provides that a foreign national wishing to enter or remain in Canada as a temporary resident must establish that they hold a visa or other document prescribed by the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] and will leave Canada by the end of the period authorized for their stay.

[17] Foreign nationals wishing to study in Canada must obtain a study permit to enter the country. The following sections of the IRPR are relevant to the case at bar:

**Study permits**

**216 (1)** Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national

**(a)** applied for it in accordance with this Part;

**(b)** will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

**(c)** meets the requirements of this Part;

**(d)** meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and

**(e)** has been accepted to undertake a program of study at a designated learning institution.

[...]

**Permis d'études**

**216 (1)** Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

**a)** l'étranger a demandé un permis d'études conformément à la présente partie;

**b)** il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

**c)** il remplit les exigences prévues à la présente partie;

**d)** s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);

**e)** il a été admis à un programme d'études par un établissement d'enseignement désigné.

[...]

**Financial resources**

**220** An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to

**(a)** pay the tuition fees for the course or program of studies that they intend to pursue;

**(b)** maintain themself and any family members who are accompanying them during their proposed period of study; and

**(c)** pay the costs of transporting themself and the family members referred to in paragraph (b) to and from Canada.

**Ressources financières**

**220** À l'exception des personnes visées aux sous-alinéas 215(1)d) ou e), l'agent ne délivre pas de permis d'études à l'étranger à moins que celui-ci ne dispose, sans qu'il lui soit nécessaire d'exercer un emploi au Canada, de ressources financières suffisantes pour :

**a)** acquitter les frais de scolarité des cours qu'il a l'intention de suivre;

**b)** subvenir à ses propres besoins et à ceux des membres de sa famille qui l'accompagnent durant ses études;

**c)** acquitter les frais de transport pour lui-même et les membres de sa famille visés à l'alinéa b) pour venir au Canada et en repartir.

## VII. Analysis

### A. *The Officer's Decision was Fair*

[18] It is well established that the level of procedural fairness owed to study permit applicants falls at the low end of the spectrum: *Nourani v Canada (Citizenship and Immigration)*, 2023 FC 732 at para 50; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 517 at para 12.

[19] I understand the Applicant's argument on the fairness of the underlying proceedings to be twofold: first she argues that the deciding Officer should have given her an opportunity to address any concerns regarding the costs of the TWU program, and whether these costs were a justifiable expense in the Applicant's circumstances. Second, the Applicant argues that the Officer's findings indicate a suspicion that the study permit application was submitted for an

improper purpose. To the extent that the Applicant's credibility was in question, she argues that a "procedural fairness letter" should have been provided, or an oral interview should have been held. I do not accept either of these arguments.

[20] On the facts of this case, the Officer was not under an obligation to notify the Applicant of any concerns related to the costs of her program. The Applicant knew what those costs were. The Applicant also knew that she was required to provide detailed information on her financial situation to satisfy the Officer that she met the requirements of section 220 of the IRPR. This Court has found on numerous occasions that officers are not obliged to "seek to clarify a deficient application, to reach out and make the applicant's case, to apprise an applicant of concerns relating to whether the requirements set out in the legislation have been met, or to provide the applicant with a running score at every step of the application process": *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 38; *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at para 16.

[21] I also do not accept the argument that the Officer assessed the study permit application with suspicion, or made veiled credibility findings. The Applicant points to no particular passage in the Officer's decision or the accompanying GCMS notes indicating that the Officer doubted the veracity of the application. I find, rather, that the decision letter and the GCMS indicate the Officer was simply not satisfied that the Applicant had discharged her obligation to establish that she met the requirements of sections 216 and 220 of the IRPR. As such, the Officer was not under a duty to inform the Applicant of any concerns or considerations before rejecting her application: *Kumar v Canada (Citizenship and Immigration)*, 2020 FC 935 at para19; *Ayyalasomayajula v Canada (Citizenship and Immigration)*, 2007 FC 248 at para 18.

[22] As a result, I see no basis on which to conclude that the decision rejecting the Applicant's study permit application was procedurally unfair.

B. *The Officer's Decision was Reasonable*

[23] Individuals seeking a study permit in Canada must satisfy an officer that they meet the requirements of the legislative regime. Most notably for the purposes of this application, applicants must establish that they will leave Canada at the end of their period of authorized stay; and that they have sufficient and available financial resources to cover their program of study, to support themselves and their accompanying family members, and to cover transportation costs: see paragraph 216(1)(b) and section 220 of the IRPR.

C. *Sufficiency of funds*

[24] As noted above, in support of her application, the Applicant provided various financial documents. These documents included the following:

- A 'credit balance and turnover' document, together with a bank statement for the Applicant's savings account;
- A property title deed for the Applicant's father;
- A 'credit balance and turnover' document, together with a bank statement for the Applicant's husband's savings account;
- A property bill of sale in the name of the Applicant's spouse;
- A property title deed for the Applicant's mother;
- A motor vehicle deed in the name of the Applicant's spouse;
- A 'credit balance and turnover' document, together with a bank statement for the Applicant's brother.

[25] The Applicant points to this significant body of evidence related to her financial security and argues that the Officer erred in finding that she had not met the requirements of section 220 of the IRPR. While I have some sympathy for the Applicant's position, I ultimately disagree that this aspect of the Officer's decision was unreasonable.

[26] The Officer acknowledged that the Applicant had submitted multiple property deeds and bank statements with large balances. As in many recent cases that have come before this Court, however, the Officer also noted that the Applicant did not provide any banking transaction history: *Salamat v. Canada (Citizenship and Immigration*), 2024 FC 545 at paras 6-9; *Mohammadi v Canada (Citizenship and Immigration)*, 2024 FC 598 at paras 15-21; *Aghvamiamoli v Canada (Citizenship and Immigration)*, 2023 FC 1613 at para 29 [*Aghvamiamoli*]; *Najaran v. Canada (Citizenship and Immigration)*, 2024 FC 541 at paras 3-6. Without this information on the day–to-day flow of funds into, and out of, the bank accounts provided, the Officer found that the Applicant's financial situation "does not demonstrate that funds would be sufficient or available for tuition, living expenses and travel."

[27] I find this conclusion to be reasonable largely because it appears that study permit applicants are specifically instructed to provide, amongst other things, copies of bank statements spanning several months as proof of financial sufficiency. I acknowledge that in this case the Applicant provided more than just a bank statement, but also submitted a 'turnover' document providing some longer-term insight into the bank accounts in question. However, it is not immediately clear what assistance these documents provide in understanding the stability of the Applicant's financial situation. It is clear, though, that these documents do not provide the kind of transaction history that the Officer determined was necessary in the circumstances.

[28] It would have been beneficial for the Officer to have mentioned these ‘turnover’ documents in considering the application. However, I do not find that the Officer’s failure to have done so to be fatal in this case, primarily because it remains unclear to me what, precisely, these documents are intended to communicate. As such, I cannot find that they directly contradict the Officer's ultimate conclusion that the Applicant had failed to meet the requirements of section 220 of the IRPR.

[29] Justice Guy Régimbald recently made reference to the instructions provided to study permit applicants from Iran which included requests to provide bank statements covering financial activity over six months: *Aghvamiamoli* at para 28. Justice Régimbald continued at paragraph 29:

> This Court has also held that when assessing a study permit application, an officer must not only look at an applicant’s bank account, but also conduct a more detailed and fulsome analysis about the source, origin, nature, and stability of these funds to determine if the applicant is able to defray the cost of their stay in Canada for the duration of their studies.

[30] Beyond listing the financial documents that she submitted, the Applicant does not provide detailed arguments as to why, in her view, the Officer’s decision was unreasonable. She states that, faced with the evidence provided, it was difficult to see what “logic or rational reasoning” could have led the Officer to conclude that she had failed to meet the prescribed criteria. As noted above, however, the Officer acknowledged the evidence that had been submitted, and provided an adequate, if brief, explanation as to why this evidence was insufficient. In essence, I find that the Applicant disagrees with the approach the Officer took to

weighing the evidence, and is now asking the Court to reweigh this same evidence. It is firmly established in the jurisprudence that this is not the role of the Court on judicial review.

[31] The conditions set out at section 220 of the IRPR are mandatory. Officers do not have discretion to grant a study permit to applicants who do not meet these conditions. As such, I find this aspect of the officer's decision to be reasonable. This finding is determinative of this application for judicial review. As Justice Régimbald stated in *Aghvamiamoli* (at para 36)*:*

> Nevertheless, even if the Officer's decision is unreasonable in relation to their conclusions on the significance of the Applicant's ties to Iran, or on his study plan, on which I do not need to conclude, the Officer's decision is reasonable in relation to the lack of financial support. That consideration, on its own, is sufficient to justify the Officer's decision to refuse the Applicant's application for a study permit.

[32] The result is that this application for judicial review must be dismissed. The Applicant has raised other concerns, but as the Officer's determination on the financial resources issue was reasonable, any deficiencies revealed by these arguments could not affect the outcome of this application.

## VIII. Additional Issue – Counsel Representation

[33] In the above paragraphs, I have set out my reasons for concluding that this application for judicial review should be dismissed.

[34] There remains, however, one further issue to address, that being the representation provided to the Applicant by her counsel, and counsel's corresponding interactions with the Court and the Respondent.

[35] The hearing into this matter was to be held on March 28, 2024. Less than a week before the hearing, the Court received correspondence from Shirin Taghavikhansari, counsel for the Applicant. In the correspondence, counsel indicated that she had received instructions from her client to not attend the hearing. Counsel indicated that the Applicant wished the Court to assess the file based on the written submissions.

[36] Given the timing, and out of concern to maintain a parity of representation between the parties, the Court issued a direction on March 25, 2024 notifying the parties that the matter would be assessed on the written submissions.

[37] In response, counsel for the Respondent provided a submission on March 26, 2024 indicating that she wished to rely on the materials already filed, but also made reference to a recent decision of this Court that was issued after the Respondent had filed a Further Memorandum of Argument.

[38] Procedurally, the Respondent also noted that counsel for the Applicant had not indicated she had been appointed to provide limited-scope representation, as is required in such situations, pursuant to section 124(2) of the *Federal Courts Rules* [the *FC Rules*]. In the absence of such notice, the Respondent had not anticipated that the application for judicial review would proceed on the written record only.

[39] The Respondent further pointed out that a similar situation had recently arisen with the same counsel: *Gholami v Canada (Citizenship and Immigration)*, 2024 FC 201 [*Gholami*].

[40] As it turns out, counsel for the Applicant has filed late notices indicating that she would not appear at hearings in multiple recent applications for judicial review. In addition to *Gholami*, see also: *Jamshidi v Canada (Citizenship and Immigration)*, 2024 FC 627 [*Jamshidi*]; *Kashani v Canada (Citizenship and Immigration)*, 2024 FC 706; *Salamat v Canada (Citizenship and Immigration)*, 2024 FC 545; *Tabatabaei v Canada (Citizenship and Immigration)*, 2024 FC 521; *Roodafshani v Canada (Immigration, Refugees and Citizenship)*, 2024 FC 595; *Zaeri v Canada (Citizenship and Immigration)*, 2024 FC 638 [*Zaeri*]; and *Khorasgani v Canada (Immigration, Refugees and Citizenship)*, 2023 FC 1581.

[41] Counsel's practice appears to be identical in all of these cases. No notice of limited-scope representation had been filed in any of them. In each case, counsel informally notified the Court that she would not be appearing in the days immediately before the hearing was to be held, despite the fact that the underlying applications have been pending for over a year, and in some cases for almost three years. It appears that in none of these cases had there been any indication that Ms. Taghavikhansari or her clients have wished to have her formally removed from the record.

[42] In the absence of notices of limited-scope representation under section 124(2) of the *Rules*, the Court can only assume that Ms. Taghavikhansari was retained to fully represent her clients in these applications. This being the case, it is surprising that so many of Ms. Taghavikhansari's clients, including the Applicant in this matter, would independently choose to instruct counsel not to appear at their hearings. The larger concern is that the last minute non-appearance of counsel in so many recent hearings appears more likely to be a function of counsel's actions, than Applicants' instructions. The concern is also that the timing of these

informal notices of non-appearance do not demonstrate adequate respect for counsel's clients, for the Respondent who prepares for oral hearings, or for the Court's processes and resources.

[43] Applications for judicial review in the Federal Courts are intended to be conducted by way of a written record and an oral hearing: see sections 72-74 of the IRPA and sections 5(1)(g), 15(1)(a) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* [the *CIRP Rules*]. Oral hearings assist the parties to articulate their key arguments, and they assist the Court in refining the issues and providing the presiding judge with the opportunity to ask clarifying questions on areas of uncertainty or ambiguity. Absent exceptional circumstances, the default approach in all immigration matters for which leave has been granted is to conduct a hearing. It is not for parties to unilaterally dispense with this essential feature of the judicial review process.

[44] Costs are not generally awarded in immigration matters, as per section 22 of the *CIRP Rules*:

> No costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders.

[45] Despite the general rule that no costs are generally awarded in immigration matters, I find, as did Justice Shirzad Ahmed in *Zaeri*, that counsel's conduct in this matter may constitute special reasons. I also wish to consider whether, in this instance, any cost awards should be made directly against counsel for the Applicant pursuant to subsection 404(1) of the *FC Rules*. As such, and pursuant to subsection 404(2) of the *FC Rules*, the parties will be given an opportunity

to make submissions on the issue of costs, both generally, and pursuant to subsection 404(1) of the *FC Rules*.

## IX. Conclusion

[46] For all of these reasons this application for judicial review is dismissed. The Officer who rendered the decision in this matter did not breach the duty of fairness, and the decision itself was reasonable.

[47] Submissions may be provided on the issue of costs, as noted above. Counsel for the Applicant will be provided with two weeks from the date of this judgment to provide submissions on costs. The Respondents will have one week to provide reply submissions, should any arise.

[48] No question of general importance was proposed and I agree none exists.

**JUDGMENT in IMM-4696-23**

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is dismissed.

2. The parties are invited to make submissions on costs, pursuant to section 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* and subsection 404(1) of the *Federal Courts Rules*. Counsel for the Applicant will be provided with two weeks from the date of this judgment to provide submissions on costs. The Respondents will have one week to provide reply submissions, should any arise.

3. No question is certified for appeal.

"Angus G. Grant"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | IMM-4696-23 |
| **STYLE OF CAUSE:** | ROYA MOHAMMADHOSSEINI v MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | MARCH 28, 2024 |
| **JUDGMENT AND REASONS:** | GRANT J. |
| **DATED:** | JUNE 5, 2024 |

**WRITTEN SUBMISSIONS BY:**

| | |
|---|---|
| Shirin Taghavikhansari | FOR THE APPLICANT |
| Kareena Wilding | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Taghavi Law Professional Corporation<br>Barrister and Solicitor<br>Richmond Hill, Ontario | FOR THE APPLICANT |
| Attorney General of Canada<br>Toronto, Ontario | FOR THE RESPONDENT |