

Federal Court



Cour fédérale

Date: 20240709

Docket: IMM-3841-23

Citation: 2024 FC 1078

Ottawa, Ontario, July 9, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

Amirabbas TAGHAVI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant Amirabbas Taghavi is a citizen of Iran who was accepted at Centennial College in the one-year Construction Project Management program. He applied for a study permit which was refused by Immigration, Refugees and Citizenship Canada, primarily on the basis of financial insufficiency in relation to the cost of international studies.

[2] Mr. Taghavi now seeks judicial review of the refusal, alleging unreasonableness and procedural unfairness.

[3] I find that the decision is unreasonable because it does not provide responsive justification for refusing the study permit application, by taking into account Mr. Taghavi's explanation for his financial situation. This issue is determinative; I decline to consider the procedural fairness issue.

[4] The decision to refuse Mr. Taghavi's study permit application thus will be set aside and the matter will be remitted to a different visa officer for redetermination.

II. Analysis

[5] In considering whether the decision is reasonable, the Court must determine whether it is intelligible, transparent and justified, further to the applicable, presumptive standard of review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 25, 99. I find that it is not.

[6] Visa officers have no discretion to approve a study permit if an applicant does not demonstrate sufficient and available funds, without working in Canada, to pay the tuition fees for their intended studies, support themselves and any accompanying family members, and pay for transportation to and from Canada: *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 220. See Annex "A" for relevant legislative provisions.

[7] Given that the officer here was not satisfied “that the applicant will have access to the funds provided in support of the application,” I agree with the Respondent that this issue is determinative, regardless of the reasonableness of the remainder of the decision. I am not convinced, however, that the officer reached this conclusion reasonably.

[8] The study permit refusal turns on the newness of the bank account Mr. Taghavi opened, for which he supplied a statement showing funds in the amount of \$55,100 in US dollars. The visa officer accepted that the account was opened for the visa application to meet financial establishment and sustainability for the study period. Indeed, recent jurisprudence supports a visa officer’s assessment of an applicant’s funds with respect to their source, origin, nature and stability: *Aghvamiamoli v Canada (Citizenship and Immigration)*, 2023 FC 1613 [*Aghvamiamoli*] at para 29.

[9] The officer noted, however, that “the applicant did not provide transactions history” and concluded that the “presence of the new account and lack of transactions history does [*sic*] not satisfy me that the applicant will have access to the funds provided in support of the application.”

[10] Notwithstanding visa application instructions, that apply to Iranian applicants, to provide copies of bank statements or a bank book covering six months, Mr. Taghavi explains specifically that there is no transaction history in his case.

[11] Mr. Taghavi describes in his study plan that the amount of approximately USD\$55,000 is held in a personal USD currency account. He states that “[t]here are **no transactions**, and the

money is liquid and available” [emphasis added]. In addition, he indicates that he “opted to have [his] savings in a USD account to hedge against hyperinflation and Rial currency devaluation.”

[12] The supporting bank statement confirms on its face that the account is a savings account in Mr. Taghavi’s name for the amount of \$55,100, as of the date of the statement which falls just shy of seven months after the account was opened.

[13] The Global Case Management System [GCMS] notes and the Respondent’s submissions, in my view, unreasonably focus on the fact of no transaction history, rather than show that the officer grappled with the Applicant’s explanation about why there is none. I find this is evident from the above conclusion based only on the “new account and lack of transactions history,” without reference to the supporting explanation.

[14] In my view, there is a distinction between providing account information without explanation where the details (such as low balances and large lump sum deposits), or lack of details (such as no transactions history), demand explanation but none is supplied, versus account information accompanied by an explanation (as in the case before me). For this reason, I find that the following cases on which the Respondent sought to rely are distinguishable and of no assistance: *Aghvamiamoli*, above at para 30; *Salamat v Canada (Citizenship and Immigration)*, 2024 FC 545 at para 9. If anything, the GCMS notes demonstrate that the officer here did not conduct “a more detailed and fulsome analysis” as urged by this Court in *Aghvamiamoli* (at para 29).

[15] Further, when an administrative decision maker is silent about evidence (such as the explanation Mr. Taghavi provided about his bank statement) that points to an opposite conclusion and contradicts findings of fact, the Court may infer that the decision maker overlooked the contradictory evidence when making their decision and, thus, may intervene: *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 24.

[16] At the hearing of this matter, the Respondent pointed to the acceptance letter from Centennial College stating estimated tuition fees of \$19,129.63, as well as estimated living costs of \$13,310, and costs of \$875 for books and supplies, all totalling \$33,314.63 in Canadian funds. The Respondent also noted the Applicant's prepayment of \$5,708 toward the tuition costs.

[17] The officer, however, does not express any concerns about the authenticity or credibility of the Applicant's banking information and accompanying explanation, including his assurance of the availability of the sum of USD\$55,100 in his name, which greatly exceeds the amount of CDN\$33,314.63 required for the one-year program.

[18] I therefore find the officer's conclusion about the insufficiency of the Applicant's finances unintelligible and lacking responsive justification when viewed through the lens of the record before the officer: *Animasaun v Canada (Citizenship and Immigration)*, 2023 FC 923 at para 29; *Farkhondehfal v Canada (Citizenship and Immigration)*, 2024 FC 692 at para 17, citing *Nesarzadeh v Canada (Citizenship and Immigration)*, 2023 FC 568 at paras 6, 11, 13.

III. Conclusion

[19] For the above reasons, this judicial review application will be granted. The March 7, 2023 decision of Immigration, Refugees and Citizenship Canada refusing Mr. Taghavi's study permit application will be set aside and remitted to a different decision maker for redetermination.

[20] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-3841-23

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is granted.
2. The March 7, 2023 decision of Immigration, Refugees and Citizenship Canada refusing the Applicant's study permit application is set aside.
3. The matter will be remitted to a different decision maker for redetermination.
4. There is no question for certification.

"Janet M. Fuhrer"

Judge

Annex “A”: Relevant Provisions***Immigration and Refugee Protection Regulations, SOR/2002-227.
Règlement sur l’immigration et la protection des réfugiés, DORS/2002-227.***

<p>Financial resources</p> <p>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</p> <p>(a) pay the tuition fees for the course or program of studies that they intend to pursue;</p> <p>(b) maintain themselves and any family members who are accompanying them during their proposed period of study; and</p> <p>(c) pay the costs of transporting themselves and the family members referred to in paragraph (b) to and from Canada.</p>	<p>Ressources financières</p> <p>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 :</p> <p>a) acquitter les frais de scolarité des cours qu’il a l’intention de suivre;</p> <p>b) subvenir à ses propres besoins et à ceux des membres de sa famille qui l’accompagnent durant ses études;</p> <p>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.</p>
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FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3841-23

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CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JULY 3, 2024

JUDGMENT AND REASONS: FUHRER J.

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