Federal Court  Cour fédérale

Date: 20240710

Docket: IMM-7160-23

Citation: 2024 FC 1086

Toronto, Ontario, July 10, 2024

PRESENT: The Honourable Justice Battista

BETWEEN:

FATEMATOSSADAT HAGH SHENAS
AHMAD ERFANI NASAB
FATEMEH ERFANI NASAB
SAREH ERFANI NASAB

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] These judicial review applications challenge decisions refusing Canadian temporary resident status for an Iranian family of four. The Principal Applicant, Fatematossadat Hagh Shenas, applied for a study permit, her husband Ahmad Erfani Nasab applied for a work permit as the spouse of a study permit holder, and their children Fatemeh Erfani Nasab and Sareh Erfani Nasab applied for temporary resident (visitor) visas. All applications were refused based on the decision

refusing the Principal Applicant's study permit. This refusal was based on the determination that the Principal Applicant's assets and financial situation were insufficient to support her stated purpose of travel and that the purpose of her visit was not consistent with a temporary stay in Canada.

[2] For the reasons below, the decision is unreasonable for its treatment of the submissions and evidence offered by the Principal Applicant. The applications are granted, the decisions are set aside, and the matters will be returned for redetermination before another officer.

II. Background

[3] The Principal Applicant is a 36-year-old Iranian citizen. On April 1, 2023, she applied for a study permit for a duration of two years to complete a Masters Degree in Business, Management and Marketing at Trinity Western University. As stated above, her husband and children applied for an open work permit and visitor visas, respectively.

[4] On May 4, 2023, an Immigration, Refugees and Citizenship Canada visa officer (Visa Officer) rejected her application, noting that she had not proved she had enough assets or financial means to support herself and her family while in Canada, and that her stated purpose of travel was not consistent with a temporary stay. This is the decision under review.

III. Issues and standard of review

[5] In her memorandum, the Principal Applicant raises several issues challenging the merits of the decision, and one of procedural fairness. The procedural fairness argument was not pursued in oral argument and I find that issue unnecessary to decide. In my view, the main issue is the reasonableness of the decision in light of the evidence provided to the Visa Officer.

[6] As agreed by both parties, the standard of review applicable to decisions of visa officers on temporary resident visas is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16–17. The decision will therefore be unreasonable if the decision maker has fundamentally misapprehended or failed to account for the evidence before it: *Vavilov*, para 126.

IV. The Visa Officer's Decision

[7] The letter sent to the Principal Applicant indicates that the Visa Officer based their decision on two factors: (i) the assets and financial situation of the Principal Applicant were insufficient to support her stated purpose of travel for herself and her family members; and (ii) the purpose of the Principal Applicant's visit to Canada was not consistent with a temporary stay given the information in her application.

[8] The Global Case Management System (GCMS) notes are fairly developed and add details to the decision. They read as follows, in their entirety:

> I have reviewed the application.
>
> I have considered the following factors in my decision.
>
> Mellat Bank statement provided. Initial balance shows a low sum that has increased to a large closing balance. Multiple Billion Rial lump sum deposited over a short period noted (in [F]ebruary 2023). Limited evidence pertaining to the source of these funds. The significant change in bank balance lends to the point that the bank account was inflated for the visa application in order to meet financial establishment and sustainability for the first, and subsequent year(s) of studies. I have concerns the funds are for demonstration purposes only and are not reflective of the applicant's legitimate financial resources. In the absence of satisfactory documentation showing the source of these funds, I am not satisfied the applicant has sufficient funds for the intended purpose.

> I note that mandatory tuition payment has been paid to hold their place in the program. No additional payments on file.
>
> Applicant has a letter of support from their employer and guarantee of continued employment upon return. Although the letter states continued employer support it does not articulate in detail the necessity of the international education. The letter from the employer is generic in its details and lists a series of tasks that were performed by the applicant along with positive character attributes. The employer's letter acknowledges the benefits of international education to their business and having skilled staff, however, there is a lack of detail on the potential employment contract.
>
> Weighing the factors in this application, I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay.
>
> For the reasons above, I have refused this application.

[9] From the information available in the consolidated files, it is clear that the same Visa Officer (EH19796) also refused the accompanying applications because the refusal of the Principal Applicant's application negated the family members' purpose for traveling to Canada. The Visa Officer did not believe they would leave Canada at the end of their authorized stay.

[10] At the outset of the hearing, I indicated to the parties that despite the consolidation order of Associate Judge Trent Horne dated September 1, 2023, which joined the matters, I had the reasons but not the Certified Tribunal Records (CTRs) for the files of the associated family members, specifically those for Court File nos. IMM-7176-23, IMM-7178-23, and IMM-7198-23. The parties agreed to proceed with the hearing and authorize a decision without the CTRs for those files.

V. Analysis

[11] I find the decision unreasonable in its treatment of the evidence provided regarding the Principal Applicant's finances, and because it ignored evidence provided by the Principal Applicant regarding her connections to Iran, including evidence of her continued employment.

A. *The Principal Applicant's financial evidence*

[12] The Visa Officer was suspicious about the large increase in funds in one of the Principal Applicant's bank accounts. Referring to the Mellat Bank statements, the Officer stated that the account balance increased because "[m]ultiple [b]illion [r]ial lump sums" were deposited over a short period of time, raising doubts regarding whether the funds were for "demonstration purposes only" and "not reflective of the [applicant's] legitimate financial resources."

[13] However, the Principal Applicant provided evidence that the funds were the result of a rent deposit from one of her apartments. She also provided evidence of other bank accounts and income documents showing that she had much more than the necessary funds to support her and her family during at least the first year of their stay in Canada.

[14] The Minister contends the Visa Officer's reasoning on this point is reasonable because the amounts on the account did not reflect a stable source of income, and it was open to the Visa Officer to find the rest of the income was insufficient "given the high cost of living and studying in Canada."

[15] I agree with the Applicants that the Minister is trying to buttress the reasons that were provided. At no point does the Visa Officer mention a "stable source of income" or the cost of studying and living in Canada. The GCMS notes show that the Visa Officer was only concerned

that the deposits in the Mellat Bank account could be an attempt by the Principal Applicant to "inflate" her account for the purpose of her application. While this could easily be classified as a credibility finding necessitating an opportunity for the Principal Applicant to address the Visa Officer's concerns, it is more directly an unreasonable finding because it ignores the Principal Applicant's clear evidence that the funds were a rent deposit for an apartment she and her husband were leasing. There is also no reference to the rest of the information she provided regarding her income, including funds held in other bank accounts or funds held by her husband. The Visa Officer's concerns regarding the sufficiency of the Principal Applicant's funds is unreasonable in light of the evidence provided.

[16] As Justice William Pentney summarized in *Nesarzadeh v Canada (Citizenship and Immigration)*, 2023 FC 568 [*Nesarzadeh*], Visa Officers face a deluge of applications and their reasons do not need to be lengthy or detailed: *Nesarzadeh*, para 7. However, their reasons do need to set out the key elements of the officer's line of analysis and be responsive to the core of the claimant's submissions and evidence on the most relevant points.

B. *The Principal Applicant's evidence of connections to Iran*

[17] The decision concluded by expressing doubt that the Principal Applicant would depart Canada at the end of her authorized stay. The Minister characterized this is a "conclusory" statement, which was not independent of the previous findings concerning the Principal Applicant's finances and employment letter. Based on the lack of connection between this finding and the previous findings, I disagree. This was an independent basis to refuse the application, which was not reasonably explained and contradicted the evidence before the Visa Officer.

[18] Specifically, the Principal Applicant provided evidence in her application demonstrating her significant ties to Iran, in particular to her family, her friends, and her community. She explained and provided evidence showing that she and her husband both had job opportunities waiting for them in Iran.

[19] In this regard, the Principal Applicant provided a letter from her employer pledging support for her continued studies, offering her re-employment upon her return to Iran, and describing her history of stable employment. The Visa Officer dismissed the letter because "it does not articulate in detail the necessity of international education." It is apparent that the Visa Officer misunderstood the purpose of the employment letter. The letter was clearly not designed to support her study plan, but to demonstrate the likelihood of her return to stable future employment in Iran. Contrary to the Visa Officer's finding, the letter was not generic but described in detail the Principal Applicant's past job duties and salary, and her anticipated future employment. The Visa Officer's treatment of this letter was unreasonable.

[20] There was also evidence that the Principal Applicant and her husband possessed immovable and movable assets in their country, including apartments and a car. She further pointed to their travel history, the fact that they are law abiding citizens, and the fact that she completed an English test.

[21] The Principal Applicant cites, among other decisions, *Mohammadi v Canada (Citizenship and Immigration)*, 2024 FC 598 to argue that the Visa Officer was obligated to consider such factors in making their assessment regarding the predictability of her return to Iran. I agree. The Visa Officer's concern that the Principal Applicant would not depart Canada at the end of the

period authorized for her stay was made in contradiction to and without addressing the evidence provided, and is therefore unreasonable.

VI. Conclusion on the Principal Applicant

[22] The Principal Applicant provided a detailed study plan, a detailed description of financial resources to support her and her family's stay in Canada, and evidence demonstrating ongoing ties to Iran and therefore her motivation to return. The bulk of the evidence she provided was ignored or unreasonably dismissed, rendering the decision unreasonable.

VII. The decisions in IMM-7176- 23, IMM-7178-23, and IMM-7198-23

[23] The decisions in the above-noted applications were based on the decision made on the Principal Applicant's study permit application. The reasons in all three decisions state: "The family member's study permit has been refused, negating the purpose of travel to Canada. Weighing the factors in this application, I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay."

[24] The reasonableness of these decisions was dependent on the reasonableness of the decision made for the Principal Applicant. As I have found the decision made for the Principal Applicant to be unreasonable, I find the decisions in these files to be unreasonable. The decisions will be set aside and referred back to another decision maker for redetermination.

JUDGMENT in IMM-7160-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The decisions on the Applicants visa applications are quashed, and the applications are remitted for redetermination before a different decision maker.

3. There is no question of general importance for certification.

"Michael Battista"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7160-23
STYLE OF CAUSE:	FATEMATOSSADAT HAGH SHENAS and others v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JULY 4, 2024
JUDGMENT AND REASONS:	BATTISTA J.
DATED:	JULY 10, 2024

APPEARANCES:

Sadeq Ziaee Bigdeli	FOR THE APPLICANTS
Christopher Ezrin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sadeq Ziaee Bigdeli Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT