Federal Court Cour fédérale

Date: 20171031

Dockets: IMM-1946-17
IMM-1947-17

Citation: 2017 FC 972

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, October 31, 2017

PRESENT: The Honourable Mr. Justice Martineau

Docket: IMM-1946-17

BETWEEN:

MAHDI ABDOLLAHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-1947-17

AND BETWEEN:

LEILA ABDOLLAHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants are challenging the reasonableness of two decisions rendered by an immigration officer in Ankara, Turkey, on March 14, 2017, summarily dismissing their applications for temporary visas because they failed to demonstrate that they would leave Canada at the end of the authorized period and that they have sufficient financial means to support themselves during their planned stay of 15 days in Canada.

[2] The applicants are husband and wife. They are Iranian citizens and have two minor children who are enrolled in school. Mr. Abdollahi has managed a family-owned construction business for over 10 years and wishes to take a short 15-day trip to Canada with his wife to see whether he wants to initiate an immigration process as an entrepreneur. Visits with business representatives were arranged by consultants and lawyers. It should be recalled that an initial exploratory visit is required for any application to the BC Provincial Nominee Program's Entrepreneur Immigration stream. It was for that purpose that they applied for temporary resident visas on February 14, 2017, to complete the visit in question between June 15 and 30, 2017. The application excluded both minor children.

[3] In support of their application, the applicants provided numerous documents, including the following:

a) Invitation letters from two companies;

b) Their airline tickets with a scheduled departure from Canada on June 30, 2017 (their return tickets to Iran were already purchased);

c) Several bank statements accompanied by a certified letter from the bank confirming a positive balance of USD$66,418.71. During the period, expenses were reportedly USD$325,423.09 and revenue was USD$212,742.87;

d) Documents confirming their children's enrolment in school in Shiraz, Iran;

e) The company's financial statements for the period from March 2013 to March 2016, accompanied by an audit report;

f) Various documents related to title transfers: property certificates, building permits, excerpts from the land register, etc.;

g) The children's birth certificates;

h) The applicants' marriage certificate; and

i) Copies of the pages from the applicants' passports attesting to their entries into and departures from Iran.

[4] On March 14, 2017, the applications were denied. The boxes checked on the standard form show that the officer based his refusal on the fact that the applicants failed to demonstrate that they would leave Canada at the end of the authorized period and that they have the means to support themselves during their stay.

[5] The only issue is whether it was reasonable to deny the visa applications in light of all the evidence on record and the applicable law.

[6] The applicants submit that the officer provided insufficient reasons and did not consider all the evidence or otherwise dismissed relevant evidence without valid reason. The respondent replies that the decision was reasonable given the inadequacy of all the evidence submitted and the minimal duty to provide reasons for a decision on a temporary visa application.

[7] There is cause to intervene in this case.

[8] It should be noted that, with respect to temporary resident visa applications, the duty to provide reasons for a decision is limited (see *Da Silva v. Canada (Citizenship and Immigration)*, 2007 FC 1138 at paragraphs 11–12). However, the reasons must nevertheless "allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 16). These principles have been applied in the context of immigration decisions (see, for example, *Zhou v. Canada (Citizenship and Immigration)*, 2013 FC 465 at paragraph 21 [*Zhou*]). In several decisions cited by the parties, limited grounds were deemed reasonable, but they were nevertheless reasons of several lines that referred to the evidence (see, for example, *Zhou* at paragraphs 5 and 19). At paragraph 54 of *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, the Supreme Court tells us that "[t]he direction that courts are to give respectful attention to the reasons 'which could be offered in support of a decision' is not a 'carte blanche to reformulate a tribunal's decision in a way that casts aside an unreasonable chain of analysis in favour of the court's own rationale for the result'" [reference omitted].

[9] That said, the officer's notes appear in the Global Case Management System [GCMS] and succinctly outline the following concerns:

> [TRANSLATION]
> Low revenues, debts exceed savings. No travel history, limited ties to the country of residence. I am not satisfied that the applicant is a bona fide visitor who will leave Canada at the end of the authorized stay. Denied.

[10] I am satisfied that the impugned decision was made without consideration of several pieces of relevant evidence establishing that the applicants could support themselves and that they have very strong family and economic ties to their country. Overall, the officer's decision is unreasonable, while the evidence on record does not support the general reasons for refusal provided to the applicants in this case.

[11] The officer's brief reasons are problematic:

a) *The purported insufficiency of the applicants' financial resources.*

The comment [TRANSLATION] "Low revenues, debts exceed savings" does not take into account all the evidence indicating that the applicants have the financial means to pay for the planned trip. Mr. Abdollahi has been operating a family-owned construction business for 10 years and holds extensive assets. All the documents filed attest to titles and assets of approximately CAD$3,500,000, in addition to the financial valuation of the company. Furthermore, a certified letter from the bank shows a positive balance of over USD$60,000 in the applicant's bank account. At the hearing, counsel for the respondent indeed acknowledged this considerable credit balance in January 2017, when the visa application was submitted. However, since the applicant spends more than he saves, the bank

account could very well have been emptied by the time of the trip in June 2017. This is pure speculation on the respondent's part, especially since the impugned decision was rendered a few weeks after the visa applications were submitted. In any event, we are talking about a trip to Canada of only two weeks. Based on the applicants' budget, expenses would not exceed $15,000, which they would have available. Given the account balance of USD$66,418.71 and the fact that they had already purchased their return tickets, any financial concerns on the officer's part had no objective or rational basis.

b) *Past trips out of Iran.*

The comment [TRANSLATION] "No travel history" is not supported by the evidence, and any negative inference by the officer in this respect is unreasonable in this case. It should be noted that the applicants' previous travel to the United Arab Emirates could not adversely affect their applications and overweigh strong evidence to the contrary in the absence of any negative travel history (see *Ogunfowora v. Canada (Citizenship and Immigration)*, 2007 FC 471 at paragraph 42). They always complied with the conditions of their visas, as established by the evidence submitted.

c) *Family and economic ties to Iran.*

The officer also considers minimal ties to the country of origin to be problematic. However, there were several pieces of evidence attesting to very strong ties to Iran: return tickets, the presence of minor children, several properties, and a successful family business. The decision makes no reference to any of these

positive factors and provides no explanation as to why they were insufficient to confirm ties to Iran. The applicants' children are still minors and are enrolled in school in Iran. It is difficult to imagine that the applicants would not want to return to Iran after their 15-day trip to Canada, especially since Mr. Abdollahi must continue to look after the family construction business.

d) *Good faith of the applicants and the legitimate purpose of their short stay in Canada.*

It may be asked how the officer could have found this element problematic, since he did not question the legitimate reasons of business in Canada, the job prospects in Iran and the current employment situation—all factors that could have been checked off on the refusal form had he truly had a problem with this point. It is reasonable for the applicants to make the planned trip to immerse themselves in the business climate in British Columbia, since an investment project would be difficult to plan without being in touch with local business people.

[12] The respondent did attempt to compensate for the deficiencies or errors of fact in the GCMS notes by suggesting various additional reasons for the refusal. I do not think that it is within our jurisdiction to infer from a decision reasons that simply are not there. Apart from the brief comments in the GCMS notes, it is clear that the officer did not perform a proper review of the applicants' visa applications and that he ignored or arbitrarily excluded several relevant factors. At this stage of the process, the officer could not assume that the applicants did in fact intend on settling in Canada permanently.

[13] Certainly, officers cannot be required to refer to every element submitted or each argument raised. It must also be presumed that he consulted the evidence (see *Florea v. Canada (Citizenship and Immigration)*, [1993] FCJ No. 598, 1993 CarswellNat 3983 at paragraph 1 (FCA)). However, "an officer's responsibility to analyse and comment on a specific piece of evidence increases in accordance with the importance of that evidence and the degree to which it contradicts the decision-maker's findings" (*Oliinyk v. Canada (Citizenship and Immigration)*, 2016 FC 756 at paragraph 15, referring to *Cepeda-Gutierrez v. Canada (Citizenship and Immigration)*, (1998), 157 FTR 35, 83 ACWS (3d) 264 (FC) at paragraphs 14–17). As was the case in *Oliinyk*, here again, "[t]he Officer made factual findings at odds with evidence that was not discussed in his reasons" (*Oliinyk* at paragraph 17).

[14] As a whole, the decision is unreasonable.

[15] For these reasons, the applications for judicial review are allowed. The decisions to refuse to issue temporary visas are quashed, and the applications are referred back for reconsideration by a different officer. The parties did not raise any questions of law of general importance.

JUDGMENT in IMM-1946-17 and IMM-1947-17

THIS COURT'S JUDGMENT is that:

1. The applications for judicial review are allowed; The decisions to refuse to issue temporary visas are quashed, and the applications are referred back for reconsideration by a different officer; and

2. No question is certified.

"Luc Martineau"
Judge

Certified true translation
This 24th day of September 2019

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1946-17
STYLE OF CAUSE:	MAHDI ABDOLLAHI v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-1947-17
STYLE OF CAUSE:	LEILA ABDOLLAHI v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	OCTOBER 26, 2017
JUDGMENT AND REASONS:	MARTINEAU J.
DATED:	OCTOBER 31, 2017

APPEARANCES:

Mélissa Potvin	FOR THE APPLICANTS
Émilie Tremblay	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Hugues Langlais Law Firm Barristers and Solicitors Montréal, Quebec	FOR THE APPLICANTS
Attorney General of Canada	FOR THE RESPONDENT