Federal Court  Cour fédérale

Date: 20190802

Docket: IMM-538-19

Citation: 2019 FC 1046

Vancouver, British Columbia, August 2, 2019

PRESENT: Madam Justice St-Louis

BETWEEN:

TANNAZ TABARI

Applicant

and

THE MINISTER OF CITIZENSHIP & IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mrs. Tannaz Tabari seeks judicial review of a decision made by an Officer of the Visa Section of the Embassy of Canada in Turkey, denying her application for a study permit.

[2] Mrs. Tabari, her husband, Mr. Ehsan Tajsanjarani, and their son, Karen, are Iranian citizens. Mrs. Tabari was denied a temporary resident visa (TRV) and a study permit, while her son and husband were each denied their multiple-entry TRV. Their son was to accompany Mrs. Tabari in Canada, while her husband was planning to visit them.

[3] Mrs. Tabari, her husband and their son each challenged their refusal before the Court. Mr. Tajsanjarani's file bears the number IMM 1311-19 and Karen's file bears the number IMM-1480-19.

[4] The parties have agreed to the Court rendering one decision, in Mrs. Tabari's file, applicable *mutatis mutandis* to the two other proceedings.

[5] For the reasons exposed hereinafter, the Court concludes that procedural fairness has not been breached, that the Officer's reasons, although brief, are adequate, and that the decision is reasonable, as it forms part of the possible outcomes given the facts and the law. The application will consequently be dismissed.

II. Background

[6] In 2011, Mrs. Tabari completed a bachelor's degree in accounting, in Iran, and started work. In September 2014, she began a position with Apadana Kavosh Iranian Co, a company in charge of exports, and in December 2015, left her employment for an extended maternity leave.

[7] On October 10, 2018, Apadana Kavosh Iranian Co provided Mrs. Tabari with a letter that approved her return to work, provided she passes specialized courses related to her position at post-graduate levels within the next four years.

[8] In October 2017, Mrs. Tabari had registered in the Master's program of technology management, majoring in technology transfer, at the Farabi Higher Education Institute in Iran, but, as indicated in the letter from the Institute, she pursued her studies for only one semester and then dropped out, disappointed by the quality of the program.

[9] On October 30, 2018, Mrs. Tabari was accepted at Langara College in Canada for three years of full-time studies, hence one year in English, followed by a two-year Post-Degree Diploma in Business Administration.

[10] In December 2018, Mrs. Tabari applied for a study permit and a TRV, and her son and husband each applied for a TRV. As part of her application for her study permit, Mrs. Tabari's representative indicated, *inter alia*, that she had limited travel history and that her main tie to her home country lied in the fact that her husband would remain there. She submitted documentation in regards to her possible employment with her former employer, to her proposed course of studies, to her joint ownership of one property, to the process of acquiring another one and to statements showing some $134,000.00 CAD in savings for the family. She estimated the cost of her stay and studies in Canada at approximately $32,750 CAD each year. Her husband, employed for a number of years, submitted, *inter alia*, a letter from his employer indicating that he had a contract due to expire in August 2019.

III. The impugned decision

[11] In the decision dated January 7, 2019 refusing Mrs. Tabari's study permit application, the Officer was not satisfied that Mrs. Tabari would leave Canada at the end of her stay, as stipulated in subsection 216(1) of the *Immigration and Refugee Protection Act* SC 2001, c 27 [the Act], based on (1) her travel history; (2) her family ties in Canada and in her country of residence; (3) the purpose of her visit; (4) her current employment situation; and (5) her personal assets and financial status.

[12] In the system's notes, the Officer indicated that Mrs. Tabari (1) does not appear to be sufficiently well established that the proposed studies would be reasonable expenses; (2) given family ties or economic motives to remain in Canada, her incentive to remain in Canada may outweigh their ties to their home country; (3) her plan of studies appears vague and poorly documented; (4) according to her current or future employment prospects, less weight was given to their employment ties in their home country; and (5) her travel history is insufficient to count as a positive factor in the assessment.

[13] Mrs. Tabari challenges the decision on two bases. First, she contends that the Officer breached procedural fairness by not providing her with an opportunity to respond to credibility findings, which must be reviewed against the correctness standard.

[14] Second, she contends that the Officer's overall decision was unreasonable as it ignored and misunderstood critical evidence and did not provide adequate reasons. Mrs. Tabari highlights

that (1) the Officer cited no evidence to support the conclusion that she is not well-established; (2) the Officer is unreasonable in assuming that cost is a determinative factor in selecting a program of study; (3) there is no evidence that the Officer considered her financial status; (4) the evidence suggests that she had provided proof of funds and assets; (5) she has no ties in Canada and strong ties in Iran; (6) the Officer did not outline what the economic motives to remain in Canada are; (7) the Officer's consideration of the travel history amounts to a refusal for lack of travel history; and (8) the Officer generally ignored the evidence. Mrs. Tabari argues that there was no evidence that supported the Officer's findings.

[15] The Minister responds that the Officer did not breach procedural fairness and that the decision is reasonable.

[16] On procedural fairness, the Minister submits that a finding of insufficient evidence must not be conflated with a negative credibility finding. The Officer had no duty to advise Mrs. Tabari of any concerns, particularly as the duty of fairness for study permits is relaxed, and as a visa officer has no legal obligation to seek to clarify a deficient application, to reach out and make the applicant's case, or to apprise an applicant of concerns relating to whether the requirements set out in the legislation have been met.

[17] The Minister submits that the decision is reasonable and that the duty to provide reasons when evaluating a temporary resident application is minimal and falls at the low end of the spectrum. The Minister adds that the Officer fairly considered the facts and weighed the various

factors. The issue Mrs. Tabari takes with the weight given to the various factors by the Officer is not a basis for a reviewing court to interfere.

IV. Analysis

A. ***Standard of review***

[18] For issues of procedural fairness, the Court must determine whether the procedure was fair having regard to all circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[19] The review of the Officer's factual assessment of the application, and of the Officer's belief that an applicant will not leave Canada at the end of her stay, is made against the reasonableness standard (*Akomolafe v Canada (Citizenship and Immigration)*, 2016 FC 472 at para 9; *Li v Canada (Citizenship and Immigration)*, 2008 FC 1284 at para 15; *Guinto Bondoc v Canada (Citizenship and Immigration)*, 2008 FC 842 at para 6). The Officer's decision is discretionary, and is considered "an administrative decision made in the exercise of a discretionary power" (*My Hong v Canada (Citizenship and Immigration)*, 2011 FC 463 at para 10). As such, it is entitled to considerable deference in view of the visa officer's special expertise and experience (*Solopova v Canada (Minister of Citizenship and Immigration)* 2016 FC 690 at para 12 [*Solopova*]; *Obeng v Canada (Minister of Citizenship and Immigration)*, 2008 FC 754 at para 21).

[20] The reasonableness standard also applies to the assessment of the adequacy of reasons (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14 [*Newfoundland Nurses*]). As stated in *Solopova*, "…the adequacy of reasons is no longer a stand-alone basis for quashing a decision …". In *Newfoundland Nurses*, the Supreme Court provided guidance on how to approach situations where decision-makers provide brief or limited reasons. Reasons need not be fulsome or perfect, and need not address all of the evidence or arguments put forward by a party or in the record. It is sufficient if the reasons permit the Court to understand why the decision was made and determine whether the conclusion falls within the range of possible acceptable outcomes (*Newfoundland Nurses* at para 16). The reasons are to be read as a whole, in conjunction with the record, in order to determine whether they provide the justification, transparency and intelligibility required of a reasonable decision (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53; *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65 at para 3; *Dunsmuir* at para 47). "Even where the reasons for the decision are brief, or poorly written, this Court should defer to the decision-maker's weighing of the evidence and credibility determinations, as long as the Court is able to understand why the decision was made. […] [the Officer's] duty to provide reasons when rejecting a temporary resident is minimal and falls at the low end of the spectrum." (*Solopova* at paras 31–32).

B. ***Did the Officer breach procedural fairness?***

[21] As stated in *Ibabu v Canada (Citizenship and Immigration)*, 2015 FC 1068, and in *Solopova*, "An adverse finding of credibility is different from a finding of insufficient evidence or an applicant's failure to meet his or her burden of proof." As stated by the Court in *Gao v.*

Canada (Minister of Citizenship and Immigration), 2014 FC 59, at para 32, and reaffirmed in *Herman v Canada (Minister of Citizenship and Immigration)*, 2010 FC 629 at para 17, "it cannot be assumed that in cases where an Officer finds that the evidence does not establish the applicant's claim, that the Officer has not believed the applicant". This was reiterated in a different way in *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067 at para 23, where Justice Zinn stated that "while an applicant may meet the evidentiary burden because evidence of each fact has been presented, he may not meet the legal burden because the evidence presented does not prove the facts required on the balance of probabilities".

[22] I agree with the Minister that Mrs. Tabari conflates an adverse finding of credibility with a finding of insufficient evidence. The Officer's concern arose from legislation, namely the requirement that Mrs. Tabari establishes on a balance of probabilities that she would leave Canada at the end of her authorized stay (section 216 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227). The onus was on Mrs. Tabari to provide the Officer with all of the relevant information and complete documentation in order to satisfy him or her that all statutory requirements were met.

[23] Given that the issue here is not one of credibility but of insufficient evidence adduced by the Applicant to satisfy the Officer, there is no breach of procedural fairness.

C. ***Is the decision reasonable?***

[24] The onus was on Mrs. Tabari to establish her case on a balance of probabilities and to demonstrate that she would leave Canada at the end of her authorized period. A student permit

applicant bears the burden of providing the visa officer with all of the relevant information to satisfy the officer that he or she meets the statutory requirements of the Act and the Regulations (*Solopova* at para 22). Mrs. Tabari's arguments amount to taking issue with the weight given to the factors and evidence by the Officer, however, the role of this Court is not here to reweigh the evidence.

[25] I can understand from the reasons and the record why the decision was made, and I have not been convinced that the Officer ignored or misconstrued evidence. For example, it is clear that the travel history was considered neutral, not detrimental, and that Mrs. Tabari's representative himself presented it as limited in the visa application. It is not unreasonable to consider that the family is not so well established to contemplate engaging such an expense since Mrs. Tabari has not been working since 2015, her history with her last employer was limited to about 15 months, and her prospective employment with this same employer was at least still 3 years away. Mrs. Tabari's husband was presented as her main tie to Iran, although he is also seeking a TRV to visit her in Canada, with the result that her closest family could all be in Canada with her.

[26] As counsel for Mrs. Tabari pointed out, it is possible that another Officer would arrive at a different conclusion. However, this is not the test under the reasonableness standard; the Court must rather determine if the Officer's conclusion falls within the range of possible outcomes given the facts and the law. I am satisfied that the Officer's reasons are adequate and that the Officer's conclusion is reasonable.

JUDGMENT in IMM-538-19

THIS COURT'S JUDGMENT is that the Applications are dismissed in this file and in files bearing number IMM 1311-19 and IMM-1480-19, a copy of these reasons are to be placed in each of these files. No question is certified.

"Martine St-Louis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-538-19
STYLE OF CAUSE:	TANNAZ TABARI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	AUGUST 1, 2019
JUDGMENT AND REASONS:	ST-LOUIS J.
DATED:	AUGUST 2, 2019

APPEARANCES:

Samin Mortazavi	FOR THE APPLICANT
Alison Brown	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Pax Law Corporation West Vancouver, British Columbia	FOR THE APPLICANT
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT