

Federal Court



Cour fédérale

Date: 20190816

Docket: IMM-663-19

Citation: 2019 FC 1080

Vancouver, British Columbia, August 16, 2019

PRESENT: Mr. Justice Gascon

BETWEEN:

ALI AGHAALIKHANI

Applicant

and

**THE MINISTER OF CITIZENSHIP
& IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Ali Aghaalikhani, is a 30-year-old citizen of Iran. In 2018, Mr. Aghaalikhani was accepted to Langara College in Canada, to complete a post bachelor's diploma in business administration. He pre-paid close to \$6,000 for tuition, and secured a job offer in his country of residence at Otagh Asnaf Iran (which translates as the "Iran Chamber of Guilds") following his studies.

[2] In December 2018, Mr. Aghaalikhani applied from Iran for a study permit to pursue his studies at Langara College. His application for a study permit was refused in January 2019 by a visa officer [Officer] at the Canadian Embassy in Ankara, Turkey, without an interview being held [Decision]. The Officer was not convinced that Mr. Aghaalikhani would leave Canada and return to Iran upon completion of his studies. Mr. Aghaalikhani requested a reconsideration of the refusal, and he was informed at the end of January 2019 that the Decision would not be reconsidered.

[3] Mr. Aghaalikhani now seeks the judicial review of the Officer's Decision. He claims that the Decision is unreasonable because it was based on findings of fact unsupported by the evidence. He submits that the reasons for the Decision are either vague, against this Court's case law, or against the policies and guidelines of Citizenship and Immigration Canada [CIC]. He further contends that the principles of procedural fairness were not respected. He asks this Court to quash the Decision and to send it back for redetermination by a different immigration officer.

[4] This application raises two issues: 1) whether the Officer's Decision denying the study permit sought by Mr. Aghaalikhani was unreasonable; and 2) whether the Officer breached the principles of natural justice by failing to give Mr. Aghaalikhani an opportunity to respond to the Officer's concerns before refusing his study permit application.

[5] For the following reasons, Mr. Aghaalikhani's application for judicial review will be granted. Having considered the evidence before the Officer and the applicable law, I conclude that the Officer's Decision is unreasonable, as the Officer ignored evidence directly contradicting his conclusions and no evidence supported a number of his key factual findings. In the circumstances, this is sufficient to push the Officer's Decision beyond the range of possible,

acceptable outcomes based on the facts and the law, and to justify the Court's intervention. I must, therefore, send the matter back for redetermination. Given that conclusion, I do not have to deal with Mr. Aghaalikhani's arguments raising procedural fairness issues.

II. Background

A. *The Decision*

[6] The Officer's Decision is brief. It takes the form of a standardized letter used by CIC where visa officers simply check the relevant boxes. According to the Decision, Mr. Aghaalikhani was denied a study permit pursuant to subsection 11(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations], on the basis that he did not satisfy the Officer that he "would leave Canada at the end of [his] stay."

[7] The Officer identified the considerations that led to his refusal by checking the relevant boxes in the predefined form. The Officer indicated that he was not satisfied that Mr. Aghaalikhani would leave Canada at the end of his stay because of three factors: his "travel history", his "family ties in Canada and in country of residence," and the "purpose of visit." The Officer checked no other reasons in the Decision.

[8] The Officer's notes in the Global Case Management System [GCMS], which form part of the Decision, further elaborate on the reasons for refusing Mr. Aghaalikhani's application. The relevant parts of the Officer's GCMS notes (which amount to the quasi-totality of his reasons) read as follows:

Given family ties or economic motives to remain in Canada, the applicant's incentives to remain in Canada may outweigh their ties to their home country [sic].

I am not satisfied that the purpose of study is reasonable, in view of the fact that similar programs are available closer to the applicant's place of residence for more competitive tuition fees and the benefits to the applicant of taking the program do not appear to outweigh the costs.

The applicant's prior travel history is insufficient to count as a positive factor in my assessment.

Weighing the factors in this application, I am not satisfied that the applicant will depart Canada at the end of the period authorized for stay.

[9] As part of the process leading up to the Decision, Mr. Aghaalikhani had sent two motivation letters to the Canadian Embassy officials, on December 17 and 22, 2018. In these letters, Mr. Aghaalikhani expressed his interest in studying in Canada because it would positively contribute to his career, he referred to the good reputation of educational institutions in Canada and the reasonable costs compared to the United States or the United Kingdom, and he mentioned that he had a job offer with the Iran Chamber of Guilds awaiting him after completion of his studies. Mr. Aghaalikhani also indicated that he is not married and has no children, and that his parents, four sisters, two brothers, nieces, nephews, many aunts, uncles, extended family and friends all reside in Iran. He had completed a bachelor degree in 2013 and a master degree in 2016, both in Iran and in the field of management.

B. *The relevant provisions*

[10] The relevant provisions of the IRPA are subsections 11(1) and 22(2), which provide that a person wishing to become a temporary resident of Canada must satisfy an officer that "she or he meets the requirements of the Act" and that "an intention by a foreign national to become a permanent resident does not preclude them from becoming a temporary resident if the officer is

satisfied that they will leave Canada by the end of the period authorized for their stay.” Paragraph 216(1)(b) of the Regulations further requires a study permit applicant to establish that he or she “will leave Canada by the end of the period authorized for their stay.” Thus, it is well accepted and clear that an applicant for a study permit bears the burden of satisfying the visa officer that he or she will not remain in Canada once the visa has expired (*Kavugho-Mission v Canada (Citizenship and Immigration)*, 2018 FC 597 [*Kavugho-Mission*] at para 7; *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 [*Solopova*] at para 10; *Zuo v Canada (Citizenship and Immigration)*, 2007 FC 88 at para 12).

C. *The standard of review*

[11] There is no dispute that, when reviewing a visa officer’s factual assessment of an application for a student visa and an officer’s belief that an applicant will not leave Canada at the end of his or her stay, the standard of review is reasonableness (*Kavugho-Mission* at para 8; *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 [*Penez*] at para 12; *Solopova* at paras 12-13). Since the jurisprudence has already established the applicable standard of review, there is no need to proceed to a further analysis of such standard (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 62).

[12] Under the standard of reasonableness, the reviewing court must show deference to the decision under review, so long as it is justified, transparent and intelligible and falls “within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir* at para 47). In other words, the reasons behind a decision are reasonable if they “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 [*Newfoundland Nurses*] at para 16).

[13] The standard of reasonableness requires to show deference to the decision-maker as it is “grounded in the legislature’s choice to give a specialized tribunal responsibility for administering the statutory provisions, and the expertise of the tribunal in so doing” (*Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47 at para 33; *Dunsmuir* at paras 48-49). Under a reasonableness review, when a question of mixed fact and law falls squarely within the expertise of a decision-maker, “the reviewing court’s task is to supervise the tribunal’s approach in the context of the decision as a whole. Its role is not to impose an approach of its own choosing” (*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 57; *Newfoundland Nurses* at para 17). A high degree of deference is particularly required when, as in this case, an administrative decision is well within the Officer’s special expertise and is made in the exercise of a discretionary power based on factual findings (*My Hong v Canada (Citizenship and Immigration)*, 2011 FC 463 at para 10; *Obeng v Canada (Citizenship and Immigration)*, 2008 FC 754 at para 21).

III. Analysis

[14] The Minister argues that the Officer’s refusal in this case was within the range of possible, acceptable outcomes, defensible in respect of the facts and law, particularly given the discretionary nature of visa decisions. The Minister contends that, while limited, the Officer’s reasons are adequate and sufficient when they are considered as a whole. The Minister submits that the Officer reasonably found that Mr. Aghaalikhani’s travel history was insufficient. On the purpose of study, the Minister argues that the Officer was entitled to find that the benefits

expected by Mr. Aghaalikhani would not be enough to outweigh the costs of his studies, in light of the financial impact the intended course of study would have. Finally, relying on *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at paragraph 14, the Minister pleads that it was open to the Officer to consider that Mr. Aghaalikhani's ties to Iran were insufficient to overcome the economic incentives to remain in Canada.

[15] I disagree with the Minister, and I do not share his reading of the evidence on the record.

[16] I do not dispute that the role of this Court is not to reweigh the evidence on the record or to substitute its own conclusions to those of visa officers (*Solopova* at para 33; *Babu v Canada (Citizenship and Immigration)*, 2013 FC 690 at paras 20-21). Visa officers have a broad discretion when rendering decisions under section 216 of the Regulations and their decisions are entitled to a high degree of deference from the Court given their specialized expertise. However, while a reviewing court should resist the temptation to intervene and to usurp the specialized expertise that Parliament has opted to confer to an administrative decision-maker like the Officer, the Court cannot show "blind reverence" to a decision-maker's interpretation and assessment of the evidence (*Dunsmuir* at para 48). When viewed as a whole, the reasons must be sufficiently supported and clear to allow the Court to find that 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).

[17] I further acknowledge that a decision-maker is not required to refer to each and every detail supporting his or her conclusion. It is sufficient if the reasons permit the Court to understand why the decision was made and to determine whether the conclusion falls within the

range of possible, acceptable outcomes (*Newfoundland Nurses* at para 16). But the standard of reasonableness also requires that the findings and overall conclusion of a decision-maker withstand a somewhat probing examination (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 63). Where parts of the evidence are not considered or are misapprehended, where the findings do not flow from the evidence and where the outcome is not defensible, a decision will not withstand such probing examination (*Kavugho-Mission* at para 14; *Penez* at para 12). Even under the deferential standard of reasonableness, it is the Court's role to detect "irrationality or arbitrariness of the sort that implicates our rule of law jurisdiction", such as "the presence of illogic or irrationality in the fact-finding process" or in the analysis, or the "making of factual findings without any acceptable basis whatsoever" (*Kanthasamy v Canada (Citizenship and Immigration)*, 2014 FCA 113 at para 99, rev'd on other grounds, SCC 2015 61; *Dandachi v Canada (Citizenship and Immigration)*, 2016 FC 952 at para 23).

[18] This will normally be rare and exceptional, but this is where the Officer's Decision regrettably falls in this case. I come to this conclusion for three main reasons.

[19] First, the Officer concluded that "given family ties or economic motives to remain in Canada," Mr. Aghaalikhani's incentives to remain in Canada might outweigh his ties to Iran. The problem with that conclusion is the deafening silence of the record on Mr. Aghaalikhani's ties to Canada. I accept that a visa officer has to conduct a balancing exercise between an applicant's ties (whether economic, family or emotional) to Canada and to his country of residence. Here, however, the evidence points only to ties to Iran. The evidence shows that Mr. Aghaalikhani has no ties to Canada; conversely, he has a very strong attachment to Iran, given that his family and friends all live there, that he is involved in the Red Crescent Society in Iran, and that he has already secured a job offer in Iran following his studies. Faced with that evidence, I fail to see

what logic or rational reasoning could have lead the Officer to conclude that Mr. Aghaalikhani's family ties or economic motives would pull him in the direction of Canada and support a concern that he would not leave Canada at the end of his studies. It is in fact the very opposite situation (i.e., the limited ties to one's country of residence and links to Canada) that typically prompts visa officers to question the true intent behind a study permit application.

[20] Second, when discussing the purpose of Mr. Aghaalikhani's study, the Officer underlined that similar programs of study are available closer to his place of residence at a more competitive cost, and that the benefits of the study program for Mr. Aghaalikhani appear to outweigh the costs. Again, the problem is the dearth of evidence to support the Officer's factual finding. The record contains no information on the availability of alleged similar programs in Iran, only a mention by Mr. Aghaalikhani that studying in Canada is more affordable than in the United States or the United Kingdom. In addition, the motivation letters of Mr. Aghaalikhani contain detailed explanations on the purpose of his contemplated studies in management in Canada, which are in the continuation of his previous education. In the circumstances, it was not reasonable, in my opinion, for the Officer to find that Mr. Aghaalikhani was not a genuine student on the basis of elusive programs at home, while ignoring the evidence on Mr. Aghaalikhani's reasons to come to Canada to obtain a diploma in a field of study he already knows. In his motivation letters to CIC, Mr. Aghaalikhani explained why the contemplated studies would positively contribute to his career and complete his education in industrial management. In those circumstances, discounting Mr. Aghaalikhani's study permit application because of alternative options not even existing in the evidence was unreasonable.

[21] Third, the overall conclusion of the Officer to the effect that Mr. Aghaalikhani would not leave Canada flies in the face of the direct evidence provided by Mr. Aghaalikhani himself.

There was simply nothing on the facts before the Officer to suggest that Mr. Aghaalikhani would stay in Canada illegally at the end of his authorized period of study. Once again, the evidence instead pointed in the opposite direction and actually showed the exact opposite. Mr. Aghaalikhani explicitly stated that he had a job offer waiting for him in Iran, supported and corroborated by a letter from the Iran Chamber of Guilds. The Officer ignored that evidence in his assessment, and did not even allude to it. Everything in Mr. Aghaalikhani's materials expressly reflects his desire, intention and plan to leave Canada once he completes his studies. In the absence of evidence suggesting or implying a risk of not leaving Canada, and faced with evidence indicating exactly the opposite, a justification for the Officer's conclusion to the contrary was required. Yet, there was none.

[22] In other words, on two of the three factors expressly singled out by the Officer in the Decision, and on his overall conclusion regarding the fear of Mr. Aghaalikhani not leaving Canada at the end of his stay, there is no evidence on the record to support them.

[23] I accept that the reasons for an administrative tribunal's decision do not have to be exhaustive, and that they simply have to be understandable. Reasons need not be comprehensive or perfect. However, decisions need to be comprehensible. For a decision to be within the range of reasonable, it must have the attributes of intelligibility and transparency, and the reasons must 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 Nurses* at para 16).

[24] I also acknowledge that a decision-maker is generally not required to make an explicit finding on each constituent element of an issue when reaching its final decision. Nevertheless, it

is also clear that contradictory evidence should not be overlooked. This is particularly true with respect to key elements relied upon by the decision-maker to reach its conclusion (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (QL) [*Cepeda-Gutierrez*] at paras 16-17). True, a decision-maker is presumed to have weighed and considered all the evidence presented to him or her unless the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) at para 1). And a failure to mention a particular piece of evidence in a decision does not mean that it was ignored and does not constitute an error (*Newfoundland Nurses* at para 16; *Cepeda-Gutierrez* at paras 16-17). But, when an administrative tribunal is silent on evidence clearly pointing to an opposite conclusion and squarely contradicting its findings of fact, the Court may intervene and infer that the tribunal overlooked the contradictory evidence when making its decision (*Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at paras 9-10; *Cepeda-Gutierrez* at para 17). The failure to consider specific evidence must be viewed in context and will lead to a decision being overturned when the non-mentioned evidence is critical, contradicts the tribunal's conclusion and the reviewing court determines that its omission means that the tribunal disregarded the material before it. This is the case here.

[25] The case law indeed recognizes that a finding for which there is no evidence before the tribunal will be set aside on review because such a finding is made without regard to the material before it (*Canadian Union of Postal Workers v Healy*, 2003 FCA 380 at para 25). Such findings for which there is no evidence before the tribunal run afoul of paragraph 18.1(4)(d) of the *Federal Courts Act*, RSC 1985, c F-7 (*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paras 34-40).

[26] The errors identified above suffice, in my view, to bring the Decision beyond the scope of possible, reasonable outcomes. However large the spectrum of possible, reasonable outcomes or the margin of appreciation of the Officer may be, I find that the Officer's finding on Mr. Aghaalikhani's study permit tumbles outside of it. The Officer's reasons are incomprehensible because there is no evidence on the record to support them and they appear to be completely arbitrary in light of the evidence submitted. In the words of the Federal Court of Appeal in *Delios v Canada (Attorney General)*, 2015 FCA 117 at paragraph 27, the Officer's Decision contains numerous "badges of unreasonableness."

[27] Given my conclusion on the unreasonableness of the Officer's Decision, I do not have to deal with the procedural fairness issue raised by Mr. Aghaalikhani.

IV. Conclusion

[28] For all those reasons, the Officer's refusal of Mr. Aghaalikhani's application for a study permit did not represent a reasonable outcome based on the law and the evidence before the Officer. On a standard of reasonableness, the Court will intervene if the decision subject to judicial review does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. This is the case here. Therefore, I must allow Mr. Aghaalikhani's application for judicial review and return it for redetermination by a different visa officer.

[29] Neither party has proposed a question of general importance for me to certify. I agree there is none.

JUDGMENT in IMM-663-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted, without costs.
2. The January 17, 2019 decision of the immigration officer rejecting the study permit application of Mr. Ali Aghaalikhani is set aside.
3. The matter is referred back to Citizenship and Immigration Canada for re-determination on the merits by a different visa officer.
4. No question of general importance is certified.

"Denis Gascon"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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