

Federal Court



Cour fédérale

Date: 20210722

Docket: IMM-6364-20

Citation: 2021 FC 778

Ottawa, Ontario, July 22, 2021

PRESENT: Madam Justice Walker

BETWEEN:

SOLMAZ ASADI RAHMATI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ms. Solmaz Rahmati, seeks judicial review of a decision of a visa officer (Officer) refusing her application for a study permit and temporary resident visa (TRV). The Officer was not satisfied that the Applicant would leave Canada at the end of her stay based on: her family ties in Canada and in her country of residence; and the purpose of her visit.

[2] The Applicant submits that the Officer's decision is unreasonable for several reasons. She also alleges that the Officer breached her right to procedural fairness by making veiled credibility findings and failing to provide her the opportunity to respond to those findings.

[3] I have found that the Officer's process was fair and that the decision was not based on credibility findings but I agree with the Applicant that the decision is not reasonable within the framework established in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*). As a result, the application will be allowed and the matter returned to another visa officer for redetermination.

I. Background

[4] The Applicant is a married citizen of Iran who has two minor children. She and her family hold valid Canadian TRVs. Neither her spouse nor her children will accompany the Applicant to Canada. Similarly, the other members of the Applicant's family live and will remain in Iran.

[5] The Applicant has been employed at an oil company since 2010 and intends to return to the same employer in Iran in a management position upon completion of her studies in Canada. She and her spouse are shareholders in another Iranian company where her spouse is the managing director.

[6] The Applicant was accepted into a Master of Business Administration (MBA) degree at the University of Canada West (UCW) in Vancouver, British Columbia. She had previously

enrolled at Shomal University in Iran to complete the UCW Master of Business Administration Foundation program in anticipation of beginning her MBA program in Canada. The Applicant successfully completed nine credits in the Shomal program.

[7] The Applicant applied for a study permit to attend UCW but her application was refused on October 7, 2020. The Officer's decision consists of a decision letter and Global Case Management System (GCMS) notes. In the decision letter, the Officer was not satisfied that the Applicant would leave Canada at the end of her stay based on her family ties in Canada and in Iran and the purpose of her visit. The explanation for the Officer's conclusions is set out in the GCMS notes, a full excerpt of which can be found at paragraph 14 of this judgment.

[8] The Applicant challenges the Officer's decision in this application.

II. Analysis

1. *Procedural fairness*

[9] The Applicant submits that the Officer acted unfairly in basing the refusal of her study permit on veiled credibility concerns without notification and without opportunity to respond.

[10] The parties agree that issues of procedural fairness are effectively reviewed for correctness (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-56 (*Canadian Pacific*)). The Court must assess whether the Officer's process was just and fair focusing on the Applicant's substantive rights and the

consequences to her of the refusal of the work permit (*Canadian Pacific* at para 54; *Sharma v Canada (Citizenship and Immigration)*, 2020 FC 381 at para 13).

[11] I am not persuaded that the Officer refused her study permit request based on credibility concerns. An applicant for a study or work permit has the right to have their application assessed in a fair process even though the content of the duty of fairness owed to visa applicants lies at the low end of the procedural spectrum (*Charara v Canada (Citizenship and Immigration)*, 2016 FC 1176 at paras 26-27). An officer is not required to notify an applicant of a concern that arises directly from the legislation or related requirements or to provide the applicant with an opportunity to make submissions regarding the concern (*Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 38). The onus is on the applicant to provide all the necessary information to support their application, not on the officer to seek it out.

[12] The Applicant submits that the Officer may have relied on extrinsic information but I find no basis for this submission in the record or in the decision. The Applicant's argument that her application was complete and fully supported her plan to obtain an MBA to further her career does not support the conclusion that the Officer must have harboured credibility concerns and not believed the explanation in her application.

2. *Was the decision reasonable?*

[13] As noted above, the Applicant submits that the Officer's decision is unreasonable. She argues that the Officer did not provide an explanation of the basis for the decision and engaged in speculation and assumption.

[14] The basis of the Officer's refusal is set out in the GCMS notes and consists of the following paragraph:

With information provided, the applicant's employment and education history, I note that, the PAs proposed studies of Masters of Business Administration with the University of Canada West do not appear to be reasonable given their career path. There is little indication from PA's previous studies/employment that this intended program is a logical progression in the PA's study/career path, as the PA has previously obtained a Masters in Environmental Engineering. The PA's course of study does not appear to be a logical progression of studies, nor does it appear to be in a related field of study. As such, on balance of probabilities, I am not satisfied the PA is a genuine student who will depart at the end of their authorized period of stay[.] Application refused

[15] The merits of the Officer's decision are subject to review for reasonableness (*Vavilov* at paras 10, 23; *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at paras 11, 23). A visa officer's decision is owed a high level of deference by the Court and may be brief but it must respond to the requirements for a reasonable decision: one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85). The Supreme Court emphasizes two components to a reasonable decision: the decision maker's reasoning process and the outcome (*Vavilov* at para 86). The reasons given must reflect a logical chain of analysis and intelligibly explain the outcome.

[16] In this matter, I find that the Officer's decision lacks a coherent chain of analysis linking the information and documents submitted by the Applicant in support of her application to the Officer's conclusion that she would not leave Canada at the end of her stay. An officer must

explain why an applicant has failed to satisfy the concerns that led to the adverse decision in order to meet the Supreme Court's requirements of transparency and intelligibility.

[17] The Officer was not satisfied that the Applicant will leave Canada at the end of her stay for the two reasons set out in the decision letter. First, the Officer expressed concern regarding the Applicant's family ties in Canada and in her country of residence. Second, the Officer questioned the purpose of the Applicant's visit.

[18] There is no explanation in the GCMS notes regarding the Officer's reference to the Applicant's family ties in Canada and in Iran as a basis on which she may decide to remain in Canada. I agree with the Applicant that the reference finds no basis in the evidence before the Officer. The Applicant has strong family ties in Iran and no family members or other ties in Canada. Her immediate family will not accompany her to Canada for the duration of her studies. I find that the Officer's reliance on the Applicant's family ties in Canada as a reason for refusal is a significant and reviewable error as it is neither intelligible nor justified.

[19] The Applicant emphasizes that she holds a multiple entry TRV valid to January 11, 2023. She argues that the Officer unreasonably ignored this aspect of her evidence and the fact that she did not need a study permit to enter Canada. The relevance of a TRV to an officer's assessment of an application for a study permit was recently considered by my colleague, Justice Pentney, in *Mekhissi v Canada (Citizenship and Immigration)*, 2020 FC 230 (*Mekhissi*). In that case, the officer had concluded that the applicant, who held a valid TRV, was seeking a study permit with a view to establishing himself permanently in Canada. Justice Pentney found that it was not

possible to follow the officer's logic because, if the applicant wished to settle in Canada, he need not apply for a study permit.

[20] The Officer's decision in this case does not conclude that the Applicant is seeking to establish herself permanently in Canada but the Officer does question the purpose of her visit. In light of the decision in *Mekhissi*, I find that the omission of any reference in the decision to the effect of the Applicant's TRV on a concern regarding the purpose of her visit is a significant omission that undermines the logic of the decision.

[21] The Applicant questions the Officer's conclusion that her proposed MBA studies do not appear to be reasonable given her career path. In this regard, the Applicant is asking the Court to re-weigh the evidence presented in the study permit application. The GCMS notes explain the Officer's concerns and are not contradicted by the evidence provided by the Applicant in her application. The Respondent submits that the Applicant included insufficient information in the application describing her education and employment and I do not disagree. The Applicant states that she is an HSE expert who works in a large oil company in Iran and has attended many management related courses. I find that it was open to the Officer to state that "[t]here is little indication from [the Applicant]'s previous studies/employment that this intended program is a logical progression" in her studies and career. I also agree with the Respondent that the employment letter proffered by the Applicant states only that she is employed and receives a certain salary. In my opinion, the Officer's reasons are responsive to one of the main questions before them, that of the viability of the proposed MBA studies and the Applicant's purpose in seeking the study permit, and are owed deference on judicial review (*Mekhissi* at para 15).

[22] The Applicant raises a number of additional issues in the decision and questions why the Officer has not referred to discrete elements of her evidence, such as the payment of tuition, her continuous employment by the same employer for 11 years and the fact that she is a shareholder in an Iranian company with her husband. I do not find that these are significant omissions from the GCMS notes whether individually or collectively. I return to the premise that the Officer is not required to assess each facet of the evidence adduced by an applicant and makes no reviewable error in focusing on the material aspects of an application.

[23] In conclusion, the absence of logical analysis in the decision regarding the Applicant's ties in Canada and the omission to consider her valid TRV result in a decision that is not transparent and intelligible. Further, the decision is not justified against the evidence presented by the Applicant. For these reasons, the application is allowed.

[24] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-6364-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. No question of general importance is certified.

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6364-20

STYLE OF CAUSE: SOLMAZ ASADI RAHMATI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: JULY 8, 2021

JUDGMENT AND REASONS: WALKER J.

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