Federal Court  Cour fédérale

Date: 20220224

Docket: IMM-2400-21

Citation: 2022 FC 259

Ottawa, Ontario, February 24, 2022

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

HASSAN AZIMLOU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of the decision of a visa officer [Officer] dated February 10, 2021, in which the Officer denied the Applicant's application for permanent residence in Canada under the self-employed person class, pursuant to section 12(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and section 100(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*]. The Officer

found that the Applicant did not meet the definition of a “self-employed person” in section 88(1) of the *Regulations*.

[2] For the reasons that follow, the application for judicial review shall be dismissed.

II. Background

[3] The Applicant is a citizen of Iran. He has a bachelor's degree in graphic design from Shahed University in Tehran and has worked in Iran as a self-employed graphic designer and illustrator in various capacities for most of his career.

[4] In February 2018, the Applicant applied for permanent residence in Canada as a member of the self-employed person class. The Applicant intends to establish a graphic design and illustration services business that would be located in Toronto, Ontario, and plans on working with various small to mid-sized businesses from various sectors who would potentially need his services.

[5] The Applicant included with his application materials that demonstrate his professional background, his personal finances, and descriptions of his intended self-employed business activities in Canada. With respect to his professional background, the Applicant's application included his university degree and other professional development education certificates, an extensive portfolio of his past work, contracts for past work, and invoices for past work. With respect to his proposed business activities in Canada, the Applicant's application included a business plan providing a general industry and market analysis, a description of his target markets,

and a list of the types of services he intends to offer. The application further included a financial plan that presented sales forecast, start-up funding and profit projections.

[6] On October 1, 2020, the Applicant receive a procedural fairness letter seeking additional and updated information. In response thereto, the Applicant submitted a document entitled “My Settlement Plan and Professional/Financial Updates” [Settlement Plan]. The Settlement Plan advised that the Applicant had registered a Canadian corporation called Boomerang Art Studio Inc. on October 15, 2020 and that the corporation has $105,000 in its Canadian bank account. The Settlement Plan also included a letter of support from the Applicant’s sister and her spouse and reference letters from the Applicant’s previous clients and industry supporters, as well as copies of the Applicant’s past contracts with clients, including Canadian clients.

[7] By letter dated February 10, 2021, the Officer advised the Applicant that the Officer was not satisfied that the Applicant meets the definition of a “self-employed person” set out in section 88(1) of the *Regulations* because, based on the evidence submitted, the Officer was not satisfied that the Applicant has the ability and intent to become self-employed in Canada. Consequently, the Officer advised that the Applicant is not eligible to receive a permanent resident visa as a member of the self-employed persons class.

[8] The Global Case Management System notes [GCMS Notes] form part of the reasons for decision and shed light on the analysis conducted by the visa officer and on the grounds for refusing the application [see *Mohammadzadeh v Canada (Citizenship and Immigration)*, 2022 FC

75 at para 5]. The GCMS Notes indicate that the Officer reviewed the initial application materials submitted by the Applicant, as well as the Settlement Plan. The Officer notes that:

A. The Applicant explained that he has been working for clients from Canada in the past and this is why he has established a business in Canada jointly with his sister (article of incorporation dated October 2020). While a bank statement evidenced money in the company's bank account, it is insufficient evidence that the company has indeed conducted any business.

B. A business plan was provided in which the Applicant states that he would like to settle in Toronto where he would establish a graphic design and illustration business. The Applicant intends to work with various small to mid-size businesses from various sectors who will potentially need his graphic design and illustration services. The plan continues by providing a general description of the industry and a general overview of the Applicant's intended business activities. The Applicant has made revenue projections in the financial plan provided, as well as recent updates. However, the basis for these projections is unclear.

C. Upon review of the information on file, insufficient information had been provided about the details of the Applicant's potential business in Canada and the financial projections provided in the business plan, especially their source and how the Applicant arrived at such conclusions.

D. There is insufficient information to indicate that the Applicant has made sufficient research of the market in Canada and his area of destination, and that the proposed business would be feasible.

E. The Applicant provided a brief outline of the projected business' characteristics, but insufficient information had been provided to satisfy the Officer that the Applicant has the intention and ability to become self-employed in Canada.

[9] By way of a conclusory statement, the GCMS Notes state that "the Applicant provided insufficient evidence to show sufficient research of the Canadian market, specifically the area of destination, in proposed business activity field or that he has adopted a plan that would reasonably be expected to lead to future self-employment and penetration of the relevant field." As a result, the Officer was not satisfied that the Applicant has the ability and intent to be self-employed in Canada.

III. Issue and Standard of Review

[10] The sole issue for determination on this application is whether the Officer's decision was reasonable.

[11] Visa officers considering permanent residence visa applications enjoy a high degree of discretion and are entitled to a considerable degree of deference [see *Rezaei v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 444 at para 25]. The parties agree that the decision should accordingly be reviewed on the reasonableness standard [see *Canada (Minister of*

Citizenship and Immigration) v Vavilov, 2019 SCC 65 at paras 16-17, 23-25]. Reasonableness is concerned with the outcome of the decision and the reasoning process that led to that outcome [see *Vavilov*, *supra* at para 87]. A reasonable decision is transparent, intelligible, justified in relation to the facts and law, based on an internally coherent and rational chain of analysis, and responsive to the submissions of the parties [see *Vavilov*, *supra* at paras 15, 85, 95, 127-128].

[12] A visa officer is not required to give extensive reasons but the reasons must be sufficient to explain the result [see *Pacheco v Canada (Citizenship and Immigration)*, 2010 FC 347 at para 36; *Ogbuchi v Canada (Citizenship and Immigration)*, 2016 FC 764 at paras 10-13; *Omijie v Canada (Citizenship and Immigration)*, 2018 FC 878 at paras 22-28]. The reviewing court should intervene only if the reasons given, viewed in the context of the record, fail this test. It is not the role of the reviewing court to reweigh the evidence or to substitute its own view of a preferable outcome [see *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61].

IV. Analysis

[13] The self-employed persons class is a sub-class of the economic class created in subsection 12(2) of the *IRPA*. As such, they are selected "on the basis of their ability to become economically established in Canada".

[14] Subsection 88(1) of the *Regulations* defines a "self-employed person" as someone who has the relevant experience as well as the ability and intention to be self-employed and to make a significant contribution to specified economic activities in Canada. Subsection 88(1) states:

"self-employed person" means a foreign national who has relevant experience and has the intention and ability to be self-employed in Canada and to make a significant contribution to specified economic activities in Canada.	« travailleur autonome » Étranger qui a l'expérience utile et qui a l'intention et est en mesure de créer son propre emploi au Canada et de contribuer de manière importante à des activités économiques déterminées au Canada.

[15] Subsection 100(2) of the *Regulations* further stipulates that if an applicant does not meet the definition, the application shall be refused:

(1) For the purposes of subsection 12(2) of the Act, the self-employed persons class is hereby prescribed as a class of persons who may become permanent residents on the basis of their ability to become economically established in Canada and who are self-employed persons within the meaning of subsection 88(1).	(1) Pour l'application du paragraphe 12(2) de la Loi, la catégorie des travailleurs autonomes est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada et qui sont des travailleurs autonomes au sens du paragraphe 88(1).
Minimal requirements	*Exigences minimales*
(2) If a foreign national who applies as a member of the self-employed persons class is not a self-employed person within the meaning of subsection 88(1), the application shall be refused and no further assessment is required.	(2) Si le demandeur au titre de la catégorie des travailleurs autonomes n'est pas un travailleur autonome au sens du paragraphe 88(1), l'agent met fin à l'examen de la demande et la rejette.

[16] Accordingly, an applicant under the self-employed person class must demonstrate, with sufficient evidence, that he has: (a) the relevant experience; (b) the intention and ability to be self-employed in Canada; and (c) the intention and ability to make a significant contribution to specified economic activities in Canada. These requirements are conjunctive and thus the failure to meet any one of the criteria will result in the refusal of the application [see *Liu v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 375 at para 17].

[17] The Applicant asserts that the Officer's decision is unreasonable as the Officer disregarded evidence that demonstrates that the Applicant (as opposed to his company) has already engaged in self-employment with Canadian companies and that the Applicant has made business connections in furtherance of his intent/ability to be self-employed in Canada. Specifically, the Applicant asserts that the Officer failed to refer to a letter from Delta Design Build indicating that the company paid $4,700 CDN for the Applicant's services and intends to continue to use the Applicant in the future and a letter from a dentist indicating that the Applicant had designed business cards for the dentist for $450 CDN and that the dentist intends to hire the Applicant to prepare new business materials when the dentist moves locations. The Applicant further asserts that the Officer failed to acknowledge that the Applicant has a design contract with Vita Trading Corp. and failed to consider a letter of intent from WOWA Leads Inc., as well as support letters from local artists and businesses that intend to support the Applicant's business in Canada.

[18] The Applicant asserts that given that the Officer does not refer to these documents in any way and considering that these documents directly contradict the Officer's finding that the Applicant failed to demonstrated that he has already engaged in business in Canada and that he lacks the ability to become self-employed in Canada, the Court can infer that the Officer ignored this relevant evidence and thus find that the Officer's decision was unreasonable.

[19] I reject the Applicant's assertion. It is well recognized that a decision-maker is presumed to have weighed and considered all the evidence presented to it unless the contrary is shown [see *Florea v Canada (Minister of Employment and Immigration)*, [1993] F.C.J. no 598 (FCA) at para 1]. A decision-maker is not required to refer to each and every piece of evidence supporting its

conclusions 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 [see *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board),* 2011 SCC 62 at para 16]. Similarly, a failure to mention a particular piece of evidence does not mean that it was ignored. It is only when a decision-maker is silent on evidence clearly pointing to an opposite conclusion that the Court may intervene and infer that the decision-maker overlooked the contradictory evidence when making its finding of fact [see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 (FCTD) at paras 16-17].

[20] In this case, the GCMS Notes clearly confirm that the Officer took into consideration the Applicant's work with Canadian clients and that the Officer reviewed the Settlement Plan, which included the letters cited by the Applicant. Contrary to the assertion of the Applicant, the evidence that the Applicant asserts was overlooked does not clearly point to a conclusion opposite to the one reached by the Officer –namely, that the Applicant had provided sufficient evidence to demonstrate his intention and ability to become self-employed in Canada. Rather, in keeping with the Officer's findings, a review of the letters reveals that the Applicant has no on-going contracts with Canadian companies, his prior contracts with Canadian companies were of relatively small monetary value and were not recent, and none of the companies had firmly committed to any future work with the Applicant. The letter from WOWA Leads Inc. only indicates that they were "considering" hiring him for future graphic design projects. The letter from the dentist indicates that the dentist would hire the Applicant when the dentist changes locations, although the letter is from 2017 and as such it is entirely unclear if that opportunity remains viable. Similarly, the letter from Delta Design Build is from 2017 and while the company indicates an interest in hiring the

Applicant for an unspecified project in the future, it is also entirely unclear if this remains a viable opportunity. In the case of Vita Trading Corp, the letter refers to the possibility of future work "if approved", although no monetary amount was given.

[21] Accordingly, I am not satisfied that the Applicant has demonstrated any error on the part of the Officer in relation to this aspect of the Officer's decision.

[22] The Applicant further alleges that the Officer's conclusion that the Applicant provided insufficient evidence on the intended business and his financial projections was unreasonable. The Applicant submits given the local market research in the business plan and Settlement Plan and given the detailed breakdown of the business' anticipated start-up costs and anticipated revenues, it is evident that the source of the Applicant's financial projections is his own research and experience from having already engaged in self-employment in the local market. I reject this assertion.

[23] It is not unreasonable for an officer to explore a business plan to assess an applicant's knowledge of the business environment and the cost of doing business. These questions are relevant to the assessment of the seriousness of an applicant's intentions and his ability to carry out those intentions. If the business plan is not realistic, excessively vague or demonstrates a lack of research with respect to the proposed venture, an applicant is unlikely to meet the requirements for the self-employed persons class [see *Singh Sahota v Canada (Minister of Citizenship and Immigration)*, 2015 FC 856 at para 13; *Shehada v Canada (Minister of Citizenship and Immigration)*, 2004 FC 11 at paras 7-8]. Moreover, a "measure of precision" is required in order

to satisfy the test of the ability to become economically established in Canada and every such application must demonstrate that the proposed venture has been "thoroughly conceived and concrete steps taken to ensure the implementation that will result in the successful economic activity to meet the requirements of self-employed immigrant under section 88(1)" [see *Gur v Canada (Citizenship and Immigration)*, 2019 FC 1275 at para 18, citing *Wei v Canada (Citizenship and Immigration)*, 2019 FC 982 at para 44].

[24] Having reviewed the Applicant's business plan and Settlement Plan, I find that it was reasonably open to the Officer to conclude that the basis for the Applicant's revenue projections was unclear and that insufficient information had been provided about the financial projections, particularly regarding their source and how the Applicant arrived at such conclusions. The Applicant forecasts anticipated revenues of at least $83,000 CDN per year, yet he did not point to any specific anticipated projects underpinning his forecasts. This is particularly troubling given that the Applicant's total historical revenues earned from Canadian clients dating back to 2017 (and possibly earlier) were not significant. No explanation was provided by the Applicant as to how he would be able to secure such a sizeable increase in revenues. I find that the Applicant's failure to sufficiently particularize his revenue projections was, on its own, a reasonable basis for the Officer to reject the Applicant's application.

[25] Finally, the Applicant asserts that it was unreasonable for the Officer to conclude that the Applicant failed to provide sufficient information to demonstrate that he researched the market in his area of destination and that he adopted a plan that is reasonably feasible. The Applicant noted that his business plan listed specific Iranian companies in Toronto that he will target for work,

other graphic design companies that he intends to collaborate with, suppliers he will order from, the estimated cost of supplies, who he will use as a corporate advisor, who he will use for book keeping and legal services, and specific locations where he would consider setting up his office, all of which demonstrates extensive research of the local market.

[26] I find that the Applicant's argument in regards to the sufficiency of his market research seeks to have the Court reweigh the evidence submitted in support of the application, which is not the role of the Court on judicial review [see *Qaddafi v Canada (Minister of Citizenship and Immigration)*, 2016 FC 629 at para 59]. I am not satisfied that the Applicant has demonstrated any error in the Officer's consideration of the local market feasibility evidence.

V. Conclusion

[27] I am satisfied that the Officer's refusal of the Applicant's application for permanent residence in the self-employed person category represents a reasonable outcome based on the law and the evidence before the Officer. Accordingly, the application for judicial review shall be dismissed.

[28] No question for certification was raised by the parties and I agree that none arises.

JUDGMENT in IMM-2400-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The parties proposed no question for certification and none arises.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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