Federal Court  Cour fédérale

Date: 20220331

Docket: IMM-2103-21

Citation: 2022 FC 453

Ottawa, Ontario, March 31, 2022

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

SHADI MAHMOUDZADEH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of a decision of a visa officer [Visa Officer] of the Visa Section, Embassy of Canada, Warsaw, refusing the Applicant's application for a permanent resident visa in the self-employed persons class.

Background

[2] The Applicant is a citizen of Iran. In April 2018, she applied for a permanent resident visa in the self-employed persons class. In her application, the Applicant indicated that she has been a self-employed artist and painter since 2011, she has worked on a number of projects, held art gallery exhibitions and taught a variety of painting and drawing techniques to students in private and group classes. The Applicant submitted documentation showing that she obtained an associate's degree in Modular Computer Graphics in 2008, and a bachelor's degree in Scientific Applied Visual Communication in 2012, as well as past contracts for art and design work, some invoices for art lessons, and examples of her painting. In November 2020, the Applicant provided updated documents including art gallery publicity of exhibits in which she participated, certificates of participation in various art shows and invoices for teaching art and artwork. The Applicant also submitted that she had started two online sites (Instagram) to market and commercialize her artwork and artistic skills.

[3] The Applicant stated that the occupation in which she intended to be self-employed in Canada was to teach different drawing and painting techniques to a variety of students of all skill levels. She stated that she would continue to teach people with disabilities as part of voluntary rehabilitation classes, and would hold exhibitions and continue with frescos and interior design. The Applicant's representative submitted that the Applicant had been self-employed as an artist and graphic designer in Tehran since graduating from university, and that she intended to continue this career in Canada. The Applicant's representative submitted that the Applicant and

her spouse had $98,000 in assets which would allow the Applicant to be self-employed in her chosen career in Canada.

[4] The Visa Officer refused her application.

Relevant Legislation

Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]

> **Application before entering Canada**
>
> 11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.
>
> **Economic immigration**
>
> 12 (2) A foreign national may be selected as a member of the economic class on the basis of their ability to become economically established in Canada.

Immigration and Refugee Protection Regulations, SOR/2002-227 [IRP Regulations]

> **88 (1)** The definitions in this subsection apply in this Division.
>
> …
>
> **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.
>
> …
>
> **Members of the class**
>
> 100 (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).

Minimal requirements

(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.

OP 8: Entrepreneur and Self-Employed (in effect until August 2, 2016)

11.2 Does the applicant meet the definition of "self-employed"?

The self-employed applicant is one who:

- has relevant experience; and
- has the intention and ability to be self-employed in Canada; and
- intends to make a significant contribution in specified economic activities as defined in the Regulations through either:
  - self-employment in cultural activities;
  - self-employment in athletics, or;
  - self-employment in the purchase and management of a farm

11.3 Determining experience, intention and ability

The officer must consider the following in assessing an applicant's experience, intent and ability to create their own employment in Canada:

- Self-employed experience in cultural activities or athletics. This will capture those traditionally applying in this category. For example, music teachers, painters, illustrators, film makers, freelance journalists. Beyond that, the category is intended to capture those people who work behind the scenes, for example, choreographers, set designers, coaches and trainers.
- Management experience in the world of arts and culture may also be a viable measure of self-employment; for example, theatrical or musical directors and impresarios.

- A person's financial assets may also be a measure of intent and ability to establish economically in Canada. There is no minimum investment level for a self-employed person. The capital required depends on the nature of the work. Applicants must have sufficient funds to create an employment opportunity for themselves and maintain themselves and their family members. They must show you that they have been able to support themselves and their family through their talents and would be likely to continue to do so in Canada. This includes the ability to be self-supporting until the self-employment has been created.
- Participation at a world-class level in cultural activities or athletics intends to capture performers. This describes those who perform in the arts, and in the world of sport. “World class” identifies persons who are known internationally. It also identifies persons who may not be known internationally but perform at the highest levels in their discipline.
- It is important, when determining an applicant’s intent and ability to purchase and manage a farm, to be aware that farming is a highly skilled and capital-intensive industry with real estate making up 54% of an average farmer’s assets. The Canadian Federation of Agriculture (CFA) reports that in Canada the average value of farmland varies significantly from province to province but ranges from $330 to $4,600 per acre. Farmland closest to urban centres has a higher market price. Average farm size varies from province to province with Newfoundland reporting an average farm size of 146 acres while Saskatchewan reports an average farm size of 1,152 acres.

…

11.7 Requesting and reviewing documentation

Documentation should provide evidence of the applicant's financial position and previous self-employment or experience. It should provide reasonable evidence that the applicant merits consideration under the program.

Officers may request that self-employed applicants show evidence of having researched the Canadian labour market and adopted a realistic plan that would reasonably be expected to lead to self-employment.

However, a formal business plan that would entail unnecessary expense and administrative burden is discouraged.

Decision under review

[5] The Visa Officer refused the application by letter dated February 25, 2021. This letter describes the content of s 12(2) of the IRPA as well as s 100(1) and s 88(1) of the IRP Regulations and states that the Officer was not satisfied that the Applicant met the definition of a "self-employed person", as set out in s 88(1), because she had not satisfied the Visa Officer that she had the ability and intent to become self-employed in Canada based on the evidence that she had submitted.

[6] In the Global Case Management System [GCMS] notes, the Officer referred to the Applicant's statements that she would teach drawing and painting techniques to students, and would teach people with disabilities as part of voluntary rehab classes and that she intended to continue working with frescoes and interior designs, and that she would hold exhibitions. The Visa Officer recorded that they had reviewed the Applicant's submissions, including the Applicant's most recent submissions that detailed the online marketing of her artwork and skills. However, the Applicant had provided insufficient information about the practical and financial details of her self-employment in Canada. Further, the Applicant had provided insufficient information to demonstrate that she had adequately researched the market in Canada and that the proposed self-employment would be feasible. More specifically, the Applicant had provided insufficient evidence to show in-depth research of the Canadian market in her area of destination, in her proposed business activity or field, or that she had adopted a plan that would be reasonably be expected to lead to future self-employment and penetration of the relevant market.

[7] Accordingly, the Visa Officer was not satisfied that the Applicant has the ability and intent to become self-employed in Canada.

Issues and standard of review

[8] The Applicant raises two issues:

i. Did the Visa Officer breach of the duty of procedural fairness owed to the Applicant; and

ii. Was the decision was reasonable.

[9] The parties also submit, and I agree, that issues of procedural fairness are to be reviewed on a correctness standard (see: *Mission Institution v Khela*, 2014 SCC 24 at para 79 and in *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). In *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 [*CPR*] the Federal Court of Appeal held that although the required reviewing exercise may be best – albeit imperfectly – reflected in the correctness standard, issues of procedural fairness do not necessarily lend themselves to a standard of review analysis. Rather, the Court is to determine whether the proceedings were fair in all of the circumstances. That is, "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond" (*CPR* at paras 54-56; see also *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[10] The parties submit, and I agree, that the reasonableness standard will apply to the review of the merits the Visa Officer's decision (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 23-25).

Procedural fairness

Applicant's position

[11] The Applicant submits that the procedure set out in operational guideline *OP 8 Entrepreneur and Self-Employed* [OP-8 Guideline] gives rise to a legitimate expectation that she would not have to submit a business plan or evidence of having researched the Canadian labour market, except on request of the Visa Officer to which she would then have an opportunity to respond. The Visa Officer did not request evidence that the Applicant had researched the Canadian market, but denied her application on the sole basis that she had not led such evidence. Thus, the decision was made in breach of procedural fairness.

Respondent's position

[12] The Respondent submits that the duty of procedural fairness owed by visa officers in these circumstances is at the low end of the spectrum and that it was the Applicant's burden to prove that she was entitled to the visa. Further, the Visa Officer's decision was explicitly concerned with whether the Applicant provided sufficient evidence to demonstrate her ability and intent to be self-employed in Canada – a requirement of s 88(1) and 100(1) of the IRP Regulations. The Applicant failed to provide any evidence concerning the Canadian art market, which information factors into whether her desire to be self-employed in Canada is feasible, and she should have anticipated that the absence of such information would be relevant and significant. Because the Visa Officer's concerns flowed directly from the requirements of the IRP Regulations, there was no duty on the Visa Officer to advise the Applicant of the

deficiencies in her application, an opportunity to respond to those concerns or, to correct the deficient application. Accordingly, the Visa Officer did not breach the Applicant's right to procedural fairness.

Analysis

[13] The jurisprudence as to the duty of procedural fairness owed by a visa officer with respect to an application for permanent residence is well established. Justice Gascon has previously set this out in *Lv v Canada (Citizenship and Immigration)*, 2018 FC 935 at paragraphs 22-23) as have I in *Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 [*Ebrahimshani*] at paragraphs 27-28.

[14] In a nutshell, the jurisprudence clearly establishes that the onus is on an applicant to establish that they meet the requirements of the IRP Regulations by providing sufficient evidence in support of their application. That is, to submit a convincing application and to anticipate adverse inferences contained in the evidence and address them. The duty of procedural fairness owed by visa officers to an applicant is on the low end of the spectrum. Visa officer are not obliged: to notify an applicant of inadequacies in their applications nor in the materials provided in support of the application; to seek clarification or additional documentation; or, to provide an applicant with an opportunity to address the officer's concerns when the material provided in support of an application is unclear, incomplete or insufficient to convince the visa officer that the applicant meets all the requirements that stem from the IRP Regulations. The duty of procedural fairness will not be breached when a visa officer's concerns could reasonably have been anticipated by the applicant.

[15] Further, when a concern arises directly from the requirements of the legislation or related regulations, a visa officer is not under a duty to provide an opportunity for an applicant to address their concerns. However, when the issue is not one that arises in this context, such a duty *may* arise. That is, if the visa officer was concerned with the credibility, the veracity, or the authenticity of the documentation provided by an applicant, as opposed to the sufficiency of the evidence provided, an obligation to provide the applicant with an opportunity to address those concerns may arise (see also *Hanza v Canada (Citizenship and Immigration)*, 2013 FC 264 at paras 22-25; *Tollerene v Canada (Citizenship and Immigration)*, 2015 FC 538 at para 15 [*Tollerene*]; *Gur v Canada (Citizenship and Immigration)*, 2019 FC 1275 [*Gur*] at paras 13-17*; Mohammadzadeh v. Canada (Citizenship and Immigration)*, 2022 FC 75 [*Mohammadzadeh*] at paras 20-29); *Rezaei v Canada (Citizenship and Immigration)*, 2020 FC 444 [*Rezaei*] at para 12).

[16] In this matter, it is clear from the Visa Officer's reasons that they were concerned with the sufficiency of the evidence provided by the Applicant. The Visa Officer found that the Applicant had provided insufficient information about the practical and financial details of her self-employment in Canada. The Applicant had not demonstrated that she had adequately researched the market in Canada and that her proposed self-employment would be feasible. More specifically, the Applicant provided insufficient evidence to show in-depth research of the Canadian market in her area of destination (which she did not identify), in her proposed business activity or field, or that she had adopted a plan that would be reasonably be expected to lead to future self-employment and penetration of the relevant market. Accordingly, the Visa Officer was not satisfied that the Applicant has the ability and intent to become self-employed in Canada.

[17] I agree with the Respondent that the Visa Officer was concerned with whether the Applicant provided sufficient evidence to demonstrate her ability and intent to be self-employed in Canada, as required by s 88(1) and s100(1) of the IRPA Regulations. That is, the Visa Officer's concern stems directly from the IRP Regulations. The requirement was known to the Applicant and the burden was on her to be responsive to it. The Visa Officer was under no obligation to advise the Applicant of the concern or to afford her an opportunity to respond. Accordingly, there was no breach of procedural fairness.

[18] As to the Applicant's submission that a legitimate expectation that she would be notified of the concern arises from the OP-8 Guideline, I do not agree.

[19] In support of that position, the Applicant refers to questions 6 and 8 of her application form (which simply describe her experience and intended occupation) and OP-8 Guideline sections 11.2, 11.3 and 11.7, as well as the affidavit of her then counsel, Mr. John Jules Somjen, stating his understanding of these sections to be that applicants should concentrate on providing evidence of their past experiences and demonstrated ability in the field. Counsel states that he usually advises clients who are artists to wait for any request from the visa post before they attempt to research the market for the art or to make specific plans for their future income in Canada. While IRCC did provide an opportunity for the Applicant to update her application, there was no request for evidence that the Applicant had researched the labour market and devised a realistic plan for self-employment.

[20] First, there is some doubt that the OP-8 Guideline was in effect when the Applicant submitted her application and the Visa Officer made their decision. As stated in *Azani v Canada (Citizenship and Immigration*), 2022 FC 99 [*Azani*]:

> [11] Operation Manual OP-8 is no longer operationally relevant. It was replaced by the Program Delivery Instruction [PDI] on the Self-Employed Persons Class, which has been in force since August 2, 2016. The Applicant's reliance on the outdated Operational Manual OP 8 does not give rise to a legitimate expectation that would enhance the duty of procedural fairness owed to the Applicant (*Jumalieva v Canada (Citizenship and Immigration)*, 2020 FC 385 at paras 19-21).

[21] *Azani* and the question of the status of the OP-8 Guideline were raised with the parties at the hearing of this matter. In response, subsequent to the hearing, the Respondent provided the Court with a copy of the affidavit filed in *Azani*. This states that section 11 of the OP-8 Guideline was replaced by the Program Delivery Instruction for the Self-Employed Persons Class [PDI], effective August 2, 2016. The PDI is attached as an exhibit to the affidavit. Also attached as an exhibit is a webpage printout entitled the "Program delivery update – August 2, 2016". This states that the information that was contained in OP-8 section 11, processing self-employed persons, can now be found in the permanent residence section of the PDI. The affidavit filed in *Azani* also states that the OP-8 Guideline is still found online as there are applications being processed by IRCC that were submitted when OP-8 was operationally relevant. The Respondent also referred the Court to *Jumalieva v Canada (Citizenship and Immigration)*, 2020 FC 385 [*Jumalieva*], decided prior to *Azani*, and to *Kucukerman v Canada (Citizenship and Immigration)*, 2022 FC 50 [*Kucukerman*], which describes the replacement of section 11 of the OP-8 Guideline with the PDI.

[22] In response, the Applicant wrote to the Court submitting that the OP-8 Guideline (including section 11) continues to be posted and accessible online and providing an affidavit of a legal assistant stating that she conducted an online search on the IRCC website for operational instructions and guidelines and "[t]he page that first comes up indicates that the operational instructions and guidelines are used by IRCC staff", clicking on the operational instructions guidelines tab, she was taken to the manuals and located OP-8. She states that there is no indication in OP-8 that is no longer in effect. She does not indicate if this information is found elsewhere, such as in the update. The Applicant submits that *Jumalieva*, *Azani*, and *Kucukerman* are distinguishable because the applicants in those matters had submitted business plans, whereas the Applicant in this case did not. The Applicant maintains that the OP-8 Guideline creates a legitimate expectation that a visa officer will notify an applicant if evidence of market research or a realistic plan is required.

[23] Regrettably, in this matter prior to the hearing neither party averted to the fact that the OP-8 Guideline had been replaced prior to the Applicant making her application for a permanent resident visa in the self-employed persons class. Nor was an affidavit filed by the Minister, as was the circumstance in *Jumalieva*, *Azani* and *Kucukerman*. However, the status of the OP-8 Guideline has been previously addressed by this Court in those cases and I am not persuaded that the fact that it can still be accessed online assists the Applicant. The OP-8 Guideline has no application to this matter.

[24] In any event, in *Jumalieva* Justice Heneghan dealt with an argument similar to that made in this matter by the Applicant. Justice Heneghan held that:

> [16] The Applicant grounds her arguments about breach of legitimate expectations, as an aspect of procedural fairness, on sections 5.14 and 11 of the Manual.
>
> …..
>
> [18] Section 11 of the Manual read, in part, as follows:
>
> …
>
> Documentation should provide evidence of the applicant's financial position and previous self-employment or experience. It should provide reasonable evidence that the applicant merits consideration under the program.
>
> Officers may request that self-employed applicants show evidence of having researched the Canadian labour market and adopted a realistic plan that would reasonably be expected to lead to self-employment.
>
> However, a formal business plan that would entail unnecessary expense and administrative burden is discouraged.
>
> …
>
> [19] The Respondent argues that the Applicant relied on an outdated manual. The affidavit of Ms. Burtt makes it clear that section 11 was replaced by something else, that is the PDI, for applications filed after August 2, 2016.
>
> [20] The Applicant submitted her application on January 23, 2019.
>
> [21] **There was no breach of the doctrine of legitimate expectations or any other breach of procedural fairness.**
>
> [22] The Officer was dissatisfied with the sufficiency of evidence presented by the Applicant to show that she met the requirements under the Regulations. The credibility of the Applicant was not at issue. There was no obligation for the Officer to notify the Applicant of concerns arising from the legislative

> requirements or to provide an opportunity for her to respond to a deficient application.
>
> (emphasis added)

[25] Further, in *Rassouli v Canada (Citizenship and Immigration)*, 2021 FC 961 Justice Ahmed rejected an argument alleging a breach of procedural fairness as the applicant had not been asked to produce a business plan, finding:

> [29] The Applicant submits that his right to procedural fairness was breached because the Officer did not request a business plan from the Applicant, yet faulted him for not having one. The Applicant argues that he has substantially researched his business and prepared a professional business plan that could have been submitted if requested. He contends that the Citizenship and Immigration Canada guidelines do not require a business plan to be submitted.
>
> [30] A review of the Officer's GCMS notes indicates that the Officer had concerns with the Applicant's knowledge of the business environment. The Officer does not state that the Applicant was required to have a business plan; rather, the Officer notes that the Applicant has provided insufficient evidence to show that he "has adopted a plan."
>
> [31] The duty of procedural fairness to visa applicants is limited and on the low end of the spectrum (*Rezaei v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 444 ("*Rezaei*") at para 11). There are two circumstances where a visa applicant will be offered the opportunity to respond to an Officer's concerns: 1) where the officer may base a conclusion on information not known to the applicant, and 2) where the officer has concerns with the applicant's credibility or the authenticity of the applicant's documents (*Rezaei* at para 12).
>
> [32] The Applicant has not raised either of these grounds. The Applicant's position is that if the Officer required more evidence from the Applicant to reach a positive decision, they should have asked him for it. The Officer was under no legal duty to ask for clarification or for more information before rejecting the application on the ground that the material submitted was insufficient (*Singh* at para 21).

> [33] The onus was on the Applicant to submit a convincing application, ”to anticipate adverse inferences contained in the evidence and address them, and to demonstrate that [he has] a right to enter Canada” (*Lv v Canada (Citizenship and Immigration)*, 2018 FC 935 at para 22). In my view, the Officer did not breach their duty of fairness in reasonably concluding that the Applicant failed to meet that onus.

[26] This is a similar circumstance. Here the Visa Officer’s reasons did not refer to a requirement to produce a business plan. Rather, the Visa Officer found that the Applicant had provided insufficient information to establish that she had researched the Canadian market to establish that her proposed self-employment would be feasible or that she had adopted a plan that would reasonably be expected to lead to future self-employment. The Visa Officer did not require that the information be provided in any particular form, i.e. a business plan; it simply had to be sufficient to demonstrate the Applicant’s ability and intent to be self-employed in Canada. As stated in *Kameli v Canada (Citizenship and Immigration)*, [2002] FCJ No 1045, relied upon by the Applicant, an applicant in the self-employed category must demonstrate through their submissions that they have “a concrete plan of action, an understanding of the market and economic conditions in Canada” (at para 19). Most significantly, the Visa Officer’s concern arose directly from the requirements of the legislation or related regulations. The Visa Officer was therefore not under a duty to provide an opportunity for an applicant to address their concerns.

[27] In conclusion, in this matter no issue with the the Applicant’s credibility or the authenticity of her documents arose. The Applicant could reasonably expect that she would have to provide evidence to establish the feasibility of her proposed self-employment in Canada. The Visa Officer did not fault the Applicant for not submitting a business plan. Rather, the Visa

Officer's concerns arose from the Applicant's failure to establish that she had met the requirements of the IRP Regulations. The Officer found that the Applicant had not met her onus of providing sufficient information to establish that she has the ability and intent to be self-employed in Canada. In this circumstance, there was no obligation for the Visa Officer to notify the Applicant of the deficiencies in her application or to provide her with an opportunity to respond to them. There was no breach of procedural fairness.

[28] And, even if the OP-8 Guideline had been in effect, sections 11.2, 11.3 and 11.7 of that document do not give rise to a legitimate expectation that the Visa Officer would, after assessing the application, separately request the Applicant to provide evidence of market research and of a realistic plan that would reasonably lead to self-employment. Section 11.7 merely states that a visa officer may request such evidence. These provisions do not create a "clear, unambiguous and unqualified procedural framework" to be followed in the manner that the Applicant suggests (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 98; *Canada (Citizenship and Immigration) v. Jayamaha Mudalige Don*, 2014 FCA 4 at para 53).

Reasonableness of the decision

Applicant's position

[29] The Applicant submits that the Visa Officer did not understand the differences between the way an artist works and earns a living and the way other self-employed persons do so, such as in the field of athletics. The Applicant submits that each artist produces their own individual artistic product. Therefore, it is not possible for self-employed artists to provide an accurate

description in advance of a market for their work; artistic taste is individual and subjective. Further, that the best indicator of an artist's ability to earn a living in Canada is their past record of successful work elsewhere, measured by things like exhibitions, sales and teaching contracts and that the Applicant submitted such materials to demonstrate her work in Iran. The Applicant submits that the Visa Officer refused her application solely on the grounds of a supposed lack of research into the Canadian market for her work and a lack of a plan with details of how her self-employment would be feasible to the exclusion of a consideration of her experience and ability as an artist, as well as her strong financial position. The Applicant submits that this contradicted the approach set out in OP-8 and was unreasonable.

Respondent's position

[30] The Respondent submits that the Visa Officer accepted that the Applicant is a self-employed artist in Iran and did not question her experience as such. Rather, the Officer was concerned with the lack of evidence that the Applicant was ready and able to sustain herself, and her husband, in Canada as a self-employed person. The onus was on the Applicant to satisfy the Visa Officer of the conjunctive requirements that she had the requisite experience, ability and intent to be self-employed in Canada. Jurisprudence establishes that self-employed applicants must establish that they are able to become economically established in Canada and that a lack of research to demonstrate the viability of their proposed self-employment activity could reasonably lead to their application being denied. The Applicant's failure to demonstrate the viability of her proposed self-employment activity reasonably lead to the Visa Officer to deny her application.

[31] The Respondent submits the Applicant does not contest the Visa Officer's findings related to a lack of evidence of market research or any form of a plan or any details of how she will become viably self-employed in Canada. Rather, she argues that artists are different from other self-employed persons and that they should not have to point to any future plans, it is sufficient that they point to their past work in their home country as evidence of the feasibility of their self-employment in Canada. However, the Applicant provides no authority to support this assertion.

Analysis

[32] The Officer noted that the Applicant wished to teach art classes, hold exhibits and continue with frescos and interior design in Canada. The Officer stated that all of the Applicant's submissions had been reviewed, including her most recent submission, which stated that the Applicant has continued her self-employed activity and started online marketing of her artwork and skills. To the extent that the Applicant is asserting that the Visa Officer failed to assess or consider her submissions, I do not agree. The Visa Officer acknowledged and did not take issue with the Applicant's claim that she is a self-employed artist in Iran.

[33] Rather, the Visa Officer's concern was that her submissions in support of her application provided insufficient practical and financial details of her potential for self-employment in Canada or to establish that she had conducted sufficient research to confirm that that her proposed self-employment in Canada would be economically feasible. Pursuant to s 100(2) of the IRP Regulations, the Visa Officer is precluded from issuing a visa under the self-employed persons class unless the applicant fits the definition of a "self-employed person" within the

meaning of s 88(1). This requires that the Applicant demonstrate that they have the intention and *ability* to be self-employed in Canada. The viability and feasibility of the proposed self-employment is integral to a determination of whether the Applicant has the intention and ability to be self-employed in Canada.

[34] The Applicant's submissions as to her ability and intention to become self-employed in Canada were limited to evidence of her prior experience in Iran, and her available assets. While the Applicant's experience in her home country is some evidence that her self-employment in Canada might succeed, the Visa Officer was entitled to assess and consider "the applicant's knowledge of the business environment and the cost of doing business" *(Sahota* at para 13). The Visa Officer was not required to find that the Applicant's prior experience in Iran, on its own, sufficiently demonstrated that she had the intention and ability to be self-employed in Canada.

[35] In that regard, I note that the Applicant's initial submission, made on her behalf by her counsel, lists four corporate clients for whom she did work between January 2012 and May 2016. The submission does not ascribe a monetary amount to the work done for these clients over this more than four-year period. However, each of the attached four contracts indicate that they were of short duration (2-3 months) and ranged between $600 and $3000 (converted to Canadian dollars at today's rate). Similarly, as to the private clients listed, the attached documentation comprises of four invoices for private art lessons conducted in 2015 and 2016. The submission does not indicate the Applicant's earnings from these lessons. However, the documents attached indicate each of invoice is between the current Canadian equivalent of $70 and $110. As to two invoices in 2014 for interior design renovations, the Applicant's submission

to the Visa Officer ascribed no value to them and I was unable to locate them among the attached documents. The submissions also referenced many art gallery showings, however, the submissions did not clearly tie any art sales as resulting from these shows. Three copies of cheques for artwork sales were included with the attached documents, one in 2013, one in 2014 and one in 2016 in the approximate current Canadian values of $450, $600 and $2100 respectively. This was the totality of the Applicant's submitted self-employment and earnings for the period between 2012 and 2016 and reflects a nominal income over that four-year period.

[36] Similarly, the Applicant's updated submission lists gallery publicity information for group and other exhibits in which the Applicant participated in 2018 and 2019, but makes no direct connection to art sales stemming from those exhibitions. Certificates of participation in other shows are also referenced and attached but without connection to any income generated as a result. As to the Applicant's Instagram accounts, the submissions state that "[h]er online marketing efforts have been quite successful" but again do not tie this marketing success to sales. Four more contracts are attached, however, these are of low monetary value (between $136 - $147 converted to today's Canadian dollars) and one of these contracts actually requires the Applicant to pay for the use of a gallery space. The submissions enclose what is described as a series of receipts for payment of artworks from August 2018 to November 21, 2020. This appears to be seven cashier cheques totalling approximately $12,500 (converted to today's Canadian dollars) for this two-year period.

[37] My point is that the record demonstrates that the documentation provided in support of the Applicant's visa application does not appear to establish that the Applicant's contracting, art

lessons and art sales – even if she were able to enter a similar market in Canada – would financially sustain her (see *Azimlou v Canada (Citizenship and Immigration)*, 2022 FC 259 at para 20). Accordingly, I see no error in the Visa Officer's finding that the Applicant had provided insufficient practical and financial details of her potential for self employment in Canada.

[38] I also agree with the Respondent that the Applicant failed to provide any details of how she would become established in Canada as a self-employed artist. For example, she did not provide any plan or details of where and how she would develop a relationship with art galleries or exhibition facilitators to show and sell her work.

[39] Based on the record before the Visa Officer and their reasons, the Visa Officer reasonably found that the Applicant had not established that she has the ability and intent to be self–employed in Canada and refused her application.

JUDGMENT IN IMM-2103-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;

2. There shall be no order as to costs; and

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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DATED:	MARCH 31, 2022

APPEARANCES:

Ronald Poulton	FOR THE APPLICANT
Matthew Siddall	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT