Federal Court Cour fédérale

Date: 20220909

Docket: IMM-5360-21

Citation: 2022 FC 1269

Ottawa, Ontario, September 9, 2022

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

YUSRA SHARAFEDDIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by an Officer of the Canadian Embassy located in Abu Dhabi, United Arab Emirates [UAE], dated July 18, 2021 [Decision]. The Officer refused the Applicant's application for a study permit and determined she did not meet the requirements under section 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

II. Facts

[2] The Applicant is a 31-year-old citizen of Jordan, and a long-term resident of the United Arab Emirates. She lives there with her husband and three children. In April 2019, she obtained a bachelor's degree in Business Administration from the Canadian University Dubai. She has not yet obtained any experience working in this field, and has been unemployed outside the house for the past 10 years.

[3] To further her education and increase her career prospects, the Applicant applied to and was accepted into a one-year Human Resources Management program at Algonquin College in Ottawa. In order to attend, the Applicant applied for a student visa, intending to leave her husband and children in the UAE while she completed the program.

[4] On July 18, 2021, the Applicant was advised her application was denied because the Officer was not satisfied that she would leave Canada at the end of her authorised period of stay.

III. Decision under review

[5] The Officer was not satisfied that the Applicant would leave Canada at the end of her stay based on her family's ties in Canada and the UAE, the purpose of her visit, limited employment prospects in the UAE and current employment situation.

[6] The Officer noted that the Applicant is married and has dependents or close family ties in the UAE, *but* is not "sufficiently established". The Officer points out the Applicant is currently

unemployed and has weak professional ties in the UAE. Additionally, the Applicant's plan of study in Canada is vague and general with limited explanations provided as to her prospects.

[7] Considering the combination of the Applicant's program of study, previous education, age and study gap, the Officer was not satisfied the intended studies "make sense" given the significant cost and the Applicant's history. In this regard, the benefit to the Applicant's career plan was not established. Additionally, the Officer noted that the Applicant's current employment situation did not demonstrate that the Applicant is "sufficiently well established" that she would leave Canada at the end of her authorized stay.

[8] The Officer also considered the Applicant's limited employment prospects in the UAE required that less weight be given to their ties in that country.

[9] Given these factors, the Officer was not persuaded that the Applicant would depart Canada at the end of the period authorized for their stay.

IV. Issues

[10] The only issue is whether the Officer's decision is reasonable.

V. Standard of Review

[11] With regard to reasonableness, in Canada *Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in

Vavilov, the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "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). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
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> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
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> [Emphasis added]

[12] Reasons must be considered holistically and contextually per *Vavilov* at 97:

> [97] Indeed, *Newfoundland Nurses* is far from holding that a decision maker's grounds or rationale for a decision is irrelevant. It instead tells us that close attention must be paid to a decision maker's written reasons and that they must be read holistically and

> contextually, for the very purpose of understanding the basis on which a decision was made.

[13] *Vavilov* makes it abundantly clear the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances". The Supreme Court of Canada instructs:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, <u>a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker"</u>: *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
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> [Emphasis added]

[14] An example of some of these principles at work is *Hashem v Canada (Citizenship and Immigration)*, 2020 FC 41:

> [27] It is not for the Court to reweigh the evidence before the visa section. I agree with the respondent that Mrs. Hashem is essentially asking the Court to reweigh the evidence and to substitute its view for that of the visa section officers.
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> [28] A decision-maker is not obliged to refer explicitly to all the evidence. It is presumed that the decision-maker considered all the evidence in making the decision unless the contrary can be established (*Hassan v Canada (Minister of Employment & Immigration)*, [1992] FCJ No 946 at para 3; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] 157 FCJ No 1425 at para 16).
>
> [29] Mrs. Hashem's failure to show that the visa section officers ignored evidence amounts to a mere disagreement with the factors they found to be determinative *(Boughus v Canada (Minister of*

> *Citizenship and Immigration)*, 2010 FC 210 at paras 56 and 57). There is no reason to intervene and set the decision aside.

[15] Finally, as this Court noted in *Alaje v Canada (Citizenship and Immigration)*, 2017 FC 949, at para 14, this Court owes great deference to the Officer's assessment, and I would add, to the Officer's weighing of the evidence: "… the Court owes great deference to the officer's assessment of the evidence."

VI. Analysis

[16] The Applicant submits the Officer erred by relying on the Applicant's family ties in Canada when she has none. Conversely, in the Applicant's view, her extensive family ties in the UAE must only be invoked in the Applicant's favour. The Applicant cites this Court's decisions in *Dhanoa v. Canada (Citizenship and Immigration),* 2009 FC 729, at para 16 and *Aghaalikhani v. Canada (Citizenship and Immigration)*, 2019 FC 1080, to support this proposition. The Applicant submits this alone renders the decision unreasonable.

[17] With respect, I disagree. I do not take either case cited to stand for the proposition asserted namely that family ties as here to only one country must be assessed in favour of an applicant without regard to context or circumstances. That would contravene *Vavilov's* requirement that judicial review be holistic and contextual. It is obvious she has no family ties in Canada but that does not conclude a holistic and contextual judicial review for reasonableness.

[18] Nor am I satisfied the Officer took family ties off the table, or unreasonably diminished their weight as the Applicant alleged. The material in the record and before the Officer included

full identification of her family in UAE. As such, the law presumes the Officer considered her UAE family ties as with her lack of family ties in Canada. In addition, a reading of the GCMS notes reveals her family ties were in fact referred and assessed, twice, once specifically and once more generally. In my view the Officer clearly considered her family ties and tellingly added: "…but, is not sufficiently established." The Officer accorded her family ties in the UAE less weight because the Officer reasonably found she has been unemployed for the past 10 years and had weak professional and economic ties to the UAE.

[19] This sort of weighing and balancing is the essence of what visa officers do, and with respect it lies within their core competence. As noted above such assessments are entitled to a great deal of deference on judicial review. Nor am I persuaded on this record that there was only one reasonably assessment of family ties in the overall circumstances of this case, particularly given that judicial review is not a treasure hunt for error nor to be conducted in a piecemeal (as submitted) as opposed to holistic and contextual basis (required by *Vavilov* above).

[20] The Applicant further submits the Officer erred in finding that the Applicant would not leave at the end of her authorized stay "based on the purpose of [her] visit." This assertion, in the Applicant's view, is "nonsensical" given that the purpose of the visit in no way indicates that she would remain in Canada illegally.

[21] I am not persuaded. The purpose of her study was stated by the Applicant as follows: "It is my dream to pursue higher education from Canada and receive a Master's degree from Canada." She said nothing more. With respect, and notwithstanding counsel's arguments to the

contrary, I find this aspect of the Decision was reasonably assessed and the purpose of her study was found wanting (taking this approach and not the holistic and contextual approach mandated by *Vavilov*): she did not provide any academic goal, gave no reasons for doing this study *in Canada* (as opposed to UAE), she said nothing about how any of this would enhance her employment prospects in the UAE, the Applicant's overall goal or anything of the like. With respect, the Applicant's explanation of her purpose in visiting is wholly lacking. It does not provide the sufficient specificity or evidence required to positively assess her educational plan and career prospects. As such, it was reasonable for the officer to be unsatisfied with her explanation.

[22] The Applicant further submits that the Officer erred in their assessment of the Applicant's employment prospects in the UAE. The Applicant notes that there was "absolutely no evidence before the Officer as to the Applicant's employment prospects one way or the other." The Applicant submits that this is neutral factor at best. I disagree. The Applicant had no employment outside the home in UAE for a decade. With respect, that reasonably constitutes evidence of her employment prospects such as might be relied upon by a visa officer. This evidence is a measurement of the present time, and was reasonably counted against her on this point, particularly given she said nothing about why she should study in Canada, or how in even the slightest way her proposed study could or would advance her employment prospects in UAE. These failings were reasonably assessed against her.

[23] On the last of the four bases referred to by the Officer, the Applicant herself, as she must, acknowledges her "current employment situation" (unemployed for a decade), shows a lesser

degree of establishment in her country of residence, i.e., UAE. However, in the Applicant's view, the Officer erred by failing to adequately assess her "substantial" ties to the UAE and lack of incentive to remain in Canada. I disagree as noted already on the matter of the foregoing assessment of family ties.

[24] Additionally, the Applicant alleges the Officer ignored her positive travel history, which specifically includes travel to the U.S., Germany and Switzerland since 2015 and return. In my view, there is no merit in this submission because her travel history is cited in the record, and the law presumes it was considered. Moreover, *Vavilov* makes it clear such Officers are not required to deal with every submission:

> [128] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para. 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice.

[25] In my view, this case is one in which the Applicant failed to satisfy the onus on her to establish her application was relevant, convincing and unambiguous. Her application was, with respect, incomplete in material respects as noted above: *Rezvani v. Canada (MCI)*, 2015 FC 951:

> [21] However, it is also true that the burden is on the applicant to provide a complete application. Concerns arising out of sufficiency of the evidence do not have to be communicated to the applicant, given that this is part of the initial burden of providing a complete application. In *Obeta*, a case in which the visa officer noted that the tasks listed in employment letters had been copied directly from the relevant NOC codes, Justice Boivin stated as follows, at para 25:

> …The applicant has the burden to put together an application that is not only "complete" but relevant, convincing and unambiguous *(Singh v. Canada (Minister of Citizenship & Immigration)*, 2012 FC 526, [2012] F.C.J. No. 548 (F.C.); *Kamchibekov*, above, at para 26). Despite the distinction that the applicant attempts to make between sufficiency and authenticity, the fact of the matter is that a complete application is in fact insufficient if the information it includes is irrelevant, unconvincing or ambiguous.

[26] In coming to my determination I am also mindful of Justice McHaffie's reasons in *Iriekpen v Canada (Citizenship and Immigration)*, 2021 FC 1276:

> [7] The "administrative setting" of the visa officer's decision includes the high volume of visa and permit applications that must be processed in the visa offices of Canada's missions: *Canada (Minister of Citizenship and Immigration) v Khan*, 2001 FCA 345 at para 32; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at paras 15, 17. Given this context and the nature of a visa application and refusal, the Court has recognized that the requirements of fairness, and the need to give reasons, are typically minimal: *Khan* at paras 31–32; *Yuzer* at paras 16, 20; *Touré v Canada (Citizenship and Immigration)*, 2020 FC 932 at para 11.
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> [Emphasis added]

[27] In this case, on their own and coupled with the record before it, I am of the view these reasons are justified, transparent and intelligible.

VII. Conclusion

[28] In my respectful view, the Applicant has not shown the decision of the Officer is unreasonable. In my view, the Decision is justified, transparent and intelligible based on the evidence presented and constraining law. Therefore, judicial review will be dismissed.

VIII. Certified Question

[29] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-5360-21

THIS COURT'S JUDGMENT is that judicial review is dismissed, no question of general importance is certified and I make no Order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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