

Federal Court



Cour fédérale

Date: 20221118

Docket: IMM-216-22

Citation: 2022 FC 1587

Ottawa, Ontario, November 18, 2022

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

**FATEMEH JALILVAND and
AMIR ARSALAN JALILVAND BIN SAIFUL ZAMRI
and MEHR AYLEEN JALILVAND**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Principal Applicant, Fatemeh Jalilvand [PA], is an Iranian national who, after completing studies in Iran in clinical psychology, immigrated to and became a permanent resident of Malaysia. Her husband is Malaysian and they have two young children.

[2] The PA applied for a study permit for herself and for temporary residence on behalf of her two co-applicant children who would accompany her to Canada for her studies. The study permit was refused on the grounds of personal assets and financial status, as well as the purpose of the visit. The temporary resident visa applications for the children also were refused on the ground of the purpose of the visit. The Applicants seek judicial review of the refusals, raising issues of breach of procedural fairness and reasonableness.

[3] Having considered the parties' written and oral submissions, the records and applicable jurisprudence, I am satisfied that there has been no breach of procedural fairness. I am persuaded, however, that the decisions refusing the Applicants' study permit and temporary resident applications are unreasonable. For the more detailed reasons below, the judicial review application therefore is granted.

[4] See Annex "A" below for relevant legislative provisions.

II. Analysis

[5] I find that the Applicants have not shown procedural unfairness in the circumstances. In my view, however, they have met their onus of establishing that the refusals were unreasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 100 [Vavilov]. I deal with each issue in turn below.

A. *Procedural Fairness*

[6] Questions of procedural fairness attract a correctness-like standard of review: *Benchery v Canada (Citizenship and Immigration)*, 2020 FC 217 at paras 8-9; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Vavilov*, above at para 77. The focus of the reviewing court is whether the process was fair in the circumstances: *Chaudhry v Canada (Citizenship and Immigration)*, 2019 FC 520 at para 24.

[7] Further, in the context of study permit decisions, the duty of procedural fairness must be considered pragmatically because of the volume of applications that visa officers must assess: *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at para 15 [*Yuzer*], citing *Khan v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345 at para 32.

[8] I note in particular that, “a visa officer has no legal obligation to warn an applicant about the deficiencies of [their] application before making a decision when those deficiencies relate to legal preconditions that must be met for the application to succeed”: *Yuzer*, above at para 16. In addition, absent an applicant establishing that the visa officer relied on extrinsic evidence without providing the applicant an opportunity to comment, the requirements of procedural fairness fall at the low end of the spectrum: *Yuzer*, above at paras 16-17.

[9] Contrary to the Applicants’ submissions, and absent showing that the visa officer here relied on extrinsic evidence, I am satisfied the officer did not have the duty to give the PA an opportunity to respond to the officer’s concerns or to seek to clarify an application the officer considered deficient before refusing it. I thus conclude that there has been no breach of procedural fairness in the circumstances.

B. *Reasonableness*

[10] A reasonable decision is one that exhibits the hallmarks of justification, transparency and intelligibility, and is justified in the context of the applicable factual and legal constraints:

Vavilov, above at para 99.

[11] A study permit applicant bears the burden of satisfying the visa officer that they will not remain in Canada once the visa expires: *Tabari v Canada (Citizenship and Immigration)*, 2019 FC 1046 at para 24. A visa officer has a wide discretion in assessing the evidence and coming to a decision: *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 33.

[12] Further, in assessing the reasonableness of an administrative tribunal decision, the reviewing court must bear in mind that perfection is not the applicable standard, nor is it the task of the court to reweigh and reassess the evidence before the decision maker: *Vavilov*, above at para 125. In addition, “not every flaw or shortcoming in a decision will render the decision as a whole unreasonable”: *Metallo v Canada (Citizenship and Immigration)*, 2021 FC 575 at para 26. The reasonableness of the decision may be jeopardized, however, if the decision maker fundamentally misapprehends or fails to take into account the evidence before it: *Vavilov*, above at para 126

[13] I find that when considered cumulatively, the errors disclosed in the Global Case Management System [GCMS] notes which form part of the visa officer’s decision to refuse the PA’s study permit, warrant the Court’s intervention in this case.

[14] First, the GCMS notes state that the PA is a Malaysian citizen. The PA's evidence, however, is that she is a permanent resident of Malaysia. The PA concedes that this error in itself would be insufficient to succeed on the judicial review, and I agree. Nonetheless, it forms part of the constellation of errors at play here.

[15] Second, even taking a broad, contextual approach, the CTR does not disclose the basis for the officer's conclusion that "the applicant's financial situation does not demonstrate that funds would be sufficient or available." The applicant's study permit application included a bank account balance certificate showing funds equivalent to just under \$59,000 in Canadian dollars held in an account in the name of the PA's father who also provided an affidavit in which he undertook to pay all educational and living expenses of his daughter and her children during their residence and study in Canada. The study permit application also indicates that the PA's expenses in Canada will be paid by herself and her father. In addition, the letter of acceptance from Adler University shows estimated tuition fees for the first year of \$19,342, prepaid fees of \$5,000 and a scholarship of \$2,000. The study permit application indicates that for the two-year program, tuition will total \$38,684 (i.e. \$19,342 per year), while room and board will total \$48,000 (i.e. \$24,000 per year).

[16] On the face of it, the above evidence demonstrates more than sufficient means to cover the first year of the program in which the PA is enrolled and most of the second year (thus demonstrating a probability of meeting future funding needs). The GCMS notes state, "No history of funds provided" but no explanation is offered why this factual observation matters or how it factors into the conclusion of insufficient funds. The same applies, in my view, to the

observation that “Spouse did not pledge funds,” given the evidence of the father’s financial support for his daughter’s stay in Canada.

[17] The officer acknowledges, “Funds by PA’s father who is in Iran.” There is no explanation, however, for the conclusion of insufficient or unavailable funds based on the officer’s factual findings. The Court is left to guess or speculate. Because no credibility concerns were stated in the GCMS notes, more was required to explain the officer’s conclusion regarding insufficiency or unavailability of funds in light of the evidence on record. In my view, the lack of justification by the officer here is an example of a decision maker misapprehending or failing to account for the evidence before it, contrary to the guidance in *Vavilov* (para 126).

[18] Third, the officer states that they are not satisfied the proposed studies would be a reasonable expense. As this Court has held, it is not the role of the officer to determine the value of learning to an applicant, nor to offer career counselling advice: *Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552 at para 18; *Adom v Canada (Citizenship and Immigration)*, 2019 FC 26 at para 16.

[19] Fourth, the officer observes that there is no information in the study permit application about childcare arrangements or how the PA plans to balance her studies and children. The PA’s evidence is that her children are school age and her motivation letter describes that her planned studies in Canada provide an opportunity for the children to study in an English-speaking country. Further, Immigration, Refugees and Citizenship Canada guidance for assessing study permit applications, as reproduced in the Applicants’ record, is focussed on proof of identity and

financial sufficiency. The Court is left wondering how or why the officer weighed this childcare factor, especially when subsection 30(2) of the *Immigration and Refugee Protection Act, SC 2001, c 27*, authorizes minor children in Canada to study without a study permit if their parent is authorized to study. Recognizing the onus on the Applicants, I nonetheless find that there is an element of justification and transparency missing here.

[20] Finally, the officer states that, weighing the factors in the application, they are not satisfied that the PA will leave Canada at the end of the period authorized for their stay. The Respondent submits that, “the Officer was not satisfied that the Applicants’ ties with Iran were sufficiently strong to ensure their return after living in Canada.” Nowhere in the GCMS notes does it say this, however. The Respondent’s submission also ignores the Applicants’ significant ties in Malaysia, i.e. where the PA’s spouse and father of their children would remain during the PA’s studies in Canada.

[21] As noted by Justice Norris, “[t]he conclusion that the applicant could not be trusted to comply with Canadian law is a serious matter[; t]he applicant has done everything she was supposed to”: *Cervjakova v Canada (Citizenship and Immigration)*, 2018 FC 1052 at para 12.

III. Conclusion

[22] In the circumstances, I conclude that, when considered cumulatively, the errors described above demonstrate a lack of justification, transparency and intelligibility that warrants the Court’s intervention. The Applicants’ judicial review application therefore is granted and the

decisions refusing the Applicants' study permit and temporary resident visa applications are set aside. The matter will be remitted to a different decision maker for redetermination.

[23] The parties have not proposed any question for certification and I find that none arises in the circumstances.

JUDGMENT in IMM-216-22

THIS COURT'S JUDGMENT is that:

1. The Applicants' judicial review application is granted.
2. The December 8, 2021 decisions refusing the Applicants' study permit and temporary resident visa applications are set aside. The matter will be remitted to a different decision maker for redetermination.
3. There is no question for certification.

"Janet M. Fuhrer"

Judge

Annex “A”: Relevant Provisions

Immigration and Refugee Protection Act (S.C. 2001, c. 27)
Loi sur l’immigration et la protection des réfugiés (L.C. 2001, ch. 27)

<p>Application before entering Canada</p> <p>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.</p>	<p>Visa et documents</p> <p>11(1) L’étranger doit, préalablement à son entrée au Canada, demander à l’agent les visa et autres documents requis par règlement. L’agent peut les délivrer sur preuve, à la suite d’un contrôle, que l’étranger n’est pas interdit de territoire et se conforme à la présente loi.</p>
<p>Obligation on entry</p> <p>20(1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,</p> <p>(a) to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence; and</p> <p>(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.</p>	<p>Obligation à l’entrée au Canada</p> <p>20(1) L’étranger non visé à l’article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :</p> <p>a) pour devenir un résident permanent, qu’il détient les visa ou autres documents réglementaires et vient s’y établir en permanence;</p> <p>b) pour devenir un résident temporaire, qu’il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.</p>
<p>Minor children</p> <p>30(2) Every minor child in Canada, other than a child of a temporary resident not authorized to work or study, is authorized to study at the pre-school, primary or secondary level.</p>	<p>Enfant mineur</p> <p>30(2) L’enfant mineur qui se trouve au Canada est autorisé à y étudier au niveau préscolaire, au primaire ou au secondaire, à l’exception de celui du résident temporaire non autorisé à y exercer un emploi ou à y étudier.</p>

Immigration and Refugee Protection Act (S.C. 2001, c. 27)
Loi sur l'immigration et la protection des réfugiés (L.C. 2001, ch. 27)

<p>Issuance</p> <p>179 An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national</p> <ul style="list-style-type: none"> (a) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class; (b) will leave Canada by the end of the period authorized for their stay under Division 2; (c) holds a passport or other document that they may use to enter the country that issued it or another country; (d) meets the requirements applicable to that class; (e) is not inadmissible; (f) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and (g) is not the subject of a declaration made under subsection 22.1(1) of the Act 	<p>Délivrance</p> <p>179 L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :</p> <ul style="list-style-type: none"> a) l'étranger en a fait, conformément au présent règlement, la demande au titre de la catégorie des visiteurs, des travailleurs ou des étudiants; b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2; c) il est titulaire d'un passeport ou autre document qui lui permet d'entrer dans le pays qui l'a délivré ou dans un autre pays; d) il se conforme aux exigences applicables à cette catégorie; e) il n'est pas interdit de territoire; f) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3); g) il ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi
<p>Study permits</p> <p>216 (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national</p> <ul style="list-style-type: none"> (a) applied for it in accordance with this Part; (b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9; (c) meets the requirements of this Part; (d) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and 	<p>Permis d'études</p> <p>216 (1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :</p> <ul style="list-style-type: none"> a) l'étranger a demandé un permis d'études conformément à la présente partie; b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9; c) il remplit les exigences prévues à la présente partie; d) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);

<p>(e) has been accepted to undertake a program of study at a designated learning institution.</p>	<p>e) il a été admis à un programme d'études par un établissement d'enseignement désigné.</p>
<p>Financial resources</p> <p>220 An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to</p> <p>(a) pay the tuition fees for the course or program of studies that they intend to pursue;</p> <p>(b) maintain themselves and any family members who are accompanying them during their proposed period of study; and</p> <p>(c) pay the costs of transporting themselves and the family members referred to in paragraph (b) to and from Canada.</p>	<p>Ressources financières</p> <p>220 À l'exception des personnes visées aux sous-alinéas 215(1)d) ou e), l'agent ne délivre pas de permis d'études à l'étranger à moins que celui-ci ne dispose, sans qu'il lui soit nécessaire d'exercer un emploi au Canada, de ressources financières suffisantes pour :</p> <p>a) acquitter les frais de scolarité des cours qu'il a l'intention de suivre;</p> <p>b) subvenir à ses propres besoins et à ceux des membres de sa famille qui l'accompagnent durant ses études;</p> <p>c) acquitter les frais de transport pour lui-même et les membres de sa famille visés à l'alinéa b) pour venir au Canada et en repartir.</p>

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-216-22

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JALILVAND BIN SAIFUL ZAMRI and MEHR
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