Federal Court  Cour fédérale

Date: 20221219

Docket: IMM-3218-22

Citation: 2022 FC 1761

Ottawa, Ontario, December 19, 2022

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

LARA JAFARI and
AZADEH SEIFOLLAHPOUR

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Preliminary Observations and Nature of the Matter

[1] This application for judicial review arises from the March 20, 2022 refusal (the "Decision") of a visa officer (the "Officer") to grant a study permit to a 7-year-old child, Lara Jafari ("Miss Jafari"). At the time of her application, Miss Jafari was attending grade 1 in Iran. She sought a study permit to attend grade 2 in Canada. At paragraph 5, page 154 of his

memorandum to this Court, counsel for the Applicant, writes about, the "strong employment prospects in their [*sic*] home country upon return after the completion of their [*sic*] Program". At paragraph 24, page 161 of that same memorandum, counsel writes about the Applicant's "career path" and refers to non-existent parts of the Applicant's affidavit. How Applicant's counsel can write about the career path of a 7-year-old girl and her strong employment prospects upon completion of her program, comes as somewhat of a surprise to me, given that this program consists of her primary level grade 2 education in Canada. Those observations by counsel, if nothing else, militate against Miss Jafari's declared intent to return to Iran upon completion of her authorized stay (which was to be one year to study grade 2 in Canada).

[2] Regardless, I have before me an application for judicial review pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], of the Decision. The Officer not only refused Miss Jafari's application for a study permit; he or she also refused the application for a temporary resident visa made by Miss Jafari's mother, Azadeh Seifollahpour (Ms. Seifollahpour), who intended to accompany her daughter to Canada.

[3] The Officer concluded that Miss Jafari and Ms. Seifollahpour had not met the onus of establishing they would leave Canada at the end of their stay: see section 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[4] For the reasons that follow, I dismiss the application for judicial review brought by both Applicants.

II. Relevant Facts

[5] On or about January 20, 2022, School District No. 43 in Coquitlam, British Columbia accepted Miss Jafari's application to study at the grade 2 level. Ms. Jafari's parents, who are sponsoring her studies, paid a program fee of $16,500 CAD. In addition to program fees, the Applicants asserted that the cost of living for the one-year period of study would be approximately $44,000.00 CDN. In total, the cost for the one year of study for the 7-year-old, in Canada, would have been approximately $60,000 CDN. As demonstrated below, this cost would consume nearly half of the total cash savings of Miss Jafari's parents.

[6] The Applicants demonstrated an ability to finance the one-year of studies. Ms. Seifollahpour provided a bank statement showing an account balance of $81,770.00 CDN. The Applicants also produced bank statements showing that Miss Jafari's father had $45,875.59 CDN on deposit. The total combined cash assets on hand for the family therefore totalled $127,645.59 CDN. In addition to their bank accounts, Miss Jafari's parents own various properties in Iran, which they claim are worth approximately $2.37M CDN. The Applicants provided no professional real estate appraisals to the Officer. The father is an attorney and the mother lists her occupation as being a housewife.

[7] In the Statement of Purpose, prepared by Miss Jafari's mother, the Officer was informed that Miss Jafari is a lively girl who enjoys physical activities such as skating and swimming. One also learns that Miss Jafari is "fond of English" and that her mother, who holds a Bachelor's Degree in English, enjoys teaching Miss Jafari English through games. Miss Jafari's mother

explains that after thorough research, the family arrived at the conclusion that studying in Canada, was the best option for her daughter, given the potential to access French immersion programming, which will provide Miss Jafari with the ability to speak three languages by the end of elementary school. Furthermore, in the Statement of Purpose, Miss Jafari's mother comments upon the large Iranian community in the Coquitlam region. The presence of this Iranian community will, according to the Statement of Purpose, prevent both mother and daughter from becoming homesick. Given the presence of restaurants, libraries and shops at which Farsi is spoken, Ms. Seifollahpour opines that her daughter will "not fall behind on her Farsi language skills". The only "family tie" in Iran, alluded to in the Statement of Purpose, is the Applicant's father who has a successful law practice in that country.

III. Decision under Review

[8] The refusal letter is brief. It simply states that the application is being refused on the grounds that the Officer is not satisfied that Miss Jafari will leave at the end of her stay as contemplated by s. 216(1) of the *IRPR*. The Officer's Global Case Management System notes (the "notes" or "GCMS notes") offer more insight into the reasons for refusal:

> "I have reviewed the application. Minor applicant to study at Coquitlam District School Board – Grade 02. The purpose of the visit itself does not appear to be reasonable, in view of the fact that similar programs are available closer to the applicant's place of residence. Motivation to pursue studies in Canada does not seem reasonable given that a comparative course is offered in their home country for a fraction of the cost. The purpose of visit does not appear reasonable given the applicant's socio-economic situation. Based on the documentation on file in support of the parent's level of economic establishment and considering the purpose of the visit, I do not consider that the proposed studies in Canada is a reasonable or affordable expense. Weighing the factors in this application. [*sic*] I am not satisfied that the applicant will depart

Canada at the end of the period authorized for their stay.
Application refused.

IV. Relevant Statutory and Regulatory Provisions

[9] The relevant statutory provisions are sections 30(1) and 30 (1.1) of the *IRPA*, as well as section 216(1) of the *IRPR*.

***Immigration and Refugee Protection Act,* SC 2001, c 27**	***Loi sur l'immigration et la protection des réfugiés,* LC 2001, c 27**
Work and Study in Canada	**Études et emploi**
30 (1) A foreign national may not work or study in Canada unless authorized to do so under this Act.	30 (1) L'étranger ne peut exercer un emploi au Canada ou y étudier que sous le régime de la présente loi.
Authorization	**Autorisation**
(1.1) An officer may, on application, authorize a foreign national to work or study in Canada if the foreign national meets the conditions set out in the regulations.	(1.1) L'agent peut, sur demande, autoriser l'étranger qui satisfait aux conditions réglementaires à exercer un emploi au Canada ou à y étudier.
Immigration and Refugee Protection Regulations, SOR/2002-227	Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227
Study Permits	**Permis d'études**
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	**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 :

(a) applied for it in accordance with this Part;	**a)** l'étranger a demandé un permis d'études conformément à la présente partie;
(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	**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) meets the requirements of this Part;	**c)** il remplit les exigences prévues à la présente partie;
(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	**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);
(e) has been accepted to undertake a program of study at a designated learning institution.	**e)** il a été admis à un programme d'études par un établissement d'enseignement désigné.

V. Issues and Standard of Review

[10] The Applicants set out the issues as follows:

(1) What are the operative statutory provisions?;

(2) Is the Officer's conclusion on the material fact reasonable?;

(3) Was there a breach of procedural fairness?

[11] I have already set out the operative statutory provisions. Given that this is a judicial review of the merits of the Officer's decision, the presumptive standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], at para 23). None of the exceptions to the presumption of the reasonableness standard applies in the circumstances (*Vavilov*, at paras 17 and 25). Therefore the question is whether the Officer's reasoning and the outcome of the decision, were based on an inherently coherent and rational analysis that is justified in light of legal and factual constraints (*Vavilov* at para 85). To set aside a decision, a reviewing court must be convinced that there are sufficiently serious shortcomings in the decision, such that any superficial or peripheral flaw will not suffice to overturn the decision (*Vavilov* at para 100). Importantly, a reviewing court must consider the decision as a whole, and must refrain from conducting a line-by-line search for error (*Vavilov* at paras 85 and 102). Recently, in *Zeifmans LLP v Canada*, 2022 FCA 160 [*Zeifmans*], the Federal Court of Appeal reminds us that reviewing courts must not insist on the sort of express, lengthy and detailed reasons that, if asked to do the job themselves, they might have provided (*Zeifmans* at para 9, citing Vavilov at paras 91–94). To so insist could subvert Parliament's intention that administrative processes be timely, efficient and effective (*Ibid*). A unanimous court, under the pen of Stratas, J.A. states:

> Vavilov says more. It tells us that an administrative decision should be left in place if reviewing courts can discern from the record why the decision was made and the decision is otherwise reasonable: Vavilov at paras. 120-122; Canada (Citizenship and Immigration) v Mason, 2021 FCA 156 at paras 38-42. In other words, the reasons on key points do not always need to be explicit. They can be implicit or implied. Looking at the entire record, the reviewing court must be sure, from explicit words in reasons or from implicit or implied things in the record or both, that the administrator was alive to the key issues, including issues of legislative interpretation, and reached a decision on them (*Zeifmans*, at para 10).

[12] On the issue procedural fairness, the Supreme Court in *Canada (Citizenship and Immigration) v Khosa*, 2009 1 SCR 339 [*Khosa*] at para 43, opined that correctness is the standard of review to be applied on judicial review.

VI. Submissions of the Parties

[13] The Applicants contend that the Officer did not provide adequate reasons for the refusal. They say there is no logical connection between the reasons given, and the material that was submitted. They also say that either the material was not reviewed by the Officer or, if it was, the Officer failed to properly consider it. They assert that in view of all of the above, this Court should infer that the Officer made an erroneous finding of fact "without regard to the evidence" in accordance with this Court's jurisprudence (see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC).

[14] With respect to procedural fairness, the Applicants contend that the Officer's finding "exudes an air of suspicion", since the subjective findings appear to have no connection to the evidence. This, according to them, renders the Officer's decision "unfair". Furthermore, the Applicants contend that since the Officer doubted their evidence of intention or purpose of visit, they should have been provided with a "procedural fairness letter" or invited to an interview, as contemplated by the Immigration, Refugees and Citizenship Canada (IRCC) processing manual, "Operational Bulletin OP12: Students s.7.11".

[15] The Respondent says that the Officer based his or her refusal upon all of the facts. The program of study appeared incomprehensible given the personal and financial circumstances of

the Applicants; and, given that comparative programs in the Applicants' home country are available at a fraction of the cost. These factors, in the Officer's assessment, demonstrated that the Applicants would not leave Canada at the end of their authorized stay.

[16] Regarding the issue of procedural fairness, the Respondent contends that because no foreign national has the right to enter Canada, procedural fairness requirements in the context of applications for study permits are "relaxed" and "on the low end of the spectrum". The Respondent also notes that an Officer is under no obligation to seek out additional information, beyond what is available in the application.

VII. Analysis

A. *Reasonableness*

[17] The Applicants take issue with the Officer's conclusion, when he states in his notes that "similar programs are available closer to the applicant's place of residence" and that "a comparative course is offered in their home country for a fraction of the cost". The Applicant contends the decision lacks transparency because the Officer merely makes a statement of fact, unsupported by any reference to the evidence. However, there was evidence before the Officer that Ms. Jafari could enter grade 2 at her school in Iran. There was also evidence that her mother, an English teacher, was teaching her daughter English. Both of those factors constitute some evidence of being able to pursue studies in English while attending grade 2 in her home country. Given the approach adopted by the Federal Court of Appeal in *Zeifmans* and the Supreme Court in *Vavilov*, the Officer's reasons on key points, such as scholastic programming available in Iran,

need not be explicit. They can be implied or implicit, if, when looking at the entire record, the reviewing court is of the opinion that the decision-maker was alive to the key issues (*Zeifmans*, at para 10). It is evident the Officer was alive and sensitive to the key issues.

[18] The Applicants also contend that the Officer's decision is unreasonable in that he or she failed to consider the financial means and other assets available for Miss Jafari's studies. I disagree. The Respondent submitted that this course of study, for only one year, would consume over one third of the combined savings of Miss Jafari's parents. The Respondent is generous when he refers to "over one third"; as I already noted, the amount is actually closer to one-half of their current savings. The Officer's notes reveal that he or she "[w]eighed the factors in this application" including the documentation on file in support of the parent's level of economic establishment. That observation, combined with the Respondent's remarks about the percentage of savings that would be expended for this one year of study, demonstrates that the Officer turned his mind to the topic of the financial feasibility of this program for a 7-year-old minor, studying at the grade 2 level in a foreign land, more than 10,000 kilometres from home. In the circumstances, given Miss Jafari's age, the cost of travel to Iran for visits with her father, the cost of living in Canada and the future costs of her education, the conclusion passes the test of reasonableness. It is justified, transparent and intelligible.

B. *Procedural Fairness*

[19] The Applicants contend that the Officer's concerns were not justified and are in fact, contradicted by the evidence. Furthermore, they assert that the Officer's decision lacked "a

logical chain of analysis" and that it was arbitrary. These observations form the basis of the procedural fairness argument.

[20] This Court acknowledges that procedural fairness lies at the heart of a culture of justification. The Officer's GCMS notes, while brief, do offer justification. I would refer to the Officer's observations about the availability of alternate programming, the age of the student applicant, the proposed course of study, the cost of one-year of study in relation to the family's savings and the number of years of study remaining for this 7-year-old minor, as demonstrative of justification. This decision was not arbitrary.

[21] Given the onus upon the Applicants, the threshold necessary to meet the requirements of procedural fairness, is at the lower end of the spectrum (see *Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264 at para 23), citing *Farooq v Canada (Minister of Citizenship and Immigration)*, 2013 FC 164 at para 10; *Sandhu v Canada (Citizenship and Immigration)*, 2010 FC 759 at para 25; *Trivedi v Canada (Minister of Citizenship and Immigration*, 2010 FC 422 at para 39; *Khan v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345 at paras 30–32, [2002] 2 FC 413; *Patel v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 55 at para 10; *Chiau v Canada (Minister of Citizenship and Immigration)* (2000), 2000 CanLII 16793 (FCA), [2001] 2 FC 297 at para 41. In my view, that low threshold has been met in the circumstances. There was no breach of procedural fairness. The Officer was entitled to rely upon the materials provided without seeking additional information.

VIII. Conclusion

[22] It is trite law that visa officers are afforded wide discretionary powers. Reasons must not be assessed against a standard of perfection (*Vavilov* at para 91), although, they must bear the hallmarks of reasonableness, namely transparency, justification and intelligibility. In my view, given the onus that was upon the Applicants, the visa Officer's decision meets that threshold and the process was procedurally fair.

JUDGMENT in IMM-3218-22

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, without costs. As the present matter raises no serious question of general application, and none was proposed by either party, there is no question for certification for the Federal Court of Appeal.

"B. Richard Bell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3218-22
STYLE OF CAUSE:	LARA JAFARI and AZADEH SEIFOLLAHPOUR v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	NOVEMBER 16, 2022
JUDGMENT AND REASONS:	BELL J.
DATED:	DECEMBER 19, 2022

APPEARANCES:

Ramanjit Sohi	FOR THE APPLICANTS
Aminollah Sabzevari	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Raman Sohi Law Corporation Surrey, British Columbia	FOR THE APPLICANTS
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT