

Federal Court



Cour fédérale

**Date: 20230105**

**Docket: IMM-1943-22**

**Citation: 2023 FC 25**

**Ottawa, Ontario, January 5, 2023**

**PRESENT: The Honourable Mr. Justice Bell**

**BETWEEN:**

**SABA AHADI and KIANA AFRASYABI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the Matter

[1] This is an application for judicial review pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] of two decision (the “decisions”) of an unidentified immigration Officer (the “Officer”) of Immigration, Refugees and Citizenship Canada (“IRCC”) in Ottawa, dated February 2, 2022 and January 31, 2022. The decisions refuse entry to Canada on a study permit to Ms. Saba Ahadi (the “Applicant” or “Ms. Ahadi”) and, by

extension, a visitor's visa to her 5-year-old daughter (the "child") Kiana Afrasyabi, who planned to accompany her mother to Canada. The Officer was not satisfied the Applicant and her dependant child would leave Canada at the end of their stay, as set out in section 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[2] The Applicant challenges the decisions on multiple grounds, including errors of law, erroneous findings of fact, undue fettering of discretion and failing to observe a principle of natural justice and/or procedural fairness. For the reasons that follow, I allow the application for judicial review.

## II. Facts

[3] The Applicant is a 31-year-old female citizen of Iran who sought a study permit to advance her education in Canada by pursuing a Master of Business Administration degree (the "program") at University Canada West ("UCW") in Vancouver, British Columbia. The Applicant had previously earned a Bachelor's Degree in Banking Affairs Management at the Kharazmi University (Tehran) in 2013. Between 2013 and 2020, the Applicant worked as an "Expert and Consultant of Business Analysis" at Yas Industrial Engineering Company. Since 2020, the Applicant has been employed at ITAK Smart Data Technology as an "Expert and Analyzer of Information Technology".

[4] The Applicant is married and, as already noted, has a 5-year-old daughter who plans to accompany her mother on a visitor's visa. The Applicant's husband, Milad Afrasyabi, is a senior networking security expert who intends to remain in Iran during his spouse's studies.

[5] The Applicant received a letter of acceptance from UCW on September 14, 2021. The estimated tuition for one academic year at UCW is \$17,550.00 CAD. The Applicant prepaid a \$7,900.00 CAD tuition deposit and received a scholarship for \$10,000.00 CAD, thus covering the first-year tuition in full.

[6] On or about January 4, 2022, the Applicant submitted her study permit application to IRCC. In addition to having paid the first year of her program of study, the Applicant evidenced that she has \$60,000 CAD available for her stay. In addition to a demonstrated ability to finance her studies in Canada, and having secured travel insurance coverage for her daughter, the Applicant indicated that she would be receiving financial support from her husband and her father. The husband and father provided undertakings that they would cover her expenses during the course of her two-year study program. In addition, the Applicant produced title deeds for real estate holdings in Iran.

[7] By letter dated February 2, 2022, the Officer refused the study permit application stating that, based on her family ties in Canada, her ties to her country of residence and the purpose of her visit, he or she was not satisfied she would leave Canada at the end of her stay (s. 216(1) of the *IRPR*). By separate letter dated January 31, 2022, the Officer refused the application for a temporary resident's visa for the Applicant's daughter.

### III. Decisions under Review

[8] Although the refusal letter is brief, the Officer's CGMS notes provide more detail and are reproduced below:

*“I have reviewed the application. I have considered the positive factors outlined by the applicant, including statements or other evidence. The applicant is 30, applying for a Master of Business Administration from the University Canada West. I note that, the applicant’s proposed studies are not reasonable, as the applicant indicates previous education of a BSC Banking Affairs Management in Iran. The applicant has been employed as an Expert & Consultant of Business Analysis and an Expert & Analyzer of Information Technology since 2013 [sic] The study plan does not appear reasonable given the applicant’s employment and education history. I note that: - the client’s proposed studies are not reasonable given their career path - the client’s previous studies were in an unrelated field Client Explanation letter reviewed. The applicant does not demonstrate to my satisfaction compelling reasons for which such an educational program would be of benefit. I am not satisfied that the applicant would leave Canada at the end of their stay as a temporary resident, I note that: - the applicant is married or has dependents or states to have close family ties in their home country, but is not sufficiently established. Additionally, the ties to Iran weaken with the intended travel to Canada involving their child, as the motivation to return will diminish with the applicant’s immediate family members presiding [sic] with them in Canada. The applicant has not demonstrated sufficiently strong ties to their country of residence. Recent education transcripts and diplomas not provided. The purpose of visit does not appear reasonable given the applicant’s socio-economic situation and therefore I am not satisfied that the applicant would leave Canada at the end of the period of authorized stay. Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application”.*

#### IV. Relevant Provisions

[9] The relevant statutory and regulatory provisions are sections 30(1) and 30 (1.1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] as well as section 216(1) of the *IRPR*. They are reproduced as follows:

***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;	e) 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 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, 25). Therefore the issue 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). Most 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, 102).

[11] This case turns on the intelligibility of the Officer's conclusions given the evidence before him or her.

VI. Submissions of the Parties

[12] The Applicants contend that although the Officer provides reasons for the refusal, those reasons are not justified and are, in fact, contradicted by the evidence. The Applicants contend that the decision is also unintelligible. As a result, they assert the decision does not bear the hallmarks of reasonableness as set out in *Vavilov*.

[13] The Respondent advances that the Applicant failed to rebut the presumption that she is seeking to enter Canada as an immigrant; this is why the Officer refused her study permit and by extension, the temporary visitor's visa for the Applicant's 5-year-old daughter. The Respondent contends that the Officer considered all of the evidence and provided adequate and intelligible reasons for the refusal.

VII. Analysis

1. *Was the decision reasonable in that it was intelligible, transparent and justified?*

- (1) The Officer's assessment of the reasonableness of the Applicant's proposed study plan

[14] The Officer states in the GCMS notes, in part:

*“The applicant's proposed studies are not reasonable, as the applicant indicates previous education of a BSC Banking Affairs Management in Iran. The applicant has been employed as an*

*Expert & Consultant of Business Analysis and an Expert & Analyzer of Information Technology since 2013 [sic] The study plan does not appear reasonable given the applicant's employment and education history. I note that: - the client's proposed studies are not reasonable given their career path - the client's previous studies were in an unrelated field”.*

[15] While I am not a career counsellor, life's experiences have not left this Court totally bereft of some knowledge about Masters' programs in business administration. One need not take judicial notice that a Masters degree is a higher-level degree than a Bachelors degree. Again, while I am not a career counsellor, it is common knowledge that people often pursue a Master of Business Administration after having undertaken an undergraduate degree and after having obtained some work experience. When I consider the Applicant's history of having acquired a Bachelors degree and related work experience, I find the conclusion that her proposed studies are not reasonable given her career path is unintelligible. Given the material before the Officer, more was required to justify the observation that her proposed studies were not reasonable. I agree with the Applicant that completion of a Master of Business Administration degree constitutes a logical study progression given her undergraduate studies and her work experience. However, there is more. The Principal Applicant's employer not only provided her with a leave of absence to pursue her studies, it opined that a promotion would be available to her upon her return to Iran. This observation by the employer lends support to the reasonableness of the career path and proposed course of study, and further evidences the lack of intelligibility of the Officer's decision.

[16] The Officer criticizes the Applicant for having failed to provide “recent education transcripts and diplomas” in support of her study permit request. With respect, this requirement



imposed by the Officer seems rather unintelligible given the number of years that have passed since the Applicant completed her Bachelor's program, the fact she offers proof of acceptance into the Master's program and the fact that she has been awarded a scholarship. I ask rhetorically, "what difference does knowledge of her marks make to any part of the task being undertaken by the Officer"? The answer, in these circumstances, is, in my view, "none".

(2) The Officer's assessment of the Applicant's ties to her country of residence

[17] The Officer drew a negative inference from the fact that the Applicant's child would be accompanying her to Canada. However, he or she failed to weigh the other mitigating factors that evidenced the Applicant's strong ties to Iran. The Record shows that the Applicant's spouse – who is the minor Applicant's father – will remain in Iran. In addition, the Applicant's two parents and a sibling will remain in the home country.

[18] When considering family ties, the only potentially adverse factor evidenced on the Record is that the minor Applicant would be accompanying her mother to Canada. The Applicant argues that to refuse an applicant's study permit because a minor child will also travel with the Applicant, is a *de facto* refusal of all applicants who have a family member accompanying them to Canada. I agree. I find that the Officer fettered his or her discretion in this regard.

[19] In addition to family ties, the Applicant also evidenced strong professional ties in Iran. She has a job waiting for her upon her return. Her employer has agreed to a leave of absence and has opined that she will be promotable upon her return. The Applicant and her husband have

immovable assets (real estate) in Iran. These factors appear not to have been critically assessed by the Officer in his or her assessment of ties to Iran.

(3) The assessment of the Applicant's socio-economic situation

[20] The Officer's notes state "The purpose of visit does not appear reasonable given the applicant's socio-economic situation and therefore I am not satisfied that the applicant would leave Canada at the end of the period of authorized stay".

[21] I fail to understand the Officer's conclusion regarding the Applicant's socio-economic situation. That conclusion appears to conflict with the evidence. Clearly, the Applicant has the means to afford the proposed course of study. She has already paid her tuition and is the recipient of a significant scholarship. She and her husband are gainfully employed, have money in their bank account, as well as other assets. She has the financial support of her parents. The temporary financial strain of post-graduate studies will, according to the evidence, likely lead to a promotion. Given the evidence, the Officer's observations regarding socio-economic circumstances lack intelligibility.

VIII. Conclusion

[22] I fail to appreciate what more the Applicant could have done to establish that she meets the statutory requirements to enter Canada as a non-immigrant. Her first year of studies are paid. She received a significant scholarship. She has sufficient financial means to undertake the program of studies. She has the approval of her employer, a leave of absence and the possibility

of a promotion upon her return to Iran. There is a logical academic progression from an undergraduate Bachelor's degree to a Master's degree. The course of study is consistent with her career path. She has significant ties to Iran and no ties to Canada. On each of these factual matrices, the Officer appears to have made conclusions, which are simply contrary to the evidence. The decision as a whole is unintelligible.

[23] In the circumstances, I grant the application for judicial review and remit the matter to a different visa officer for redetermination.

**JUDGMENT in IMM-1943-22**

**THIS COURT’S JUDGMENT is that:**

1. The Application for Judicial Review is allowed. The matter is remitted to a different officer for redetermination.
2. 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.
3. All without costs.

“B. Richard Bell”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1943-22

**STYLE OF CAUSE:** SABA AHADI and KIANA AFRASYABI v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA VIA  
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**JUDGMENT AND REASONS:** BELL J.

**DATED:** JANUARY 5, 2023

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