Federal Court  Cour fédérale

Date: 20230210

Docket: IMM-9557-21

Citation: 2023 FC 198

Ottawa, Ontario, February 10, 2023

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

ALI RIVAZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Ali Rivaz [Applicant] seeks judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 of an immigration officer's [Officer] December 25, 2021 decision refusing the Applicant's application for a study permit to complete a dual post-graduate program in Information and Communication Technology as well as Data

Analytics at Douglas College [Decision]. The Officer was not satisfied that the Applicant would leave Canada at the end of his stay based on the purpose of his visit and his family ties.

[2] For the reasons that follow, the application for judicial review is allowed.

II. Background

[3] The Applicant is a single 28-year-old citizen of Iran with no dependants**.** In 2016, the Applicant completed a Bachelor's Degree in Information Technology at Salman Farsi University. In 2018, he became employed at Shiraz Machine Company as an Employee in Charge of Computer Affairs. The Applicant secured a promotion offer to the position of Manager of the Information Technology Department from his employer, conditional upon the successful completion of further education in Canada.

[4] On September 9, 2021, the Applicant was admitted to a two-year dual post-graduate program in Information and Communication Technology as well as Data Analytics at Douglas College. On or about September 17, 2021, the Applicant submitted a study permit application. On October 13, 2021, the Applicant paid his tuition fees in full for the first academic year.

III. The Decision

[5] The Officer refused the Applicant's application, having not been satisfied that he would leave Canada at the end of his stay based on the purpose of his visit and his family ties in Canada and Iran.

[6] The Officer's Global Case Management System notes are reproduced below:

> I have reviewed the application. I am not satisfied that the applicant would leave Canada at the end of their stay as a temporary resident, I note that: -the client is single, mobile, is not well established and has no dependents. Given family ties or economic motives to remain in Canada, the applicant's incentives to remain in Canada may outweigh their ties to their home country. PA is applying to study Information and Communication Technology at Douglas College. Previously obtained Bachelor in Information Technology and currently employed as IT Specialist. Considering applicant's education and work experiences, I am not satisfied that applicant would not have already achieved the benefits of this program. In light of the PA's previous study and current career, I am not satisfied that this is a reasonable progression of studies. 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. Issues and Standard of Review

[7] The issues are best characterized as:

1. Was the Decision reasonable?
2. Was there a breach of procedural fairness?

[8] Both parties agree that the merits of the Decision are subject to a reasonableness review. In this case, the presumption of reasonableness is not rebutted by the rule of law or through clear legislative intent (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]).

[9] To determine whether a decision is reasonable, a 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). A decision may be unreasonable where there is a fatal flaw in the decision maker's overarching logic, or where it is untenable within the applicable law and facts (*Vavilov* at paras 102, 105). The party challenging the decision bears the burden of showing that the decision is unreasonable (*Vavilov* at para 100).

[10] In light of my determination that the Decision was unreasonable, as discussed below, I find it unnecessary to address the Applicant's submissions on the breach of procedural fairness.

V. Analysis

A. *Was the Officer's Decision reasonable?*

(1) Applicant's Position

[11] The Decision is not transparent, intelligible, or justifiable due to the Officer's repeated lack of explanation surrounding various conclusions.

[12] First, the Officer's conclusion as to the Applicant's family ties in Canada and Iran is vague and unfounded, amounting to a significant and reviewable error (*Rahmati v Canada (Citizenship and Immigration)*, 2021 FC 778 at para 18). The evidence in the record directly contradicts the Officer's conclusion. Further, even if the Applicant did have strong family ties in Canada, this should not warrant a refusal (*Bteich v Canada (Citizenship and Immigration)*, 2019 FC 1230 at para 34 [*Bteich*]).

[13] Second, there is no explanation to substantiate the Officer's bald statement that the Applicant is "not well established", including any insight into the criteria used to arrive at this conclusion (*Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596 at para 13; *Vavilov* at para 121). The Officer did not justify why the evidence provided was inadequate to prove establishment, despite such a requirement where the evidence in question points to the opposite conclusion (*Rodriguez Martinez v Canada (Citizenship and Immigration)*, 2020 FC 293 at para 15 [*Rodriguez Martinez*]; *Ayeni v Canada (Citizenship and Immigration)*, 2019 FC 1202 at para 28 [*Ayeni*]).

[14] Further, the Decision was based on both an unfounded generalization and an unreasonable chain of analysis as it relates to the Applicant being single, mobile and without dependents (*Onyeka v Canada (Citizenship and Immigration)*, 2009 FC 336 at para 48 [*Onyeka*]).

[15] Fourth, the Officer failed to address the evidence in favour of the Applicant's application, notably the significant tuition fees paid and the letter of acceptance (*Iyiola v Canada (Citizenship and Immigration)*, 2020 FC 324 at para 19 [*Iyiola*]; *Kheradpazhooh v Canada (Citizenship and Immigration)*, 2018 FC 1097 at para 18 [*Kheradpazhooh*]). There is no evidence that the Applicant would not abide by Canadian law (*Cervjakova v Canada (Citizenship and Immigration)*, 2018 FC 1052 at para 12 [*Cervjakova*]).

[16] Lastly, the Officer misapprehended the evidence in assessing the purpose of the Applicant's visit (*Peiro v Canada (Citizenship and Immigration)*, 2019 FC 1146 at paras 21-23;

Li v Canada (Citizenship and Immigration), 2008 FC 1284 at para 29 [*Li*]; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at paras 15, 17, 20).

(2) Respondent's Position

[17] The Decision is reasonable. The Officer both considered and weighed the evidence relating to the Applicant's study plan, family ties, establishment, and future career prospects. The Applicant's arguments are simply an effort to have the Court reweigh the evidence. Given the available evidence, it was open to the Officer to conclude that the Applicant would not leave Canada at the end of his studies (*Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at para 9).

[18] The Applicant does not state that the proposed program would not be available in Iran, other than to say that the resources available are outdated. The Applicant also failed to provide any reason why such international studies are necessary for his career advancement, nor is there any clear indication that the promotion includes a salary increase or change in responsibility. The Applicant did not expand on his aspirations or the specific benefits to be accrued from the study plan, as required by the jurisprudence (*Ali v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 702 at para 19; *Akomolafe v Canada (Citizenship and Immigration)*, 2016 FC 472 at para 21 [*Akomolafe*]).

[19] The Applicant's ties in Canada, including his aunt, a Canadian citizen, and his sister, an international student in the country, justify the Officer placing greater weight on the Applicant's incentives to remain in Canada. The Officer appropriately compared and considered the

Applicant's statement that he intends to return to Iran at the end of his studies to his contradictory statement that the study permit would make him eligible for permanent residence.

[20] The law is clear that visa officers are presumed to have weighed and considered all the evidence unless proven otherwise. This is not the case here (*Boughus v Canada (Citizenship and Immigration)*, 2010 FC 210 at para 41; *Ahmed v Canada (Citizenship and Immigration)*, 2013 FC 1083 at para 34). The Applicant simply has not met his burden of providing the Officer with all the relevant information (*Tabari v Canada (Citizenship and Immigration)*, 2019 FC 1046 at para 24 [*Tabari*]).

(3) Conclusion

[21] I find the Decision unreasonable. The Officer not only failed to consider the evidence before them, but also failed to adequately explain multiple findings concerning the Applicant's family ties, establishment, and purpose of visit. The mere existence of an incentive to stay due to family ties is insufficient in and of itself to deny a student visa (*Li* at para 29). Justice Shore discussed the manner of assessing family ties in *Bteich*:

> [34] …the Officer should not have drawn negative inferences from the Applicant's family ties in Canada. If anything, the Officer should have considered the financial support the Applicant's family provides as a positive factor. At the very least, the Officer should have justified his/her reasoning: it is unreasonable to infer that Applicant will remain in the country illegally simply because he has strong family ties in Canada.

[22] In the present matter, the record established that the Applicant had one sister studying in Canada, but both parents and one sibling residing in Iran. The Court is unable to understand the reasons for the Officer's conclusion about the Applicant's family ties.

[23] The Respondent cites *Akomolafe* in support of their argument that the Applicant failed to expand on his aspirations or the specific benefits to be accrued from his study plan. The case at hand is distinguishable from *Akomolafe*, as the Applicant's study plan appears more detailed. Specifically, it refers to a career advancement opportunity in the form of a promotion. I am unable to follow the Officer's reasoning as to why the evidence presented is insufficient.

[24] There is no evidence that the Applicant would not abide by Canadian law (*Cervjakova* at para 12). While the Applicant does mention that the student visa program could translate into eventual permanent residency, he also explained that this was not his immediate plan and he is looking to go through the proper channels.

[25] I similarly agree that the Officer ignored evidence in favour of the Applicant's application, notably the significant tuition fees already paid and the letter of acceptance from a designated institution (*Iyiola* at para 19; *Kheradpazhooh* at para 18).

[26] Further, the Officer relied on unfounded generalizations about applicants who are single, mobile, and without dependants to arrive at a conclusion concerning the Applicant's level of establishment in Iran (*Onyeka* at para 48). While *Onyeka* is distinguishable from the case at hand because the applicant did not have any ties in Canada, here, the Applicant's ties in Canada are

nevertheless insufficient to support the Officer's conclusion, given the contradictory evidence including his employment and family ties in Iran. In fact, as noted in *Onyeka*, the descriptors 'single', 'mobile', and 'without dependants' would likely capture most students.

[27] It is true that the onus to present evidence is on the Applicant (*Tabari* at para 24). However, the Officer must still explain why the evidence provided was inadequate (*Rodriguez Martinez* at para 15; *Ayeni* at para 28).

[28] When read holistically, I find that the Decision does not meet the standard of reasonableness (*Vavilov* at paras 99-101). Study permits do not require lengthy reasons, but the jurisprudence requires the Officer to ensure that the reasons are responsive to the Applicant's evidence and, where the evidence is deemed insufficient, adequately explain how that evidence does not meet the relevant threshold (*Ayeni* at para 28).

VI. Conclusion

[29] The application for judicial review is allowed. The Officer's Decision is not intelligible, transparent, or justifiable, as it was not responsive to the Applicant's evidence.

[30] The parties have not proposed any question for certification and I agree that none arises.

JUDGMENT in IMM-9557-21

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. There is no question of general importance for certification.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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