Federal Court  Cour fédérale

Date: 20230314

Docket: IMM-5143-22

Citation: 2023 FC 339

Ottawa, Ontario, March 14, 2023

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

ABOLFAZL BORJI

Applicant

and

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 Immigration Officer, dated May 16, 2022, denying the Applicant's study permit application because of family ties in Canada and his country of residence, and the purpose of his visit.

II. Facts

[2] The Applicant is a 38-year-old citizen of Iran who submitted a study permit application for Canada on April 13, 2022 after receiving admission at University Canada West. The Applicant was to begin his studies in the Master of Business Administration course in Summer 2022. The Applicant has prepaid the university $7,900 CAD in tuition thus far and received a grant from the school in the amount of $9,720 CAD. He has some $53,000 in the bank to cover expenses for his second year.

[3] Previously, the Applicant obtained an associate degree in Accounting and Business at Technical and Vocational College of Qom and his Bachelor's degree in Accounting at Islamic Azad University of Qom. Thereafter, the Applicant started working for Sepah Bank in 2006 as a teller. Through many promotions, the Applicant became an Inspector in 2014, and has been working as such since then.

[4] The Applicant's application for a study permit was refused May 16, 2022.

III. Decision under review

[5] The Officer refused the Applicant's application on two grounds. The Officer was not satisfied that the Applicant would leave Canada and the end of his stay based on (1) his family ties in Canada and Iran; and (2) the purpose of his visit.

[6] Specifically, the Officer explained in their Global Case Management System [GCMS] Notes:

> 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 PA is applying to study MBA. Previously obtained Bachelors in Accounting and currently employed as Bank Inspector. Considering applicant's education and previous work experience, I am not satisfied that applicant would not have already achieved the benefits of this program. I note that the client has not explained how they intend to support/retain their previous career, nor has the applicant demonstrated how a 2 year leave of absence from their current employment will translate to increased prospects of promotion with employer back in Iran. 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

[7] Respectfully, the issue on this application is whether the Officer's decision was reasonable.

V. Standard of Review

A. *Reasonableness*

[8] 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 *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*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]

VI. Analysis

A. *Reasonableness of the Officer's decision*

[9] I will set out and discuss each of the Officer's determinations as set out in the GCMS notes quoted above.

(1) Family ties

(a) *The client is single, mobile, is not well established and has no dependents*

[10] Findings like this have attracted considerable discussion in the jurisprudence. On its face and if applied as a standalone objection, it would disqualify many if not most applicants wishing to further their studies at accredited Canadian colleges and universities. See *Onyeka v Canada (Citizenship and Immigration)*, 2009 FC 336 [*Onyeka*], where Justice Russell found:

> [48] I can see some connection between being single and having no dependents and the issue of whether, under Regulation 216(1)(b), the Applicant will leave Canada at the end of the authorized period. These factors, however, merely place the Applicant in the position of most students applying for study permits. The Applicant has no family connections in Canada; his family is in the U.K. or Nigeria, and he has a highly responsible job in Nigeria. The Officer does give reasons – being single and having no dependents – but these reasons are hardly sufficient to amount to a reasonable exercise of discretion when the other factors are taken into account. There is simply nothing on the facts to suggest that the Applicant is not a bona fide student or that he would stay in Canada illegally at the end of the authorized period. See *Ogbonnaya* at paragraphs 16-17.
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> [Emphasis added]

[11] And see *Iyiola v. Canada (Citizenship and Immigration)*, 2020 FC 324 [*Iyiola*], where Justice Fuhrer found:

> [20] […] Moreover, I agree with Justices Russell and Mosley that an applicant's lack of a dependent spouse or children, without any further analysis [as in this case], should not be considered a negative factor on a study permit application; otherwise, this would preclude many students from being eligible: *Onyeka*, above at para 48; *Obot*, above at para 20. Finally, it is unintelligible in my view to construe a lack documented travel abroad in itself [and without something else, such as a negative travel history] as an indication that an individual will overstay their authorized time in Canada: *Onyeka*, above at para 48; *Ogunfowora*, above at para 42.
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> [Emphasis added]

[12] Moreover, in *Barril v Canada (Citizenship and Immigration)*, 2022 FC 400, Justice Aylen emphasized the sentiments in *Onyeka* and *Iyiola* have been "repeatedly recognized" by the Federal Court. Based on this line of jurisprudence, the Applicant submits the Officer's conclusion in the present case cannot stand.

[13] In my respectful view, if left unchecked, use of this consideration as a standalone disqualifier could readily result in an unacceptable degree of arbitrary decision making that might very well eviscerate and defeat the purposes for which the study permit class of temporary visas was established by the *Immigration and Refugee Protection Regulations*, SOR/2002-227. Thus, as I read it, the preponderance of jurisprudence concludes that "further analysis" is required when relying on this basis. Such "further analysis" could refer to further analysis of family status and mobility, or it could refer to further analysis in the sense of identifying an additional relevant and different consideration. In my respectful view the use of determinations like 'single, mobile, is not well established and has no dependents' is simply not acceptable as a

standalone reason to disqualify an applicant for a study permit. A relevant, additional and different consideration must be identified by the Officer.

[14] That said, as the Respondent correctly submits, the Applicant's status as a single person without dependents was not the sole basis to reject his visa application in this case. The Officer also found he was "not well established."

[15] I am not satisfied the Officer reasonably assessed the record in this respect. The Officer's finding this Applicant was "not well established" is unintelligible and lacks justification given his academic career and 16 years with an Iranian bank where he holds the position of Inspector, with contributions to his pension fund at risk, care for his mother and siblings and other factors militating in favour of his return to Iran, leading me to conclude this finding is unreasonable as contrary to constraining law and also the undisputed facts of this case.

(2) Purpose of visit

[16] Under this heading, several additional considerations were identified. I turn to them.

> (a) *PA is applying to study MBA. Previously obtained Bachelors in Accounting and currently employed as Bank Inspector. Considering applicant's education and previous work experience, I am not satisfied that applicant would not have already achieved the benefits of this program*

[17] A consideration as to whether an applicant has already achieved the benefits of the intended study program falls within the range of considerations open to the officer. However, by

analogy to and in comity with my colleague Justice Bell in *Ahadi v. Canada (Citizenship and Immigration)*, 2023 FC 25 [*Ahadi*] this conclusion is unreasonable:

> [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. […]
>
> [Emphasis added]

[18] The Applicant is in his 30's, has a BA in accounting, has spent 14 years with an Iranian bank, has achieved the rank of Inspector, finds his career limited and wishes to obtain an MBA from an accredited Canadian university. Frankly, I discern nothing in the record to support the proposition the Applicant's accounting degree and bank work are equivalent to an MBA. Per *Vavilov* this lack of justification renders this finding unreasonable.

> (b) *I note that the client has not explained how they intend to support/retain their previous career*

[19] It is certainly open for an officer to consider how an applicant intends to support/retain their previous career. However, and with respect, this finding in this case is not supported by the evidence. Moreover it is contrary to the evidence. There is in this sense nothing to support it. The

Applicant, in my respectful view, did explain how he intended to support and retain his previous career, namely through a two year leave of absence granted by his employer. It seems to me the officer overlooked or did not properly assess the evidence: *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001, and *Tan v Canada (Citizenship and Immigration)*, 2022 FC 1652.

> (c) *Nor has the applicant demonstrated how a 2 year leave of absence from their current employment will translate to increased prospects of promotion with employer back in Iran*

[20] Consideration as to whether an applicant's study plan will translate into increased prospects of promotion with their employer back in their home country is again one that falls within the range of considerations open to the officer. However, it seems to me the bar has been placed too high. While an applicant may have written assurances from an employer they will be promoted upon successful completion of certain planned study, short of that, what exactly does the officer require from this applicant to "demonstrate" increased prospects of employment or promotion? I agree with Justice Bell who said in *Ahadi* in words I find appropriate here: "… 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."

(d) *In light of the PA's previous study and current career, I am not satisfied that this is a reasonable progression of studies*

[21] It is open in my view for the visa officer to ask whether there is a reasonable progression of studies. That said it seems to me this consideration involves the same considerations as items (b) and (d) above. For those reasons, this determination is unreasonable in this case.

[22] On balance and considering all of the above, I have concluded the Decision is unreasonable.

[23] It is not necessary to consider the issue of procedural fairness, which in cases like this is well known to be very minimal.

VII. Conclusion

[24] The application for judicial review will be granted.

VIII. Certified Question

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

JUDGMENT in IMM-5143-22

THIS COURT'S JUDGMENT is that judicial review is granted, the Decision is set aside, the matter is remanded for redetermination by a different decision-maker, no question of general importance is certified and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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