

Federal Court



Cour fédérale

Date: 20230413

Docket: IMM-4047-22

Citation: 2023 FC 542

Ottawa, Ontario, April 13, 2023

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

**ALI MAGHAMI
MONIRE BAGHI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ali Maghami and his wife Monire Baghi are citizens of Iran. Mr. Maghami seeks judicial review of a decision by a visa officer to refuse his application for a work permit under the International Mobility Start-Up Visa [SUV] Program. The Officer also refused an application for a work permit by Ms. Baghi, who hoped to accompany her husband to Canada.

[2] The Officer was not satisfied that Mr. Maghami would leave Canada at the end of his authorized stay, as required by s 200(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], made under the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[3] The SUV Program was described at some length by Justice Andrew Little in *Phan v Canada (Citizenship and Immigration)*, 2022 FC 916 at paragraphs 5 to 16. The Minister notes that Mr. Maghami requested a work permit in advance of any determination of an application for permanent residence.

[4] In his application, Mr. Maghami explained that he intended to assume the position of Chief Technology Officer [CTO] for a start-up company called Cocooncloud Technologies Inc [Cocooncloud]. Mr. Maghami is one of the founders of Cocooncloud, which was incorporated in British Columbia on June 26, 2021. Cocooncloud is a developer of private cloud software services.

[5] Mr. Maghami's application was accompanied by a Commitment Certificate – Letter of Support from Biomedical Commercialization Canada Inc, operating as Manitoba Technology Accelerator, a business incubator and designated entity [Designated Entity] under s 98.03(1) of the IRPR. The Designated Entity confirmed that Mr. Maghami had sufficient financial resources to support himself during the 52-week period authorized by the work permit.

[6] In the Commitment Certificate – Letter of Support, the Designated Entity offered the following “urgent reasons” for Mr. Maghami to receive a work permit before obtaining permanent residence:

Cocooncloud is an all-in-one private cloud, software as a service solution which different types of organizations can use to deploy their own specific platform on their location and remote spaces, easily and comparatively in cheapest way. With few click and granting necessary access, Cocooncloud platform would be deployed directly from our dashboard to the preferred location. Information security and data privacy are fully covered by Cocooncloud’s security protocols which enable secure use of E-mail, Calendar, Messaging, Video conferencing, Sharing & syncing data.

[7] The Minister notes that none of these reasons addressed the question of urgency.

[8] The Designated Entity also confirmed that Mr. Maghami’s position was “essential”, and identified the following “urgent business reasons” for him to come to Canada before permanent residence was obtained:

The team needs to incorporate the company, open bank accounts, Finding and settle of office, hire local staff, and initiate partnerships with local peers to kickstart the business activities. Additionally, we are going to set up our datacentre, cloud software, and its platform with required services, negotiation with customers, and market evaluation, attending to business events, contacting and relationship with Manitoba Technology Accelerator Organization and the acquirement of certain licenses and certificates requires physical presence in Canada.

[9] The Minister notes that Cocooncloud was already incorporated, and the remaining tasks were generic and could be performed either remotely or by someone other than the CTO.

[10] The Officer's notes in the Global Case Management System [GCMS] form a part of the decision under review (*Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 at para 5). The Officer's GCMS notes read as follows:

I have reviewed the application.

The applicant's intended employment in Canada does not appear reasonable given.

The applicant has applied under the start up visa program in order to establish COCOONCLOUD, all-in-one private cloud, software as a service solution which different types of organizations can use to deploy their own specific platform on their location and remote spaces. The applicant is identified as the company CTO.

No business plan is on file and the details provided on the business purpose in Canada are unclear and vaguely documented.

While articles of incorporation have been provided details of company structure are not on file and therefore the required voting rights cannot be assessed.

Given the applicant's described responsibilities and the lack of detail on the specific activities to be performed in Canada and/or I am not satisfied that the urgent business need to travel to Canada has been demonstrated nor that a significant benefit to Canada has been demonstrated.

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 reasons above, I have refused this application.

[11] The Officer's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only where "there are sufficiently serious

shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

[12] The criteria of “justification, intelligibility and transparency” are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[13] Mr. Maghami argues the Officer unreasonably required him to submit a business plan and particulars of Cocooncloud’s corporate structure. He says that neither of these requirements may be found in the legislation or applicable policy documents (citing Immigration, Refugees and Citizenship Canada, “Work permits for Start-Up Visa applicants” (26 July 2022), <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/start-visa/work-permits.html> [Application Guide]).

[14] The Application Guide describes the eligibility requirements for the SUV Program as follows (at section 2):

To be eligible for a work permit, you must:

- plan to live in a province or territory other than Quebec
- pay the employer compliance fee
- have received a Commitment Certificate and a Letter of Support from a designated entity indicating that you are “essential” and there are urgent business reasons for your early entry to Canada (i.e. section 8.0 of the Commitment Certificate is completed) and
- have sufficient funds to meet the low income cut off for your family for 52 weeks

[15] Mr. Maghami argues that his application satisfied all of these requirements, and the Officer therefore based the refusal on irrelevant considerations.

[16] The Minister responds that the Application Guide describes only the minimum eligibility requirements for the SUV Program. An applicant must also comply with the general criteria for work permits in ss 200(1) and 205(a) of the IRPR. Pursuant to s 205(a) of the IRPR:

205 A work permit may be issued under section 200 to a foreign national who intends to perform work that

(a) would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents; [...]

205 Un permis de travail peut être délivré à l'étranger en vertu de l'article 200 si le travail pour lequel le permis est demandé satisfait à l'une ou l'autre des conditions suivantes :

a) il permet de créer ou de conserver des débouchés ou des avantages sociaux, culturels ou économiques pour les citoyens canadiens ou les résidents permanents; [...]

[17] The Minister maintains that it was incumbent on Mr. Maghami to demonstrate his business purpose was reasonable and would offer a significant benefit to Canada. It was not sufficient for Mr. Maghami to provide minimal information and expect the Officer to seek elaboration or clarification. Rather, "it is for the applicant to put his best case forward" (citing *Sulce v Canada (Citizenship and Immigration)*, [*Sulce*] at para 10).

[18] Mr. Maghami argues that the Designated Entity endorsed his business proposal, as confirmed by its Commitment Certificate – Letter of Support. He says the Officer had no

jurisdiction to depart from the Designated Entity's assessment or require additional information. I disagree.

[19] The Officer was not bound by the Designated Entity's assessment. This was only an expression of opinion for the Officer's consideration. The Officer reasonably found that the rationales for the assertions that Mr. Maghami's position was essential, and that his presence in Canada was urgently required, were unclear and vaguely-documented.

[20] The level of procedural fairness owed to work permit applicants is at the low end of the spectrum. A refusal is not in itself a severe consequence, as an applicant retains the ability to reapply (*Sulce* at para 10).

[21] Mr. Maghami says it was unreasonable for the Officer to refuse his application without first referring it for peer review in accordance with s 98.09 of the IRPR. However, peer review is not mandatory; nor would the Officer be bound by the independent review (IRPR, s 98.09(1) and (4)). Furthermore, the Minister takes the position that the peer review process applies only to permanent residence applications, not to work permit applications.

[22] The application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

“Simon Fothergill”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4047-22

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MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

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JUDGMENT AND REASONS: FOTHERGILL J.

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