Federal Court  Cour fédérale

Date: 20230420

Docket: IMM-4138-22

Citation: 2023 FC 568

Ottawa, Ontario, April 20, 2023

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

MOHAMMAD REZA NESARZADEH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicant, Mohammad Reza Nesarzadeh, is a high school student in Iran. He applied for a student visa to come to Canada to complete Grade 12, and he explained that he hoped to pursue post-secondary education in Canada before returning to Iran to continue to work on his family's farm. He says that he will inherit the farm his family has operated for 100 years, and he wants a Canadian education to improve his skills and abilities to make it a success in the future.

[2] The Applicant's request for a student visa was denied, and he seeks judicial review of this decision. The key portions of the Officer's reasons state:

- The purpose of the visit did not seem reasonable, because the Applicant could complete high school in Iran at a fraction of the cost;

- The Applicant is single, mobile, and not well established, and thus did not demonstrate sufficiently strong ties to Iran (the decision letter also mentions "family ties in Canada" but it was acknowledged that this was a mistake, and that this ground was not a consideration for the Officer); and

- Based on these considerations, the Officer was not satisfied that the Applicant would depart Canada at the end of his authorized stay.

[3] The only issue in this case is whether the Officer's decision is reasonable.

II. Legal Framework

[4] This Court has discussed the legal framework that governs the judicial review of student visa denials in a large number of recent decisions. The following principles drawn from the case-law are particularly relevant to a review of the decision in this particular case.

[5] *A reasonable decision must explain the result, in view of the law and the key facts:* Under the framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] , a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at para 2). The burden is on the Applicant to satisfy the Court "that any shortcomings or flaws relied on… are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33).

[6] *Vavilov seeks to reinforce a "culture of justification" requiring the decision-maker to provide a logical explanation for the result and to be responsive to the parties' submissions, but it also requires the context for decision-making to be taken into account.* Under the *Vavilov* framework, the focus is on the decision actually provided, and the reasoning set out must support the conclusion. Stated another way: "…, it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies" (*Vavilov* at para 86).

[7] *Visa Officers face a deluge of applications, and their reasons do not need to be lengthy or detailed. However, their reasons do need to set out the key elements of the Officer's line of analysis and be responsive to the core of the claimant's submissions on the most relevant points*. See, for example: *Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552 at

para 13,cited with approval in *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 [*Ocran*] at para 15; *Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596 at paras 9-10; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 17, cited with approval in *Motlagh v Canada (Citizenship and Immigration)*, 2022 FC 1098 at para 22.

[8] *The onus is on the Applicant to satisfy the Officer that they meet the requirements of the law that applies to consideration of student visas, including that they will leave at the end of their authorized stay*: The requirements include those set out in the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and the *Immigration and Refugee Protection Regulations*, SOR/2022-227 [the *Regulations*]. Pursuant to paragraph 216(1)(b) of the *Regulations*, an officer shall not issue a study permit to a foreign national if they are not satisfied that the foreign national will leave Canada by the end of the period authorized for their stay.

[9] *Visa Officers must consider the "push" and "pull" factors that could lead an Applicant to overstay their visa and stay in Canada, or that would encourage them to return to their home country: Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872, at para 14, cited with approval in *Ocran* at para 23.

III. Analysis

[10] Applying the principles set out above, I find the decision to be unreasonable.

[11] A key consideration in the judicial review of a Visa Officer's denial of a student visa is whether the reasons meet the standard of "responsive justification" set out in *Vavilov*. The context for decision-making is an important factor in this assessment – in particular, the high volume of applications to be processed, as well as the nature of the interests involved, including the fact that in most instances an applicant can simply re-apply.

[12] In this case, the Officer's decision rests on two key findings: the purpose of the visit was not reasonable because the Applicant could complete high school in Iran for a fraction of the cost, and he lacked sufficiently strong ties to Iran.

[13] However, I find the decision does not meet the minimum requirements of "responsive justification" because the Applicant had provided specific and important information that is directly relevant to both of the grounds on which the Officer's decision rests. The Officer did not need to accept everything put forward by the Applicant, but was required to offer some explanation about how this information factored into their analysis. A reasonable decision must demonstrate that the decision maker engaged with the key evidence that is relevant given the legal framework that applies. That was not done here.

[14] The key findings, and my analysis on each, are set out below:

A. The Officer found the course of study did not make sense, because the Applicant could complete high school in Iran for a fraction of the cost of coming to study in Canada.

Discussion:

[15] The Applicant explained that he wanted to finish high school in Canada because that would help him gain entry to post-secondary studies here. The Officer may think that the Applicant and his family are making a mistake in spending so much money to send him to Canada to finish high school, but the Officer needed to explain why they reached that conclusion in light of the Applicant's reasons for doing this.

B. The Officer found the Applicant did not have sufficiently strong ties to Iran.

Discussion:

[16] The Applicant explained that he would inherit his family's farm, which had been in his family for 100 years and was a successful enterprise. He said that studying in Canada would increase his chances of making the farm successful in the future. Again, the Officer may have found that to be unpersuasive, but that needed to be explained.

[17] In addition, the fact that a person entering Grade 12 is unmarried and has no children may support a finding that the "push" factors would lead the Applicant to try to remain in Canada, depending on the particular circumstances of the case (for example, if all of their other close family members had previously come to Canada). This will depend on the facts of each case because, as this Court has often noted, it is not uncommon for younger people to be single and

without dependents. The relevance of this particular fact needs to be explained by an Officer who seeks to rely on it. In this case, that was not done.

[18] Furthermore, and perhaps more importantly, the Officer needed to show that the most important "pull" factor set out in the Applicant's narrative had also been considered – namely, his desire to return to operate the family farm with his father, a farm that he would later inherit. That was also not done, and so this part of the analysis does not meet the *Vavilov* standard of "responsive justification."

[19] The Respondent offered a number of arguments in support of the decision, but I find that the majority of these seek to supplement the Officer's reasons. For example, the fact that the Applicant did not seem entirely certain about which post-secondary program he would pursue (he mentions studying either agricultural science or pursuing a Bachelor of Commerce) is not mentioned by the Officer as a reason for denying the application, and it is not evident from the GCMS notes or the record that this was a factor. Similarly, the fact that the Applicant appears to have received some form of financial assistance from the school in Canada may be a relevant consideration, but the Officer does not specifically note it. None of the Respondent's arguments persuade me that the Officer's decision is justified in light of the evidence in the record.

[20] For the reasons set out above, I find the decision is unreasonable. The application for judicial review is granted.

[21] The decision is quashed and set aside. The matter is remitted back for reconsideration by a different Officer.

[22] There is no question of general importance for certification.

JUDGMENT in IMM-4138-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The decision is quashed and set aside, and the matter is remitted back for reconsideration by a different Officer.

3. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4138-22
STYLE OF CAUSE:	MOHAMMAD REZA NESARZADEH v MCI
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	APRIL 5, 2023
JUDGMENT AND REASONS:	PENTNEY J.
DATED:	APRIL 20, 2023

APPEARANCES:

Anna Davtyan	FOR THE APPLICANT
Asha Gafar	FOR THE RESPONDENT

SOLICITORS OF RECORD:

EME Professional Corp. Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT