

Federal Court



Cour fédérale

Date: 20230426

Docket: IMM-1237-22

Citation: 2023 FC 608

Ottawa, Ontario, April 26, 2023

PRESENT: Mr. Justice McHaffie

BETWEEN:

**RABIA AKRAM MOHAMMAD AKRAM MOHAMMAD AMIN ALI
SHAMAEL HASAN IJAZ AHMED MOH G MURTAZA
AHMED HASAN IJAZ AHMED MOHAMED MURTAZA
MOHAMED HASAN IJAZ AHMED MGHUL MURTAZA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Rabia Ali and her three minor children seek judicial review of the refusals of their study permit applications. For the following reasons, I conclude the refusals were unreasonable and must be set aside.

[2] Ms. Ali's study permit application was based on her plan to pursue a Diploma Certificate in Baking and Pastry Arts Management at Centennial College in Toronto. Ms. Ali was looking to improve her skills in baking techniques and business management to support the online baking business she started in Bahrain in 2019. Ms. Ali's husband was to remain in Bahrain, living in the family home in Tubli and working at his textile business. The couple's three children were to accompany Ms. Ali to Canada for the duration of her studies and study at public schools in Toronto. The children's applications were thus dependent on their mother's application.

[3] The visa officer who refused the applications was not satisfied Ms. Ali would leave Canada at the end of her stay. Their reasons for this conclusion are found in a refusal letter dated February 7, 2022, and in the Global Case Management System [GCMS] notes associated with the letter. The refusal letter simply indicates that the officer is not satisfied that Ms. Ali would leave Canada at the end of her stay, based on (i) her family ties in Canada and in her country of residence; (ii) the purpose of her visit; and (iii) her current employment situation. The underlying GCMS notes give the following reasons for the refusal:

I have reviewed the application. 39yrs old. Bahraini [citizen]. Accompanied by 3 minor student children aged 13yrs old, 11yrs old & 8yrs old. Seeking SW [Study/Work Permit] to obtain a Diploma certificate in baking & Pastry arts management at Centennial college. PA completed her secondary education with 61% in dep 2001& then obtained 2yrs bach prog in Economics from Lahore Uni with 57% in aug 2004. States been home baker through online since jan 2019. 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 married or has dependents or states to have close family ties in their home country, but is not sufficiently established[.] After examining the applicant's family, financial, and professional ties in light of their decision to leave them for the duration of their poorly justified studies, I'm not satisfied that those related to their country of residence are sufficient to compel their return at the end of the period authorized

for their stay in Canada. After considering the applicant’s academic and professional history, their financial situation, as well as their planned studies and explanation provided for it, I am not satisfied that the applicant is a genuine student who will pursue studies in Canada. The stated benefits of their intended studies do not seem to warrant the cost and difficulty of undertaking foreign education. I am therefore not satisfied that the applicant will enroll in a [Designated Learning Institution] and pursue their studies or leave Canada at the end of the period authorized for their stay. Taking the applicant’s current employment situation into consideration, the employment does not demonstrate that the applicant is sufficiently well established that the applicant would leave Canada at the end of a 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.

[Emphasis added; minor typographical errors corrected for legibility.]

[4] The children’s applications were each refused on the basis that, since they were to accompany Ms. Ali, whose application was refused, the purpose of their trip was “no longer relevant.”

[5] The standard of review applicable to the substance of the visa officer’s decision is that of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Marcelin v Canada (Citizenship and Immigration)*, 2021 FC 761 at para 7. Ms. Ali argues that the officer unreasonably ignored the evidence in her application and provided “generic” reasons that do not demonstrate the hallmarks of transparency, intelligibility, and justification required of a reasonable decision: *Vavilov* at paras 15, 81, 85–86.

[6] Given the administrative context of visa decisions, this Court has confirmed that visa officers are not expected to provide extensive or voluminous reasons for refusals: *Patel v*

Canada (Citizenship and Immigration), 2020 FC 77 at paras 15, 17; citing *Vavilov* at paras 13, 67, 72, 127–128; *Marcelin* at para 9. Visa officers’ decisions must also be reviewed in light of the record, which “may reveal that an apparent shortcoming in the reasons is not, in fact, a failure of justification, intelligibility or transparency”: *Vavilov* at para 94. That said, reading the reasons in light of the record does not permit the Court to simply manufacture new reasons that are not given by the visa officer or speculate as to what they might have been thinking: *Vavilov* at paras 95–97, citing *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at para 11.

[7] Having reviewed the decision in its administrative context and in light of the record before the officer, I agree it is unreasonable.

[8] One of the visa officer’s primary reasons for refusing the application was their concern about Ms. Ali’s family ties and establishment in Bahrain (she has no family ties in Canada). As Ms. Ali underscored in her application, she is a citizen of Bahrain. She has been married to her husband, also a citizen of Bahrain, for 15 years. The couple has a costly house in Tubli, together with other assets, the husband’s business established in 2009, and Ms. Ali’s own recently started business. They have three children, all born in Bahrain. Ms. Ali also has a brother in Bahrain.

[9] The visa officer’s reasons with respect to family ties and establishment in Bahrain read, enigmatically: “the client is married or has dependents or states to have close family ties in their home country, but is not sufficiently established.” It is clear that this sentence is, as Ms. Ali correctly describes it, generic or boilerplate. It proposes several possibilities without indicating which applies in the current case, and gives no explanation why the visa officer finds Ms. Ali is

“not sufficiently established” despite her personal history. The Court, and Ms. Ali, are left to speculate as to why the officer concluded that Ms. Ali was “not sufficiently established” in Bahrain after 15 years of marriage there. This does not demonstrate the justification, transparency, and intelligibility expected of an administrative decision.

[10] I note that this Court has reached the same or similar conclusions with respect to precisely the same language in several other cases: *Vahdati v Canada (Citizenship and Immigration)*, 2022 FC 1083 at paras 4, 7–12; *Namin v Canada (Citizenship and Immigration)*, 2022 FC 1706 at paras 5, 10–17; *Ahadi v Canada (Citizenship and Immigration)*, 2023 FC 25 at paras 8, 17–19; see also *Shahrezaei v Canada (Citizenship and Immigration)*, 2023 FC 499 at paras 11, 18–20, a decision rendered after the hearing in this application.

[11] Nor does the visa officer’s subsequent reference to having examined Ms. Ali’s family ties “in light of her decision to leave them” provide any additional explanation. It appears the officer may be reaching some degree of negative conclusion regarding Ms. Ali’s ties to her husband and brother in Bahrain based on her willingness to leave them in order to study. If so, there is a certain irony in such a conclusion. Other cases reveal that visa officers have treated an accompanying spouse as a negative factor: see, e.g., *Vahdati* at paras 7, 10, citing *Balepo v Canada (Citizenship and Immigration)*, 2016 FC 268 at paras 15–16; *Shahrezaei* at para 18. Ms. Ali notes that the refusal of her own earlier study permit application appeared to consider that having her husband accompany her was a negative factor. It would certainly place married applicants for study permits in a difficult situation if both the possibility that their spouse would accompany them to Canada and the possibility that they would be willing to leave them behind

were to be held against them. In any event, the decision of the visa officer provides no explanation as to why or to what extent Ms. Ali's "decision to leave" her family and other ties in Bahrain affected their conclusion that those ties were not "sufficient to compel [her] return at the end of the period authorized for [her] stay in Canada."

[12] With respect to the purpose of Ms. Ali's visit, namely her planned course of study, the visa officer states that they considered Ms. Ali's academic history and study plan. They describe the studies as "poorly justified" and note that the benefits "do not seem to warrant the cost and difficulty of undertaking foreign education." Again, both the Court and Ms. Ali are left to speculate about the reasons for this conclusion.

[13] There is no question that a visa officer reviewing a study permit application is permitted, and even required, to review any study plan an applicant has submitted in assessing whether they are satisfied the applicant will leave Canada by the end of the period authorized for their stay: *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 216(1)(b); *Vavilov* at paras 126–128; *Zhang v Canada (Citizenship and Immigration)*, 2022 FC 1679 at para 20; *Farnia v Canada (Citizenship and Immigration)*, 2022 FC 511 at para 18. Concerns or flaws in the reasonableness or rationality of a study plan may lead a visa officer to conclude the applicant has not demonstrated they are a *bona fide* student who intends to and is capable of pursuing a course of study: *Farnia* at para 18; *Hamid v Canada (Citizenship and Immigration)*, 2022 FC 886 at para 24. However, such reasoning must be adequately articulated and should not amount to mere "career counselling" focused on the "value of learning" to an applicant: *Zhang* at paras 20–21; *Naeem v Canada (Citizenship and Immigration)*, 2022 FC 391 at paras 15–18, 23;

Jalilvand v Canada (Citizenship and Immigration), 2022 FC 1587 at para 18, citing *Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552 at para 18 and *Adom v Canada (Citizenship and Immigration)*, 2019 FC 26 at para 16; *Najmi v Canada (Citizenship and Immigration)*, 2023 FC 132 at para 25.

[14] In the present case, the visa officer's statements that Ms. Ali's study plan is "poorly justified" and that the benefits of the proposed education "do not seem to warrant the cost and difficulty of undertaking foreign education" are unexplained. The officer's concerns, and why those concerns lead them to conclude they are not satisfied that Ms. Ali would leave Canada after her stay, cannot be gleaned from the decision, even when read in light of the record.

[15] With respect to both the issue of family ties and the study plan, the Minister referred to elements of the record, pointing out areas of potential concern in Ms. Ali's application that might justify a refusal. I appreciate that the Minister's submissions on these issues responded to Ms. Ali's submissions regarding the high quality of her study permit application. However, they cannot act as a substitute for the visa officer's own reasoning to demonstrate the reasonableness of the decision. In other words, the Court's role is to assess whether the visa officer's decision was justified in light of the factual and legal constraints that bear upon it, and not to review the record to determine whether the visa officer, or the Court, might be able to justifiably reach the same conclusion: *Vavilov* at para 86; *Najmi* at para 26.

[16] I therefore conclude the visa officer's decision was unreasonable and must be set aside. Given this conclusion, I need not address Ms. Ali's argument that the visa officer unfairly made

adverse credibility findings without first giving her the opportunity to address their concerns.

Since the children's applications were based on Ms. Ali's application, and the visa officer's refusal of them was based on the refusal of Ms. Ali's application, these refusals must similarly be set aside.

[17] Neither party proposed a question for certification. I agree that none arises in the matter.

JUDGMENT IN IMM-1237-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed. The refusals of the applicants' applications for study permits, each dated February 7, 2022, are set aside and the applicants' applications are remitted for redetermination by a different officer.

"Nicholas McHaffie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1237-22

STYLE OF CAUSE: RABIA AKRAM MOHAMMAD AKRAM
MOHAMMAD AMIN ALI ET AL v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: FEBRUARY 8, 2023

JUDGMENT AND REASONS: MCHAFFIE J.

DATED: APRIL 26, 2023

APPEARANCES:

Ugochukwu Udogu FOR THE APPLICANTS

Brad Bechard FOR THE RESPONDENT

SOLICITORS OF RECORD:

Ugochukwu Udogu FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario