

Federal Court



Cour fédérale

Date: 20230914

Docket: IMM-12276-22

Citation: 2023 FC 1240

Vancouver, British Columbia, September 14, 2023

PRESENT: Mr. Justice McHaffie

BETWEEN:

HASTI TABRIZI NOURI

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Hasti Tabrizi Nouri, a young Iranian citizen, was refused a study permit to attend Grade 11 at a Vancouver high school because a visa officer was not satisfied she would leave Canada at the end of her stay. She seeks judicial review of that refusal, which I will grant for the following reasons.

[2] The visa officer's reasons for refusing the study permit application are set out in a refusal letter dated September 14, 2022, and in the officer's underlying notes in the Global Case Management System [GCMS]. The letter states that the visa officer was not satisfied Ms. Tabrizi Nouri would leave Canada at the end of her stay based on a single factor, namely that the purpose of her visit to Canada was "not consistent with a temporary stay" given the details provided in her application. The officer's GCMS notes that underlie this conclusion read as follows:

I have reviewed the application. I have considered the following factors in my decision. Minor applicant to study at Bodwell High School- Grade 11. The applicant has paid tuition fee to attend the intend DLI. However, I have given less weight to the positive factors, for the following reasons: The purpose of the visit itself does not appear to be reasonable, in view of the fact that similar programs are available closer to the applicant's place of residence. Motivation to pursue studies in Canada does not seem reasonable given that a comparative course is offered in their home country for a fraction of the cost. 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.]

[3] The refusal of a visa is reviewable on the standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at paras 14–16, citing *Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552 at para 13. Applying this standard, the Court assesses whether the decision is justified, intelligible, and transparent, and will only intervene if there are sufficiently serious shortcomings in the decision that it cannot be said to exhibit these qualities: *Vavilov* at paras 15, 99–101.

[4] In assessing the reasonableness of the decision, the Court recognizes that the high volume of visa decisions and the narrow consequences of a refusal are such that extensive reasons are not required: *Vavilov* at paras 88, 91; *Lingepo* at para 13; *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at paras 9, 16; *Wang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1298 at paras 19–20. Nonetheless, the reasons given by the officer must, when read in the context of the record, adequately explain and justify why the application was refused: *Yuzer* at paras 9, 20; *Hashemi v Canada (Citizenship and Immigration)*, 2022 FC 1562 at para 35; *Vavilov* at paras 86, 93–98.

[5] On my review of the visa officer’s GCMS notes, their decision appears entirely based on the asserted availability of high school programs, and in particular less expensive high school programs, in Iran. In summarily concluding that Ms. Tabrizi Nouri’s purpose and motivation to study in Canada were not “reasonable” because of the availability of such programs in Iran, the visa officer does not appear to have engaged at all with her stated reason for studying in Canada, nor with her statements regarding her family’s means to support that study.

[6] In this regard, I agree with Ms. Tabrizi Nouri that the current situation resembles that in *Hashemi*. In that case, which similarly involved Iranian high school students, the visa officer used very similar language to assess the purpose of the visit in light of the availability of similar cheaper programs in Iran: *Hashemi* at para 11. In my view, the following conclusions of Justice Pentney regarding the officer’s decision apply equally in the current circumstances:

A main reason for the refusal set out in the decision letters is that the Officer was not satisfied that the Applicants would leave Canada at the end of their stay, based on the purpose of their visit. The only purpose of their visit was to study in Canada. As the

GCMS notes make clear, the Officer cast doubt over the authenticity of the Applicants' stated purpose, largely because the expense was not seen to be justified when a comparable program was available in Iran. The Applicants explained – albeit imperfectly and quite generally – why they thought finishing high school in Canada was important, because it would provide a better quality of education in an enriching environment, and would improve their chances of being admitted to a Canadian university. The Officer failed to engage with the Applicants' stated reason for their choice to finish high school in Canada.

[Emphasis added; *Hashemi* at para 34.]

[7] I note that visa refusals based on the same or similar language were also found to be unreasonable recently by this Court in *Soltaninejad v Canada (Citizenship and Immigration)*, 2022 FC 1343 at paras 4, 19–23 and *Torkestani v Canada (Citizenship and Immigration)*, 2022 FC 1469 at paras 4–12.

[8] The Minister argues Ms. Tabrizi Nouri's application did not adequately set out why she felt it was necessary to complete high school in Canada, and that it was therefore reasonable for the officer to conclude that her motivation for doing so was not reasonable. I disagree. As in *Hashemi*, Ms. Tabrizi Nouri did explain—albeit imperfectly and quite generally—why she thought finishing high school in Canada was important. In particular, she highlighted her improved chances of being admitted to the University of British Columbia, where she wished to pursue undergraduate studies and then medical school, and the focus on career mentoring at the high school she proposed to attend. As in *Hashemi*, the visa officer in this case failed to engage with Ms. Tabrizi Nouri's stated reason for her choice.

[9] The Minister also points to the statement in the refusal letter that the purpose of Ms. Tabrizi Nouri's visit to Canada was "not consistent with a temporary stay given the details you have provided in your application." Counsel suggested this was reasonably read as referring to Ms. Tabrizi Nouri's plan to remain in Canada for undergraduate studies and medical school, which he argued was not a "temporary stay." I cannot accept this argument, for two reasons.

[10] First, reading the refusal letter together with the GCMS notes, there is no indication that this formed any part of the visa officer's reasons for refusing the application. The officer does not refer at all to Ms. Tabrizi Nouri's future academic plans, and does not link those plans to the stated concern about a "temporary stay." Rather, the concern about a temporary stay—the only reason given for the refusal—was based on the availability and cost of programs in Iran and the visa officer's associated conclusion that Ms. Tabrizi Nouri's motivation to study in Canada was not reasonable. While a decision maker's reasons must be read in light of the record, this does not permit the Minister, or the Court, to create new reasons or to rewrite those given by the decision maker: *Vavilov* at paras 96–98; *Torkestani* at paras 18–20. Nor can the Court use the refusal letter's general reference to "the details you have provided" as a basis to seek out new "details" in the application not referred to by the visa officer.

[11] Second, the visa officer's conclusion was that they were not satisfied Ms. Tabrizi Nouri would depart Canada at the end of the period *authorized* for her stay: see *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 216(1)(b). That stay would continue to be authorized, regardless of the number of years of study, provided Ms. Tabrizi Nouri obtained the necessary renewals of her study permit. The issue for the officer was whether Ms. Tabrizi Nouri

would leave Canada when she *ceased* to be authorized, not whether her program of study in Canada might lead to other programs, if and when further permits or renewals were granted. I question whether it would be reasonable to refuse a study permit effectively on grounds that an applicant might ask that it be renewed. Again, however, I underscore that this was not the officer's reason for refusing the application in this case.

[12] I therefore conclude the visa officer's decision does not exhibit the requisite degree of justification, intelligibility, and transparency with respect to the central basis for the decision. The application for judicial review is granted and the decision set aside. Given this conclusion, I need not address Ms. Tabrizi Nouri's argument that the visa officer breached the duty of procedural fairness by failing to give her an opportunity to respond to their concerns.

[13] Neither party proposed a question for certification and I agree that none arises in this matter.

JUDGMENT IN IMM-12276-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted. The refusal of Hasti Tabrizi Nouri's application for a study permit is set aside and her application is remitted for redetermination by a different officer.

"Nicholas McHaffie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12276-22

STYLE OF CAUSE: HASTI TABRIZI NOURI v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

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JUDGMENT AND REASONS: MCHAFFIE J.

DATED: SEPTEMBER 14, 2023

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