

Federal Court



Cour fédérale

**Date: 20230926**

**Docket: IMM-8795-22**

**Citation: 2023 FC 1300**

**Ottawa, Ontario, September 26, 2023**

**PRESENT: The Honourable Mr. Justice Fothergill**

**BETWEEN:**

**SEYED MANSOOR SHAMS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Seyed Mansoor Shams is a citizen of Iran. He is Managing Director of Pargan Construction Company [Pargan]. In June 2022, Mr. Shams applied for an intra-company transferee work permit. He said he intended to launch and direct Saba Waterbuild Company [Saba] in Toronto.

[2] A case processing officer with Citizenship and Immigration Canada [Officer] rejected Mr. Shams' application on the grounds that he did not meet the eligibility criteria for issuance of the permit.

[3] The Officer reasonably found that Mr. Shams had not demonstrated the requisite employer/employee relationship; that Saba had no plan to acquire physical premises in Toronto; that the financial information submitted was insufficient to demonstrate Saba's ability to commence business and compensate employees; that the business plan did not establish significant economic benefits for Canadians and permanent residents; and that Saba would be large enough to support an executive or management function.

[4] The application for judicial review is therefore dismissed.

## II. Background

[5] Pargan is an Iranian company that specializes in construction and engineering services. Mr. Shams joined the company in 2011, and has been its Managing Director since 2017. At the time of his application, Mr. Shams owned 33% of Pargan and 49% of Saba.

[6] In June 2022, Mr. Shams sought an intra-company transferee work permit (Labour Market Impact Assessment Exemption Code – C12) under the International Mobility Program. His application specified that he would be transferred to Saba for a one-year period. His wife and young child were included as dependents in the application.

[7] The documents submitted in support of the application included a certificate of incorporation for Saba, a business plan for Saba in its first few years, a Work Certificate issued by Pargan and signed on its behalf by Mr. Shams, an agreement to lease virtual office space in Canada, and Mr. Shams' recent banking history.

[8] The Officer refused the application for the following reasons:

You have not demonstrated that you have met the C12 eligibility criteria and that you come within the exceptions of R205(a) or that your work would create/maintain significant social, cultural or economic benefits or opportunities for Canadian[s] & PRs.

[9] According to the Officer's extensive notes in the Global Case Management System [GCMS], the Officer was not convinced of Mr. Shams' employer/employee relationship. Mr. Shams provided neither paystubs nor payroll records to demonstrate continuous employment for at least one year. The Officer was also concerned about the absence of any intention to rent physical premises. The Officer noted that the business plan contemplated hiring only one Canadian employee in the first year.

[10] According to Saba's business plan, it would hire one person in the first year and up to three by the end of the third year, while using the engineering team in Iran for planning and design work. This suggested a low likelihood of significant economic impact or the creation of viable jobs for Canadians or permanent residents. The Officer also found little evidentiary basis for Saba's ability to support a management function.

[11] The Officer found that the commitment to invest approximately \$100,000 CAD in Saba in the first two years was low given the cost of rent and other business expenses. The Officer was also concerned about the many revolving and unidentified withdrawal and remittance transactions in the personal bank accounts of Mr. Shams and his wife.

### III. Issue

[12] The sole issue raised by this application for judicial review is whether the Officer's refusal decision was reasonable.

### IV. Analysis

[13] 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).

[14] 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).

[15] The Officer's GCMS notes form a part of the decision under review (*Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 [*Ebrahimshani*] at para 5).

[16] The *Immigration and Refugee Protection Rules*, SOR/2022-227 [IRPR] provide in s 205(a):

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] Further guidance may be found in Instructions from Immigration, Refugees, and Citizenship Canada [Instructions]: International Program: Canadian interests – Significant benefit – Intra-company transferees – General requirements [R205(a)] (exemption code C12). In particular:

Intra-company transferees may apply for work permits under the general provision if they

- have been employed continuously (via payroll or by contract directly with the company), by the company that plans to transfer them outside Canada in a similar full-time position (not accumulated part-time) for at least one year in

the three-year period immediately preceding the date of initial application...

#### Requirements for the Company

- Generally, the company must secure physical premises to house the Canadian operation, particularly in the case of specialized knowledge. However, in specific cases involving senior managers or executives, it would be acceptable that the address of the new start-up not yet be secured; for example, the company may use its counsel's address until the executive can purchase or lease a premise. [...]
- The company must have the financial ability to commence business in Canada and compensate employees.
- When transferring executives or managers, the company must demonstrate that it will be large enough to support executive or management function.

#### A. *Employer/Employee Relationship*

[18] Mr. Shams notes that the Instructions do not require an applicant to submit paystubs or payroll records. All that is required is confirmation of employment that is continuous, in a similar full-time position, for at least one year within the three-year period preceding the application. Mr. Shams argues that the work certificate provided by Pargan, which confirmed his title and shareholder status, as well as his monthly salary, should have been sufficient.

[19] The Work Certificate submitted by Mr. Shams did not specify whether he was employed on a full-time basis. The bank statements did not demonstrate regular monthly deposits corresponding to the salary claimed. As the Officer noted, the sources of the deposits were not

identified. The Officer reasonably concluded that insufficient information had been provided to establish an employer/employee relationship that was continuous and full-time during the relevant period.

B. *Physical Premises*

[20] Mr. Shams says there was no requirement for Saba to acquire physical premises. He notes that the Instructions explicitly acknowledge that “in specific cases involving senior managers or executives, it would be acceptable that the address of the new start-up not yet be secured”.

[21] The Officer reasonably found that Mr. Shams had no plan to rent physical premises. Nor did Mr. Shams provide a reason for the lack of physical premises. The Officer acknowledged that it may be acceptable, in specific cases involving senior managers or executives, for premises not to be secured; however, Mr. Shams did not provide a rationale to warrant this. Nor did he indicate any intention to rent physical premises or shared workspace at the address provided. The Officer was understandably concerned that, with only one employee to be hired in the first year, there would be little incentive to establish physical premises where Mr. Shams and his staff would go to work.

C. *Saba’s Financial Ability to Commence Business*

[22] The Officer found that the bank statements demonstrated Saba’s ability to commence business, but was nevertheless dissatisfied with the financial information presented. Mr. Shams

says this was unreasonable, given the information contained in the business plan and supporting documentation. The cash flow charts and income statements demonstrated Saba's ability to pay employee salaries and operating expenses and to make a profit. He says the Officer failed to consider how various operating costs might be funded from the profit generated.

[23] Saba's business plan was largely aspirational and contained little information to confirm the general claims respecting expenses and anticipated profits. This Court has repeatedly found that visa officers are entitled to be skeptical about inadequate business plans (*Shirkavand v Canada (Citizenship and Immigration)*, 2023 FC 1022 at para 29; *Tekcan v Canada (Citizenship and Immigration)*, 2022 FC 635 at paras 11-13; *Ebrahimshani* at para 49). It was not unreasonable for the Officer to focus on the \$100,000 investment from Pargan without assuming the projected profit.

[24] The Instructions refer to the company's "ability to commence business and compensate employees". The Officer noted that Mr. Shams' proposed salary was \$120,000. Taking into account other expenses, this clearly exceeded Pargan's initial investment of \$100,000.

#### D. *Benefits for Canadians*

[25] The Officer found that hiring only one person in the first year and as many as three by the end of the third year did not amount to a significant economic benefit for Canadians or permanent residents. Mr. Shams says the Officer neglected to consider the economic benefits enjoyed by the contract workers that Saba would hire, or Saba's plan to hire additional



employees after the third year. The business plan explained that Saba would hire employees and engage in contracts with other business and third-party service providers in Canada, and use the Iranian engineering team's expertise to benefit the Canadian economy.

[26] As previously mentioned, the business plan was aspirational. It became increasingly speculative as it projected developments in the future. It was open to the Officer to place little weight on its optimistic predictions.

[27] The business plan provided no particulars of the number of contract workers or the duration of their employment. Furthermore, as the Respondent points out, contract workers and third party suppliers are already active in the Canadian economy, and would not be dependent on Saba for their livelihoods.

[28] The requirement in s 205(a) of the IRPR is that economic benefits or opportunities be significant. Saba proposed to rely on its Iranian parent company for most of its skilled engineering labour. The unspecified benefits to contract workers were largely aspirational, derived from a business plan with little evidentiary foundation.

E. *Saba's Ability to Support Management Function*

[29] A company that proposes to transfer executives or managers must demonstrate that it will be large enough to support the executive or managerial function. Saba's capacity to support management positions was premised on the growth projections contained in its business plan.

Again, the business plan was aspirational and largely without evidentiary foundation. It became less reliable as it projected developments in the future. It was reasonable for the Officer to base the assessment of whether Saba could support management positions on its short-term outlook.

V. Conclusion

[30] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

**JUDGMENT**

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

“Simon Fothergill”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-8795-22

**STYLE OF CAUSE:** SEYED MANSOOR SHAMS v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 17, 2023

**JUDGMENT AND REASONS:** FOTHERGILL J.

**DATED:** SEPTEMBER 26, 2023

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