

Federal Court



Cour fédérale

Date: 20231108

Docket: IMM-7140-22

Citation: 2023 FC 1489

Ottawa, Ontario, November 8, 2023

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

**ROSHA NAGHIANFESHARAKI
BY HIS LITIGATION GUARDIAN
ALIEH SHIRAZI MOGHADAM
ALIEH SHIRAZI MOGHADAM**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is a consolidated judicial review of two decisions made by an officer [Officer] of Immigration, Refugees, and Citizenship Canada [IRCC], dated May 30, 2022 [Decisions],

refusing the Principal Applicant's [PA] request for a study permit and the application by the PA's mother for a visitor visa.

II. Facts

[2] The PA is a seven or eight year old girl. The other Applicant is her mother. They are both citizens of Iran. In 2022, the PA applied for a one-year study visa to attend Grade 2 at a public school in Canada. Her mother applied for a temporary visitor visa to accompany her daughter.

[3] The PA's application was refused because 1) the Officer was not satisfied there were sufficient or available funds for the purposes given the remaining family back in Iran, and 2) because the study plan and proposed studies were insufficient given the little girl's "employment and education history" and her "career plan". In the result, the Officer was not satisfied the PA would return to Iran. Given this, and the officer's assessment of the mother's "socio-economic situation" (without any indication of what that meant), the Officer likewise refused the mother's application.

III. Issues

[4] The Applicants raise the following issues:

1. Does the Officer err in concluding that the Principal Applicant does not have sufficient funds?
2. Is the Officer's assessment of the Principal Applicant's purpose of the visit reasonable?
3. Does the Officer's concern with the adult Applicant's socioeconomic status reveal a rational chain of analysis?

[5] Respectfully, the issue is whether the Officer's Decisions are reasonable.

IV. Decisions under review

[6] There are two Decisions under review.

[7] The Global Case Management System [GCMS] notes for the child's application state:

I have reviewed the application. Taking the applicant's plan of studies into account, the documentation provided in support of the applicant's financial situation does not demonstrate that funds would be sufficient or available. I am not satisfied that the proposed studies would be a reasonable expense. I note the 1st tuition year was pre-paid, however the remaining bank statements provided are not satisfactory to cover living and transport costs, while considering the remaining family members living situation back in Iran. The study plan does not appear reasonable given the applicant's employment and education history. I note that: -the client did not provide their previous academic record -the client's proposed studies are not reasonable given their career path: client is a minor applying to come study Grade 2. No study plan provided to motivate international studies at this level nor the benefits to study Grade 2 internationally. Weighing the factors in this application. I am not satisfied that the applicant will adhere to the terms and conditions imposed as a temporary resident. For the reasons above, I have refused this application.

[8] For the mother, the GCMS notes state:

I have reviewed the application. The purpose of visit does not appear reasonable given the applicant's socio-economic situation and therefore I am not satisfied that the applicant would leave Canada at the end of the period of authorized stay. Accompanying child on SP - SP was refused. Weighing the factors in this application. I am not satisfied that the applicant will adhere to the terms and conditions imposed as a temporary resident. For the reasons above, I have refused this application.

V. Analysis

[9] The standard of review in student visa and temporary resident visa cases is reasonableness. With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard. Justice Rowe concludes at paragraph 32, the reviewing court “must ask ‘whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision.’”

[10] In terms of the economic assessment, and having considered the record including both written and oral submissions, I have concluded the Officer’s decision is unreasonable. While the Minister’s guidelines required sufficient funds to pay tuition plus \$10,000 for the PA, and an additional \$4,000 for her mother, the record shows tuition of \$16,000.00 was paid in full. Over and above that, the record shows bank account balances of approximately \$30,900 in Canadian funds and a further \$10,500 in US funds. The two Applicants had significantly more than required by the Minister’s guidelines. While the Officer considered the needs of the “remaining family members living situation back in Iran”, I am not satisfied that assessment is justified. No reasons were provided. I should add, as the Applicants noted, the Officer performed no assessment of the father / husband in Iran.

[11] In terms of purpose of visit, as already noted, the Officer faulted the PA's "study plan" and "proposed studies" based on the child's "employment and education history" and "career plan." The Applicants submit such these findings are absurd.

[12] The Respondent says there is no explanation why the PA wishes to study grade two at a public school in Canada. The Respondent's opposition to judicial review is more general. The Respondent in its Memorandum provides an example of what a reasonable study plan might be in a case like this (at paragraph 22):

“...for the purposes of this discussion, let's assume that the minor Applicant's parents indicated in the application that they intended for her to be a professional ballerina or an elite-level gymnast. Let's also assume that she had been enrolled in a school in Iran that provided that type of specialized training (ignoring, for the moment, the obvious religious restrictions for those type of activities in Iran). The minor Applicant's parents could then assert that the prospective school in Canada was more suited to their intended career path for their child or in keeping with the child's education history. The Officer's comments on this point were not absurd.”

[13] In oral argument, Counsel for the Respondent suggested a child MENSA candidate might be an appropriate candidate for a study permit where special schooling might be reasonable.

[14] I understand these example explanations could be satisfactory. However, it seems to me they put the bar too high and could, if adopted, unreasonably limit access to the study permit stream where the Minister in relevant regulations, policies, guidelines and programs expresses no such limitation. Likewise, no such limitation is found expressly or implicitly in the Decisions at hand.

[15] In my view, the Decision in this respect and without more lacks justification given the record and applicable regulations, policies and guidelines. I say this because and in my respectful view, the Respondent effectively asks this Court to all but end the study permit program for young elementary school children, along with visitor visas for accompanying parents. The Court declines this invitation. To do so would usurp the Minister's role in establishing who may and who may not obtain a study permit.

[16] As it is, foreign children may lawfully apply for Canadian study permits at the grade two level without establishing the very stringent and special conditions suggested. Canadian study permits are available to attend elementary school as well as colleges and universities. There is no requirement that they have special educational needs.

[17] More fundamentally, if such limitations are indeed intended, they should have been set out in the decision maker's reasons: it is not the Court's job to write reasons where, as here, none along the lines suggested were provided.

[18] Judicial review will be granted to the PA. The Decision with respect to the mother must therefore be set aside because it relied in large part on the PA being turned down.

VI. Conclusion

[19] The applications for judicial review are granted both in respect of the PA and her mother.

VII. Certified Question

[20] The parties do not propose a question for certification, and I agree none arises.

JUDGMENT in IMM-7140-22

THIS COURT'S JUDGMENT is that the applications for judicial review are granted in respect of both the PA and her mother, both matters are remanded to a different decision maker for redetermination, no question of general importance is certified, and there is no order as to costs.

"Henry S. Brown"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7140-22

STYLE OF CAUSE: ROSHA NAGHIANFESHARAKI BY HIS
LITIGATION GUARDIAN, ALIEH SHIRAZI
MOGHADAM, ALIEH SHIRAZI MOGHADAM v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF ZOOM VIDEOCONFERENCE

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JUDGMENT AND REASONS: BROWN J.

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