

Federal Court



Cour fédérale

Date: 20231116

Docket: IMM-6655-22

Citation: 2023 FC 1515

Ottawa, Ontario, November 16, 2023

PRESENT: Madam Justice Pallotta

BETWEEN:

FATEMEH SHAHBA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Ms. Fatemeh Shahba, seeks judicial review of an immigration officer's (Officer) decision that refused her study permit application.

[2] Ms. Shahba was admitted to an MA in Leadership program at Trinity Western University. The Officer who considered Ms. Shahba's study permit application was not satisfied she would leave Canada at the end of her stay, as stipulated in subsection 216(1) of the

Immigration and Refugee Protection Regulations, SOR/2002-227 [IRPR], based on the purpose of her visit and her family ties in Canada and Iran.

[3] The Officer's reasons for refusing the application, as recorded in the Global Case Management System (GCMS) notes, are as follows:

I have reviewed the application. Applicant is a 36 year old, married Iranian national applying for a study permit to attend Trinity Western University in MA in Leadership. In light of the PA's previous studies and current career, the intended program is a redundant course of action and does not appear to be a logical progression in their career path. Previous university studies in Bachelor in Tourism Management. Currently employed as a Marketing manager. PA does not demonstrate to my satisfaction compelling reasons for which the international educational program would be of benefit. PA is traveling with their spouse and dependent children, I have concerns that the ties to Iran are not sufficiently great to motivate departure from Canada. The ties to Iran are weakened with the intended travel to Canada by the client as the travel involves their immediate family; the motivation to return will diminish with the applicant's immediate family members residing with them in Canada. 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.

[4] The parties agree that the standard for reviewing the merits of the Officer's decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]; see also *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 13.

[5] Ms. Shahba states the Officer provided two main reasons why her study permit was refused: the intended program is a redundant course of action that does not appear to be a logical

progression in her career path for which the international educational program would be of benefit, and she would be travelling with her immediate family.

[6] Ms. Shahba states that her application set out in detail why she wanted to take a leadership course, how it related to her past experience in tourism management, and how the MA in Leadership program would advance her career in her field. The application also set out her significant ties to Iran, including detailed information about strong family ties, employment that she intended to pursue at a further level with the benefit of the program, and evidence of her employer's support for a leave of absence to study in Canada so she could return to a more senior position. In addition, she included evidence of a significant travel history, and she always returned to Iran. Ms. Shahba submits the decision is unreasonable as the Officer's reasons disregard, contradict, or misrepresent the evidence, and fail to justify the conclusions drawn.

[7] Considered in light of the record, Ms. Shahba states it is not possible to understand why her application was refused. The Officer rejected her application without providing the "why". Ms. Shahba submits the Officer's errors are the same errors that led this Court to set aside visa officers' decisions in *Ali v Canada (Citizenship and Immigration)*, 2023 FC 608 (at paragraphs 14-15), *Asong Alem v Canada (Citizenship and Immigration)*, 2010 FC 148 (at paragraphs 13-15), *Borji v Canada (Citizenship and Immigration)*, 2023 FC 339 (at paragraphs 13, 15, 17), *Nia v Canada (Citizenship and Immigration)*, 2022 FC 1648 (at paragraphs 23-25, 27-29), *Omijie v Canada (Citizenship and Immigration)*, 2018 FC 878 (at paragraph 14), and *Taiwo v Canada (Citizenship and Immigration)*, 2018 FC 91.

[8] The respondent submits Ms. Shahba did not submit a personal affidavit, and she has failed to demonstrate an error on the face of the record. Furthermore, while the respondent does not allege that this application is moot, the respondent states the failure to provide a personal affidavit is a deficiency because Ms. Shahba has not established that she still needs a study permit and has an interest in having the matter returned for reconsideration: *AlOmari v Canada (Citizenship and Immigration)*, 2017 FC 727 at para 37 [*AlOmari*].

[9] The respondent submits that paragraph 179(b) and subsection 216(1) of *IRPR* require a study permit applicant to establish that they will leave Canada at the end of the period authorized for their stay, and the Officer reasonably found that Ms. Shahba did not satisfy her onus in this regard. Despite Ms. Shahba's stated reasons for needing to return to Iran, she is prepared to leave Iran for a lengthy period of two years, and uproot her husband and children. The Officer found there were no compelling reasons to demonstrate why an international education program would be of benefit. The respondent states a comparison of Ms. Shahba's current responsibilities with those in the more senior position show no difference between the duties. It was reasonable for the Officer to find there was no natural career progression. The application did not provide clear evidence about the benefits Ms. Shahba expected to receive that would merit a two-year absence.

[10] The respondent submits the Officer did not need to address Ms. Shahba's travel history. The Officer was not obliged to refer explicitly to all the evidence, and is presumed to have considered all the evidence before them: *Hashem v Canada (Citizenship and Immigration)*, 2020 FC 41 at paras 27-29. The respondent submits the Officer did not find sufficient connection to

Iran to accept that Ms. Shahba would return. An applicant cannot merely assert that they will leave Canada, but rather, must satisfy the decision maker that they will actually do so: *Abbas v Canada (Citizenship and Immigration)*, 2022 FC 378 at paras 20-21. According to the respondent, Ms. Shahba disagrees with the factors the Officer found to be determinative, but she has not demonstrated that the Officer ignored evidence.

[11] I find the lack of a personal affidavit from Ms. Shahba does not affect this application. The arguments Ms. Shahba raises relate to errors on the face of the record. In my view, *AlOmari* is distinguishable. The Court's concern in that case was that the applicant had no interest in the application. Counsel had attempted to withdraw because he was unable to obtain the applicant's instructions, and the proceeding related to a visitor permit that was clearly required for a date that had passed. The Court set aside the officer's decision, but found no purpose would be served in returning the matter for reconsideration.

[12] For the reasons below, the applicant has established that the Officer's decision is unreasonable.

[13] A visa officer's reasons may be brief, and the respondent is correct that an officer is presumed to have considered all of the evidence before them. However, reading the GCMS notes holistically and in the context of the record before the Officer, I cannot understand the basis for the Officer's findings. For example, the Officer found the intended program to be "a redundant course of action and does not appear to be a logical progression in [Ms. Shahba's] career path". Ms. Shahba's application indicates she completed an undergraduate degree in

tourism management in 2016 and she has been working in her field as a marketing manager since then. Her employer's letter discusses a more senior position that is conditional on completing a degree in leadership and management. With respect to ties to Iran, Ms. Shahba's application indicates she had a job prospect in Iran, as well as family and financial obligations, and a history of travelling out of the country. In view of the specific information in Ms. Shahba's application, I cannot understand the basis for the Officer's concerns that the program would be a redundant course of action and that ties to Iran were insufficient to motivate departure from Canada.

[14] A reasonable decision is one that is justified in light of the facts: *Vavilov* at para 126. The decision maker must take the evidentiary record and the general factual matrix that bears on the decision into account and the decision must be reasonable in light of them: *Ibid.* When considered in light of the information in Ms. Shahba's study permit application, it appears that the Officer disregarded or misconstrued relevant information and evidence.

[15] I agree with Ms. Shahba that the respondent's arguments supply reasons that the Officer did not give. While a reviewing court may "connect the dots on the page where the lines, and the direction they are headed, may be readily drawn", it must not speculate as to what the decision maker was thinking, supply the reasons that might have been given, or make findings of fact that were not made: *Vavilov* at para 97. The Officer's reasons for refusing Ms. Shahba's study permit, considered contextually, do not allow this Court on review to understand why the Officer reached a negative decision. I am not able to discern the Officer's thinking or "connect the dots" without speculating or supplying reasons that were not given.

[16] In conclusion, the Officer's reasons were not responsive to the information provided in Ms. Shahba's application, including her explanation for pursuing the MA program at Trinity Western University and her evidence about her ties to Iran. The GCMS notes do not provide transparent, intelligible reasons that justify the Officer's decision to refuse Ms. Shahba's application.

[17] The application is allowed, the Officer's decision is set aside, and the matter is remitted to another decision maker for reconsideration.

[18] Neither party proposed a question for certification. I agree that there is no question to certify.

JUDGMENT in IMM-6655-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted and the Officer's June 5, 2022 decision is set aside.
2. The applicant's study permit application is remitted for redetermination by a different decision maker.
3. No question of general importance is certified.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6655-22

STYLE OF CAUSE: FATEMEH SHAHBA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: JUNE 27, 2023

JUDGMENT AND REASONS: PALLOTTA J.

DATED: NOVEMBER 16, 2023

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