Federal Court  Cour fédérale

Date: 20231116

Docket: IMM-9030-22

Citation:2023 FC 1516

Ottawa, Ontario, November 16, 2023

PRESENT: Madam Justice Azmudeh

BETWEEN:

MARYAM TAGHDIRI
MOHAMMADREZA KIYAN MANESH
DELSA KIYAN MANESH

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Maryam Taghdiri, is seeking Judicial Review under section 72(1) of the Immigration and Refugee Protection Act **[IRPA]** concerning the rejection of her Study Permit application for Canada. Her Spouse and Child also applied for a work permit and visitor visa, respectively, the success of which depended on the Applicant's study permit visa. The Judicial Review is granted for all Applicants for the following reasons.

[2] The Applicant, a 39-year-old Iranian citizen, sought a study permit to enroll in a Master's program in Public Health at the University of Saskatchewan. The Visa Officer (the “Officer”) denied her study permit application which resulted in the refusal of her family’s visa applications as well.

[3] The Applicant completed a Bachelor of Science degree in Molecular and Cellular Biology from the Islamic Azad University of Karaj in 2006 and a Master of Science degree in Clinical Immunology from the Jundishapur University of Medical Sciences in Ahvaz in 2013.

[4] The Applicant's professional background included work as a Research Assistant at the Department of Immunology at the Razi Vaccine and Serum Research Institute since 2015 (the “Employer”), where she managed lab operations and taught immunology techniques. The Applicant had previously been employed as a Microbial Analyst from 2006 to 2015. The Applicant also has experience teaching immunology and biology courses and has authored numerous publications in vaccine research. As part of her professional development, she has attended several international seminars and conferences.

[5] On March 24, 2022, the Applicant was accepted into the Master of Public Health program at the University of Saskatchewan (U of S) in Saskatoon, Saskatchewan. On or about July 4, 2022, the Applicant submitted her study permit application to Immigration, Refugees and Citizenship Canada (IRCC).

[6] By letter dated August 19, 2022, the Officer refused the Applicant’s study permit application namely due to the Applicant’s insufficient family ties outside of Canada resulting in

the Officer's doubts that the Applicant would leave Canada at the conclusion of her study program.

[7] In their notes, the Officer mentioned several refusal grounds contributing to why the Applicant had not demonstrated she would leave Canada after her authorized stay. In addition to a lack of significant family ties outside Canada, the Officer had questioned the logic of the Applicant's study plan because it was similar to her educational and professional backgrounds. The Officer's analysis of the Principal Applicant's application is set out in Global Case Management System (GCMS) notes as follows:

> I have reviewed the application. I have considered the following factors in my decision. PA is a 38 years old Iranian national. As for purpose of visit, PA is applying for a Master of Public Health at University of Saskatchewan. PA has similar studies at the same academic level as the proposed studies in Canada. PA obtained a M.Sc. in Clinical Immunology. Currently employed as a Research assistant at Department of Immunology. Considering applicant's previous education and work experience in the same field, I am not satisfied that applicant would not have already achieved the benefits of this program. There is little indication from PA's previous studies/employment that this intended program is a necessary progression in the PA's study / career path. I am not satisfied that the applicant would leave Canada at the end of their stay as a temporary resident, I note that PA will be accompanied by spouse and dependent child. The ties to their home country are weaken with the intended travel to Canada involving their immediate family, as 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.
>
> I have reviewed the application. I have considered the following factors in my decision. Client is seeking entry to accompany a family member who is applying for a study permit. Family member's study permit has been refused. 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.

II. Issues and Standard of Review

[8] This Application for Judicial Review raises two main issues:

A. *Was the Officer's decision unreasonable?*

B. *Was there a breach of procedural fairness?*

[9] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov,* at paras 12-13 and 15; *Mason v Canada (Citizenship and Immigration),* 2023 SCC 21, at paras 8, 63.

[10] I have started by reading the reasons of the decision-maker in conjunction with the record that was before them holistically and contextually. As guided by *Vavilov,* at paras 83, 84 and 87, as the judge in reviewing court, I have focused on the reasoning process used by the decision-maker. I have not considered whether the decision-maker's decision was correct, or what I would do if I were deciding the matter itself: *Vavilov,* at para 83; *Canada (Justice) v. D.V.*, 2022 FCA 181, at paras 15, 23.

[11] A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision-maker: *Vavilov,* esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v. Canadian Union of Postal Workers,* 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61; *Mason,* at paras 8, 59-61, 66. For a decision to be unreasonable, the Applicant must establish the decision contains flaws that

are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention.

[12] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 ("Canadian Pacific Railway Company") at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35)). The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company* at para 54).

III. Legislative Overview

[13] The following sections of the Immigration and Refugee Protection Act, SC 2001, c 27 **[IRPA]** are relevant:

Application for judicial review	**Demande d'autorisation**
72 (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is, subject to section 86.1, commenced by making an application for leave to the Court.	72 (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est, sous réserve de l'article 86.1, subordonné au dépôt d'une demande d'autorisation.
Application	**Application**
(2) The following provisions govern an application under subsection (1):	(2) Les dispositions suivantes s'appliquent à la demande d'autorisation :

(a) the application may not be made until any right of appeal that may be provided by this Act is exhausted;

(b) subject to paragraph 169(f), notice of the application shall be served on the other party and the application shall be filed in the Registry of the Federal Court ("the Court") within 15 days, in the case of a matter arising in Canada, or within 60 days, in the case of a matter arising outside Canada, after the day on which the applicant is notified of or otherwise becomes aware of the matter;

(c) a judge of the Court may, for special reasons, allow an extended time for filing and serving the application or notice;

(d) a judge of the Court shall dispose of the application without delay and in a summary way and, unless a judge of the Court directs otherwise, without personal appearance; and

(e) no appeal lies from the decision of the Court with respect to the application or with respect to an interlocutory judgment.

a) elle ne peut être présentée tant que les voies d'appel ne sont pas épuisées;

b) elle doit être signifiée à l'autre partie puis déposée au greffe de la Cour fédérale — la Cour — dans les quinze ou soixante jours, selon que la mesure attaquée a été rendue au Canada ou non, suivant, sous réserve de l'alinéa 169f), la date où le demandeur en est avisé ou en a eu connaissance;

c) le délai peut toutefois être prorogé, pour motifs valables, par un juge de la Cour;

d) il est statué sur la demande à bref délai et selon la procédure sommaire et, sauf autorisation d'un juge de la Cour, sans comparution en personne;

e) le jugement sur la demande et toute décision interlocutoire ne sont pas susceptibles d'appel.

[14] The following sections of the Immigration and Refugee Protection Regulations, SOR/2002-227 **[IRPR]** are also relevant**:**

Study permits

216 (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national

(a) applied for it in accordance with this Part;

(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

Permis d'études

216 (1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

a) l'étranger a demandé un permis d'études conformément à la présente partie;

b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

(c) meets the requirements of this Part;

(d) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and

(e) has been accepted to undertake a program of study at a designated learning institution.

[…]

Acceptance letter

219 (1) A study permit shall not be issued to a foreign national unless they have written documentation from the designated learning institution where they intend to study that states that they have been accepted to study there.

[…]

Financial resources

220 An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to

(a) pay the tuition fees for the course or program of studies that they intend to pursue;

(b) maintain themself and any family members who are accompanying them during their proposed period of study; and

(c) pay the costs of transporting themself and the family members referred to in paragraph (b) to and from Canada.

Conditions — study permit holder

220.1 (1) The holder of a study permit in Canada is subject to the following conditions:

c) il remplit les exigences prévues à la présente partie;

d) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et F(3);

e) il a été admis à un programme d'études par un établissement d'enseignement désigné.

[…]

Acceptation par l'établissement

219 (1) Le permis d'études ne peut être délivré à l'étranger que si celui-ci produit une attestation écrite de son acceptation émanant de l'établissement d'enseignement désigné où il a l'intention d'étudier.

[…]

Ressources financières

220 À l'exception des personnes visées aux sous-alinéas 215(1)d) ou e), l'agent ne délivre pas de permis d'études à l'étranger à moins que celui-ci ne dispose, sans qu'il lui soit nécessaire d'exercer un emploi au Canada, de ressources financières suffisantes pour :

a) acquitter les frais de scolarité des cours qu'il a l'intention de suivre;

b) subvenir à ses propres besoins et à ceux des membres de sa famille qui l'accompagnent durant ses études;

c) acquitter les frais de transport pour lui-même et les membres de sa famille visés à l'alinéa b) pour venir au Canada et en repartir.

Conditions — titulaire du permis d'études

220.1 (1) Le titulaire d'un permis d'études au Canada est assujetti aux conditions suivantes :

(a) they shall enroll at a designated learning institution and remain enrolled at a designated learning institution until they complete their studies; and	a) il est inscrit dans un établissement d'enseignement désigné et demeure inscrit dans un tel établissement jusqu'à ce qu'il termine ses études;
(b) they shall actively pursue their course or program of study.	b) il suit activement un cours ou son programme d'études.

IV. Analysis

A. *Was the Officer's decision unreasonable?*

[15] On a study permit application, the Applicant must establish that they meet the requirements of the Immigration and Refugee Protection Act [IRPA] and the Regulations. Visa Officers have a wide discretion in their assessment of the application and the Court ought to provide considerable deference to an Officer's decision given the level of expertise they bring to these matters. The onus is on the Applicant who seeks temporary entry to Canada to establish and satisfy a visa Officer that they will leave Canada at the end of the authorized period of stay requested.

[16] In addition, 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.

V. Family Ties

[17] Visa officers "must assess the strength of the ties that bind or pull the Applicant to their home country against the incentives, economic and otherwise, that might induce the foreign national to overstay": *Hashemi v Canada (MCI)*, 2022 FC 1562 [*Hashemi*] at para 19; *Rivaz v Canada (MCI)*, 2023 FC 198 [*Rivaz*] at para 21-22; *Ali v Canada (MCI)*, 2023 FC 608 [*Ali*] at paras 9-11; *Zeinali* at para 20; *Hassanpour* at para 19; *Nesarzadeh* at paras 16-18; *Hassani* at para 20; *Chhetri* at para 14. I agree that traveling to Canada with one's spouse and child could dilute one's ties to the home country. However, the Officer should offer some analysis as to how taking advantage of visa programs designed to allow students to have their family members accompany them would contribute to the likelihood of an eventual illegal overstay. There is nothing on the record to suggest that the Applicant has been anything but a law-abiding individual and that this would reasonably change because her family would accompany her.

[18] The mere existence of family ties to Canada is not a sufficient reason in and of itself to deny a study permit application. A family member's presence in Canada may be a negative factor or, where the family member is willing to provide the Applicant with financial support, a positive one: *Rivaz* at para 21; *Mouivand* at para 13. In this particular case, it was the intent of the Applicant's spouse to work in Canada. I am not making a finding as to whether this is a positive evidence of financial support, or a potentially negative "pull" factor. It was the Officer's job to engage in this analysis, however they have not done so here.

[19] In addition, there was contrary evidence on the family ties that the Officer did not analyse, being the family members in Iran, including parents and siblings for both the Applicant

and her spouse. By not engaging with the contrary evidence in any way, the Officer made an arbitrary decision (*Seyedsalehi v Canada (Citizenship and Immigration*), 2022 FC 1250).

[20] In their arguments, Counsel for the Respondent relied on *Moosavi v Canada (Citizenship and Immigration)*, 2023 FC 1037 to argue that since the Applicant lived with her spouse and child, and not the parents and/or siblings, the Officer was entitled to conclude the Applicant had weak family ties to Iran. There was evidence before the Officer that the Applicant has a close relationship to the rest of their family. This Court cannot substitute counsel's speculation on ties to rest of the family members for what might or might not have been in the Officer's mind. In *Moosavi*, it was the decision-maker who had engaged with the evidence on the parents and siblings, and it is not clear whether there was evidence of a close relationship. In any event, *Moosavi* is distinguished from this case as a significant determinative issue was the Applicant's lack of funds in that case, contrary to s. 216(1) of the IRPR.

[21] Moreover, the requirement to leave Canada at the end of a visa is a legal requirement based on the balance of the evidence and not a speculation about an individual's intent. It ensures that people will respect the terms of their visa and follow the legal process. Without any evidence of non-compliance or poor intentions and no analysis on the part of the Officer, one cannot assume that individuals have the intent to break the law by overstaying illegally. This is particularly critical when the Applicant had filed evidence demonstration otherwise, but the Officer does not engage with that evidence. This evidence included the rest of the family in Iran, irremovable assets and professional ties for both the Applicant and her spouse.

[22] I am further guided by this Court in *Kazemi v Canada (Minister of Citizenship and Immigration)*, 2023 FC 615 that it is incumbent on Officers to weigh the evidence of family

connections to their home countries, along with the other evidence, in deciding whether the Applicant had established that he would return to Iran at the end of his temporary permits. Without that weighing, the Officer's conclusions are not intelligible, transparent, or justified — they are simply unreasonable.

VI. Study Plan

[23] The Officer also questioned the Applicant's purpose to study in Canada. The Officer recognized the Applicant's impressive background in science degrees, but questioned whether the Master's program in Public Health would significantly contribute to her career progression, as in the Officer's opinion, she already had extensive experience in the same field. The Officer's analysis is limited to the following: "Considering applicant's previous education and work experience in the same field, I am not satisfied that applicant would not have already achieved the benefits of this program."

[24] This is a situation where there is clear contradictory evidence on the file with which the Officer did not engage. Not only did the Applicant provide evidence of financial means to support her studies in Canada, she had disclosed a letter from her employer that stated the Applicant's studies at U of S are not only in line with their expansion plan but that "her studies are of mandatories [sigh] for our projected expansion plan and have our full support". The lack of analysis and engagement with potentially contrary evidence renders the decision arbitrary.

[25] I disagree with the Respondent's arguments that these comments were too general to merit any engagement.

[26] Additional contradictory evidence with which the Officer did not engage was her motivation letter in her study plan which explained her reasons to study at the University of Saskatchewan in this specific field:

> In addition to mentioned facts, the University of Saskatchewan (U of S) is one of the most senior and distinguished universities both in Canada and the world. The university also works closely with VIDO-InterVac (a world leader in developing vaccines and technologies against infectious diseases) and an integrated Health Sciences Complex; that being said, the U of S has an outstanding reputation in my field of interest. They are also a member of Canadian U15 research-intensive universities, offering unique opportunities for researchers to work on leading research areas. Not to mention that the Department of Public Health of U of S has highly reputed professors and faculty members, both nationally and internationally. Therefore, I have found the university a place that can boost my future professional life in human health and public immunity. However, other factors have been influential in my decision, very low tuition compared to others, an English-speaking environment, and convenient living conditions for international students.

[27] The Applicant had clearly conducted research on the university and the program to which she was applying. She explained how it would meet her academic interest and professional advancement. It is not for the Court to weight this evidence. That was the role of the Officer, but it is an example of evidence on the record that does not support the Officer's conclusion and which did not form part of their analysis or chain of reasoning. The lack of engagement with material evidence renders the decision unreasonable.

[28] I disagree with the Respondent's characterization that the Applicant did not describe how the new degree and promotion as a Disease Detective would help her career advancement. In fact, the Applicant had described the benefits of the her new position and how the Canadian degree would help her achieve it in great detail:

> On the other hand, after almost seven years of experience as a research assistant at RVSRI and conducting more than 15 research projects related to vaccination and infectious disease, I realized that having independence in designing experiments based on the community's needs and analyzing data is of mandatories. Therefore, I aim to be well trained in analytical and supervision skills.
>
> I believe that studying at the University of Saskatchewan, with its well-designed program and outstanding faculty members, will equip me with a wide range of intellectual skills and qualifications required to pursue my goals, become a disease detective, and boost my future professional life in my country and contribute more to my country, Iran.
>
> I researched universities offering these programs, reviewed their catalogs, and talked to their students and professors, in addition to my previous professors, about the courses offered in each program. I understood that the offered courses by the Iranian universities are developed to train students in a specific field. For instance, Biostatistics and Epidemiology are considered two different majors for master's, Environmental Health Sciences is a sub-branch of health science, and Safety and Environment Management and Health Services Administration are not offered for graduate level. Iranian universities are indeed well-developed to train students in a specific area of a discipline, especially for undergraduate studies. In addition, similar programs are not adequately developed to train talented students in an interdisciplinary field at a graduate level, specifically in an area requested by the professional job market.
>
> At the U of S, however, the Master of Public Health is designed to be an interdisciplinary program focusing on the main mentioned cores: Biostatistics, Epidemiology, Environmental Health Sciences, Health Services Administration, and Social and Behavioral Sciences.

[29] As stated before, what makes the decision arbitrary is the Officer's lack of any engagement with contrary material evidence to their conclusion. I acknowledge that a decision-maker is generally not required to make an explicit finding on each piece of evidence when reaching its final decision. Nevertheless, it is also clear that contradictory material evidence should not be overlooked (*Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080). When there is no analysis, I cannot assume that the evidence was not overlooked.

[30] Turning to the other Applicants, as I read the Decision, the Officer's conclusions in relation to their applications for a work permit and visitor visa flow from the conclusions in relation to the Principal Applicant. Therefore, based on my finding that the Decision is unreasonable in relation to the Principal Applicant, it is also unreasonable in relation to the other Applicants.

VII. Conclusion

[31] The Officer's decision is unreasonable, as it does not exhibit the requisite degree of justification, intelligibility, and transparency. The application for judicial review is granted and the decision set aside.

[32] Since I have set aside the Officer's decision because it is unreasonable, it is not necessary to address the procedural fairness issues raised.

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

JUDGMENT IN IMM-9030-22

THIS COURT'S JUDGMENT is that

1. The Judicial Review is granted. The matter is remitted for redetermination by a different Officer.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Samin MORTAZAVI	FOR THE APPLICANTS
Coco WIENS-PARIS	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Pax Law Corporation Vancouver, BC	FOR THE APPLICANTS
Department of Justice Canada Vancouver, BC	FOR THE RESPONDENT