Federal Court Cour fédérale

Date: 20231120

Docket: IMM-941-23

Citation: 2023 FC 1535

Ottawa, Ontario, November 20, 2023

PRESENT: Madam Justice Azmudeh

BETWEEN:

BEHNAZ PIRHADI
JAVAD MOHAMMADHOSSEINI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Behnaz Prihadi **[the "Applicant"]** and her spouse Javad Mohammadhosseini **[the "Spouse"] [together, the "Applicants"],** are seeking a Judicial Review under section 72(1) of the Immigration and Refugee Protection Act **[IRPA]** concerning the rejection of her Study Permit application for Canada and her Spouse's Work Permit. The Judicial Review is granted for the following reasons.

[2] The Applicant is 31 years old, married and has no children. She is a citizen of Iran and has applied for a Study Permit to study in Canada. Her Spouse applied for a Work Permit to accompany her to Canada during her studies.

[3] The Applicant previously earned a Bachelor's Degree in Civil Engineering in 2013 and has worked part-time as a building surveyor and drafter since 2015 at Naati Translation Services **[the "Employer"]**.

[4] The Applicant intends to further her education in Canada by pursuing a Post-Degree Diploma in Business Administration at Langara College in Vancouver, British Columbia. She has already made a substantial tuition deposit and has secured a Leave of Absence from her Employer to pursue her studies.

[5] Upon completing the program, the Applicant anticipates a promotion to Executive Director at her workplace. Her employer provided a letter to that effect.

[6] The Officer refused the application on multiple grounds concluding that the Applicant had not demonstrated that she would leave Canada after her authorized stay. The reasons cited in the letter was lack of significant family ties outside Canada, and in their notes, the Officer had also raised doubt about the Applicant's study plan because of its questionable benefits to the Applicant's career progression or the Employer's business. 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 for re-determination. After re-opening the application, PA was given 30 days to provide updated documentation. PA provided updated LOA and funds. I have reviewed all the documentation provided for this application. Summary of key findings below: The applicant is a 30 year old Iranian national, married and no dependents. As for purpose of visit, PA is applying for a Post-Degree College Diploma in Business Administration. Previous university studies: Civil Engineer - BA, completed in 2013. Currently a home maker, since 2012 and employed part-time as a Building Surveyor / Drafter since 2015, according to IMM 1294. Rep submission reviewed and considered. It provided a generalized explanation and did not provide details on how the proposed studies would benefit PA's career path or why Canadian studies, at a high tuition, were necessary and beneficial. Employment letter reviewed. Temporary contract ended on 16/09/2022. Rep states: mentions that "the CEO wishes to bring her on as full time and request that she has the position of Technical Manager". Rep also states that "it is their intention to continue their studies to get a Canadian Post Graduate University degree". Employer did not explain how or why applicant obtaining schooling in Canada will assist their business, despite losing applicant as an employee for a minimum of a 4 year period. I am not satisfied that sufficient explanation has been given to demonstrate how the sought educational program would be of benefit or how chosen course will improve job prospects back home. I note that PA is married, spouse accompanying, with no dependents, and according to the submitted documentation, PA's financial assets are linked to their parents. The applicant states a strong connection to their family, the living circumstances demonstrating weak economic ties to their COR. On balance, after review all information including PA’s previous educational history, relevance of the proposed course of study and taking into account factors such as personal establishment, the applicant has failed to satisfy me that they are a bona fide temporary resident who will leave Canada following the completion of their studies. Application refused

[7] The decision, which was dated December 29, 2022, involved the refusal of the Applicant's application for a Study Permit under section 216(1) of the Immigration and Refugee Protection Regulations [IRPR]. Additionally, the refusal directly impacted her Spouse, the accompanying applicant, who applied for an open work permit.

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: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 **[*Vavilov*]**, at paras 12-13 and 15; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21**[*Mason*]**, 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;

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

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) 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 (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) pay the costs of transporting themself and the family members referred to in paragraph (b) to and from Canada.	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 — study permit holder	Conditions — titulaire du permis d'études
220.1 (1) The holder of a study permit in Canada is subject to the following conditions:	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

[15] Was the Officer's decision reasonable?

[16] On a study permit application, the Applicant must establish that they meet the requirements of the IRPA and the IRPR. 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.

[17] 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 v Canada (Citizenship and*

Immigration), 2021 FC 552 at para 13; *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 **[*Yuzer*]** 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 **[*Hashemi*]** at para 35; *Vavilov* at paras 86, 93–98.

V. Family Ties

[18] 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* at para 19; *Rivaz v Canada (MCI)*, 2023 FC 198 **[*Rivaz*]** at para 21-22; *Ali v Canada (MCI)*, 2023 FC 608 at paras 9-11; *Zeinali v Canada (Citizenship and Immigration)*, 2022 FC 1539 at para 20; *Hassanpour v Canada (Citizenship and Immigration)*, 2022 FC 1738 at para 19; *Nesarzadeh v Canada (Citizenship and Immigration)*, 2023 FC 568 at paras 16-18*; Hassani v Canada (Citizenship and Immigration)*, 2023 FC 734 at para 20; *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at para 14. I agree that traveling to Canada with one's spouse could dilute one's ties to the home country. However, the Officer should still offer some analysis as to how taking advantage of visa programs designed to allow students to have their immediate family members with 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 could reasonably change because her Spouse would accompany her.

[19] 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 v Canada (Citizenship and Immigration)*, 2023 FC 573 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.

[20] In addition, there were contrary evidence on the family ties that the Officer did not analyse, including the location of the remaining family members in Iran. These included parents and a total of 12 siblings between 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).

[21] In their arguments, Counsel for the Respondent relied on several cases, including *Moosavi v Canada (Citizenship and Immigration)*, 2023 FC 1037 **[*Moosavi*]** to argue that the Officer was entitled to conclude that travelling to Canada with her Spouse would weaken the Applicant's family ties to Iran. There was evidence before the Officer that the Applicant and her Spouse came from large families, and that everyone else lived in Iran. This Court cannot speculate as to how the remaining family members in Iran would affect the eventual decision to not leave Canada. For example, in *Moosavi*, it was the decision-maker who had engaged with the

evidence on the parents and siblings. If family ties were deemed a determinative issue for the Officer; the Officer should have engaged with contradictory evidence in their analysis.

[22] 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 would 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 automatically assume that individuals have the intent to break the law by overstaying illegally. This is particularly critical when the Applicant had filed evidence to the contrary with which the Officer chose not to engage. These included the rest of the family in Iran, irremovable assets and professional ties for both the Applicant and her Spouse.

[23] 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

[24] The Officer also questioned the Applicant's purpose to study in Canada. The Officer was of the opinion that the program in which the Applicant is planning to study (i.e., Business Administration) is not a logical continuation of the Applicant's career path as she was already a

civil engineer and she did not demonstrate how the proposed studies would benefit her career. The Officer also noted that the Applicant would have to endure a high tuition for this program, even though the Applicant had provided ample evidence of financial resources.

[25] The Applicant had submitted contradictory evidence that the Officer should have turned their mind to. These included a letter from the CEO of the Applicant's Employer on how they anticipated her to be promoted as her Employer's "Executive Director" at the completion of her study program in Canada. The supporting letter from the CEO also stated how they hoped the Applicant's completion of the program in Canada would help improve the company's scientific level, expand their relations and activities internationally and offer the Applicant an up-to-date knowledge of the business sector.

[26] Just referring to the Employer letter casually while making wrong factual findings is not sufficient evidence of a logical chain of reasoning. The program of studies was for 2 years and the CEO had stated how it would help the Applicant and the company. Yet, the Officer concluded that: "[the] Employer did not explain how or why applicant obtaining schooling in Canada will assist their business, despite losing applicant as an employee for a minimum of a 4 year period." Both parties agreed that the reference to 4 years of absence from work is factually wrong. I do not agree with counsel for the Respondent that it was an insignificant mistake.

[27] In any event, the Officer concluded that they could not see "how the sought educational program would be of benefit or how chosen course will improve job prospects back home." This is when there was evidence of potential promotion to the position of Executive Director before

the Officer – the credibility of which the Officer did not question. The Officer had also made a finding that the Applicant's current position as a civil engineer "was part-time as a building surveyor/drafter". If the Officer saw the leap from a part-time building/surveyor/drafter to the Executive Director of little benefit and not amounting to improved "job prospects back home", the Officer must provide a clear chain of reasoning. Without that clear chain of reasoning, the Officer's conclusion defies logic and is arbitrary.

[28] I disagree with the Respondent's arguments that because the Officer saw the comments as too general, they did not have to engage further. There were specific facts before the Officer on the Applicant's job prospect in Iran on the completion of her studies in Canada.

[29] What makes the decision arbitrary is the Officer's lack of logical 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. As stated, referring to certain facts, without engaging with how it allowed them to reach a conclusion, is not particularly helpful in establishing a chain of reasoning.

[30] Turning to the Spouse, 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-941-23

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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