

Federal Court



Cour fédérale

Date: 20231121

Docket: IMM-243-23

Citation: 2023 FC 1541

Ottawa, Ontario, November 21 , 2023

PRESENT: Madam Justice Azmudeh

BETWEEN:

AHMAD RAHMANIAN KOOSHKAKI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Decision

[1] The Applicant, Ahmad Rahmanian Kooshkaki [the “Applicant”], is seeking a Judicial Review under section 72(1) of the Immigration and Refugee Protection Act [IRPA] concerning the rejection of their Study Permit application for Canada. The Judicial Review is granted for the following reasons.

II. Overview

[2] The Applicant is a 37-year-old Iranian citizen who is married, has no children, and has significant family ties outside Canada but none within Canada. In fact, the plan is for him to come to Canada to study without his wife.

[3] The Applicant applied for a Global Business Management Certificate program at Humber College [the “Program”], for which he prepaid tuition fees. He has been employed as a Finance and Budget Specialist and Investment Manager since 2014 at Omran Pasargad Miaad Company [the “Employer”] and has been offered a higher position as Chief Investment Officer upon the completion of the Program and his return to Iran.

[4] The Officer refused the application on multiple grounds concluding that the Applicant had not demonstrated he would leave Canada after their authorized stay. The reasons cited were the lack of significant family ties outside Canada, insufficiency and source of funds and what the officer thought was not a logical progression in the Applicant’s career.

III. Issues and Standard of Review

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

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

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

[6] 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.

[7] 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.

[8] 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.

[9] 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).

IV. Analysis

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

[10] On a study permit application, the Applicant must establish that they meet the requirements of the IRPA and the Immigration and Refugee Protection Regulations [IRPR] to be issued a study permit. 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.

[11] I find that the Officer's engagement with the Applicant's family ties has rendered the entire decision unreasonable. This was one of the central and determinative findings. In fact, even though the Global Case Management System ["GCMS"] notes refer to multiple issues, which I understand are part of the Officer's reasons, the Officer saw it necessary to refer to family ties as the only reason for the refusal in their letter. Given the centrality of the family ties to Officer's reason to refuse the application, and for reasons that follow why it is unreasonable, it is not necessary for me to deal with the Officer's finding on other issues referred to in the GCMS notes. Not making a finding on the other points is not to be interpreted that I have found them to be necessarily reasonable.

[12] The Applicant had explained that all of his family, including his spouse, were staying behind in Iran, and that no one from the family would accompany him to Canada. Without providing an analysis, the Officer decided that the Applicant did not have sufficient family ties outside of Canada. If there were any concerns about the credibility of the Applicant's submissions on this point, the Officer should have raised them with the Applicant and offered him an opportunity to be heard further on that issue.

[13] The Officer concluded in his decision that the Applicant did not demonstrate "significant family ties outside Canada" and specified, in his notes, that even if the Applicant's spouse is not travelling with him, there were concerns that the Applicant's family ties to Iran were not sufficiently great to motivate him to depart from Canada after his degree. I believe this conclusion to be unreasonable.

[14] The Applicant clearly showed that his entire family was in Iran, including his wife, parents and three siblings. He also specified that his wife's career was in Iran as well as his – along with a promotion waiting on his return – were in Iran. The wife's decision not to accompany him was consistent with this. Furthermore, the Applicant had made submission on his aging parents who rely mainly on him to support them. The Officer did not engage with any of this and did not offer any analysis.

[15] In his notes, the Officer only made mention of the Applicant's wife, without consideration for the Applicant's parents and siblings still in Iran. He did not engage with any analysis about how the whereabouts of any of the family members affects the Applicant's potential decision not to leave Canada at the end of the period authorized by a study permit.

[16] I do not agree with the Respondent's submission that the Applicant remaining open to the option of his wife coming to Canada after the winter semester would mean that he would not leave Canada after the conclusion of his studies. The Respondent's counsel or the Court cannot speculate on the Officer's conclusion when they did not offer an analysis on how her eventual visit would influence the Applicant's decision not to leave Canada after the period authorized by his study permit. What makes the decision unreasonable is the absence of engaging in an analysis with any of these issues.

[17] Nor did the Officer engage with the multitude of other family members remaining in Iran, even if the wife might visit him. Concisely, the Officer failed to weigh the Applicants' family ties in Iran, and the absence of family ties in Canada. He reached a conclusion not supported by the evidence before him and without providing a rational. The decision has become arbitrary due to the absence of analysis.

[18] I am 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.

[19] In assessing the reasonableness of the decision, I have recognized 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 at para 35; *Vavilov* at paras 86, 93–98. In this case, the conclusion is not supported by the evidence before the Officer and they have not provided an explanation about a thought process that allowed them to reach the conclusion.

[20] Since I have found the decision to be unreasonable on the lack of analysis with family ties, I need not engage with the other issues.

V. Conclusion

[21] 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.

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

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

JUDGMENT IN IMM-243-23

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

DOCKET: IMM-243-23

STYLE OF CAUSE: AHMAD RAHMANIAN KOOSHKAKI v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 6, 2023

**REASONS FOR JUDGMENT
AND JUDGMENT:** AZMUDEH J.

DATED: NOVEMBER 21, 2023

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