

Federal Court



Cour fédérale

Date: 20231124

Docket: IMM-10149-22

Citation: 2023 FC 1563

Ottawa, Ontario, November 24, 2023

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

ALI SEFIDGAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ali Sefidgar, is an Iranian citizen who applied for a study permit, having been accepted at the University Canada West in the Master's of Business Administration [MBA] program. The Applicant previously obtained a Bachelor's degree in Business Management in Iran. The study permit was refused. The Applicant now seeks judicial review of the refusal.

[2] The presumptive standard of review is reasonableness. There are no circumstances present that would rebut this presumption, notwithstanding the Applicant's assertions to the contrary: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 17, 25.

[3] A reasonable decision is one that exhibits the hallmarks of justification, transparency and intelligibility, and is justified in the context of the applicable factual and legal constraints: *Vavilov*, above at para 99.

[4] For the reasons below, I am satisfied that the Applicant has met his onus of establishing that the study permit refusal is unreasonable: *Vavilov*, above at para 100.

II. Analysis

[5] The August 11, 2022 decision letter [Decision] provides three reasons for refusing the Applicant's study permit application. The visa officer [Officer] was not satisfied that: (i) the Applicant would leave Canada at the end of his stay; (ii) the Applicant does not have significant ties outside Canada; and (iii) the purpose of the Applicant's visit is not consistent with the temporary stay. See Annex "A" below for relevant legislative provisions.

[6] While the Officer's reasons provided in the Global Case Management System [GCMS] notes support the above conclusions, in my view they are unreasonable for several reasons.

[7] Starting with the second conclusion, the Applicant's evidence does not disclose any ties outside the Applicant's home country, let alone in Canada. The Applicant is newly married, and together the couple own their own home in Iran. The Applicant's spouse remains in Iran along with other family members, including the couple's minor child and the Applicant's father. The Applicant's spouse and father have sponsored the Applicant's proposed studies in Canada.

[8] The Officer acknowledges that the Applicant is married and that his spouse will not be accompanying him. The Officer also acknowledges the Applicant's statement regarding his close family ties in his home country, but concludes that the Applicant is not sufficiently established. In my view, there simply is no basis in the evidence for such a conclusion without further explanation on the part of the Officer, given both the Applicant's family ties and employment history.

[9] I further find that the Officer's reasoning is not indicative of a holistic review or weighing of all the evidence, rather than simply considering the negative factors described in the GCMS notes.

[10] As another example, the Officer points to a general statement in the Applicant's study plan to the effect that, because of "the high reputation of North American universities in the world and Iran, [he] can have very effective cooperation with [his] company in managing its sales department and developing its market in neighboring countries... and to improve the company's level in Deciding [*sic*] to help with sales and negotiation." The Officer's reasons note that the Applicant "did not provide supporting details or explanation on how the proposed studies

would help them achieve that.” In my view, this statement is contradicted by sections in the Applicant’s study plan about why he chose to study at the University Canada West and how the MBA courses will help with his employment.

[11] Regarding the job reference from the Applicant’s employer, the Officer states that it “only mentions an approved leave for 2.5 years” [emphasis added]. The letter itself contradicts this statement. I find that the Officer unreasonably considers only what the letter does not state, in the Officer’s view (i.e. “[e]mployer did not explain why an international degree is required and there’s no mention on [*sic*] the necessary skills to perform the new position”), rather than what the letter does state.

[12] This Court has recognized that it is common knowledge that pursuing a Master’s degree in the same field as a previous Bachelor’s degree, following related work experience, is a logical career progression: *Ahadi v Canada (Citizenship and Immigration)*, 2023 FC 25 at para 15. This is the case here, and the Officer did not intelligibly explain why the Applicant’s MBA would not advance the Applicant’s career. In addition, this Court consistently has cautioned against an officer arbitrarily and subjectively determining the value of education to an applicant because there are many valid reasons to study in Canada despite the associated costs: *Najmi v Canada (Citizenship and Immigration)*, 2023 FC 132 at para 25.

[13] Further, the Officer expressed dissatisfaction with the Applicant’s ties to Iran as being sufficiently great to motivate departure from Canada. When viewed in the context of the record, this leaves the Court wondering what more the Applicant could have provided. The Officer has

not explained how the Applicant's employment, marital and parental status, as well as financial and other aspects of his lifelong connection to Iran are problematic. In this respect, the Decision is not transparent, and hence, unreasonable in the Court's view: *Ogbuchi v Canada (Citizenship and Immigration)*, 2016 FC 764 at para 12; *Shohratifar v Canada (Citizenship and Immigration)*, 2023 FC 218 at para 14, citing *Jafari v Canada (Citizenship and Immigration)*, 2023 FC 183 at paras 18-20.

[14] Although the Officer is presumed to have considered all the evidence, it is not evident from the reasons, as mentioned above, whether the Officer weighed the Applicant's evidence holistically, including the positive factors: *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 [*Aghaalikhani*] at para 24. This is especially relevant when the reasons focus on negative factors.

[15] In other words, the reasons do not disclose, and the Court is left wondering, how the Officer weighed the positive factors against the negative factors. The Court thus finds the reasons insufficiently transparent; while the Officer states that all factors have been weighed, the reasons fail to reflect other significant factors described in the evidence, such as those mentioned above. The Officer's silence on the positive factors leads the Court to infer that the evidence was overlooked or misapprehended: *Hassani v Canada (Citizenship and Immigration)*, 2023 FC 734 at para 33; *Vavilov*, above at para 126.

[16] The Decision's flaws, as discussed above, are more than superficial, peripheral, or minor missteps. Rather, they are central to the Applicant's study permit application: *Vavilov* above at

para 100. Despite the deference owed to the Officer, the Decision cannot withstand a somewhat probing examination: *Aghaalikhani*, above at para 17; *Vavilov*, above at para 138.

III. Conclusion

[17] For the reasons above, I find that the Decision refusing the Applicant's application for a study permit is unreasonable. I therefore grant this judicial review application. The Decision is quashed, with the matter remitted to a different decision maker for reconsideration.

[18] The parties have not proposed any question for certification, and I find that none arises in the circumstances.

JUDGMENT in IMM-10149-22

THIS COURT'S JUDGMENT is that:

1. The Applicant's judicial review application is granted.
2. The August 11, 2022 decision of the visa officer refusing the Applicant's application for a study permit is set aside.
3. The matter will be remitted to a different decision maker for reconsideration.
4. There is no question for certification.

"Janet M. Fuhrer"

Judge

Annex “A”: Relevant Provisions

Immigration and Refugee Protection Regulations, SOR/2002-227
Règlement sur l’immigration et la protection des réfugiés, (DORS/2002-227)

<p>Issuance of Study Permits</p> <p>Study permits</p> <p>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</p> <ul style="list-style-type: none"> (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; (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. 	<p>Délivrance du permis d’études</p> <p>Permis d’études</p> <p>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 :</p> <ul style="list-style-type: none"> 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) 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.
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FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10149-22

STYLE OF CAUSE: ALI SEFIDGAR v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: AUGUST 17, 2023

JUDGMENT AND REASONS: FUHRER J.

DATED: NOVEMBER 24, 2023

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