

Federal Court



Cour fédérale

Date: 20231201

Docket: IMM-1058-23

Citation: 2023 FC 1613

Ottawa, Ontario, December 1, 2023

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

SAHAND AGHVAMIAMOLI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision by a visa officer [Officer], dated January 3, 2023, refusing the Applicant's application for a study permit under section 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[2] The Applicant, Sahand Aghvamiamoli [Applicant], is a 22-year-old Iranian citizen, who is single and has no children. He has a high school diploma and applied for a student permit in Canada to pursue a Bachelor's degree in Biology at York University. He only has one family member, a brother, who resides in Iran.

[3] The Officer refused the application on the basis that the Applicant did not satisfy them that he would leave Canada at the end of his authorized stay, citing his lack of financial support, of family ties outside Canada and the purpose of the Applicant's visit.

[4] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, the Applicant has not discharged his burden to demonstrate that the Officer's decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

II. Facts

[5] The Applicant holds a high school diploma in Experimental Science from Iran. He aims to pursue a Bachelor of Biology at York University and received a letter of acceptance.

[6] The Applicant has only one relative, his brother, who lives in Iran.

[7] The Officer refused the Applicant's study permit on the grounds that they were not satisfied that the Applicant's assets and financial situation were sufficient to support the purpose

of travel, that the Applicant has no significant family ties outside Canada and that the purpose of the visit to Canada is not consistent with a temporary stay.

[8] In the Global Case Management System notes, the Officer stated:

I have reviewed the application. I have considered the following factors in my decision.

The applicant's study plan refers to general advantageous comments regarding the value of international education in Canada and makes sweeping statements on how the education will improve the applicant's situation in Iran. The applicant does not demonstrate how the proposed studies in Canada would benefit their academic and professional development in Iran.

I am not satisfied with the applicant's stated family ties as sufficiently strong (or documented) to warrant a return to Iran.

I note that the applicant is single, mobile and has no dependents. I also note that both parents are deceased.

The documentation provided in support of the applicant's financial situation does not demonstrate that the funds would be sufficient or available. Banking transaction history shows pre-existing low balances and lump-sum deposits. Little evidence on file to demonstrate the history of funds accumulation. The presence of the lump-sum deposit does not satisfy me that the applicant will have access to the funds provided in support of the application. In the absence of satisfactory documentation showing the source of these funds, I am not satisfied the applicant has sufficient funds for the intended studies 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.

III. Relevant Legislation

[9] An applicant must establish that they meet the requirements of the IRPA and the IRPR to obtain a study permit. Section 216(1) of the IRPR states that an applicant must establish that they will leave at the end of their authorized stay.

[10] Section 220(b) of the IRPR holds that an Officer shall not issue a study permit to a foreign national unless the Officer assesses that they have sufficient and available financial resources to “maintain themselves [...] during their proposed period of study [...].”

[11] An applicant also bears the onus of providing an officer with all relevant documentation to support their case and to satisfy the officer that they will not remain in Canada once their visa has expired (*Hassanpour v Canada (Citizenship and Immigration)*, 2022 FC 1738 at para 9; *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 10 [*Penez*]).

[12] The IRPR provide that:

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.

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.

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 themselves and any family members who are accompanying them during their proposed period of study; and

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 themselves 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.

IV. Issues and Standard of Review

[13] Having considered the parties' memoranda and oral arguments, the evidence and the applicable case law, this matter raises two main issues:

- 1) Whether the Officer breached the Applicant's right to procedural fairness.
- 2) Whether the decision of the Officer was reasonable.

[14] The standard of review applicable to the merits of the Officer's decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 25; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [Mason] at paras 7, 39-44). A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Mason* at para 8); and that is justified, transparent and intelligible (*Vavilov* at para 99; *Mason* at para 59). Reasonableness review is not a "rubber-stamping" exercise; it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125-126; *Mason* at para 73). The onus of demonstrating that a decision is unreasonable lies with the Applicant (*Vavilov* at para 100).

[15] On the procedural fairness issue, the standard of review applicable on that issue is subject to a “reviewing exercise... ‘best reflected in the correctness standard’ even though, strictly speaking, no standard of review is being applied” (*Abouddal v Canada (Citizenship and Immigration)*, 2023 FC 689 at para 32 citing *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [CPRC] at para 54). As recently stated in *Caron v Canada (Attorney General)*, 2022 FCA 196 at paragraph 5 : “[w]hen engaging in a procedural fairness analysis, [the] Court must assess the procedures and safeguards required, and, if they have not been met, the Court must intervene” (see also *Mission Institution v Khela*, 2014 SCC 24 at para 79). The role of the reviewing court on procedural fairness issues is simply to determine whether the procedure that was followed was fair, having regard to the particular circumstances of the case: “The ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond” (As reiterated in *CPRC* at paras 56).

V. Analysis

A. *The Officer did not breach the Applicant’s right to procedural fairness*

[16] The Applicant asserts that his right to procedural fairness was breached because the Officer failed to put their concerns to him and inquire for additional justification (relying on *Nsiegbe v Canada (Citizenship and Immigration)*, 2018 FC 1262 at para 13).

[17] The Applicant takes issue with the Officer’s findings on his financial support, where the Officer held that his banking transaction history shows pre-existing low balances and lump-sum deposits, without a satisfactory explanation and documentation showing the source of the funds.

[18] I disagree with the Applicant. There was no breach of procedural fairness in this case.

[19] An applicant always has the onus to “put their best foot forward” and provide all necessary information in support of their application. There is no obligation on an officer to provide an opportunity for explanation, or to seek additional information, if an applicant has not met their burden to prove that they will leave Canada at the end of their authorized stay (*Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at paras 9-10; *Hakimi v Canada (Citizenship and Immigration)*, 2015 FC 657 at paras 19, 21-24; *Idowu v Canada (Citizenship and Immigration)*, 2022 FC 46 at para 21; *Penez* at para 37; *Hashem v Canada (Citizenship and Immigration)*, 2020 FC 41 at para 31; *Khaleel v Canada (Citizenship and Immigration)*, 2022 FC 1385 at para 18; *Bidassa v Canada (Citizenship and Immigration)*, 2022 FC 242 at paras 11, 22 [*Bidassa*])

[20] An officer is not normally obliged to notify an applicant of the weaknesses in their application, by way of a fairness letter or an interview, when the concerns relate to the applicant’s own evidence in an attempt to meet statutory requirements. The officer is entitled to draw an adverse conclusion on the evidence filed without bringing the potential adverse conclusion to the applicant’s attention for a rebuttal (*Gomes v Canada (Citizenship and Immigration)*, 2020 FC 451 at paras 20-21; *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 33).

[21] In this particular case, raising a concern on the nature of lump-sum deposits is not a credibility assessment. In those cases, procedural fairness requires the officer to provide the

applicant with an opportunity to address their concerns about the credibility or accuracy of the evidence (*Taeb v Canada (Citizenship and Immigration)*, 2023 FC 576 at para 5). Rather, in this case, the issue is about the sufficiency of the evidence. Procedural fairness does not require an officer to allow an applicant an opportunity to address their concerns in those circumstances, or to address any gaps in the evidence. The onus was on the Applicant to anticipate these adverse concerns and provide adequate evidence (*Bidassa* at para 11).

B. *The Officer's decision was reasonable*

[22] Under section 216 of the IRPR, an officer must issue a study permit to a foreign national that demonstrates meeting certain criteria, including that they will leave Canada by the end of the period authorized for their stay. The Applicant has the onus of proving each element.

[23] In the context of a visa officer's decision, reasons will normally be brief because of the important volume of requests being made (*Hajiyeva v Canada (Citizenship and Immigration)*, 2020 FC 71 at para 6; *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at para 15 [*Ocran*]; *Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552 at para 13). The decision in such context must be read in light of the record that was before the decision maker, including the evidence and the arguments of the parties.

[24] In its decision dated January 3, 2023, the Officer refused the Applicant's study permit application because of their doubts that the Applicant will leave Canada after the end of his course of study, as required under subsection 216(1)(b) of the IRPR.

[25] The Officer justified their decision with the following reasons:

- Your assets and financial situation are insufficient to support the stated purpose of travel for yourself (and any accompanying family member(s), if applicable);
- You do not have significant family ties outside Canada;
- The purpose of your visit to Canada is not consistent with a temporary stay given the details you have provided in your application.

[26] The Applicant submits that the Officer's reasons are flawed, unreasonable and based on factually incorrect inferences. The Applicant argues that the Officer made bald statements and based his decision on unfounded generalizations to reverse-engineer a refusal. In the circumstances, the Applicant asserts that the decision is unintelligible, is not justified in relation to the relevant factual and legal constraints, and that he cannot understand the reasons for the refusal.

[27] In my view, the Officer's reasons to refuse the Applicant's study permit are sufficiently intelligible, transparent and justified, and consequently the decision is reasonable (*Vavilov* at paras 15, 98). Read as a whole and in context, the reasons explain why the Officer's considerations, taken together, justified their decision that the Applicant has not satisfied the Officer that he would leave Canada at the end of the period authorized for his stay.

[28] In the case of the Applicant's financial support, the Officer reviewed the evidence. It is important at this point to note that as a person applying from Iran, the visa office instructions for study permits require an applicant to include with their study permit application "[c]opies of bank statements or bank book covering the past 6 months" and that "[i]f person or organization

outside Canada is funding your studies: detailed explanation letter and proof of financial capacity of that person or organization (employment letter, bank statements, proof of real estate property, etc.)” (Immigration Canada, *Study Permit Ankara Visa Office Instructions*, IMM 5816 E (Ottawa: Immigration Canada, May 2016)). The Applicant did not provide 6 months of bank statements. Moreover, the Applicant stated that he was financially supported by his brother and grandfather (Certified Tribunal Record at p 21). But again, the Applicant did not provide any evidence of financial capacity from them.

[29] This Court has also held that when assessing a study permit application, an officer must not only look at an applicant’s bank account, but also conduct a more detailed and fulsome analysis about the source, origin, nature, and stability of these funds to determine if the applicant is able to defray the cost of their stay in Canada for the duration of their studies (*Sayyar v Canada (Citizenship and Immigration)*, 2023 FC 494 at para 12 [Sayyar]; *Kita v Canada (Citizenship and Immigration)*, 2020 FC 1084 at paras 10, 20; *Bidassa* at paras 21-22). In that sense, while I agree that it may be sufficient to demonstrate the ability to fund only the first year of study (*Cervjakova v Canada (Citizenship and Immigration)*, 2018 FC 1052 at para 14), it is also not unreasonable to refuse a study permit on that basis and require additional evidence that the applicant may be able to rely on sufficient funds to defray the costs of their stay for a longer period (*Ibekwe v Canada (Citizenship and Immigration)* 2022 FC 728 at para 29; *Sayyar* at para 12).

[30] Considering the study plan and its costs, and with the banking information submitted, the Officer was not satisfied that the Applicant had sufficient financial support for his stay in

Canada. That conclusion is bolstered by the fact that the Applicant is 22 years old, did not mention having occupied a particular fruitful occupation before seeking admission in Canada, his parents are deceased and he has one brother in Iran. Yet, his banking information demonstrates low balances, with large lump-sum deposits, without any explanation.

[31] The Officer therefore concluded that the Applicant had not demonstrated sufficient available financial resources for the purpose of his visit. That conclusion is reasonable on the basis of the evidence presented, and is on its own sufficient to refuse the Applicant's study permit (*Ocran* at para 48).

[32] On the issue of the Applicant's family ties outside Canada, I agree with the Applicant that one may choose to study in Canada even if they have no significant ties outside Canada, including parents, a spouse or dependants, yet really have the intention to return to their home country. In their reasons, the Officer explained that the lack of significant family ties in Iran was mainly due to the fact that the Applicant's parents were deceased, and that he was single with no dependents. The record demonstrates that he only has one brother still living in Iran, but the Officer did not mention that fact. However, the Officer is presumed to have considered the entire record and does not need to refer to each argument or evidence in their reasons (*Zamor v Canada (Citizenship and Immigration)*, 2021 FC 479 at paras 20-22).

[33] The lack of significant ties, on its own, is not sufficient to deny entry to Canada for a student permit (*Gilavan v Canada (Citizenship and Immigration)*, 2022 FC 1698 at para 23; *Seyedsalehi v Canada (Citizenship and Immigration)*, 2022 FC 1250 at para 11 [*Seyedsalehi*]). I

disagree, however, that the Officer relied on stereotypes. The Officer's decision must be analysed holistically and in context. In this case, the lack of significant ties in Iran, along with other weaknesses in the Applicant's application (such as insufficient financial support), together influenced the Officer's decision. The Officer was entitled to weigh the Applicant's personal situation in their decision-making process and the Applicant's request for a study permit was not refused solely for a lack of family ties outside Canada.

[34] On the issue of the Applicant's study plan, I acknowledge that the Officer's decision in relation to that assessment may be problematic. The Applicant explained wishing to come to Canada and study Biology, on his way to pursue a medical degree. The Officer simply stated that "The applicant's study plan refers to general advantageous comments regarding the value of international education in Canada and makes sweeping statements on how the education will improve the Applicant's situation in Iran. The applicant does not demonstrate how the proposed studies in Canada would benefit their academic and professional development in Iran".

[35] In my view, such a generic comment does not explain "what more" the Officer may have been looking for in terms of guidance if the Applicant wished to reapply in the future. Moreover, as held numerous times by the Court, it is not the role of the Officer to engage in "career counselling", to determine whether an additional degree is useful to the Applicant or not, without basing its decision on the evidence presented to them (*Seyedsalehi* at paras 14-16; *Adom v Canada (Minister of Citizenship and Immigration)* 2019 FC 26, at paras 16, 19; *Al Aridi v Canada (Citizenship and Immigration)*, 2019 FC 381 at para 27; *Vahdati v Canada (Citizenship and Immigration)*, 2022 FC 1083 at paras 13-16). The Applicant's case is not one where the

applicant is seeking a diploma in an undergraduate program when the applicant already holds a master's degree in the same general field, or where there are inconsistencies between the study plan and the proposed diploma's utility given the applicant's existing academic and professional background (*Charara v Canada (Citizenship and Immigration)*, 2016 FC 1176 at paras 37-38).

[36] Nevertheless, even if the Officer's decision is unreasonable in relation to their conclusions on the significance of the Applicant's ties to Iran, or on his study plan, on which I do not need to conclude, the Officer's decision is reasonable in relation to the lack of financial support. That consideration, on its own, is sufficient to justify the Officer's decision to refuse the Applicant's application for a study permit.

VI. Conclusion

[37] In my view, the Officer's decision is intelligible, transparent and justified (*Vavilov* at paras 15, 98). The Officer properly considered all of the evidence that was before it, and found that the Applicant did not discharge his burden to demonstrate that he would leave Canada at the end of the period authorized for his stay. The application for judicial review is dismissed.

[38] The parties do not propose a question for certification and I agree that none arises in the circumstances.

JUDGMENT in IMM-1058-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Guy Régimbald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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