

Federal Court



Cour fédérale

Date: 20231219

Docket: IMM-2518-23

Citation: 2023 FC 1725

Vancouver, British Columbia, December 19, 2023

PRESENT: Madam Justice Pallotta

BETWEEN:

MASOUD ZEINALI MOGHANJOUGHHI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Mr. Masoud Zeinali Moghanjoughi, seeks judicial review of a visa officer's January 11, 2023 decision that refused his study permit application.

[2] Mr. Moghanjoughi is a citizen of Iran. He has worked for an information and communication technology company since 2014, and is now a co-owner of the company and chair of its board of directors. Mr. Moghanjoughi also has a technology business that he founded in 2017.

[3] Mr. Moghanjoughi has a Bachelor's degree in electrical engineering. He applied for a study permit because he was admitted to a Master of Science program at Northeastern University, Toronto Campus.

[4] The officer refused the application because Mr. Moghanjoughi had not established he would leave Canada at the end of his studies. According to the refusal letter, Mr. Moghanjoughi's assets and financial situation were insufficient to support the stated purpose of travel, and the purpose of Mr. Moghanjoughi's visit to Canada was not consistent with a temporary stay, given the details he provided in the application.

[5] The officer's notes recorded in the Global Case Management System (GCMS) provide the following reasons:

I have reviewed the application. I have considered the following factors in my decision. Mr. Moghanjoughi'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 Mr. Moghanjoughi's situation in Iran. Applicant does not provide supporting details or explanation on how the program of study would benefit their career in Iran. I note that applicant owns/operates businesses in Iran, however, no explanation is provided on how Mr. Moghanjoughi's businesses will operate in their absence. Further, Mr. Moghanjoughi does not demonstrate how a 2 year leave of absence will be beneficial for their businesses. Additionally, Mr. Moghanjoughi demonstrates (through their submitted documentation) that they possess an acceptable combination of education, training and experience in their respective field. This negates the necessity for the international education towards their career advancement in Iran and leads to concerns that their motivation for pursuing education in Canada is to seek entry for reasons other than temporary. Taking Mr. Moghanjoughi's plan of studies into account, the documentation provided in support of Mr. Moghanjoughi's financial situation does not demonstrate that the funds would be sufficient or available. The banking transaction

history shows pre-existing low balances, lump-sum deposits and fluctuating transactions with total deductions often equaling/exceeding the total deposits. Little evidence on file to demonstrate the history of funds accumulation. The presence of the lump-sum deposit does not satisfy me that Mr. Moghanjoughi 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 Mr. Moghanjoughi has sufficient funds for the intended studies in Canada. Evidence of available funds associated with assets such as a vehicle, rental properties, or potential income, have not been included in the calculation of available funds. Weighing the factors in this application, I am not satisfied that Mr. Moghanjoughi will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

[6] Mr. Moghanjoughi submits the officer's decision is unreasonable. He argues the officer's concerns are not justified or are contradicted by the evidence, and the decision lacks a logical chain of analysis.

[7] With respect to the sufficiency and availability of funds, Mr. Moghanjoughi submits the officer's reasons lack intelligibility. He states he provided a personal bank statement, as well as bank statements with the transaction history for his businesses. Mr. Moghanjoughi submits the officer did not justify the finding that available funds were insufficient for the intended studies, and the basis for the officer's concern is not apparent from the reasons: *Opakunbi v Canada (Citizenship and Immigration)*, 2021 FC 943 at para 12; *Taeb v Canada (Citizenship and Immigration)*, 2023 FC 576 at paras 6-7. He states the jurisprudence has established it is unreasonable to refuse an application because the source of funds is allegedly unexplained or undocumented when the applicant provided evidence to the contrary, relying on *Nsiegbe v Canada (Citizenship and Immigration)*, 2018 FC 1262 at paragraph 13.

[8] With respect to whether his purpose is consistent with a temporary stay, Mr. Moghanjoughi submits the officer failed to meaningfully grapple with central arguments and provide a logical chain of analysis based on the facts in the record: *Fallahi v Canada (Citizenship and Immigration)*, 2022 FC 506 at paras 13-14. Mr. Moghanjoughi states his study plan explained how the program would advance his career and professional goals, which the officer did not address. The officer's statement that Mr. Moghanjoughi has an acceptable combination of education, training, and experience in the field was a foray into career counselling: *Adom v Canada (Citizenship and Immigration)*, 2019 FC 26 at para 17 [*Adom*]; *Rajasekharan v Canada (Citizenship and Immigration)*, 2023 FC 68 at para 21 [*Rajasekharan*]. Mr. Moghanjoughi states the officer also failed to consider a service contract with the Persian Kandooye Danesh Institute (Kandooye). Kandooye agreed to pay up to US\$40,000 toward Mr. Moghanjoughi's tuition and US\$24,000 toward living expenses in exchange for teaching specialized courses in Information Technology (IT) when he returns.

[9] In addition to the service contract and his businesses, Mr. Moghanjoughi contends he provided evidence of immovable assets and strong family ties in Iran. His parents are in Iran, and he has a spouse and child who will not accompany him. Mr. Moghanjoughi argues the officer was not alive to the details in his application, and the failure to address evidence pointing to an intention to return suggests this evidence was overlooked: *Rajasekharan* at paras 23, 25. He contends the determination about whether he would depart Canada was not based on deficiencies in the evidence; rather, it was a veiled credibility finding. Consequently, the officer breached procedural fairness by failing to provide an opportunity to address the credibility concern: *Al Aridi v Canada (Citizenship and Immigration)*, 2019 FC 381 at paras 20, 29;

Hakimi v Canada (Citizenship and Immigration), 2015 FC 657 at paras 23-24; *Hernandez Bonilla v Canada (Minister of Citizenship and Immigration)*, 2007 FC 20 at para 27.

[10] The respondent submits the officer's findings about Mr. Moghanjoughi's finances are reasonable. The application indicates that Mr. Moghanjoughi alone will be paying for his studies, expenses, and travel and he has \$46,000 at his disposal—the amount in his personal bank account. Tuition alone will be \$23,000. Statements that Mr. Moghanjoughi has the required finances to study in Canada because his tuition and expenses will be paid for (at least in part) by Kandooye should be “approached with caution”. The only funds that Kandooye agreed to pay before Mr. Moghanjoughi finishes his studies and returns to Iran, about US\$6,400, appear to be included in the \$46,000. Mr. Moghanjoughi must demonstrate sufficient funds to pay for studies, living expenses, and travel, and the amounts and origins of the available funds are relevant to whether he will leave Canada after his studies: *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at para 40 [*Ocran*]; *Maiga v Canada (Minister of Citizenship and Immigration)*, 2006 FC 252 at para 7.

[11] The respondent submits Mr. Moghanjoughi's study plan is a crucial element to prove the purpose of travel, and Mr. Moghanjoughi's study plan lacks detail. Much of it consists of boilerplate statements and bald assertions about the Canadian program and how Iranian universities are inadequate, or how the program will assist Mr. Moghanjoughi. The study plan states Mr. Moghanjoughi will become a problem solver able to “fulfil his responsibilities under the newly negotiated projects due to his enhanced technical skills” without adequate description of projects or the specific way in which the program will assist him. It is not enough to provide

general assertions of how the proposed program would benefit an applicant: *Hussain v Canada (Citizenship and Immigration)*, 2012 FC 900 at para 24; *Azimi v Canada (Citizenship and Immigration)*, 2023 FC 1292 at para 24.

[12] The respondent states the record does not support Mr. Moghanjoughi's assertion that the officer missed evidence. A decision maker is presumed to have considered all evidence unless the contrary is shown, and is not required to refer to every piece of evidence: *Canada (Public Safety and Emergency Preparedness) v Edom*, 2021 FC 1220 at para 30; *Burai v Canada (Citizenship and Immigration)*, 2020 FC 966 at para 38; *Wei v Canada (Citizenship and Immigration)*, 2023 FC 1125 at para 26. The officer did not engage in "career counselling"; rather, the decision is clear that the supporting documents were insufficient to demonstrate viable finances or a sufficiently detailed study plan. There is no indication that the officer made a credibility finding; rather, the application was refused due to a lack of evidence. Mr. Moghanjoughi simply failed to meet his burden to prove he would leave at the end of his studies: *Lv v Canada (Citizenship and Immigration)*, 2018 FC 935 at para 40.

[13] The parties agree on the applicable standards of review. The merits of the officer's decision are reviewed on the reasonableness standard. This is a deferential but robust form of review that considers whether the decision, including the reasoning process and the outcome, is transparent, intelligible, and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 13, 99 [Vavilov]. Allegations of procedural unfairness are reviewed on a standard that is akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54.

[14] I am not persuaded the officer breached procedural fairness. I agree with the respondent that there is no indication the officer's stated concerns about the sufficiency of the evidence were, in fact, veiled credibility findings.

[15] For the reasons below, Mr. Moghanjoughi has established that the officer's decision is unreasonable. While I am not persuaded of a reviewable error in the officer's finding about available funds, I am satisfied the officer unreasonably assessed the purpose of study, and this warrants setting aside the officer's decision.

[16] With respect to the available funds, the officer reasonably found that the documentation provided in support of Mr. Moghanjoughi's financial situation "does not demonstrate that the funds would be sufficient or available". Mr. Moghanjoughi states he met the requirements for sufficient and available financial resources to study in Canada as an international student according to section 220 of the *Immigration and Refugee Protection Regulations*, SOR/2002/227 [IRPR], and according to Immigration, Refugees and Citizenship Canada (IRCC) policy that requires students to demonstrate financial sufficiency for the first year of studies only, and provides a base amount of \$10,000 per year plus tuition to help officers assess financial sufficiency. However, in my view the officer did not refuse the application on the basis that Mr. Moghanjoughi failed to meet the requirements of section 220 of the IRPR, which would have provided a standalone basis to refuse a study permit. Rather, the officer considered Mr. Moghanjoughi's financial situation as one aspect of whether he met his burden to establish he would leave Canada at the end of his authorized stay. The cost of international travel and study and the amounts and origins of the available funds are relevant to whether an applicant will

leave Canada after their studies: *Kita v Canada (Citizenship and Immigration)*, 2020 FC 1084 at para 20; *Ocran* at para 40.

[17] The application indicates that Mr. Moghanjoughi alone will be paying for his studies, expenses, and travel and he has \$46,000 at his disposal—the amount in his personal bank account. It also indicates his two businesses are his primary source of income. While the officer's notes do not clearly distinguish between business banking statements and personal banking statements, the officer's assessment of the banking transaction history was accurate. The business statements show low balances, fluctuating transactions, and total withdrawals often equalling or exceeding the total deposits. Mr. Moghanjoughi's personal bank statement shows a \$46,000 balance without transaction history. The respondent notes that tuition is \$23,000, and states living expenses in Toronto are high. Mr. Moghanjoughi counters that the respondent's statement about living expenses is not supported by evidence in the record. While this may be so, it was Mr. Moghanjoughi's burden to satisfy the officer he would leave Canada at the end of his stay, and his application did not provide evidence of his anticipated expenses in Canada.

[18] I agree with the respondent that the officer is entitled to weigh the evidence, and the findings that led the officer to conclude they were not satisfied Mr. Moghanjoughi would depart Canada are entitled to deference. However, silence on contradictory evidence of an applicant's intent to return to their country of origin can suggest that the officer did not consider the evidence: *Rajasekharan* at paras 25-31. In this case, the officer was silent on the evidence Mr. Moghanjoughi submitted to show his ties to Iran.

[19] Mr. Moghanjoughi's application states he must return to Iran because of his wife, son, and parents. The officer's reasons do not mention family ties. While the officer considered whether there was evidence of income associated with Mr. Moghanjoughi's assets, the reasons do not mention the evidence of immovable assets submitted to show ties to Iran. Also, the officer's reasons do not mention the service contract with Kandooye. The respondent cautions that only 10% of the funds Kandooye committed to provide would be paid before Mr. Moghanjoughi finishes his studies and returns to Iran, but it seems to me this argument misses the point. In order for Mr. Moghanjoughi to be reimbursed for the expenses of his international studies, he must return to Iran, and fulfill his commitment to teach.

[20] Concerning the study plan, the officer states that it provides general advantageous comments regarding the value of international education, makes sweeping statements on how the education will improve Mr. Moghanjoughi's situation in Iran, and does not provide supporting details or explain how the program of study would benefit his career in Iran. The officer also finds that Mr. Moghanjoughi already has an acceptable combination of education, training, and experience in his field "to negate the necessity for the international education for career advancement". Mr. Moghanjoughi argues that the evidence does not support these findings, given the service contract with Kandooye and the study plan that explicitly detailed the program's utility.

[21] While I disagree that the study plan "explicitly" detailed the program's utility, in my view the study plan provided a level of detail that required more than a generalized finding that it "does not provide supporting details or explanation on how the program of study would benefit

his career in Iran”. For example, the study plan describes the growing fields of cybersecurity and IT, and states the program’s courses will help Mr. Moghanjoughi fulfill his responsibilities under newly negotiated projects. The study plan also describes the contract with Kandooye, and the institute’s commitment to reimburse the cost of international study in exchange for Mr. Moghanjoughi teaching specialized courses in IT.

[22] The application states Mr. Moghanjoughi has more than ten years of experience in the IT field, works for a leading information and communication technology company, founded an IT consulting firm, and teaches cyber security, cloud computing, and virtualization at Kandooye, which is described as a specialist IT training centre. While Mr. Moghanjoughi clearly has education, training, and experience in his field, it is not clear why the officer found this “negated” the necessity for international education. At the very least, the officer did not explain why the international program is unnecessary in light of the Kandooye service contract. In the context of this record, the officer’s comments seem to be a foray into career counselling advice: *Adom* at paras 16-17; *Rajasekharan* at paras 21-22.

[23] A reasonable decision is one that is justified in light of the facts: *Vavilov* at para 126. The decision maker must take the evidentiary record and the general factual matrix that bears on the decision into account and the decision must be reasonable in light of them: *Ibid*. When considered in light of the information in Mr. Moghanjoughi’s study permit application, it appears that the officer did not account for relevant information and evidence.

[24] In conclusion, Mr. Moghanjoughi has established that the officer's decision is unreasonable. Accordingly, this application for judicial review is allowed, and the matter will be remitted for redetermination.

[25] Neither party proposed a serious question of general importance for certification. In my view, such a question does not arise in this case.

JUDGMENT in IMM-2518-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed.
2. The officer's decision is set aside and the matter shall be redetermined by a different officer.
3. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2518-23

STYLE OF CAUSE: MASOUD ZEINALI MOGHANJOUGHJI v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 12, 2023

JUDGMENT AND REASONS: PALLOTTA J.

DATED: DECEMBER 19, 2023

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