

Federal Court



Cour fédérale

Date: 20240311

Docket: IMM-2803-23

Citation: 2024 FC 409

Ottawa, Ontario, March 11, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

SINA ESLAMI

Applicant

and

**MINISTER OF IMMIGRATION
AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Sina Eslami [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 dismissed for the following reasons.

[2] The Applicant is a 21-year-old Iranian citizen who applied for a study permit to attend a two-year program in Computer Studies at Langara College in Vancouver, BC, Canada. He paid

the \$6,000 tuition deposit in the process. The visa officer (the "Officer") who reviewed the application refused it mainly on the ground that the assets and financial situation of the Applicant were insufficient to support his stated purpose of travel. The Officer also cited additional reasons including on his ties. The Officer's analysis of the Applicant's application is set out in the GCMS notes as follows:

I have reviewed the application. I have considered the following factors in my decision. I note multiple property deeds and titles are provided, however, no banking transaction history to show regular intervals of deposits into the applicant's accounts from said properties. Bank balance statements provided; large balances noted, no transaction history. I have concerns that the property documents are for demonstration purposes only and are not reflective of the applicants legitimate financial resources. Taking this into account, alongside the applicant's plan of studies into account and banking records provided, I find the applicant's financial situation does not demonstrate that funds would be sufficient or available for tuition, living expenses and travel. I am not satisfied that the proposed studies would be a reasonable expense. The applicant does not have significant family ties outside Canada. I am not satisfied that the applicant would leave Canada at the end of their stay as a temporary resident, I note that: The client is single, mobile, and has no dependents. 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.

II. Issues and Standard of Review

[3] This Application for judicial review raises two main issues:

- A. Was the Officer's decision unreasonable?
- B. Was there a breach of procedural fairness?

[4] 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, at paras 12-13 and 15 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras 8 and 63 [*Mason*].

[5] 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 and 23.

[6] 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 and 61; *Mason*, at paras 8, 59-61 and 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.

[7] 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 paras 21-28 (*Canadian Pacific Railway Company* at para 54).

III. Legislative Overview

[8] 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;
- (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

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) 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

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 themselves and any family members who are accompanying them during their proposed period of study; and
- (c) pay the costs of transporting themselves and the family members referred to in paragraph (b) to and from Canada.

Conditions — study permit holder

220.1 (1) The holder of a study permit in Canada is subject to the following conditions:

- (a) they shall enroll at a designated learning institution and remain enrolled at a designated learning institution until they complete their studies; and
- (b) they shall actively pursue their course or program of study.

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) 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 — titulaire du permis d'études

220.1 (1) Le titulaire d'un permis d'études au Canada est assujéti aux conditions suivantes :

- 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) il suit activement un cours ou son programme d'études.

IV. Analysis

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

[9] 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.

[10] 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 and 91; *Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552 at para 13; *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at paras 9 and 16 [*Yuzer*]; *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 and 20; *Hashemi v Canada (Citizenship and Immigration)*, 2022 FC 1562 at para 35 [*Hashemi*]; *Vavilov* at paras 86 and 93–98.

(1) Funds

[11] According to section 220(b) of the IRPR, an immigration officer cannot issue a study permit unless the applicant has sufficient and available financial resources to maintain themselves, and any accompanying family members, during the proposed period of study. An

applicant's financial resources are also relevant to the question of whether an applicant will depart Canada at the end of their authorized stay under section 216 of the IRPR.

[12] Section 216(1) of the IRPR sets out the requirements that a foreign national must meet before an officer will issue a study permit. One of the requirements is that it is established that the foreign national will leave Canada by the end of the period authorized for their stay. When the requirements are not met, the officer will not issue a study permit. The burden is on an applicant to satisfy the officer that they meet all the legislative requirements for a study permit.

[13] In this particular case, as an Iranian citizen, the Applicant's application was being processed in the Ankara Visa Office. In the checklist for the Ankara Visa Office, applicants are reminded to include copies of bank statements or bank book covering the past 6 months. The Applicant was represented by counsel in the course of his study permit application and the said checklist, dated May 2016, is publically available on the internet. Therefore, it was reasonable for the Officer to expect to see bank statements or bank books covering a period of 6 months prior to the date of application. Since the Application was submitted in January 2023, it was reasonable for the Officer to expect bank statements dating back to at least July 2023. The Applicant had not provided this information with his study permit application.

[14] The parties do not dispute the completeness or accuracy of the following relevant financial information before the Officer:

- The Applicant provided a letter from Bank Mellat, dated December 15, 2022, stating that he maintains an account which has a credit balance of IRR

164,026,030, equalling about **\$731CAD** based on the bank's exchange rate. The Applicant provided a statement from September 25, 2022 to December 24, 2022 only. This statement shows that there were credits of \$17,860 CAD and debits of \$17,522 CAD in the previous 91 days.

- The Applicant's father provided a letter from Bank Mellat, dated December 15, 2022. This letter states that the father maintains an account, which has a balance of IRR 241,555,227, equalling about **\$1,077 CAD** based on the bank's exchange rate (CAD/IRR 224,277). Again, the Applicant failed to provide copies of the bank statement covering the past six months, as was required for the Application. He provided a statement from September 25, 2022 to December 24, 2022 only. It states that there were credits of \$112,068 CAD and debits of \$111,076 CAD in the previous 91 days.
- The Applicant's mother provided an account balance certificate. This certificate states that the mother holds four accounts with a total balance of IRR 21,570,276,517. This is equivalent to about **\$96,557 CAD** based on the exchange rate provided by the bank (CAD/IRR 223,161) held. The make up of the four accounts are as follows:
 - A "Current account" that showed a balance of IRR 13,473,015,966 (approximately **\$60,373 CAD**). A copy of a bank statement covering the past six months was not provided for this account.
 - A "Short term deposit", with a balance of IRR 1,097,250,551 (approximately **\$4,916 CAD**) on December 23, 2022.²⁸ This statement is for three months (October 18, 2022 to December 23, 2022);

- A “Long term deposit”, which shows a deposit of IRR 1,000,000,000 (approximately **\$4,481 CAD**) on October 25, 2022. No other transaction history is provided.
 - Another “Long term deposit”, which shows a deposit of IRR 6,000,000,000 (approximately **\$26,886 CAD**), on December 1, 2022. No other transaction history is provided.
- On the Applicant’s Family Information form, the Applicant wrote that his father’s occupation is “businessman” and his mother’s occupation is “housewife”. The Applicant had provided very limited information about his father’s business or income. He provided copies of title deeds and bills of sale as follows but he did not provide information regarding these properties or their income generating revenue:
- Land and building in Noor, Iran, with price of IRR 19,317,219 (approximately \$86 CAD) 31 in December 2020.
 - Land and building of a residential apartment unit in Tehran, Iran, with price of IRR 1,008,306,000 (approximately \$4518 CAD) in December 2022.
 - Bill of Sale for 3-unit building in Tonekabon, Iran, with a price of IRR 150,000,000,000 (approximately \$672,160 CAD) in November 2022.
 - Bill of Sale for a commercial unit in Kraj, Iran, with a price of IRR 98,120,000,000 (approximately \$439,682 CAD) in October 2022.
- Lastly, the Letter of Acceptance does not state the estimated tuition for the first academic year. It only states “minimum \$6000 prepaid”. The Applicant stated that the tuition cost is \$20,000 on his Application for Study Permit (IMM 1294). The Applicant did not provide a receipt to show that a deposit has been paid.

[15] Therefore, the Applicant's assertion that he has \$50,000 CAD/USD in cash is not supported with the financial information provided. The Officer's concern regarding the Applicant's financial resources is reasonable based on the information available to them. Based on the information above, the Officers reasons for refusal were justified, transparent and intelligible. It is not for this Court to weigh the evidence differently.

(2) Family Ties

[16] In this particular case, the Applicant is a 21-year old man who proposes to come to Canada by himself leaving the rest of his family, including parents and a sibling, behind in Iran. The Officer cites being "unmarried and mobile" as factors that reduce his family ties to Iran. There was no evidence of family ties in Canada.

[17] The Applicant argues that the decision was unreasonable because the Officer refused the application on the grounds of "insignificant family ties outside of Canada" when the evidence pointed to everyone in the family being in Iran.

[18] I find that the Officer's analysis on family ties is somewhat flawed, but this does not render the decision as a whole unreasonable. First, the GCMS notes show that the main reason for the refusal was the Applicant's financial situation, and the Officer engaged with it reasonably. Second, even though the Applicant's family members remain in Iran, I agree with the Respondent that the information he provided about his family ties were vague. In his Statement of Purpose, he writes that being "the family's first/last/child/only son has made me closer to my parents". He also states that "by the time I finish my studies, they will both be

aging” and that he needs to provide “emotional and physical help”. This is in the context of a two year diploma program when his parents are only 50 years old.

V. Did the Officer reach their decision in a procedurally fair manner?

[19] The Applicant argues that the decision is procedurally unfair because the Officer failed to provide adequate reasons, failed to allow the Applicant to respond to their concerns and committed an error of facts. More specifically, he argues that the Officer should have given the Applicant an opportunity to respond to their concerns. I disagree. There were no credibility concerns with the evidence. The Officer simply did not find that the Applicant had met his onus. Therefore, I agree with the Respondent that no such obligation was present in this application and its assessment.

[20] The Applicant did not provide the required financial information as per the visa office instructions and provided vague information about his parents’ source of income. He stated his father is a businessman and provided copies of sale of apparent commercial properties. Three of these purchases were shortly before the study permit application. The Applicant did not provide a clear picture of his family’s finances and solely relied on bank balances to support his financial resources. This Court has clearly stated that there is no obligation on the part of a visa officer to apprise an applicant of their concerns that arise directly from the requirements of the application (*Singh v Canada* (MCI), 2022 FC 855 at para 22).

[21] Simply put, the Officer was not satisfied that the Applicant had the financial resources to study in Canada and provided reasons that demonstrate a clear chain of reasoning. The onus was

on the Applicant and the Officer believed he had not discharged it successfully. These concerns are the basis of the refusal, not a veiled credibility assessment (*D'Almeida v Canada (MCI)*, 2019 FC 308 at para 65).

[22] I find that the Officer reached their decision fairly.

VI. Conclusion

[23] The Officer's decision is reasonable and reached in a procedurally fair manner. It does exhibit the requisite degree of justification, intelligibility, and transparency. The application for judicial review is therefore dismissed.

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

JUDGMENT IN IMM-2803-23

THIS COURT'S JUDGMENT is that

1. The Judicial Review is dismissed.

2. There are no questions to be certified.

"Negar Azmudeh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2803-23

STYLE OF CAUSE: SINA ESLAMI v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 6, 2024

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

DATED: MARCH 11, 2024

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