Federal Court Cour fédérale

Date: 20240404

Docket: IMM-2060-23

Citation: 2024 FC 522

Toronto, Ontario, April 4, 2024

PRESENT: Madam Justice Go

BETWEEN:

Parmida Moradi

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Parmida Moradi [Applicant] is 14-year-old Iranian citizen. She applied for a study permit on December 20, 2022 to study at a school in the Toronto District School Board [TDSB].

[2] This is the Applicant's second study permit application. Her first application was refused on April 20, 2022, for which the Applicant sought an application for leave and for judicial review [ALJR] (IMM-4798-22). Justice Fuhrer denied leave on November 4, 2022.

[3] A visa officer [Officer] refused the Applicant's second study permit application as they were not satisfied the Applicant would leave Canada at the end of her authorized stay pursuant to paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR 2002/227 [*IRPR*] [Decision].

[4] The Applicant seeks judicial review of the Decision. For the reasons set out below, I dismiss the application.

II. Issues and Standard of Review

[5] The main issue before this Court is whether the Officer's Decision was reasonable. On reasonableness, the Applicant submits the following:

A. The Officer's finding that the Applicant would not leave Canada at the end of her authorized stay is unreasonable as the Officer's reasons were silent on her intent to return to Iran.
B. The Officer's reasons do not sufficiently account for her study plan.
C. The Officer does not explain why the Applicant's family in Iran is not well established to fund her studies abroad.

[6] The presumptive standard of review for the merits of the Decision is reasonableness, and the circumstances of this case do not warrant a departure from this standard, as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[7] Reasonableness is a deferential, but robust, standard of review: *Vavilov* at paras 12-13. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Vavilov* at para 15. 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. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov* at paras 88-90, 94 and 133-135.

[8] For a decision to be unreasonable, the applicant must establish that 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. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov* at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep:" *Vavilov* at para 100.

III. Analysis

A. *Inconsistencies and inaccuracies in the Applicant's record and written submissions*

[9] Before I examine the reasonableness of the Decision, I want to address certain inconsistencies and inaccuracies in the materials the Applicant filed, through counsel, in terms of the evidence that was filed with the Court and the submissions concerning the previous study permit, as well as the proceedings that followed.

[10] In her written submissions, the Applicant asserts that the study permit subject to this judicial review is the same study permit application that was refused on April 20, 2022. The Applicant submits that when she sought an ALJR for this first refusal (IMM-4798-22), Immigration, Refugees and Citizenship Canada [IRCC] "agreed to remit the matter back to a different visa officer for a redetermination in exchange for [the Applicant's] discontinuance of the [ALJR]."

[11] However, as the Respondent notes, this is not the case.

[12] First, the ALJR for IMM-4798-22 was not discontinued. Rather, Justice Fuhrer denied leave on November 4, 2022.

[13] Second, the application number for the first study permit application is different from the application number for the second study permit application, which further serves to rebut the Applicant's claim that this current matter under review is the same study permit application.

[14] In fact, and on this point, the Respondent submits that the Global Case Management Systems notes indicate that the second study permit application was signed on December 20, 2022. This can also be confirmed by looking at the study permit application itself.

[15] The Applicant appears to retract from that position in her reply. However, she repeats the same erroneous claim in her further memorandum of argument.

[16] I also note that Parichehr Shahrivar, the Applicant's mother, who was the affiant for the Applicant's application for judicial review continues to claim in her Further Affidavit that the IRCC in Court File IMM-4798-22 agreed to remit the matter back to a different visa officer for redetermination.

[17] Both the further memorandum and Ms. Shahrivar's Further Affidavit were filed after the Applicant's reply, and after leave was granted for the judicial review.

[18] At the hearing, I asked counsel to explain the reason for making such an erroneous claim. Counsel acknowledged that it was an error on his part and expressed his wish that this error would not disadvantage his client's application.

[19] I find the explanation by counsel, who represented the Applicant throughout the current proceeding and the IMM-4798-22 ALJR, less than satisfactory. This was not a one-off error made only in the initial memorandum of argument, but an error that was repeated after the Respondent brought this error to counsel's attention.

[20] In a very recent decision, *Diakité v Canada (Immigration, Refugees and Citizenship)*, 2024 FC 170 [*Diakité*], Justice Rochester [then a member of this Court] emphasized counsel's "overriding duty of candour," which includes, among other things, the duty to provide the Court with accurate information. Justice Rochester also emphasized the justice system's reliance on counsel's representation, noting that "[w]here a lawyer misleads the Court, this not only

adversely affects the administration of justice, this also serves to erode the public confidence in the legal profession:" *Diakité* at para 5.

[21] While there is no suggestion that counsel in this case has any intent to mislead the court, I wish to remind counsel of the importance of accuracy in factual assertions for effective legal advocacy: *Anvar v Canada (Citizenship and Immigration)*, 2023 FC 1194 at para 13. Similarly, in *Grover v Canada (Immigration, Refugees and Citizenship)*, 2023 FC 1349 [*Grover*] at para 19, I highlighted how consequential counsel's actions or inactions may be to the applicant, given that there is no distinction between an applicant and their counsel.

[22] In *Grover*, the Applicants were elderly, had limited to no formal education and lacked proficiency in either of the official languages of Canada. Here, we are dealing with a 14-year-old minor who relies on responsible adults, including her parents and counsel, to represent her best interests. My comment in *Grover* that counsel carries a heightened responsibility when representing vulnerable applicants applies with equal force in the present context: *Grover* at para 23.

[23] Finally, I note that Ms. Shahrivar's Further Affidavit contains certain documents that were not before the Officer, and as such will not be admitted as evidence.

B. *The Decision was reasonable*

[24] The relevant provisions for study permit applications are found in the *Immigration and Refugee Protection Act*, SC 2001, c 27, subsection 11(1) and the *IRPR* subsections 216(1) and section 220. These provisions are reproduced under Appendix A.

[25] The Applicant submits the Decision was silent on her intent to return to Canada and argues that in her study plan she provided information about her ties to Iran, including that she has "extensive attachments to everyone in her family in Iran," she would "dearly" miss her family while abroad, she "loves her family very much," and that "returning back home to make them proud" is her motivation to do well in school. The Applicant further submits that she provided evidence of her family ties in her study permit application, such as proof of her parents' employment. The Applicant contends the Officer's silence on her intent implies that the Officer overlooked her evidence of her ties to Iran.

[26] In support of her argument, the Applicant cites *Zibadel v Canada (Citizenship and Immigration)*, 2023 FC 285 [*Zibadel*].

[27] I find this argument lacks merits.

[28] First, the Officer did note the study plan in their Decision, which contains the Applicant's brief submission on family ties. I also agree with the Respondent that the Officer's decision was not unreasonable merely because the Applicant has family ties in Iran and expresses affection

and love for her family in Iran. The Applicant's application materials confirm that she may seek to remain in Canada on a long-term basis and "returning to Iran" at some point is only one possibility.

[29] Specifically, the Respondent points to the following statement from the Applicant's study plan:

> "After completing grade 8 in TDSB, I hope to receive an Ontario Elementary School Certificate. Upon completing grade 8, I will explore the opportunities ahead, such as entering the Secondary school in Canada to have a chance of admission of top-ranked universities in Canada or returning to Iran after receiving the Elementary school certificate."
>
> [Emphasis added]

[30] As the Respondent notes, the Applicant stated in her study plan her wish to remain in Canada for the entirety of her schooling, and only made a side reference to the possibility of returning to Iran at a later date.

[31] I also find *Zibadel* distinguishable, as the main issue in that case was not intent to return or ties to one's country of residence. Rather, Justice Little held the officer's decision was unreasonable on the ground that the applicant's education in Iran was comparable to that in Canada but did not provide further explanation or consider contrary evidence, which included the applicant's study plan explaining the difference between education in the two countries: *Zibadel* at para 41.

[32] While Justice Little did note the officer's failure to mention the applicant's evidence of her ties to Iran and described it as a "factor that contributes to a loss of confidence in the decision:" *Zibadel* at 52, the Applicant's own study plan, in the case before me, establishes that she may not leave Canada at the end of her authorized stay.

[33] Indeed, on this basis alone, the Officer's refusal would be justified as the Applicant has not established she would leave Canada at the end of her stay as required by paragraph 216(1)(b) of the *IRPR*.

[34] For the sake of completion, I will address the remaining two arguments the Applicant raises.

[35] The Applicant submits the Officer discounted her study plan without analysis or support from the evidence. Specifically, the Applicant submits the Officer should have addressed her reasons for wanting to come to Canada and notes she provided proof of tuition payment and explained her reasons for choosing TDSB. The Applicant argues the Officer's findings on her study plan are akin to "career counselling," which the Court disapproves of.

[36] I am unpersuaded by this argument.

[37] First, the cases the Applicant cites do not assist her arguments, as these cases are distinguishable, involving different factual circumstances or different issues upon which the Court found the decision unreasonable: *Soltaninejad v Canada (Citizenship and Immigration)*,

2022 FC 1343; *Torkestani v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 1469; *Najmi v Canada (Citizenship and Immigration)*, 2023 FC 132; and *Aghvamiamoli v Canada (Citizenship and Immigration)*, 2023 FC 1613.

[38] While the Decision was brief, the Officer did note that other than general advantageous comments regarding the international education in Canada, the Applicant provided an insufficient explanation on how the proposed studies would be of benefit "at this stage in the [Applicant's] life." I see no reviewable error arising from this finding in light of the evidence. Further, contrary to the Applicant's submission, nothing in the Decision indicates that the Officer was offering career counselling.

[39] Finally, the Applicant submits the Officer provides no explanation for their finding on her family's ability to invest in her education and fails to point to any evidence in the record to support their conclusion. This evidence includes her mother's financial status certificate, deposit statements, payslips, employment certificate, insurance payment records, proof of title deeds and lease agreements, and the fact her tuition fees were paid.

[40] The Applicant cites *Aghdam v Canada (Citizenship and Immigration)*, 2022 FC 1685 [*Aghdam*] and *Mohammadaghaei v Canada (Citizenship and Immigration)*, 2023 FC 294 [*Mohammadaghaei*].

[41] Unlike *Aghdam*, where the officer refused to issue a study permit only on the ground of the parents' "socio-economic situation" and economic establishment without offering an

explanation: *Aghdam* at paras 10-12, in the case before me, the Officer noted that although the tuition has been paid, the Applicant's family "does not appear to be sufficiently well established that the funds provided will suffice in providing for the long term invest [sic] of education in Canada." In *Mohammadaghaei*, Justice Bell contended that the evidence showed the applicant's parents had sufficient savings to finance her one-year abroad and the applicant had obtained a scholarship: *Mohammadaghaei* at para 22.

[42] Here, the Applicant herself stated her intention to "explore the opportunities ahead" including further secondary and even university education in Canada. Therefore, I do not find it unreasonable for the Officer to question the family's position to support the Applicant's "long term" educational investment.

[43] At the hearing, the Applicant raised a new argument that under section 220 of the *IRPR*, the Officer ought to look at proof of funds for one year, as opposed to the funds covering the entire high school program, citing *Aghdam*.

[44] I reject this argument. The Court in *Aghdam* did not consider section 220. Further, as this Court confirmed in *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at paras 44-45, where the proposed program would last more than one year, it was reasonable for the officer to consider the overall financial commitment to the entirety of the program.

[45] In this case, the Applicant stated that she wishes to explore further secondary and even university education in Canada. In light of the Applicant's own statement, it was not

unreasonable for the Officer to consider sufficiency of funds beyond the one-year study. The Applicant has not established why the Officer's conclusion that the funds were insufficient to meet the Applicant's "long term" investment of education in Canada was unreasonable, rather, she only reiterates the financial evidence she submitted to the Officer.

IV. Conclusion

[46] The application for judicial review is dismissed.

[47] There is no question for certification.

JUDGMENT in IMM-2060-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

APPENDIX A

Immigration and Refugee Protection Act (S.C. 2001, c. 27)
Loi sur l'immigration et la protection des réfugiés (L.C. 2001, ch. 27)

Application before entering Canada	**Visa et documents**
11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	**11 (1)** L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

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

Study permits	**Permis d'études**
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	**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) 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.	**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.
[…]	[…]
Financial resources	**Ressources financières**
220 An officer shall not issue a study permit to a foreign national, other than one	**220** À l'exception des personnes visées aux sous-alinéas 215(1)d) ou e), l'agent ne

described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to	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) pay the tuition fees for the course or program of studies that they intend to pursue;	**a)** acquitter les frais de scolarité des cours qu'il a l'intention de suivre;
(b) maintain themself and any family members who are accompanying them during their proposed period of study; and	**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 themself 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.

FEDERAL COURT

SOLICITORS OF RECORD

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