

Federal Court



Cour fédérale

Date: 20240409

Docket: IMM-13626-22

Citation: 2024 FC 549

Montréal, Québec, April 9, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

BENHAM BABALOU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision by an officer of Immigration, Refugees and Citizenship Canada [Officer], dated November 17, 2022, refusing his work permit application under the International Mobility Program as an intra-company transferee [Decision].

[2] The work permit was refused based on section 200(1)b) of the *Immigration and Refugees Protection Regulations*, SOR/2002-227 [IRPR] and the requirements under section 205(a) of the IRPR (exemption code C12). The Officer was not convinced that the Applicant demonstrated that the company has the ability to support the client's managerial function and that the proposed business plan would be feasible.

[3] The Applicant argues that the Decision was unreasonable, as it misinterprets documents in the application and ignored central facts that contradicted the Officer's conclusions. The Applicant also states that the applicable guidelines do not explicitly describe the requirements that the Officer has considered in the Decision. The Respondent argues that the Applicant's disagreements with the Decision amount to asking the Court to reweigh the evidence.

[4] For the reasons set out below, this application for judicial review is dismissed. Based on the evidentiary record, the applicable case law and the parties' submissions, the Applicant has not demonstrated that the Decision is unreasonable.

II. Background and Decision at Issue

[5] The Applicant is a citizen of Iran. He works for Azargan Kish Company [Azargan Kish], a construction company in Iran. The Applicant has been with Azargan Kish since 2006. He is one of the founders and a board member.

[6] Azargan Kish incorporated a Canadian affiliate, Azargan Canada Inc. [Azargan Canada], registered in Vancouver, British Columbia, with a view to expanding Azargan Kish's business in

Canada. The main anticipated service Azargan Canada will provide is defined as the “fabrication of portable, modular, modern concept architecture, eco-friendly, economic and ready to use buildings utilizing cargo intermodal containers.”

[7] In July 2022, the Applicant applied for a work permit under exemption C12 under 205(a) of the IRPR as an intra-company transfer. The objective was for the Applicant to act as managing director and project manager with Azargan Canada for a period of two years.

[8] The Applicant provided documents in support of his application, including a curriculum vitae that described his previous employment and work experience, a business plan for Azargan Canada, and documentation from Azargan Kish outlining its business experience and financial capabilities.

[9] By letter dated November 17, 2022, the work permit was denied as follows:

I am not satisfied that you will leave Canada at the end of your stay as required by paragraph 200(1)(b) of the IRPR (<https://laws.justice.gc.ca/eng/regulations/SOR-2002-227/section-200.html>). I am refusing your application because you have not established that you will leave Canada, based on the following factors:

You have not demonstrated that the company has the ability to support client’s managerial function, that the proposed business plan would be feasible and so that the application would meet the requirements of the exemption C12 under R205(a).

[10] The Officer’s notes in Global Case Management System [Notes] set out the Officer’s conclusions:

PA seeks WP under C12 (Transferee).

The client's business plan seems unrealistic. The parent company, while offering services in the construction industry, does not provide the service that is planned to be offered in Canada (housing made from container). Not clear why the company branched out in Canada this way. The business plans expect that the gross revenue by the end of the 1st year of operation will be 1,144,000\$. Considering the business does not have any clients yet, there is very limited documents to support those sales. I am not satisfied the applicant is meeting the requirement of a WP under C12. Application refused.

[11] The refusal letter also specified that the Applicant can apply again, and that a new application will be assessed on its own merits.

III. Issues and Standard of Review

[12] The issue in this application for judicial review is whether the Decision is reasonable.

[13] Both parties have submitted that the Officer's Decision is reviewable on the standard of reasonableness (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). I also agree that this is the appropriate standard of review in this case (*Jamali v Canada* 2023 FC 1328 [*Jamali*] at paras 12-15; *Shams v Canada (Citizenship and Immigration)* 2023 FC 1300 at paras 13-14).

[14] The reasonableness standard of review finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers (*Vavilov* at para 13).

[15] A reviewing court applying the reasonableness standard must focus on the decision actually made, including the reasoning process and the outcome. It does not ask what decision it would have made instead, does not attempt to ascertain the “range” of possible conclusions, conduct a *de novo* analysis or seek to determine the “correct” solution to the problem (*Vavilov* at para 83).

[16] The decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker” (*Vavilov* at para 125).

[17] A reasonable decision is one 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. The reasonableness standard requires that a reviewing court defer to such a decision (*Vavilov* at para 85). Reasonableness review is not a “line-by-line treasure hunt for error” (*Vavilov* at para 102).

[18] A reviewing court “must bear in mind that the written reasons given by an administrative body must not be assessed against a standard of perfection. That the reasons given for a decision do “not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred” is not on its own a basis to set the decision aside” (*Vavilov* at para 91). Moreover, “even where elements of the analysis are left out and, in the whole scheme of the things, the decision is not undermined as a whole and must stand” (*Vavilov* at para 122).

[19] The burden of proof lies with the party claiming that the decision is unreasonable. The party must prove to the reviewing court that the decision is so seriously flawed that it cannot be said to meet the requirements of justification, intelligibility and transparency (*Vavilov* at para 100).

IV. Law and Legislation applicable to C12 Intra-Company Transfers

[20] The legislative provisions which apply to the Applicant's case are sections 200 (1)(b) and 205(a) of the IRPR. For ease of reference, the applicable legislation is as follows:

Work permits

200 (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that...

(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9...

Canadian interests

205 A work permit may be issued under section 200 to a foreign national who intends to perform work that

(a) would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents...

[21] The relevant policy and guidelines are titled International Mobility Program: Canadian interests –Significant benefit – Intra-company transferees – General requirements [R205(a)] (exemption code C12), which I also reproduce below:

Intra-company transferees **may apply for work permits under the general provision** if they

- are currently employed by a multinational company and seeking entry to work in a parent, a subsidiary, a branch, or an affiliate of that enterprise;
- are transferring to an enterprise that has a qualifying relationship with the enterprise in which they are currently employed, and will be undertaking employment at a legitimate and continuing establishment of that company (where 18–24 months can be used as a reasonable minimum guideline);
- are being transferred to a position in an executive, senior managerial, or specialized knowledge capacity;
- have been employed continuously (via payroll or by contract directly with the company), by the company that plans to transfer them outside Canada in a similar full-time position (not accumulated part-time) for at least one year in the three-year period immediately preceding the date of initial application. Extensions may be granted up to the five- and seven-year maximums referred to in the section Breaks, recaptured time and duration of work permit limit below and in the section on the categories of work with validity periods which may not be exceeded. Documented time spent outside Canada during the duration of the work permit can be “recaptured” to allow the intra-company transferee five or seven full years of physical presence in Canada...
- are coming to Canada for a temporary period only;
- comply with all immigration requirements for temporary entry.

Guidelines when assessing start-up companies

Requirements for the company

- Generally, the company must secure physical premises to house the Canadian operation, particularly in the case of specialized knowledge. However, in specific cases involving senior managers or executives, it would be acceptable that the address of the new start-up not yet be

secured; for example, the company may use its counsel's address until the executive can purchase or lease a premise.

- The company must furnish realistic plans to staff the new operation.
- The company must have the financial ability to commence business in Canada and compensate employees.
- When transferring executives or managers, the company must
 - demonstrate that it will be large enough to support executive or management function.
- When transferring a specialized knowledge worker, the company must
 - demonstrate that it is expected to be doing business;
 - ensure that work is guided and directed by management at the Canadian operation.

V. Analysis

[22] Both parties pointed to the business plan as being the core of the case.

[23] The Applicant identified the established case law that guidelines are not law and are not binding, but can assist the Court in determining the reasonableness of the decision under review (*Shang v Canada (Minister of Citizenship and Immigration)* 2021 FC 633 at paras 46-47).

However, the Applicant submits that the Officer erred by making negative findings with respect to aspects of the work permit applications that were not requirements outlined in the guidelines.

[24] In this case, the Applicant stated that the guidelines set out requirements such as :
securing physical premises, furnishing realistic plans to staff the new operation, having financial

ability to commence business in Canada and compensating employees, and demonstrating it will be large enough to support executive or management function.

[25] The Applicant submits that the Officer's reliance on a lack of clients or contracts to support the company's business plan is a reviewable error. The guidelines do not specifically require that an applicant provide proof of contracts or clients or that the parent company provide evidence of previous experience in the business objectives the Canadian affiliate intends to pursue.

[26] The Respondent states that the Court should look at the whole context in which the Officer's comments about lack of clients or contracts were made. It was reasonable in light of the statements in the business plan for the Officer to consider whether the company's objectives were realistic or not, and whether it would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents.

[27] The business plan stated that Azargan Canada is "new in the Canadian market" and that "it would take time for the market to become familiar with its products, services and solutions." The company's objectives in the first year of business included introducing the company's capabilities, products, and services, to advertise themselves with various organizations, as well as to establish relationships such as with a transportation company. There are no references to particular organizations, other than a wide range of sectors such as health, educational, hotel, temporary residential and commercial purposes.

[28] The business plan clearly states that much of Azargan Canada's activities in the first year of the business is to introduce itself to clients and suppliers, and establish itself in the Canadian market.

[29] In contrast, Azargan Canada's business plan identified projections of a total minimum number of orders in the first year of 44 containers (with each container priced at \$30,000 CAD), and revenues exceeding 1 million dollars. The business plan outlined statistics related to the construction industry in Canada, and market research, including commitments by the Canadian government for building and infrastructure spending.

[30] The Applicant submits that this data demonstrates the extent of business opportunities associated to the construction industry even without committed clients at the moment. The Applicant is an experienced professional who knew how to target opportunities and his business plan was complete. In addition to demonstrating the Applicant's own personal competence to run a business, the application addressed these requirements and included projections of potential clients, profits and how they would achieve revenues. It is the Applicant's contention that the business plan met the IRPR requirements, and that granting a work permit was justified.

[31] With respect, I disagree with the Applicant, and I also disagree with his characterization of evidence of clients and/or contracts as a hidden requirement.

[32] The Officer's Notes outline Azargan Canada's projected sales in the first year of operation "The business plans expect that the gross revenue by the end of the 1st year of

operation will be \$1,144,00. Considering the business does not have any clients yet, there is very limited documents to support those sales.”

[33] It is evident on reading the Decision that the consideration of clients and contracts was in conjunction with an assessment of the viability of the business plan and not as a stand-alone requirement. It was open for the Officer to consider whether there was sufficient evidence to support the sales projections, including whether there were any clients or contracts to support the proposed business. It was reasonable for them to do so (*Jamali* at para 11).

[34] In the Applicant’s case, the business plan was ambitious but speculative because it lacked any other evidentiary foundation to support its objectives. This was further compounded by the fact that the company would be spending its first year trying to penetrate a new market in an industry where neither the Applicant nor the parent company had any previous experience.

[35] This conclusion does not take away from the Applicant or the parent company’s experience in the construction industry. However, the determination of the viability of the Applicant’s business plan that was proposed is within the Officer’s discretion and to which this Court must grant deference (*Raveshi v Canada (Citizenship and Immigration)* 2024 FC 15 at para 14).

[36] An officer may consider the sufficiency or viability of the proposed business plan when considering whether the proposed business will provide a significant benefit to Canada (*Jamali*

at para 22; *Shidfar v Canada (Citizenship and Immigration)* 2023 FC 1241 at para 10 citing *Wang v Canada (Citizenship and Immigration)* 2021 FC 1002).

[37] Applying *Vavilov*, I find that the Decision is not unreasonable. Rather, it is justified in respect to the factual and legal constraints that bear on the decision-maker. It was open to the Officer to find that the business plan was unrealistic and did not meet the statutory requirements in R 205(a).

VI. Conclusion

[38] The application for judicial review is dismissed.

[39] The parties confirmed there were no questions for certification and none arises.

JUDGMENT in IMM-13626-22

THIS COURT'S JUDGMENT is that:

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

"Phuong T.V. Ngo"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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