Federal Court  Cour fédérale

Date: 20240404

Docket: IMM-8471-22

Citation: 2024 FC 521

Toronto, Ontario, April 4, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

HOURIEHALSADAT TABATABAEI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Houriehalsadat Tabatabaei, is a citizen of Iran who was accepted into the Business - International Business program at Centennial College in Canada. She thus applied for a study permit, which an officer [Officer] of Immigration, Refugees and Citizenship Canada refused [Decision].

[2] The Applicant seeks to have the Decision set aside, asserting that it is unreasonable and procedurally unfair.

[3] A reasonable decision is one that exhibits the hallmarks of justification, transparency and intelligibility, and is justified in the context of the applicable factual and legal constraints: *Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65 [*Vavilov*] at para 99. The party challenging an administrative decision has the burden of showing that it is unreasonable: *Vavilov*, above at para 100.

[4] Questions of procedural fairness attract a correctness-like standard of review: *Benchery v Canada (Citizenship and Immigration)*, 2020 FC 217 at paras 8-9; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Vavilov,* above at para 77. The focus of the reviewing court is whether the process was fair in the circumstances: *Chaudhry v Canada (Citizenship and Immigration)*, 2019 FC 520 at para 24.

[5] As explained below, I am satisfied that the Applicant has met her onus of demonstrating that the Decision is unreasonable regarding the Officer's treatment of her family ties and her study plan. Further, notwithstanding the Respondent's submissions to the contrary, I find that the Officer makes a barely veiled credibility finding that should have been put to the Applicant.

[6] The Decision thus will be set aside and remitted for redetermination by a different officer.

[7] See Annex “A” for relevant legislative provisions.

II. Analysis

[8] Before addressing the merits of this judicial review, I deal first with two preliminary issues: (a) the Applicant’s non-participation in the hearing of this matter; and (b) the Respondent’s proposed amendment of the style of cause.

(a) *No participation by the Applicant in the oral hearing*

[9] As alluded above, the Applicant did not attend the oral hearing. She advised the Court in advance of the hearing that she would not be appearing. She requested instead that the Court rely on her written submissions, which I have done. In the circumstances, the oral hearing was convened via videoconference at which only the Respondent appeared. I have determined this judicial review based on the record before the Court, including both parties’ written submissions, as well as the Respondent’s oral submissions, which in my view largely followed the Respondent’s written submissions. I agree with the Respondent’s oral submission that rule 38 of the *Federal Courts Rules*, SOR/98-106, applies in the circumstances, which allows the Court to proceed in the absence of a party if proper notice of the hearing was given to that party.

(b) *Respondent’s proposed amendment of the style of cause*

[10] In addition, I agree with the Respondent’s request at the oral hearing to amend the style of cause to identify the Respondent as the Minister of Citizenship and Immigration. Notwithstanding the somewhat different current title of the Minister, I find that the requested

amendment accords with subsection 4(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The style of cause thus will be amended accordingly with immediate effect.

(A) *The Decision is Unreasonable*

[11] I find that the Decision is unreasonable in several notable respects.

[12] The Applicant's study permit application was refused because the Officer was not satisfied, pursuant to paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, that the Applicant would leave Canada at the end of her stay. This provision is reproduced in Annex "A" below, along with paragraph 20(1)(b) of the *IRPA*, for legislative context.

[13] In my view, the Officer deals unreasonably with the issue of family ties.

[14] The Officer finds that the Applicant does not have significant ties outside Canada and that the purpose of her visit was not consistent with a temporary stay. According to the Global Case Management System [GCMS] notes, the former reason is based on the fact that the Applicant's "immediate family members" [*sic*] (i.e. her spouse) would be accompanying her to Canada, thus weakening ties to Iran and diminishing her motivation to return.

[15] While it is not unreasonable in itself for the Officer to take into account the accompanying spouse, the Officer's family ties analysis ends there without mentioning any other family members in Iran. The Applicant's evidence includes a Family Information form listing

parents and two sisters in Iran, while the spouse's Family Information form (in connection with his application for a temporary visa and work permit) lists parents and seven siblings.

[16] I find the Officer's failure to balance the evidence of the family members remaining in Iran against the accompanying spouse exhibits a lack of transparency and intelligibility warranting the Court's intervention: *Balepo v Canada (Citizenship and Immigration)*, 2016 FC 268 at para 16; *Vahdati v Canada (Citizenship and Immigration)*, 2022 FC 1083 at para 10; *Jafari v Canada (Citizenship and Immigration)*, 2023 FC 183 at paras 18-19.

[17] Regarding the Applicant's study plan, I further find that the Officer does not explain reasonably why the college diploma course in business was "redundant" in light of the Applicant's Bachelor's degree in accounting and not a logical progression in her career path. The Officer neither compares the course curricula nor engages with the Applicant's stated reasons for pursuing a business program. In other words, the Officer's finding, in my view, is unsupported by the evidence: *Al Aridi v Canada (Citizenship and Immigration)*, 2019 FC 381 at para 27.

[18] Further, I find that the Respondent's submissions comparing the employer's letters concerning the Applicant's current position and future position, arguing that the two positions are very similar, are an example of unacceptable bolstering or gap filling: *Maarouf v Canada (Citizenship and Immigration)*, 2023 FC 787 at para 56. The Officer does not state this reasoning in the Decision, but rather focuses on the "similar academic level" of the studies, also without reasonable explanation.

[19] In addition, I find that the Respondent's reliance on this Court's decision in *Mehrjoo v Canada (Citizenship and Immigration)*, 2023 FC 886 [*Mehrjoo*], is not of assistance because, unlike in *Mehrjoo* (at para 13), the Applicant here extensively discussed the benefits of the business program in her study plan. The Officer, however, does not grapple with this aspect of her study plan.

[20] Regardless, the GCMS notes also disclose a non-transparent and unintelligible assessment of the Applicant's evidence comprised of three letters from her employer: one letter describes her current position as the company's Financial Affairs and Accounting expert and the attendant job responsibilities; a second letter describes her future position as Chief Financial Officer; a third one describes the company's approval of a two-year leave of absence for the Applicant.

[21] The GCMS notes, however, do not differentiate among these three letters, and it is consistently unclear to which of the three letters from the employer the Officer is referring. Recognizing that *Vavilov* cautions against assessing administrative reasons against a standard of perfection (at para 91), I am prepared to infer that the Officer refers to each letter from the employer in turn. Nonetheless, the Officer's reasons are not responsive to the evidence. For example, the GCMS notes state that a letter mentions positive character attributes of the Applicant, but none does.

[22] As another example, the Officer refers to a lack of detail on the potential employment contract. In light of the listed job activities and responsibilities in the employer's first and second

letters, however, the Court is left wondering what the Officer means in this regard. The statement suggests to the Court that the Officer examined the employer's second letter in particular for what it does not say, rather than what it does: *Al Dya v Canada (Citizenship and Immigration)*, 2020 FC 901 at para 56.

[23] In my view, the Officer also unreasonably engages in career counselling by finding that the "combination of education, training and experience… negates the necessity for international education towards their career advancement in Iran": *Adom v Canada (Citizenship and Immigration)*, 2019 FC 26 at para 17.

(B) *The Decision is Procedurally Unfair*

[24] I find that the Officer's next statements allude to credibility concerns that should have been put to the Applicant.

[25] The Officer here goes beyond expressing concern with the Applicant's motivation for seeking to study in Canada and whether it is for other than temporary reasons, i.e. whether she is a *bona fide* student within the meaning discussed in *D'Almeida v Canada (Citizenship and Immigration)*, 2019 FC 308 at para 65.

[26] While I agree that the Officer does not doubt the Applicant's acceptance into the business program at Centennial College, the Officer expresses dissatisfaction, without explanation, with the Applicant's intention to pursue studies in Canada.

[27] If the Officer doubted the Applicant's intention to study in Canada at all, which in my view goes to the Applicant's credibility as opposed to that of her supporting documentation, that should have been stated in clear and unmistakable terms, and the Applicant should have been given an opportunity to respond: *Hilo v Canada (Minister of Employment and Immigration)* (1991), 130 NR 236 (FCA) at para 6. See also *Zhou v Canada (Citizenship and Immigration)*, 2013 FC 619 at paras 32-34.

III. Conclusion

[28] For the above reasons, the Decision will be set aside and the matter will be remitted to a different officer for reconsideration.

[29] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-8471-22

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended, with immediate effect, to identify the Respondent as the Minister of Citizenship and Immigration.
2. The Applicant's judicial review application is granted.
3. The August 17, 2022 decision of Immigration, Refugees and Citizenship Canada refusing the Applicant's application for a study permit is set aside.
4. The matter will be remitted to a different officer for redetermination.
5. There is no question for certification.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

***Immigration and Refugee Protection Act*, SC 2001, c 27.**
***Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch 27.**

Minister of Citizenship and Immigration **4 (1)** Except as otherwise provided in this section, the Minister of Citizenship and Immigration is responsible for the administration of this Act.	**Compétence générale du ministre de la Citoyenneté et de l'Immigration** **4 (1)** Sauf disposition contraire du présent article, le ministre de la Citoyenneté et de l'Immigration est chargé de l'application de la présente loi.
Obligation on entry **20 (1)** Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish, **(a)** to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence; and **(b)** to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.	**Obligation à l'entrée au Canada** **20 (1)** L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver : **a)** pour devenir un résident permanent, qu'il détient les visa ou autres documents réglementaires et vient s'y établir en permanence; **b)** pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.

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

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;	**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) 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.	**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.

***Federal Courts Rules*, SOR/98-106.**
***Règles des Cours fédérales*, DORS/98-106.**

Absence of party **38** Where a party fails to appear at a hearing, the Court may proceed in the absence of the party if the Court is satisfied that notice of the hearing was given to that party in accordance with these Rules.	**Absence d'une partie** **38** Lorsqu'une partie ne comparaît pas à une audience, la Cour peut procéder en son absence si elle est convaincue qu'un avis de l'audience lui a été donné en conformité avec les présentes règles.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8471-22
STYLE OF CAUSE:	HOURIEHALSADAT TABATABAEI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE
DATE OF HEARING:	APRIL 2, 2024
JUDGMENT AND REASONS:	FUHRER J.
DATED:	APRIL 4, 2024

APPEARANCES:

Charles J. Jubenville	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shirin Taghavikhansari Barrister and Solicitor Richmond Hill, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT