Federal Court  Cour fédérale

Date: 20240412

Docket: IMM-983-23

Citation: 2024 FC 581

Ottawa, Ontario, April 12, 2024

PRESENT: Mr. Justice Norris

BETWEEN:

NAZANIN JAHANIAN
ALIREZA HAGHTALAB

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Nanzanin Jahanian, a citizen of Iran, applied for a study permit after Université Laval accepted her into a Master of Arts program specializing in educational technology. Her husband, Alireza Haghtalab, wished to accompany her to Canada so he applied for an open work permit. Both applications were refused by a visa officer with Immigration, Refugees and Citizenship Canada (IRCC) because the officer was not satisfied that they would leave Canada at the end of their authorized stay.

[2] Ms. Jahanian and Mr. Haghtalab now apply for judicial review of these decisions under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). Since Mr. Haghtalab's work permit application was entirely dependent on the success of Ms. Jahanian's study permit application, their grounds for judicial review focused on the decision rejecting the study permit application.

[3] When they sought leave, the applicants challenged the study permit decision on the basis that it is unreasonable and, further, that it was rendered in breach of the requirements of procedural fairness because the officer made an adverse credibility finding without first alerting the applicants to the officer's concerns and giving them an opportunity to respond. In their Further Memorandum of Argument, however, the applicants also argue that the officer's use of the Chinook application processing tool breached the requirements of procedural fairness. In support of this submission, the applicants filed a further affidavit to which were attached as exhibits several documents relating to the use of the Chinook tool by IRCC decision makers. Together, these exhibits run to almost 500 pages in length.

[4] The respondent submits that the procedural fairness argument relating to the Chinook tool is a new issue and, applying the factors identified in *Al Mansuri v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 22 at para 12, the Court should not exercise its discretion to entertain it. This was addressed as a preliminary issue at the hearing of the application. Counsel for the applicants ultimately agreed not to advance the arguments concerning the alleged breaches of the requirements of procedural fairness flowing from the use of the Chinook tool. In the circumstances of this case, this was an appropriate concession.

[5] As I will explain, I agree with the applicants that the study permit decision was made in breach of the requirements of procedural fairness because the officer made an adverse credibility finding without first alerting the applicants to the officer's concerns and giving them an opportunity to respond.

[6] In assessing this ground for judicial review, strictly speaking, no standard of review is implicated. The question I must answer is whether the applicants knew the case they had to meet and had a full and fair chance to do so (*Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at para 56).

[7] It is axiomatic that the applicants bore the burden of showing that they met the legal requirements for a study permit, including providing evidence establishing that they will leave Canada at the end of their authorized stay (*Immigration and Refugee Protection Regulations*, SOR/2002-227 (*IRPR*), paragraph 216(1)(b)) and that they have sufficient and available financial resources (*IRPR*, section 220). Nevertheless, officers must give applicants a fair opportunity to address concerns about the credibility or accuracy of their evidence (*Ibekwe v Canada (Citizenship and Immigration)*, 2022 FC 728 at para 17).

[8] In support of the study permit application, the applicants provided documentation to establish their savings and other assets, all with a view to demonstrating that they have sufficient financial resources to cover the cost of the degree and their stay in Canada. On their face, the documents showed that the applicants had access to sufficient funds. However, in the reasons for rejecting the application, the officer wrote: "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 [*sic*] legitimate financial resources."

[9] The applicants submit that the officer has made an adverse credibility finding without first giving them an opportunity to address the officer's concerns. I agree.

[10] In *Taeb v Canada (Citizenship and Immigration)*, 2023 FC 576, Justice O'Reilly found that very similar language (the documentary evidence had been found there to be for "demonstrative purposes") implied that the officer had found that the information provided about the applicant's financial resources "did not demonstrate Mr. Taeb's true financial position but, rather, was a deceptive façade" (at para 6). In my view, this characterization is equally applicable here.

[11] I am unable to agree with the respondent that the officer only meant that the financial documents had been provided "to demonstrate" the applicants' financial resources. If this was all the officer meant, it would not be a reason for rejecting the application; rather, it would merely be a statement of fact. Nor can I agree that the officer simply found the applicants' evidence to be insufficient because, contrary to the Ankara Visa Office Instructions issued by IRCC (IMM 5816), the applicants had not provided bank statements covering the past six months. Standing on its own, an officer's reliance on this factor would not raise credibility or procedural fairness concerns. (Whether or not this would be a reasonable basis to find the evidence insufficient is, of course, a different question.) But the officer did not stop there. The

officer went on to express thinly veiled doubts about the veracity of the applicants' representations. That the documents "are for demonstration purposes only" necessarily carries a pejorative connotation is reinforced by the officer's further statement that the documentation provided by the applicants is not reflective of their "legitimate financial resources."

[12] In sum, the officer questioned the accuracy of the representations the applicants had made about their available financial resources. Nothing on the face of the documents gave rise to any concerns. Consequently, the officer must have doubted the veracity of the applicants' representation that the documents were an accurate reflection of their available resources. While it is doubtless open to a visa officer to reach such a conclusion, and to refuse an application on that basis, procedural fairness requires that, before doing so, the officer must provide an applicant with an opportunity to respond to the concerns. That did not happen here.

[13] The officer's concerns about available financial resources were not the only reason given for rejecting the study permit application. The officer also found that, since the applicants would be travelling to Canada together, their remaining ties to Iran would not be sufficiently great "to motivate departure from Canada." As well, the officer found that Ms. Jahanian's "motivation to pursue studies in Canada at this point does not seem reasonable." The officer cited these factors along with the financial concerns in concluding that the applicants had not established that they would leave Canada at the end of their authorized stay. The applicants challenge the reasonableness of these other determinations but it is not necessary to address their submissions in this regard. In my view, the breach of procedural fairness, which relates to a central element of their applications, is sufficiently material to require that the matter be reconsidered.

[14] Neither party proposed a serious question of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-983-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision of the IRCC officer dated December 4, 2022, is set aside and the matter is remitted for redetermination by a different decision maker.
3. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-983-23
STYLE OF CAUSE:	NAZANIN JAHANIAN ET AL v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	APRIL 11, 2024
JUDGMENT AND REASONS:	NORRIS J.
DATED:	APRIL 12, 2024

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