Federal Court  Cour fédérale

Date: 20240422

Docket: IMM-3030-23

Citation: 2024 FC 603

Ottawa, Ontario, April 22, 2024

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

SARA JALALI
BIJAN ARABAMERI
AISA ARABAMERI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Principle Applicant, Sara Jalali, ("PA") seeks judicial review of a decision made by an Immigration Officer (the "Officer") on February 21, 2023, refusing the PA's study permit application.

[2] The PA and her husband were married on November 8, 2007. The PA's husband, Bijan Arabameri, and their twelve-year-old daughter, Aisa Arabameri, are also parties to this application.

[3] The Officer determined the PA had not satisfied the requirements for a study permit as set out in the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*") and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*").

[4] For the reasons set out below, I will allow this application.

II. Background

[5] The PA is a 42-year-old citizen of Iran seeking to pursue a two-year Business Administration and Commerce program, at College Canada (Montreal), in Montreal, Quebec. The PA is educated in Accounting and works as an Insurance Representative for Iran Insurance Company.

[6] The PA's husband has an Associate Degree in the field of Civil Technician – General Construction and, he is dually employed as a Film Director and a Sales & Marketing Manager for Maghar Gostar Zagross Co.

[7] The PA's husband and her daughter applied for a spousal work permit and visitor's visa, respectively, to allow them to accompany her to Canada for the duration of her study in Canada.

[8] By way of letter dated February 21, 2023, the PA's application for a study permit was denied, along with the applications of the Dependent Applicants (the Decision).

III. Decision under Review

[9] In arriving at the Decision, the Officer cited the following concerns:

1. The Principle Applicant's assets and financial situation are insufficient to support the stated purpose of travel for herself and the Dependent Applicants.
2. The Principle Applicant does not have significant family ties outside Canada.
3. The purpose of the visit to Canada is not consistent with a temporary stay given the details provided by the Principle Applicant in her application.

[10] After considering the circumstances of the PA and examining all of the submitted documents, the Officer was not satisfied the PA would leave Canada at the end of her stay as required by paragraph 216(1)(b) of the *IRPR*. The Officer therefore refused the application for a study permit.

IV. Issues and Standard of Review

[11] This application for judicial review raises two issues:

1. Whether the Decision is reasonable.
2. Whether there was a breach of procedural fairness.

[12] I agree with the parties that the appropriate standard of review for the Officer's refusal of the study permit application is reasonableness. The Supreme Court of Canada has established

that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. While this presumption is rebuttable, no exception to the presumption is present here.

[13] A reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it: *Vavilov* at para 15. Overall, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

[14] The second issue raised by the PA is one of procedural fairness. The standard of review for this is whether the decision is fair in all the circumstances, which has been described as akin to correctness review: see *Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Association of Refugee Lawyers v Canada (Immigration, Citizenship and Refugees)*, 2020 FCA 196 at para 35. See also: *Ganeswaran v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1797, at para 20-28.

V. Analysis

A. *Financial Situation*

[15] The visa officer in the GCMS note stated that:

> 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.

[16] Under paragraph 216(1)(b) of the *IRPR* an officer is only to issue a study permit to a foreign national if it is established that the foreign national will leave Canada at the end of the period authorized for their stay. Section 220 of the *IRPR* provides that an officer shall not issue a study permit to a foreign national unless they have sufficient financial resources, without working in Canada, to pay tuition fees, transportation costs and living expenses.

[17] The Applicants argue that the Officer was unreasonable to conclude that they lacked sufficient financial resources and state that they provided sufficient proof of funds to show that they are financially capable of supporting themselves in Canada.

[18] I agree with the Applicants that the Officer's decision is unreasonable. The Officer concluded that the Applicants lacked sufficient financial resources based on an unreasonable assessment of the evidence before him.

[19] IRCC guideline requires the PA to demonstrate that she can pay her tuition fees with an additional sum of $17,000 to cover the living expenses for herself, her spouse and her daughter.

[20] As found in the Letter of Admission from Canada College (Application Record ("AR"), 35), the tuition fee for the PA's two-year program is $18,500.00 CAD in total, with the annual tuition fee of $9,250.00 CAD. It should be noted that the PA has already paid the full tuition fee for the first year of her proposed study in Canada.

[21] In order to show proof of funds, the applicants presented the bank statements of the PA and her husband, who is her sponsor for her proposed study and travel to Canada.

[22] The bank statements presented by the applicants contain the following balances:

a. The PA has the sum of $7,758.80 CAD in her account with Bank Mellat
b. The PA has the sum of $9,334 CAD in her account with Ayandeh Bank
c. The PA's spouse has the sum $27,777 CAD in his account with Ayandeh Bank

[23] These accounts have a gross balance of $44, 869.80 CAD. Therefore, while the Applicants were obligated to present the sum of CAD $17, 000 in addition to the cost of tuition, for at least one year in Canada as proof of funds, they presented an amount in excess of the

minimum requirement and provided substantial evidence of their establishment in Iran through proof of employment, asset ownership, and monthly income.

[24] The Respondent argues it was reasonable for the Officer to be concerned about the Applicants' personal assets and financial status, as there was no transaction history provided with the bank account statements that would permit the Officer to determine the source of the funds.

[25] I disagree.

[26] The Officer does not articulate any reason to doubt the veracity of the Applicants' banking documents. The Applicants also provided evidence of their employment in Iran, which would appear to support their financial status. There is no evidence, or explanation in the Decision, that these funds came from an alternative source or are otherwise not genuine.

[27] In the case of *Kheradpazhooh v Canada (Citizenship and Immigration)*, 2018 FC 1097 the court held as follows at paragraph 18 of the judgment:

> [18] First, the officer had before him extensive documentation, the authenticity and relevance of which have not been challenged in this case. Even though an officer is presumed to have weighed and considered all of the evidence on file (see *Zhou* at para 20), if the officer ignores relevant evidence pointing to an opposite conclusion and contradicting the officer's findings, it can be inferred that the officer did not review the evidence or arbitrarily disregarded it (*Canada (Citizenship and Immigration) v Tefera*, 2017 FC 204 at paras 30-31; *Shakeri v Canada (Citizenship and Immigration)*, 2016 FC 132 at paras 21-23).

[28] I agree with the Applicants that the Officer failed to accord any probative evidence to the various assets that the Applicants presented as proof of income to support their proposed travel to Canada. The Officer failed to accord commensurate evidential value to these assets because of the alleged reason that the Applicants did not provide evidence of banking transaction history.

[29] Overall, there is a lack of justification or transparency as to how the Officer reached the conclusions on personal assets and financial status in light of evidence to the contrary. In my view, the Officer had a duty to state why there were insufficient funds given that the evidence supported otherwise. This renders the Officer's decision unreasonable. It appears that the Officer simply and unreasonably failed to grapple with the evidence.

B. *Family Ties Outside Canada*

[30] The Applicants submit that the Officer's decision to refuse the PA's study permit was based on the erroneous finding that the PA would not leave Canada based on her family ties and an unreasonable assessment of her study plan.

[31] The Applicants further submit that the Officer breached procedural fairness by failing to provide the PA the opportunity to respond to credibility concerns, despite making a negative credibility finding in the final decision.

[32] In my view, the Officer's refusal of the PA's study permit application is unreasonable for failing to meaningfully grapple with the evidentiary record regarding the Applicants' family ties in Iran. Finding this error sufficient to render the decision unreasonable, I do not address the

allegation regarding the Officer's assessment of the purpose of the visit or the procedural fairness issue.

[33] In the GCMS notes for the refusal of the PA's study permit application, the Officer found that the PA's ties to Iran are weakened by her being accompanied by her husband and daughter and that the motivation to return will diminish with the immediate family members residing in Canada. The Applicants submit that this reason is speculative and unreasonable.

[34] I agree with the Applicants.

[35] In a similar case, *Thiruguanasambandamurthy v The Minister of Citizenship and Immigration* 2012 FC 1518 at paragraph 32, the court said:

> [32] On the issue of the applicant's intention to return to Sri Lanka, I find the officer's reasoning to be similarly opaque. The officer concluded the applicant had only weak family ties to Sri Lanka. As there is no elaboration on this finding, one can only assume the officer concluded the ties are weak due to only a single family member being in that country. However, to judge family ties solely based on the quantity of family members is to ignore the relevant factor of the strength of the child-parent bond (see *Guo v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1353 at paragraph 15, [2001] FCJ No 1851). The officer may have had legitimate reasons for doubting the strength of that bond in this case. The record is silent, making it very difficult for this Court to see this finding as reasonable.

[36] The court has also warned that Officers must consider the strength of ties of Applicants to their home country as a pull factor that will motivate them to return against the incentives that might induce a foreign national to overstay their visa in Canada. In *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 the court held as follows:

> [14] The focus must, therefore, be on the strength of ties to the home country. Visa officers must assess the strength of the ties that bind or pull the applicant to their home country against the incentives, economic and otherwise, that might induce the foreign national to overstay. In this sense, the relative economic advantage is a necessary component of the decision, but it is not the only part of the analysis. It is only through objective evidence of countervailing strong social and economic links to the home country that the onus to establish an intent to return be discharged.

[37] The Applicants provided evidence of assets in Iran and in the Family Information forms indicating multiple family members residing in Iran, including the PA's elderly parents, her brother, and her spouse's widowed mother and brother. They do not have any family ties in Canada. In the absence of an explanation as to why their evidence demonstrating establishment in Iran is insufficient, the Officer's decision fails to accord with the record and is therefore unreasonable.

[38] The Officer also failed to consider the economic ties of the Applicants to Iran, including the PA's promotion to manager, which will double her salary, her desire to set up her own insurance company, and her insurance premium record of about 13 years that will be eligible for pension and retirement salary.

[39] The Officer's GCMS notes lack any explanation of the PA's family ties in Iran or how they were assessed in the context of her lack of family ties in Canada, beyond her husband and minor child, who will be accompanying her for the duration of her studies. Although the Officer is not required to mention every piece of evidence, a failure to mention evidence that clearly contradicts the Officer's finding supports the inference than it was overlooked: *Balepo v Canada*

(Citizenship and Immigration), 2016 FC 268 at para 17, citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1998] FCJ No 1425).

[40] The Officer's analysis of her family ties is not unreasonable solely because it considers the accompaniment by her husband and child, but because the analysis ends there: *Vahdati v Canada (Citizenship and Immigration),* 2022 FC 1083 at para 10). There is no indication that the Officer weighed this factor against the Family Information forms submitted as part of the application, the evidence of assets in Iran, or the lack of any other family ties in Canada beyond her husband and child. Beyond the fact of the intended accompaniment, the Officer's reasons fail to establish a clear line of analysis between the conclusion and the evidence, rendering the decision unreasonable: *Vavilov* at para 10.

[41] The Officer's finding that the PA failed to satisfy them that she would return to Iran at the end of her stay because she did not demonstrate establishment in Iran is not justified, intelligible or transparent: *Vavilov* at para 86. The finding that the study permit refusal is unreasonable leads to the finding that the other two refusals are founded on unreasonable bases. For these reasons, I find that all three decisions underlying this application for judicial review are unreasonable.

VI. **Conclusion**

[42] For the reasons set out above, this Application is allowed and the Decision is set aside to be returned for redetermination by a different Officer.

JUDGMENT in IMM-3030-23

THIS COURT'S JUDGMENT is that:

1. This Application is allowed.
2. The Decision is set aside and this matter is to be sent back for redetermination by a different Officer.
3. There is no question for certification.
4. No costs are awarded.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3030-23
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APPEARANCES:

Oluwadamilola Asuni	FOR THE APPLICANTS
Michael Digout	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Oluwadamilola Asuni Barrister and Solicitor Saskatoon, Saskatchewan	FOR THE APPLICANTS
Attorney General of Canada Saskatoon, Saskatchewan	FOR THE RESPONDENT