Federal Court  Cour fédérale

Date: 20240425

Docket: IMM-1390-23

Citation: 2024 FC 629

Toronto, Ontario, April 25, 2024

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

ABDOLLAH MAHDAVI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Abdollah Mahdavi [the Applicant], is a 45 year old citizen of Iran who applied for a study permit to pursue his Masters in Business Administration [MBA] at Trinity Western University [TWU]. The Visa Officer [the Officer] who rejected his application [the Decision] did so on the basis that the Applicant had not satisfied him that the Applicant would leave Canada at the end of his stay because the purpose of his visit is not consistent with a temporary stay.

[2] This is an application for judicial review of the Decision.

[3] For the reasons that follow, I am granting this application as I find the Officer's Decision to be unreasonable. It does not bear the hallmarks of intelligibility and justification and the Officer failed to engage with important evidence on the record that contradicted the reasons for rejecting the Applicant's application.

I. The Facts

[4] The Applicant is an Iranian citizen who holds both a Bachelor's degree and a Master's degree in Civil Engineering.

[5] Since February 2016, the Applicant has been employed as a part-time Technical Sales Supervisor and Marketing Expert at a construction company in Iran [the Applicant's Employer]. He is also the Board Chairman and Managing Director of his family's company. He holds an expert license in "Road and Construction" from the Iranian Association of Official Experts.

[6] The Applicant was accepted into the MBA program at TWU in April 2022.

[7] In support of his application for a Study Visa, the Applicant submitted: a study plan; education documents reflecting his past studies in Iran; employment documents; and financial documents which addressed his financial ability to pursue his MBA and which showed that he had prepaid part of his tuition. The Applicant also included information to demonstrate his family ties to Iran.

[8] The Applicant detailed in his study plan the reasons why he wanted to pursue his MBA. One of those reasons was that the Applicant's Employer had offered him a position within the company that would constitute not only a promotion, but provide the Applicant with an 80% increase in pay [the Offer]. The Offer was conditional on the Applicant's successful completion of his MBA at TWU.

II. Legislative Framework and the Decision under Review

[9] Pursuant to subsections 11(1) and 20(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 and subsection 216(1)(b) of the *Immigration and Refugee Protection Regulations*, an officer issuing a study permit to a foreign national must be satisfied that a person applying to study in Canada will not overstay the period authorized for their stay.

A. *The Decision*

[10] The Officer refused the Applicant's Application in a letter dated December 2, 2022. The accompanying Global Case Management System entry notes shows that the Officer considered there to be "positive factors" in the Applicant's favour (his previous university studies, current employment in Iran and his pre-paid tuition), however, the Officer gave these factors "less weight" in favour of the following considerations:

> a) the Officer was of the view that the Applicant would not have already achieved the benefits of the program given that the "[t]he applicant demonstrates (through their submitted documentation) that they possess an acceptable combination or education, training and/or experience, in their respective field";
>
> b) the Officer was not satisfied with the Applicant's purpose/intention to pursue studies in Canada; and

c) the Applicant's Employer did not explain why a MBA degree is required for the Applicant's potential job promotion.

III. Issues and Standard of Review

[11] The Applicant has raised a number of issues related to the reasonableness of the Second Decision. The Applicant's written submissions also raised issues of procedural fairness, however, those issues were withdrawn during the oral hearing of this application.

[12] The standard of review in matters related to the merits of a study permit decision is reasonableness (*Hajiyeva v Canada (Citizenship and Immigration)*, 2020 FC 71 at para 4 [*Hajiyeva*]). In accordance with the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], this review involves both judicial restraint (which demonstrates a respect for the distinct role and expertise of administrative decision-makers) and robust review (which ensures that administrative decision-makers exercise their public power in a manner that is justified, intelligent and transparent in terms of both the rationale and outcome of their decision) (*Vavilov* at paras 13, 95 and 99).

[13] The burden of proof lies with the party claiming that the decision is unreasonable (*Vavilov* at para 100).

IV. Analysis

[14] The jurisprudence that applies to a judicial review of a study permit decision was summarized by Justice Pentney in *Nesarzadeh v Canada (Citizenship and Immigration)*, 2023 FC 568 (paras 5-9). The applicable principles are as follows:

- A reasonable decision must explain the result, in view of the law and the key facts.
- *Vavilov* seeks to reinforce a "culture of justification" requiring the decision maker to provide a logical explanation for the result and to be responsive to the parties' submissions.
- The reviewing court must take the administrative context in which the decision was made into account. Visa officers face a deluge of applications, and their reasons do not need to be lengthy or detailed. However, the reasons do need to set out the key elements of the officer's line of analysis and be responsive to the central aspects of the application.
- The onus is on the applicant to satisfy the officer that they meet the legal requirements for obtaining a study permit, including that they will leave Canada at the end of their authorized stay.
- Visa officers must consider the "push" and "pull" factors that could lead an applicant to overstay their visa and stay in Canada, or that would, on the other hand, encourage them to return to their home country when required to.

[15] Applying these principles, I consider the Officer's Decision to be unreasonable for two reasons: first, it is unintelligible and unjustified in its reasoning; and second, it fails to engage and grapple with obviously relevant evidence on the record that contradicted the Officer's concerns that the Applicant would not leave Canada after completing his studies at TWU.

A. *The Decision does not bear the Hallmarks of Intelligibility and Justification*

[16] I acknowledge that it was technically permissible for the Officer to consider whether the Applicant has already achieved the benefits of the intended course of study and whether the proposed studies are repetitive and inconsistent with their career path (*Rajabi v Canada*, 2024 FC 371 at para 12).

[17] Nevertheless, it is important to recall that the exercise of discretion granted to visa officers must accord with the purpose for which it was given (*Vavilov* at para 108). This means that a visa officer must not lose sight of their task, which is to assess whether the course of study is so obviously unconnected to the applicant's goals or redundant that an inference should be drawn that it is not legitimate. So long as the applicant's choices do not fall below such a threshold, an officer should not second-guess an applicant's study choices nor how they wish to pursue their career goals. Justice Ahmed's admonition in *Adom v Canada (MCI)*, 2019 FC 26 at paragraph 16 is apt in cautioning against "career counseling."

[18] In this case, the Officer crossed that line in judging the "acceptable" level of a combination of education, training and experience that the Applicant should be satisfied with. Not only is the notion of what constitutes an "acceptable" level unclear, but it flies in the face of the very notion of higher education and the fact that a combination of education, training and experience is a pre-requisite for an MBA.

B. *The Officer Failed to Engage with Contradictory Evidence*

[19] I am mindful of the case law that acknowledges that visa officers need not give exhaustive reasons for the decision to be reasonable given the pressure and caseload they work under (*Hajiyeva* at para 6). However, this does not relieve the Officer of the need to address evidence that contradicts key aspects of their decision, even if briefly (*Vavilov* at para 128; *Balepo v Canada (Citizenship and Immigration)*, 2016 FC 268 at para 17, citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425).

[20] In this case, there was a failure on the part of the Officer to engage with the Applicant's study plan, which was directly relevant to the concerns raised by the Officer:

> 1) The Applicant stated why he wished to get his MBA and why it fit his career goals which included his desire to work on an international scale and improve his financial prospects;
>
> 2) The Applicant gave a number of reasons for his desire to study in Canada including Canada's "high education standards" and cultural diversity as compared to Iranian programs, which he considered outdated and lacked a practical approach; and
>
> 3) The Applicant provided a detailed list of responsibilities that his new position would entail and the fact that he requires a new set of academic knowledge in "MBA International Business" in order to carry them out successfully.

[21] The Officer's failure to address the study plan in a meaningful way is a reviewable error given that it addressed the Officer's concerns over the *bona fide* nature of the Applicant's motive to take his MBA despite having an already impressive educational background and work history.

V. Conclusion

[22] In accordance with the Supreme Court's decision in *Vavilov*, reasons such as these which fall short of the standard of intelligibility and justification and which fail to address and grapple with relevant evidence are unreasonable. Accordingly, the application for judicial review shall be granted.

[23] No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-1390-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted, the underlying decision is set aside and the matter is remitted to a different officer for redetermination.
2. There is no question to certify.

"Allyson Whyte Nowak"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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