Federal Court  Cour fédérale

Date: 20240510

Docket: IMM-11759-22

Citation: 2024 FC 726

Toronto, Ontario, May 10, 2024

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

AMIRKEYVAN MOUSAVIMIANJI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT

UPON application for judicial review to review and set aside a decision by an Officer with Immigration, Refugees and Citizenship Canada [IRCC] dated November 21, 2022 refusing the Applicant's application for a Canadian work permit under the International Mobility Program [Decision];

AND UPON the Applicant, Mr. Amirkeyvan Mousavimianji, an Iranian citizen, having applied for a LMIA-exempt code C11 category work permit, which category targets foreign nationals who are entrepreneurs and self-employed candidates seeking only temporary residence

to operate a business in Canada that would create or maintain significant social, cultural, or economic benefits or opportunities for Canadian citizens or permanent residents pursuant to Rule 205(a) of the *Immigration and Refugee Protection Regulations* SOR/2022-227 [IRPR];

AND UPON the Applicant having applied for a work permit in order to establish a student advisory business by the name Kenyan International Student Advisor Services Inc. and submitted a 78-page business plan in which he described his plans for such a company, which he incorporated in British Columbia on July 20, 2021;

AND UPON the Officer having reviewed the Applicant's work permit application and supporting documentation and having determined that his application did not meet the statutory requirements of the *Immigration and Refugee Protection Act* [IRPA] and the IRPR, and concluding in their Decision that the Applicant has not sufficiently demonstrated that the requirements of the exemption of significant benefit (C10) within the meaning of section 205(a) of the IRPR;

AND UPON noting that the notes contained in the Global Case Management System [GCMS], which form part of the reasons, state:

> Application for WP under C11 – Self-Employed /Entrepreneur - Significant benefit to Canada
>
> Family listed as non-accompanying
>
> Education: High School – computer – 2007
>
> MBA one-year program 2016 - noted PA is founder of the vocational institution who issued certificate on file.
>
> Work Experience: Founder and Chairman and senior manager of this Institute created in 2011.

Proposal: to work as Executive Director NOC:0014

Business license for KEYVAN INTERNATIONAL STUDENT ADVISOR SERVICES INC. dated July 2021 (BC) submitted. Also applying for Ontario Business Registry –

As per Business Plan is: 'the Company will offer educational consulting services to aspiring overseas students particularly those pursuing trade schools in Canada."

I have carefully reviewed the business plan submitted. I have found that a large part of the information submitted is general and appears to have been copied from open source websites. Applicant indicates the forecast total revenue of the Company in Canada would be over $241,000 on the first year and over $507,000 in year 4. Salary offered to local employees are below average.

I believe these projections are overly optimistic in the Canadian context. Looking more into details of the financials of that business plan, I am not satisfied it is reasonable.

Applicant's business line is very competitive in BC and Ontario and I am not satisfied he would bring a significant advancement to Canada.

Weighing the factors in this application, I am not satisfied Applicant have demonstrated his admission to Canada would be a significant benefit for Canada and that she qualifies for LMIA exemption.

Application refused

AND UPON reading the written submissions and hearing the oral submissions of the parties;

AND UPON noting that the issues outlined by the Applicant have changed significantly between what was filed in its original Memorandum of Arguments that was filed before leave was granted and the Further Memorandum of Argument that was filed after leave was granted;

AND UPON noting that the bulk or all of the Applicant's written submissions in the original Memorandum of Arguments related to the alleged breach of his right to procedural fairness where the Applicant argues it was breached in the following ways:

- IRCC communicated 83 refusals within less than a month that were prepared by Applicant's counsel, so they have mass-refused applications instead of analyzing or evaluating these applications independently;
- The Applicant was not provided with an opportunity to be heard;
- IRCC violated the Applicant's legitimate expectation to follow the procedure of the application process they applied to;
- The Applicant did not receive the reasons for his refusal;
- The Applicant did not know the case to be met;
- IRCC's choice to change their procedure was procedurally unfair; and,
- The underlying application warranted a high degree of procedural fairness because the Applicant "spent a considerable amount of time and resources, as well as blocked significant funds for commencing the business operations" in advance of the application.

AND UPON noting the recent decisions of Justice Go in *Shidfar v Canada (Citizenship and Immigration)*, 2023 FC 1241 and Justice Aylen in *Shahbazian v Canada (Citizenship and Immigration)*, 2023 FC 1556, both rejecting similar procedural fairness allegations in near-identical circumstances;

AND UPON noting from the written submissions in the Applicant's Further Memorandum of Argument and as confirmed at the hearing that the Applicant was no longer

advancing any of the procedural fairness arguments as set out in the Applicant's original Memorandum of Arguments at the leave stage;

AND UPON noting the recent decisions of Justice Ahmed in *Roodafshani v Canada (Immigration, Refugees and Citizenship), 2024 FC 595 [Roodafshani]*, and Justice Zinn in *Tehranimotamed v Canada (Citizenship and Immigration), 2024 FC 548 [Tehranimotamed]*, where arguments raised in the original application materials were deemed abandoned as unmentioned in the further materials, this abandonment of the procedural fairness allegations in the original Memorandum of Arguments was appropriate;

AND UPON concluding that these procedural fairness arguments were abandoned in the Applicant's Further Memorandum of Argument, which replaced their original submissions per Justice Elliott's Order granting leave dated February 15, 2024, and by operation of the requirement that memoranda of argument submitted to perfect an application for leave must contain "concise submissions of the facts and law relied upon by the applicant for the relief proposed in the event that leave is granted" in Rule 10(2)(vi) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22;

AND UPON noting that the Applicant raises, in essence, two principal arguments in their Further Memorandum of Argument that are not related in any way to the submissions in their original Memorandum of Argument, namely:

- The Officer ignored the Applicant's business plan because they did not explain how the business plan's total forecast revenue and financial planning was unreasonable; and,

- The Officer's reasons failed to explain how they arrived at their determinations in respect of their assessment of open-source information, financial planning, and whether the business would bring a significant advancement to Canada.

AND UPON determining that this application should be dismissed for the following reasons:

I. The Applicant's new issues will not be considered

[1] It is for the Court to exercise its discretion as to whether to allow issues to be raised for the first time in a party's further memorandum of argument, bearing in mind the following factors:

i. Were all of the facts and matters relevant to the new issue or issues known (or available with reasonable diligence) at the time the application for leave was filed and/or perfected?

ii. Is there any suggestion of prejudice to the opposing party if the new issues are considered?

iii. Does the record disclose all of the facts relevant to the new issues?

iv. Are the new issues related to those in respect of which leave was granted?

v. What is the apparent strength of the new issue or issues?

vi. Will allowing new issues to be raised unduly delay the hearing of the application?
(*Al Mansuri v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 22 [*Al Mansuri*] at para 12).

[2] The Applicant has the burden to put together an application that is not only complete but also relevant, convincing and unambiguous (see, for example, *Obeta v Canada (Citizenship and*

Immigration), 2012 FC 1542 at para 25). In this case, the documentation put forward was neither complete, convincing, nor unambiguous.

[3] As noted above, in their Further Memorandum of Argument, the Applicant abandons the only substantive argument they made in their perfected application materials, replacing the procedural fairness argument with allegations that the Officer ignored the Applicant's business plan and subsequently failed to explain in their reasons how they arrived at their determination. As I outline below, the Court exercises its discretion as per *Al Mansuri* not to consider the Applicant's new issues for the reasons below.

[4] At the hearing, the Applicant suggested their Further Memorandum of Argument submissions on the Decision's reasonableness were not new, but were elaborations on arguments raised in their pre-leave Reply Memorandum. The Court does not accept this suggestion. A Reply is intended to respond to matters raised by the opposing party, as Justice Mactavish explained in *Deegan v Canada (Attorney General)*, 2019 FC 960 at paragraph 121:

> It is a well-established principle that new arguments are not the proper subject of Reply. The purpose of a Reply is to respond to matters raised by the opposing party, not to produce new arguments or new evidence that should have been raised in first instance. Proper Reply is limited to issues that a party had no opportunity to deal with, or which could not reasonably have been anticipated.

[5] While this comment was in the context of Reply submissions at a hearing, it has naturally extended to the purpose of written submissions in Reply (see for example *Murphy v Canada (Attorney General)*, 2023 FC 57 at para 39).

[6] Upon review, the Applicant's Reply Memorandum meticulously states at the outset of each numbered paragraph which paragraph of the Respondent's Memorandum of Argument to which that paragraph is responding. As the Respondent pointed out during the hearing, their own submissions were limited to addressing the standard of review they were arguing was applicable, and made an effort to outline in its Overview why the Decision was otherwise reasonable even in the face of the Applicant's original Memorandum of Argument's exclusive focus on procedural fairness. If the Respondent's submissions were limited to their argument on the applicable standard of review, to summarily explaining why the application for judicial review should be dismissed, and to responding to the Applicant's procedural fairness issues, it stands to reason that these must be the four walls within which the Applicant can make proper Reply submissions.

[7] The three paragraphs of the Applicant's Reply Memorandum that the Applicant claims bring their new reasonableness issues within the scope of this application for judicial review are paragraphs 1, 6, and 8. Paragraph 1 is in response to the Respondent's paragraph 1, which was simply their Overview, and the Court refuses to accept that an overview of a case dealing exclusively with procedural fairness introduces issues of reasonableness. Paragraph 6 responds to the Respondent's paragraphs 14 and 15, which were not submissions at all but the Respondent's summary of the Officer's Decision, and therefore contained no submissions to which the Applicant could properly respond. Paragraph 8 responds to the Respondent's paragraph 19, which was the Respondent's submission that the applicable standard of review with respect to the Officer's findings should be reasonableness. To that end, the Court does not accept that the Applicant could reply to the Respondent's submission by introducing new arguments for why the Decision was unreasonable; such submissions would not only be wholly unrelated to the

applicable standard of review but also should have been raised in the first instance in their original Memorandum of Arguments at the leave stage. With these findings in mind, the four walls within which the Applicant was granted leave based on their original materials limit them to the procedural fairness arguments they have now abandoned. The new issues are, at-best, vaguely related to those in which leave was granted, but only insofar as there was a vague allegation of unreasonableness in the Applicant's leave materials in assertions that the Decision was unreasonable because it was procedurally unfair. The substantive issues for unreasonableness they now raise were either unmentioned in their leave materials or improperly raised in their Reply Memorandum. They now raise new reasonableness issues in their Further Memorandum of Argument, and the Court will follow through the factors in *Al Mansuri*.

[8] In considering the *Al Mansuri* factors, the Court agrees with the Respondent that all the facts and matters relevant to the new issue or issues were known at the time the application for leave was perfected. The Respondent alleges they suffered prejudice from the Applicant's late introduction of new arguments, and while they were able to provide some submissions addressing the new arguments in their own Further Memorandum of Argument, a considerable portion of their submissions were addressing the now-abandoned procedural fairness arguments. This may go some way to suggest prejudice, but it should be noted that the record does indeed disclose all of the facts relevant to these new issues. As mentioned above, the new issues are only vaguely related to those in which leave was granted, but vague assertions about the Decision being unreasonable because it was procedurally unfair do not open the door to entirely different substantive issues. Likewise, allowing these new issues to be raised would not unduly

delay the hearing of this application. As a whole, these factors appear slightly against hearing these new issues.

[9] My final consideration on the exercise of my discretion is to assess the apparent strength of these new issues, which I shall likewise adopt as an analysis on the alleged merits of these issues had I exercised my discretion to consider them in this application. The two new issues are:

A. The Officer ignored the Applicant's business plan because they did not explain how the business plan's total forecast revenue and financial planning was unreasonable; and,
B. The Officer's reasons failed to explain how they arrived at their determinations in respect of their assessment of open-source information, financial planning, and whether the business would bring a significant advancement to Canada.

A. *The Officer did not ignore the Applicant's business plan*

[10] Summarily, it cannot be said that the Officer ignored the Applicant's business plan. To the contrary, despite the general brevity of the Global Case Management System [GCMS] notes, the Officer made several references to the contents of the business plan, including their own paraphrasing of certain financial information taken from tables in the business plan. What the Applicant appears to truly be submitting is the Officer *must have ignored* the business plan because they did not agree with the Applicant's assertion of the intended conclusion of their application, as the Applicant seems assured the contents of their business plan satisfy all the statutory requirements for the granting of an entrepreneurial work permit. This is a veiled

argument to reweigh the evidence, and such arguments have little merit given the role of this Court on judicial review.

B. *The Officer's reasons did not fail to explain how they arrived at their determinations*

[11] In similar fashion, I disagree with the Applicant's contention that the Officer failed to explain how they arrived at their determinations in respect of open-source information, financial planning, and where the business would have a significant benefit for Canadians. For example, the Applicant submits that the Officer did not explain how information was allegedly copied from open-source websites, taking issue with the term "open-source". With respect, the Applicant included in both its business plan and as a screenshot in their Further Memorandum of Argument a list of websites the Applicant used as references for the publicly-available information they copied and reformatted into the business plan in support of their market research. As such, the Officer's determination in the GCMS notes that the Applicant's several references they purport to be "market research" was based in fact and not unreasonable. During the hearing, Applicant's counsel specified that they allege the Officer erred in referring to "open-source" websites in its Decision as the public is unable to modify or change the listed websites' content. As the term implies, the Applicant's understanding of "open-source" is misconstrued in this administrative context. While certain technological industries use the Applicant's proposed understanding of "open-source websites", the Applicant has not convinced the Court that the Officer, or the IRCC generally, uses such a specific understanding as opposed to the more colloquial definition of "open-source" meaning something that is freely accessible to the public. It was not unreasonable for the Officer to find that in the business plan submitted "a large part of

the information submitted is general and appears to have been copied from open source websites."

[12] Another example is the Applicant's submission that the Officer did not explain how he determined that the salary intended to be offered to local employees was below average. Again, with respect, the permit application was submitted in 2022 when the minimum wage in Toronto, Ontario (the intended market for this start-up) was $15.50 per hour, while the business plan states that "employees are expected to work 40 hours per week and will receive an hourly wage of $15.00 per hour" or an annualized $31,200. Other salaries listed in the business plan would have all employees other than the Applicant making an annualized $44,803, while the Applicant would make $65,718. Not only is at least one of these salaries *below* minimum wage, but it is difficult to see how the Applicant's prospective employees would be expected to live in Toronto, Ontario, with an estimated post-tax monthly income of a little more than $3,000 per month. The Officer was not only reasonable, but also accurate in assessing the intended salary as below average, and the Applicant's bald assertions that the Officer was unreasonable because they disagreed with the Applicant's assertion of what the Officer's conclusions *should have been* do not have any merit.

[13] The new issues raised by the Applicant have little or no merit, and when assessed holistically, the factors to consider whether to hear these issues at all militates against doing so. As such, I do not exercise my discretion to hear these submissions, and this Application is dismissed without substantive arguments from the Applicant. Even if I had decided to consider these issues on the merits, this Application would be dismissed for the same foregoing reasons.

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed; and,

2. No question of general importance is certified.

"Ekaterina Tsimberis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11759-22
STYLE OF CAUSE:	AMIRKEYVAN MOUSAVIMIANJI v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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APPEARANCES:

Nga Kit (Christy) Tang	FOR THE APPLICANT
Kevin Doyle	FOR THE RESPONDENT

SOLICITORS OF RECORD:

YLG Professional Corporation Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT