

Federal Court



Cour fédérale

Date: 20240716

Docket: IMM-9741-23

Citation: 2024 FC 1110

Vancouver, British Columbia, July 16, 2024

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

EHSAN GOSHTASBI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ehsan Goshtasbi, the Applicant, seeks judicial review of a decision made by an Immigration Officer [Officer] on June 18, 2023, refusing the Applicant's study permit application. The Officer determined that the Applicant 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 [IRP Regulations].

[2] The Applicant is a citizen of Iran. He holds a bachelor and a masters degree in accounting obtained in Iran and works there as a Treasury and Fund Manager at Sepah Bank. He was accepted into Master of Arts in Leadership – Business program [Program] at Trinity Western University in Langley, British Columbia.

[3] The Officer refused the study permit application because they were not satisfied that the Applicant would leave Canada at the end of an authorized stay as required by s 216(1)(b) of the *IRP Regulations*, on the basis that the Applicant has no significant family ties outside Canada and, given the details he provided in his application, that the purpose of the Applicant's stay was not consistent with a temporary stay.

[4] The Global Case Management System [GCMS] notes, which form a part of the reasons for the decision, elaborate on the decision, indicating that the Officer was not satisfied that:

- the Applicant's stated family ties were sufficiently strong (or documented) to warrant a return to Iran, noting that the Applicant is single, mobile and has no dependents;
- the Applicant's study plan does not appear reasonable given his education history. The Applicant had not declared any education history from 2015 to 2023 and has similar studies at the same academic level as the proposed studies in Canada; and
- although the Applicant's job offer letter mentions a promotion, according to the Applicant's study plan and resume, the Applicant appears to possess the sought skills because of his work experience and previous studies, negating the need of additional education. In light of the Applicant's previous studies and current career, the Officer

found that the intended program of study appears to be a redundant course of action. Nor did the Applicant's job offer letter mention why an international degree is required for this position or promotion.

[5] The Officer concluded, after reviewing all of the documents and weighing the factors that they were not satisfied the Applicant will depart Canada at the end of the period authorized for their stay. The Officer therefore refused the application.

Issues and standard of review

[6] This application gives rise to the question of whether the decision was reasonable and, according to the Applicant, whether there was a breach of procedural fairness. The presumptive standard of review of the merits of a visa officer's decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23, 85 and 99 [*Vavilov*]; *Ocran v. Canada (Citizenship and Immigration)*, 2022 FC 175 at para 16).

[7] Questions of procedural fairness are reviewed on a correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). The Court, owing no deference to the decision-maker, must ask “whether the procedure that was followed was fair having regard to all the circumstances” (*Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 56).

No breach of procedural fairness

[8] The Applicant's submission on this issue are that he was not given an opportunity to respond to the Officer's concerns by way of a procedural fairness letter or an interview. The submissions on this point are largely generic.

[9] However, the jurisprudence is clear that the level of procedural fairness owed to student visa applicants is at the low end of the spectrum. It is an applicant's obligation to satisfy all requirements which arise directly from the provisions of the legislation and regulations. A visa officer is not required to inform an applicant of concerns regarding the sufficiency of the materials submitted in support of the application. Only in circumstances such as where an officer questions the authenticity of the documents or an applicant's credibility, would the officer have an obligation to allow the applicant an opportunity to respond (see, for example, *Al Aridi v. Canada (Citizenship and Immigration)*, 2019 FC 381 at para 20 citing, among other decisions, *Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 at para 24).

[10] This is not such a case. The Officer did not make a veiled or other credibility finding nor did they rely on extrinsic evidence or question the authenticity of the Applicant's documents. The level of procedural fairness afforded to the Applicant was appropriate in the circumstances of this case as the Officer was concerned only with the question of whether the Applicant's student visa application demonstrated that the legislative requirements had been met.

Decision was unreasonable

[11] In essence, the Applicant submits that the Officer has not provided adequate reasons or any justification for their concern about the purpose of the Applicant's visit to Canada – which purpose the Applicant says was clearly demonstrated in his Study Plan. He also submits that his Study Plan explained his rationale for applying to the Program and how it fits into his educational and employment history and his future career progression and that there is a lack of connection between the Officer's reasons and the application at hand. Further, that the Officer failed to properly assess other relevant evidence in the materials before them, including the reasons why the Applicant had chosen to study in Canada, his strong financial circumstances, his family and other ties to his home country – such as his employment prospects upon return after the completion of the Program.

[12] The Applicant asserts this gives rise to a suspicion that the application was not closely reviewed by the Officer, or if it was reviewed, that the Officer did not consider the material submitted and simply refused his application on the unfounded assumption that the Applicant will not leave Canada at end of the stay.

[13] I agree that some aspects of the Officer's reasons lack justification in light of the materials that were before them.

[14] For example, the Officer found that the Applicant had pursued similar studies at the same academic level as those proposed in Canada and that he appeared to already possess the skills

needed – obtained by his existing education and work experience – for a referenced promotion, thereby rendering the proposed Program a redundant course of action. However, in his Study Plan the Applicant explained his rationale for applying to the Program, being a gap in the economic system in Iran due to a lack of business leadership, as opposed to management skills. “In terms of banking, advanced leadership is a part of the modern banking industry in many ways, something that is lost in Iran”. He stated that the banking system in Iran is particularly impacted by a leadership shortage which would be alleviated by graduates of leadership programs returning to Iran to employ their acquired skills.

[15] And, while the Officer was correct that the Applicant already holds a masters level degree, his existing degree is a masters in Professional Accountancy while his proposed masters degree is in Leadership, Business. In his Study Plan the Applicant explained why he would benefit from pursuing another masters degree in a different program:

... It is known for transformative, quality education among top business schools. I did not come across this university by chance. What I chose is based on my research. Even I checked the curriculums and modules carefully to find out if they would compensate for my knowledge gap in leadership. The course on Leading Change and Innovation (LDRS 612) appealed to me as its contents will fill the earlier gap regarding the time lag in Iran about synchronizing global technology. The content will deepen my understanding of how banking can survive and thrive while leading change initiatives, innovation, and promoting new ways of being in twenty-first-century organizations. The Team Leadership and Conflict Resolution (LDRS 502) course prepared me to assess and develop my abilities to coach and design teams, manage conflict by building a relationship, turn confrontation into cooperation, and explore and experience teamwork And the course of Strategic Leadership. (LDRS 501) will prepare me to use my creative problem-solving skills and strategic vision to help team members and an organization. These courses will bridge me to my plan to achieve the first position in the bank and also run a technical, financial consultant institute as my own business.

[16] The Officer does not refer to this explanation nor can I discern from the reasons or record why the Officer found that it is not sufficient to address their concern.

[17] The Officer also refers to a job offer letter that the Officer indicates mentions a promotion, but states that the Applicant's Study Plan and resume appear to suggest that he already has the necessary skill set. Upon review of the record, I am unable to locate a promotion letter. The Applicant's February 16, 2023 Certificate of Employment describes his current core responsibilities as Treasurer and Fund Manger for the past seven years, but does not mention a promotion or what the new skills, if any, underlying same may be required. In his Study Plan, the Applicant describes his position as head of the Fund and Treasury Department. The record also contains a Notice of Appointment, dated February 25, 2023 (subsequent to February 9, 2023 Leave of Absence Approval Letter) which appoints the Applicant as the Bank Accounts and Liquidity Affairs Office Manager for a one year appointment, with the potential of becoming permanent, no skill set is described. I am not able to determine from the record how the Officer arrived at the conclusion that a promotion was promised, but that the Applicant already has the necessary skill set to fulfill this new role.

[18] The Officer also found that the Applicant's family ties are not sufficiently strong or well-documented to warrant a return to Iran and that he is "single, mobile and has no dependants".

[19] The Family Information Form included with the Applicant's study permit application indicates that his parents and two brothers reside in Iran. In his Study Plan he states "I am also emotionally reliant on my parents and brothers and would like to reunite with them quickly. And

as I said, my father is retired, and both my parents need my assistance in old age. It is, a motivation for me to return home after graduation. I will need to return to Iran to see all these people who can emotionally boost me to focus on what I plan to do in my career.” He also indicates he has been verbally promised a promotion after his graduation from the Program and, after retiring from the Bank, that he hopes to start his own auditing and financial planning institute, implementing what he has learned. Further, because of his job position, he has good social and work connections which are only of benefit to him in Iran, being another motivation to return to his home country.

[20] I agree with the Applicant that it is not clear from the Officer’s reasons why this description of his family ties to Iran is not satisfactory. Contrary to the decision letter, which states that the Applicant does “not have significant family ties outside Canada”, the Applicant has no ties in Canada, all of his family remains in Iran and he has also set out economic “pull” factors to his home country. While the Applicant’s status is a factor that may reasonably be taken into consideration when assessing, under *IRP Regulation 216(1)(b)*, whether the Applicant will leave Canada at the end of an authorized period, this must be weighed against any other factors identified in the record that might lead to a different conclusion. I am not persuaded that the Officer has done so in this case.

Conclusion

[21] While I appreciate that the Officer states that, upon weighing all of the factors in the application before them, they were not satisfied that the Applicant will depart Canada at the end of a period authorized for their stay, for the reasons above, I find that the Officer’s decision was

unreasonable as it failed to engage with information in the record that pertained to some of the factors considered and which, on their face, appear to contradict the Officer's findings. In that regard, the decision lacks justification, transparency and intelligibility.

JUDGMENT IN IMM-9741-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted;
2. The decision is set aside and the matter shall be remitted to a different Officer for redetermination;
3. There shall be no order as to costs; and
4. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9741-23

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CITIZENSHIP AND IMMIGRATION

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