

Federal Court



Cour fédérale

**Date: 20240812**

**Docket: IMM-3811-23**

**Citation: 2024 FC 1251**

**Ottawa, Ontario, August 12, 2024**

**PRESENT: Madam Justice Gagné**

**BETWEEN:**

**ABED KAMALI KERMANI  
NARGES SEDAGHATI  
SEVDA KAMALI KERMANI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr. Abed Kamali Kermani, the Principal Applicant, is a 44-year-old Iranian citizen who was refused a study permit application. Consequently, his wife and child were respectively refused an open work permit and a visitor visa.

[2] They filed for judicial review, stating that the process leading to the immigration officer's decision was unfair and that the overall decision was unreasonable.

## II. Facts

[3] The Principal Applicant previously earned an Associate's Degree in Information and Communication Technology at the University of Applied Science and Technology in 2011.

[4] Since 2009, he has been employed as a Production and Engineering Expert at Electrosim Hedayat Co.

[5] The Principal Applicant's employer offered him a promotion, contingent upon completing his studies in Canada, for a role in Energy Consumption Optimization and Energy Management. He also offered the Principal Applicant a mix of a loan and grant totaling 1,000,000,000 IRR, "should [he] prove to be a distinguished student."

[6] On February 15, 2023, the Principal Applicant applied for a study permit to attend the Bachelor of Business Administration program at Yorkville University for a four-year period from July 10, 2023 to July 3, 2027.

III. Decision under Review

[7] By way of letter dated March 1, 2023, the officer refused the Principal Applicant's study permit application. The officer's GCMS notes form a part of the decision under review (*Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 at para 5).

[8] In the GCMS notes, the officer indicates the Applicant's multiple property deeds and titles but highlights the absence of banking transaction history showing regular intervals of deposits from these properties into the Applicant's accounts. The bank statements provided show large balances but no transaction history.

[9] The GCMS notes also indicate the Principal Applicant does not have significant ties outside Canada and will be travelling to Canada with their spouse and child.

[10] The officer concludes the purpose of the Principal Applicant's visit to Canada is not consistent with a temporary stay. The officer bases this conclusion on the fact that the Principal Applicant's previous studies were in an unrelated field and the Applicant demonstrates an inconsistent career progression. The officer finds the proposed program not to be a "reasonable expense" for the Principal Applicant.

[11] Weighing these factors, the officer was not satisfied the Applicants would depart Canada at the end of the period authorized for their stay and refused the application.

IV. Issues and Standard of Review

[12] This application for judicial review raises the following issues:

- A. *Whether the officer breached procedural fairness; and*
- B. *Whether the officer erred in his assessment of the Applicants' applications.*

[13] Procedural fairness issues are reviewed on a standard akin to correctness (*Canadian Pacific Railway v Canada (Attorney General)*, 2018 FCA 69 at para 54). This Court must determine whether the process followed was fair having regard to all the circumstances. The level of procedural fairness owed to study permit applicants is at the low end of the spectrum (*Nourani v Canada (Citizenship and Immigration)*, 2023 FC 732 at para 50).

[14] The substance of an officer's decision on a study permit application is reviewable for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23).

V. Analysis

- A. *Did the officer breach procedural fairness?*

[15] The Applicant argues that he was owed an opportunity to respond to the officer's concerns about the genuineness of the Applicant's financial evidence (citing *Taeb v Canada (Citizenship and Immigration)*, 2023 FC 576 at paras 7-8).

[16] The Respondent, on the other hand, argues that the officer was not required to provide the Applicant with an opportunity to respond. The Applicant simply did not provide enough information to satisfy the officer they would leave Canada upon completion of their studies as required by section 216(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[17] The crux of the issue is whether the officer was concerned with the credibility, accuracy, or genuineness of the information submitted by the Applicant in support of their study permit application, or whether the information provided by the Applicant was insufficient to satisfy section 216(b) of the IRPR. Concerns about credibility, accuracy, or genuineness of the information would require the officer to give the Applicant an opportunity to respond.

[18] The officer states in his GCMS notes that he has “concerns that the property documents are for demonstration purposes only and are not reflective of the applicants’ legitimate financial resources”.

[19] In fact, the Applicants have filed deeds of property for an apartment, a land and a garden for which they state they could obtain 600\$ to 667\$ CAD in renting income. Yet, they do not file a lease agreement or any evidence that the properties could be rented out and generate the alleged revenue.

[20] For proof of funds, the Applicants filed a bank letter attesting to a balance of the equivalent of \$61,000 CAD on February 8, 2023.

[21] The officer found that the Applicants' "financial situation does not demonstrate that funds would be sufficient or available for tuition, living expenses and travel".

[22] The officer did not question the genuineness of the bank letter nor did he question whether the Applicants were the owners of the properties. He simply stated that the evidence did not show any revenue would be coming from these assets. He did not have to provide the Applicants with the opportunity to respond and/or to complete their evidence.

B. *Is the decision reasonable?*

[23] Section 216(b) of the IRPR provides that an officer shall issue a study permit if it is established that the foreign national will leave Canada by the end of the period authorized for their stay.

[24] In conducting a reasonableness review, the Court's task is to develop an understanding of the officer's reasoning process to determine whether the decision to deny leave as a whole is reasonable. The question is whether the decision as a whole is transparent, intelligible, and justified in relation to the relevant factual and legal constraints that bear on it (*Vavilov* at para 99).

[25] The Applicants dispute the officer's finding that they did not provide evidence that they have sufficient funds for their planned travel and study in Canada. Jurisprudence shows that it is unreasonable for an officer to rely on the high cost of post-secondary education in Canada to reach the conclusion that an applicant is not a bona fide student (*Caianda v Canada (Citizenship*

*and Immigration*), 2019 FC 218 at para 5; *Rajasekharan v Canada (Citizenship and Immigration)*, 2023 FC 68 at para 33).

[26] The Applicants submit that the officer failed to meaningfully grapple with positive aspects of the study permit application. The Applicants submitted evidence detailing their tuition prepayment of \$12,900, scholarship for \$10,000 and grant/loan from their employer for \$1,000,000,000 IRR.

[27] The officer considered the Applicants' banking and property records and found that their financial situation does not demonstrate sufficient available funds.

[28] While the "Financial sufficiency" section of the IRCC guidelines on study permits show an applicant is only required to demonstrate financial sufficiency for the first year of studies, it also shows an officer must still be satisfied that the probability of funding for future years does exist (IRCC – Study permit: Assessing the application).

[29] The Principal Applicant did not show that sufficient probability of funding for future years exists. He provided a letter from his bank stating that on February 8, 2023, the balance was the equivalent of \$61,000 CAD. The estimated costs of the first year totals around \$42,000 CAD, leaving \$19,000 CAD to fund the next three years of study. It is reasonable to find it is not enough to support the Principal Applicant and his family.

[30] While the Principal Applicant states the family will gain monthly income through his wife's employment, and by renting their properties in Iran, no rental or employment contracts were provided.

[31] In my view, the officer meaningfully grappled with the evidence that showed the available funds and the potential of future income and the evidence supports his conclusion.

[32] I also find it was reasonable for the officer to find incentives for an applicant to remain in Canada when an applicant is accompanied by immediate family (*Hajiyeva v Canada (Minister of Citizenship and Immigration)*, 2020 FC 71 at para 5). By finding the Applicants have no significant family ties in Iran, rather than no family ties at all, the officer indicates he has considered the evidence provided.

[33] While the officer cannot solely base his decision on the immediate family's accompaniment of the Principal Applicant to Canada, it is permissible to consider this factor when determining the Principal Applicant's incentives to remain in Canada.

[34] Finally, the officer does engage with some of the Principal Applicant's submissions regarding his motivation to come to Canada and engage in a Bachelor degree in administration. The officer notes that the choice of study demonstrates an inconsistent career progression and that he is not satisfied that the study program would be of benefit to the Principal Applicant.



[35] The Principal Applicant has a diploma in car repairing and the documentary evidence shows that in 2018 he obtained a certificate of vocational skill in industrial electricity and in 2022, he obtained similar certificates in carpentry and in wooden cupboard making. He states that in 2017, he returned to working full time for his current employer who manufactures high-standard wires and cables of KNX, AWG and Solar Crossing.

[36] The officer reasonably determined that the Principal Applicant's "motivation to pursue studies in Canada at this point does not seem reasonable". The Principal Applicant had not shown the merits of his study plan, nor had he shown the officer that the Program was a logical choice given his prior education and employment.

[37] Having regards to the evidence, it was open to the officer to conclude that the Applicant has not shown that a Canadian Bachelor in administration would be of benefit or that it would be a logical career progression. The Principal Applicant provided a letter showing that upon completion of this program, he may work as "the Energy Manager and Energy Consumption Optimization manager" for his employer. However, the letter does not show that position would be a promotion, nor does it show that the duties of the position are more favourable to the Principal Applicant than his current position. In *Akomolafe v Canada (Citizenship and Immigration)*, 2016 FC 472, this Court found it was reasonable for an officer to refuse a study permit application if an applicant has not sufficiently articulated the benefits they intend to gain from a particular study plan.

VI. Conclusion

[38] As I find the officer did not breach procedural fairness and the overall decision to be reasonable, this application for judicial review is dismissed.

[39] The parties have proposed no question of general importance for certification and no such question arises from the facts of this case.

**JUDGMENT in IMM-3811-23**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed;
2. No question of general importance is certified.

“Jocelyne Gagné”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3811-23

**STYLE OF CAUSE:** ABED KAMALI KERMANI, NARGES SEDAGHATI  
and SEVDA KAMALI KERMANI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** MAY 29, 2024

**JUDGMENT AND REASONS:** GAGNÉ J.

**DATED:** AUGUST 12, 2024

**APPEARANCES:**

Samin Mortazavi FOR THE APPLICANT

Charles Barnes FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Pax Law Corporation FOR THE APPLICANT  
North Vancouver, BC

Attorney General of Canada FOR THE RESPONDENT  
Vancouver, BC