Federal Court Cour fédérale

Date: 20240829

Docket: IMM-7877-23

Citation: 2024 FC 1343

Toronto, Ontario, August 29, 2024

PRESENT: Mr. Justice Diner

BETWEEN:

ROSHANAK MORADIAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>JUDGMENT AND REASONS</u>

[1] Ms. Moradian seeks judicial review of a decision made by an Immigration Officer [Officer] refusing her application for a study permit [Application], dated June 8, 2023 [Decision]. The Officer was not satisfied that Ms. Moradian would leave Canada by the end of the authorized period based on her financial status and purpose of her visit to Canada, pursuant to paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR, with provisions indicated by "R"]. For the reasons below, this application for judicial

review is dismissed. The Officer's refusal of the study permit was reasonable in light of the scant financial evidence provided.

[2] Ms. Moradian raises two issues: (i) was the Decision unreasonable in light of the evidence before the Officer, and (ii) was there a breach of procedural fairness? Reasonableness is the presumptive standard of review and in my view, the circumstances of this case do not warrant a departure from the standard (*Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65 [*Vavilov*]). I must thus determine whether the Decision is transparent, intelligible and justified, in light of both its rationale and outcome (*Vavilov*, para 15).
Ms. Moradian argues before this Court that the Officer's Decision is unreasonable because the Officer (i) ignored the evidence, and (ii) was unduly concerned about the disproportionate cost of studying in Canada and in doing so, acted beyond their jurisdiction. The standard of review for procedural fairness, on the other hand, has been equated to correctness, by considering whether the process was fair and just (*Vavilov*, at paras 37–38; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34–56).

[3] I begin by noting that all applicants must establish that they meet the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and the IRPR to obtain a study permit. R216(1) of the IRPR states that an applicant must establish that they will leave at the end of their authorized stay. R220(b) holds that an officer shall not issue a study permit to a foreign national unless the officer assesses that they have sufficient and available resources to "maintain themselves […] during their proposed period of study […]." Applicants therefore bear the onus of providing all relevant documentation to support their case, including sufficient evidence of

financial resources, and to satisfy the officer that they will not remain in Canada at the end of their study period (*Aghvamiamoli v Canada (Citizenship and Immigration)*, 2023 FC 1613 at para 11 [*Aghvamiamoli*]).

[4] Here, the Global Case Management System [GCMS] notes read in part:

> The applicant's assets and financial situation are insufficient to support the stated purpose of travel for the applicant. Financial documentation provided shows only the balance, there is no evidence on file to demonstrate the history of fund accumulation, therefore I have concerns that the funds are sufficient or available for the intended purposed studies in Canada.

[5] I am satisfied that the Officer satisfactorily considered the evidence that was provided in the Application. In terms of financial records, Ms. Moradian provided (i) an account balance certificate, indicating the amount available in a bank account, (ii) a sales contract for a property transferred by her father, (iii) a sales contract for a property acquired in her name and (iv) a title deed for a distinct property in her name (all three properties being located in Iran).
Ms. Moradian's Application also stated that her husband would be supporting her during her stay in Canada.

[6] With respect to the proof required to establish that an applicant meets the requirements for documents relating to personal finances, Immigration, Refugee and Citizenship Canada [IRCC] provides an application guide which instructs Iranian applicants on what to provide, including bank statements showing six months worth of transaction history (Study Permit – Ankara Visa Office Instructions, IMM 5816 E). A failure by an applicant to provide all

documentation reasonably required by the visa office can be sufficient reason to refuse an application (*Aghvamiamoli* at paras 28–31).

[7] Recently this Court reviewed a similar scenario in *Najaran v Canada, (Citizenship and Immigration)*, 2024 FC 541 [*Najaran*], where Justice Sadrehashemi dismissed the applicants' judicial review. In terms of financial documentation, Mr. Najaran had provided a bank statement indicating a final balance as well as documentation relating to a sale of land and a pay slip for a month period. The Court found that the officer's evaluation of Mr. Najaran's finances to be both determinative, and reasonable on the basis of R220 that a study permit shall not be issued unless there are sufficient and available financial resources (*Najaran* at para 2). Similarly here, the Applicant failed to adhere to the checklist requirements of the Ankara visa office for bank account transactional history.

[8] Neither the requirement for financial documentation, nor the refusal based in part on a failure to comply with it, are unreasonable. As Justice Pamel recently held, "it is not a simple matter of reviewing the applicant's bank account and, if they have sufficient funds, granting them a permit; the visa officer must conduct a more detailed and fulsome investigation about the source, nature, and stability of these funds" (*Sayyar v Canada (Citizenship and Immigration)*, 2023 FC 494 at para 12). Similarly, Justice Grant confirmed that without information on the "day-to-day flow of funds into, and out of, the bank accounts provided" it was reasonable for an officer to not be satisfied that funds would be sufficient (*Mohammadhosseini v Canada (Citizenship and Immigration)*, 2024 FC 848 at paras 26–27 [*Mohammadhosseini*]).

[9] Here, Ms. Moradian also pointed to the other documentation including her property to state that it was unreasonable to refuse her Application on the basis of her financial evidence. However, the jurisprudence is that it is not unreasonable for an officer to exclude non-liquid assets from their evaluation as these funds are not readily accessible (*Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at paras 44–45; *Izokun v Canada (Citizenship and Immigration)*, 2024 FC 875 at para 19), or to exclude a pay slip where there is no evidence of where the funds are being deposited (*Najaran* at para 6). I acknowledge that in *Najaran*, the applicant's pay slip had information to a deposit account, albeit a different account than the one he had provided a certificate for. In this case, the pay slip provided has no deposit information or proof that the funds are being deposited in the account for which Ms. Moradian provided a certificate.

[10] Ultimately, visa officers do not have discretion to issue a permit when the applicant fails to satisfy them of adequate financial resources (see for instance *Ibekwe v Canada (Citizenship and Immigration)*, 2022 FC 728 at para 31; *Pourmehdi Kasmaei v Canada (Citizenship and Immigration)*, 2024 FC 963 at para 3). Therefore, Ms. Moradian's failure to satisfy the Officer of sufficient financial means is determinative of this matter. Her financial documentation was ultimately deficient in that (i) the account balance certificate showed no transactional history, (ii) the sale contract purporting to show the sale of a piece of real property by Ms. Moradian's father failed to establish that these funds were the source of the funds in her bank account, and (iii) the Officer was not required to consider Ms. Moradian's non-liquid assets, such as properties in her name, in their evaluation. While Ms. Moradian stated that her husband would support her

financially throughout her stay in Canada if needed, she did not provide independent evidence of his financial capacity.

[11] Counsel for Ms. Moradian made the point that she provided a certificate for a "long term deposit account" and that therefore, it is illogical to be requesting a 6-month transactional history because (i) there is no monthly change in that kind of account, and (ii) the terms of the account should be sufficient evidence of fund accumulation. To that, I provide two observations. First, Ankara visa office instructions state that the applicant must submit "copies of bank statements or bank book covering the past 6 months." Second, there was no evidence provided to the Officer regarding the mechanics of long-term accounts, and counsel provided no jurisprudence to assist the Court on this issue.

[12] Indeed, the jurisprudence appears unhelpful to Ms. Moradian in that only three cases have discussed a "long term deposit account," two of which only mention the fact that the account proof was submitted, but are otherwise unhelpful to the applicant's assertion (*Therani v Canada, (Citizenship and Immigration),* 2023 FC 159; *Eslami v Canada (Citizenship and Immigration)*, 2024 FC 409). In the third case, the applicant submitted not only the account, but also a record of monthly transactions "covering a few months," and Justice Grammond nonetheless held that the visa officer's finding of insufficient financial resources was reasonable (*Moghadar Haghani v Canada (Citizenship and Immigration)*, 2023 FC 816 at paras 9–10).

[13] Counsel for Ms. Moradian also argued that most of the cases relied upon by the Respondent concern families, as opposed to the present case where Ms. Moradian's husband and

daughter were to remain in Iran for the duration of her studies. However, I would first note that not all the cases on this issue have involved families. There are certainly analogous decisions that involve persons traveling to Canada without any dependents. Furthermore, the visa officers must address not only sufficiency and availability of funds, but also source (or provenance) of funds. In this case, it was reasonable that the Officer had concerns about finances because they were not satisfied on the issue of the source of funds, based on the evidence in front of them.

[14] Lastly on the issue of reasonableness, I agree with the Applicant's counsel that officers should exercise caution not to fall into career counseling (*Adom v Canada (Citizenship and Immigration)*, 2019 FC 26 at paras 16–17; *Rajasekharan v Canada (Citizenship and Immigration)*, 2023 FC 68 at para 21). However, in this case, the Officer's comments on the availability and cost of alternate local study options were peripheral to the primary conclusion on the failure to provide sufficient financial evidence. This Court's jurisprudence is clear that insufficient financial evidence can be a determinable issue (see for instance *Najaran* at para 2; *Mohammadhosseini* at para 31). That was the case for Ms. Moradian. As for the career counseling, decisions need not be perfect on every point, but must be justified as a whole (*Vavilov* at para 91). Here, the Officer's reasons as a whole add up, and the Decision was reasonable based on the fact and the law.

[15] On the second issue, Ms. Moradian submits that the Officer breached her right to procedural fairness because they questioned the genuineness of her financial resources and did not give her an opportunity to provide additional evidence before refusing her Application.

[16] The Respondent, on the other hand, submits that there is no breach of procedural fairness in this case because there is no credibility finding. Rather, the onus was on Ms. Moradian to provide all necessary information to support her Application. I agree. Here, Ms. Moradian simply failed to provide sufficient financial history evidence – rather than the officer disbelieving what she did provide (see for instance *Lv v Canada (Citizenship and Immigration)*, 2018 FC 935 at para 40). Indeed, the onus was on Ms. Moradian to provide sufficient evidence of her finances, and the Officer had no obligation to raise concerns with her, given the financial documentation requirements as set out in the Ankara checklist. As this Court has held:

> It is well established that a visa officer has no legal obligation to seek to clarify a deficient application, to reach out and make the applicant's case, to apprise an applicant of concerns relating to whether the requirements set out in the legislation have been met, or to provide an applicant with a running score at every step of the application process (*Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 38).

[17] In light of the above, this application for judicial review is dismissed.

JUDGMENT in file IMM-7877-23

THIS COURT'S JUDGMENT is that:

1. The judicial review is dismissed.

2. There is no question to certify.

3. No costs will issue.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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