Federal Court  Cour fédérale

Date: 20241007

Docket: IMM-12255-23

Citation: 2024 FC 1573

Toronto, Ontario, October 7, 2024

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

FARZAD FARSHID

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Farzad Farshid [the Applicant], is a citizen of Iran who applied for a study permit to pursue studies at Centennial College in Toronto [Centennial]. A visa officer [the Officer] rejected his application [the Decision] on the basis that the Officer was not satisfied that the Applicant would leave Canada at the end of his authorized stay because the purpose of his visit is not consistent with a temporary stay in Canada.

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

[3] For the reasons that follow, I find that the Decision is intelligible and justified based on the record that was before the Officer. Accordingly, this application for judicial review is dismissed.

II. Legislative Framework

[4] Pursuant to subsection 11(1) and paragraph 20(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 and paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*], 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.

III. Facts

[5] The Applicant is a 26-year-old student with an undergraduate degree in computer engineering from Islamic Azad University. He received an acceptance letter from Centennial for an advanced college diploma program in computer systems technology with a focus in networking.

[6] The Applicant has significant work experience in computer systems, digital media and web design. His career started as an intern at an IT company where he started to learn about the repair and maintenance of computers and computer systems. He then joined a studio where he

worked as a content and sound recorder. Between May 2018 and February 2020, the Applicant was employed as a Network Specialist responsible for planning, designing and implementing network infrastructure as well as trouble-shooting and resolving network issues. In January 2019, he joined his current employer in Iran where he has been managing digital marketing and social media ever since. He has also been running a web design business since January 2019.

[7] The Applicant applied for a study permit on June 28, 2023. The Officer refused his application in the Decision dated August 30, 2023. The Officer was not satisfied that the applicant would leave Canada at the end of his stay as required by paragraph 216(1)(b) of the *IRPR*. The Global Case Management System [GCMS] notes that accompanied the Decision state:

> I have reviewed the application. I have considered the following factors in my decision. Chosen program at such expense appears redundant in light of the PA's reported scholarly history. Considering applicant's education and previous work experience, I am not satisfied that applicant would not have already achieved the benefits of this program. In light of the PA's previous study and current career, I am not satisfied that this is a reasonable progression of studies. Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

IV. Issues and Standard of Review

[8] The Applicant has raised the following issues:

A. Is the Decision unreasonable given that the Officer ignored and/or misapprehended material evidence in making the Decision?

B. Was the Applicant denied procedural fairness when he was not given the opportunity to address the Officer's adverse credibility finding?

[9] 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).

[10] In accordance with the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], this review starts with judicial restraint and a respect for the distinct role and expertise of administrative decision makers. The Court's review is nevertheless a robust review which ensures that administrative decision makers exercise their public power in a manner that is justified, intelligible and transparent in terms of both the rationale and outcome of their decision (*Vavilov* at paras 13, 95, 99).

[11] Issues of procedural fairness, on the other hand, are reviewed on a standard akin to correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35, 54-55 [*Canadian Pacific*], citing *Mission Institution v Khela*, 2014 SCC 24 at para 79). The Court looks to ensure that administrative decisions are made using a fair, open and appropriate procedure that provides an opportunity for those affected by the decision to understand the case they have to meet and put forward their views and evidence fully for consideration by an impartial decision maker (*Canadian Pacific* at para 41).

V. Analysis

A. *Was the Decision Unreasonable?*

(1) *The Officer's Use of Chinook 3+*

[12] As a preliminary point, I wish to address the Applicant's submission that the GCMS notes disclose not only that the Applicant's file was processed with the assistance of an artificial intelligence tool, "Chinook 3+," but that the Decision was made by Chinook 3+ before the Officer even accessed the file. The impact of this observation is far from clear and invites speculation, none of which changes the Court's role in judicial review, which is to look at the decision and determine whether it is both reasonable and procedurally fair (*Haghshenas v Canada (Citizenship and Immigration)*, 2023 FC 464 at para 24).

(2) *The Officer's Consideration of the Evidence*

[13] The Applicant submits that the Officer was selective in his consideration of the evidence and only referred to factors that supported the Decision while failing to consider other favourable factors. In particular, the Applicant points to the Applicant's Study Plan and the job offer letter he received from his current employer [the Employer's Letter]. The Applicant relies on jurisprudence that considers a decision unreasonable where a decision maker is silent on evidence clearly pointing to an opposite conclusion (*Shang v Canada (Citizenship and Immigration)*, 2021 FC 633 at para 65 citing *Basanti v Canada (Citizenship and Immigration)*, 2019 FC 1068 at paras 24-25).

[14] The determinative factor in the Officer's Decision is that the Applicant's proposed program is redundant and not a reasonable progression in light of his already obtained Bachelor's degree in computer engineering, his past work experience and his current career.

[15] Based on the issue raised by the Applicant, the role of the Court is to assess whether this rationale is justified on the record that was before the Officer and responsive to the central aspects of the Applicant's application (*Nesarzadeh v Canada (Citizenship and Immigration)*, 2023 FC 568 at paras 5-9 [*Nesarzadeh*]). The onus is on the Applicant to demonstrate that the decision maker failed to consider important evidence (*Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 at para 38).

[16] Based on my review of the record, I do not consider the Officer to have ignored important evidence or evidence that contradicts the Officer's concerns related to the redundancy of the Applicant's proposed studies. The Study Plan offers little in the way of explanation for the Applicant's pursuit of the Centennial degree apart from his broad statement that "[he is] interested in studying for a degree that will consolidate [his] computer knowledge and enrich [his] experience with up-to-date information" and his belief that the diploma degree will enhance his employability.

[17] Nor do I find the Employer's Letter to constitute evidence that undermines the Officer's rationale. The Employer's Letter states that upon completion of the Centennial degree, the Applicant's position will change from Digital and Social Media Manager to Network Automation Engineer in which role he will be responsible for the design, development,

implementation and trouble-shooting of network automation solutions. As the Officer notes, this is not a career progression in light of the Applicant's significant work history as a network specialist. As the Respondent's counsel pointed out, the role described in the Employer's Letter matches the description of the role the Applicant held as a Network Specialist in the years 2018-2020.

[18] Given the vague nature of the Study Plan coupled with the Applicant's previous work experience, it was not unreasonable for the Officer not to have addressed this evidence which was ultimately of little probative value (*Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at para 10).

[19] I also find that the Applicant has failed to demonstrate that the Officer's concern that the Applicant's proposed studies are redundant in light of his previous education and work experience to be unjustified on the record. The Centennial degree is an advanced diploma degree in computer systems technology that focuses on networking. However, the Applicant already graduated with a Bachelor's degree in 2022 in computer engineering and in terms of the Applicant's prior work experience, his resume states that he has "[e]xtensive experience in computer networking, assembling and installation."

[20] I therefore find the Applicant has not shown the Officer's rationale to be unjustified. Rather, the GCMS notes set out the key elements of the Officer's line of analysis, which is both rational and responsive to the central aspects of the Applicant's application (*Nesarzadeh* at paras 5-9).

B. *Was the Applicant Denied Procedural Fairness?*

[21] The Applicant submits that the Officer made a veiled credibility finding that the Applicant's application was not genuine and should have given the Applicant the opportunity to address the Officer's concern. The Applicant suggests that the Officer's grounds for refusal in the Decision are identical to those in *Soltaninejad v Canada (Citizenship and Immigration)*, 2022 FC 1343 [*Soltaninejad*] where the GCMS notes showed that "the Officer cast doubt over the genuineness of the Applicant's stated purpose, largely because the expense was not seen to be justified when a comparable program was available in Iran" (*Soltaninejad* at para 22). The *Soltaninejad* decision does not support the Applicant's argument. Justice Pentney did not analyze this line of reasoning as a credibility finding; rather, the ratio of the case relates to a failure on the part of the Officer to engage with the Applicant's evidence.

[22] The Applicant also relies on the decision in *Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284 [*Rukmangathan*] for the proposition that there are circumstances where a visa officer will be required to inform an applicant of concerns with an application, even where those concerns arise from the applicant's own evidence.

[23] *Rukmangathan* is distinguishable. While Justice Mosley found a breach of procedural fairness in *Rukmangathan*, the officer's concerns did not emanate directly from the requirements of the legislation and the sufficiency of the Applicant's application in view of those requirements. *Rukmangathan* is therefore consistent with the long line of authorities that hold that procedural fairness does not require a visa officer to provide an applicant with a "running

score" of the weaknesses in their application (*Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at paras 37-38).

VI. Conclusion

[24] I find that the Applicant has failed to discharge his burden of showing that the Decision was unreasonable and that he was denied procedural fairness. The Decision sets out the key elements of the Officer's line of analysis and is responsive to the central aspects of the application. Accordingly, this application is dismissed.

JUDGMENT in IMM-12255-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. There is no question for certification.

"Allyson Whyte Nowak"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Shahab Nazarinia	FOR THE APPLICANT
Nicole John	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shahab Nazarinia Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT