Federal Court Cour fédérale

Date: 20241017

Docket: IMM-5053-23

Citation: 2024 FC 1641

Toronto, Ontario, October 17, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

NARGES NAZARI AND HODA REZAEIAN
AND ELIKA REZAEIAN

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondents

JUDGMENT AND REASONS

[1] The Primary Applicant [PA], Nagares Nazari, is a citizen of Iran who lives in Malaysia with the co applicants, her spouse and their daughter. The PA applied for a study permit to pursue an 18-24 month Master's of Business Administration [MBA] program. The PA's spouse applied for a work permit and their child a visitor's visa to allow them to accompany the PA.

[2] In a decision dated April 5, 2023, the Immigration Officer [Officer] found they were not satisfied the PA would leave Canada at the end of her authorized stay. The Officer found the PA's assets and financial situation were insufficient to support the stated purpose of travel for the PA and accompanying family members.

[3] The Officer's notes, as set out in the Global Case Management System [GCMS], state the following:

> Application reviewed along with supporting documents. Additional and updated submissions have been requested from PA and have been received and reviewed.
>
> Financial documents from Malaysia do not include bank statements and are essentially constituted of a financial assessment of the applicant's spouse's business in Malaysia. I also note that PA and her spouse would both be in Canada and it is therefore unclear how PA's spouse would then be able to draw financial resources from their business in Malaysia, as they would not be able to operate it. Financial statements for the company reviewed, indicating that the company had a loss of 532 MYR in 2022, down from very low profit of 3,279 MYR in 2021. I further note that the profit had very low revenue of 5,350 (about 1,639 CAD) in 2022. No bank statements were provided but, based on the documents on file, it appears that PA and her spouse's company in Malaysia generates very low revenue and was at a loss in 2022. This raises concerns that the applicants have no adequate regular income.
>
> I acknowledge that the estimated tuition for the entire program is $36,225 and that the applicant has paid over half of that amount, as she paid $19,980 already. However I note that this still indicates that a substantial part of the tuition fees remains pending and that PA would still have living expenses for a family of 3 for the duration of the proposed studies. I note that our public website suggests that applicants going outside Quebec require at least 10,000$ per year plus 7,000 for two dependents: https://www.canada.ca/en/immigration-refugees-citizenship/services/study-canadia/study-permit/get-documents.html
>
> According to the updated submission, PA and her spouse would have a total of 28,221 USD in liquid funds, excluding bonds, or

> about 37,915 CAD. I note that those funds would be almost entirely depleted while considering the remainder of the tuition fees due and the living expenses for only 1 year. Having considered the available funds, I have concerns that the applicant would have to draw from several accounts, most of which would then be entirely depleted. Considering that no additional satisfying proof of regular income has been provided and that the company documents on file show that their company in Malaysia is losing money, I have concerns that the applicant and her family would exhaust most of their financial resources while having no regular income.
>
> I also have concerns that no proof of funds in Malaysia, where PA and spouse are currently residing and working have been provided, and that most of the financial documents on file are from Iran, although PA and spouse are not working there currently. Based on the above and on balance, I am not satisfied that the applicant and her family would have sufficient financial resources to undertaker the proposed studies and maintain themselves while in Canada.
>
> Applications refused.

[4] The Applicants apply under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of Officer's refusal decisions raising two issues:

A. The Officer's decision is inconsistent with the evidence and therefore unreasonable.

B. The Officer's conclusion that the PA lacked sufficient funds was a veiled credibility finding, and the failure to provide the PA an opportunity to address the Officer's concern was a breach procedural fairness.

[5] I am neither persuaded that the Officer's decision was unreasonable, nor that the process was unfair. The Application is dismissed for the reasons that follow.

[6] Section 220 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], provides that an officer "shall not" issue a study permit where sufficient financial resources have not been demonstrated to fund tuition for the program to be pursued, maintain the applicant and accompanying family members for the proposed study period, and to cover transportation costs to and from Canada:

***Immigration and Refugee Protection Regulations*, SOR/2002-227**	***Règlement sur l'immigration et la protection des réfugiés,* DORS/2002-227**
Financial resources	**Ressources financières**
220 An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to	**220** À l'exception des personnes visées aux sous-alinéas 215(1)d) ou e), l'agent ne délivre pas de permis d'études à l'étranger à moins que celui-ci ne dispose, sans qu'il lui soit nécessaire d'exercer un emploi au Canada, de ressources financières suffisantes pour :
(a) pay the tuition fees for the course or program of studies that they intend to pursue;	**a)** acquitter les frais de scolarité des cours qu'il a l'intention de suivre;
(b) maintain themself and any family members who are accompanying them during their proposed period of study; and	**b)** subvenir à ses propres besoins et à ceux des membres de sa famille qui l'accompagnent durant ses études;
(c) pay the costs of transporting themself and the family members referred to in paragraph (b) to and from Canada.	**c)** acquitter les frais de transport pour lui-même et les membres de sa famille visés à l'alinéa b) pour venir au Canada et en repartir.

[7] The Applicant has the burden of demonstrating sufficient funds to satisfy section 220 of the IRPR.

[8] Policy guidelines guide an officer's discretion in assessing whether an applicant meets the requirements of section 220 of the IRPR. These guidelines suggest that an officer's primary consideration during this assessment should be an applicant's ability to fund the first year of studies (*Cervjakova v Canada (Citizenship and Immigration)*, 2018 FC 1052 at para 14). Nevertheless, these guidelines are not binding on an Officer and it is an error to treat them as such (*Sani v Canada (Citizenship and Immigration)*, 2024 FC 396 at paras 26 [*Sani*]). That is to say, an officer may properly exercise their discretion if they are satisfied that the applicant has submitted sufficient proof of funding for the first full year of study, though they retain the ability to consider other factors in assessing the section 220 requirements (*Sani* at para 27).

[9] In this instance, the Officer considered and engaged with the Applicants' financial evidence and noted that:

A. The total cost of tuition for the PA would be $36,225 of which the PA had already paid $19,980;

B. The living costs for the PA and her family would be approximately $17,000 per year;

C. The record demonstrated that liquid funds of approximately $37,916 were available to the PA and her family; and

D. Although the PA’s spouse operated a business in Malaysia, it was unclear if that business could operate if the PA’s spouse were in Canada, and that in any event the financial records demonstrated the business was generating little if any revenue.

[10] The Officer’s decision is to be reviewed on the standard of reasonableness. In conducting a reasonableness review, a court will only intervene where an applicant demonstrates the impugned decision fails to demonstrate the hallmarks of reasonableness – justification, transparency, and intelligibility. Where a reviewing court is able to understand why the decision was made, and it is satisfied the outcome is defensible in light of the facts and applicable law, the court should not intervene (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 85-86, and 100).

[11] Contrary to the PA’s submissions, it is clear that the Officer considered the significant tuition deposit the PA had made. Having done so, it was not unreasonable for the Officer to note, even with the partial prepayment of tuition, that the PA and her family would deplete almost the entirety of their disposable funds in the first year of studies. While the PA argues the Officer should have considered that the PA’s spouse intent to work in Canada as well as the increase in his company assets between 2021 and 2022, these arguments amount to nothing more than a request that this Court reweigh the evidence on judicial review. The Officer was clearly aware that the spouse was seeking a work permit, and reviewed the company financial records. That being the case – and recognizing that employment in Canada was a speculative consideration – the Officer did not commit a reviewable error by failing to address the possibility of spousal employment. Nor did the Officer err by preferring the business revenue evidence over a reported

increase in the value of corporate assets; an increase that is not addressed or explained in the PA’s submissions to the Officer. Similarly, it was not unreasonable for the Officer not to address real property assets in Iran given the absence of a statement from the PA in her study plan demonstrating a clear intent to liquidate those assets to fund her proposed studies in Canada.

[12] Turning to the issue of fairness, I am not persuaded by the PA’s argument that the Officer found the PA’s financial evidence not to be credible.

[13] While in some instances it can be difficult to distinguish between a veiled credibility finding, and a finding based on the sufficiency of evidence, this is not one of those cases. The Officer’s GCMS notes clearly demonstrate that the Officer did not take issue with the credibility of any evidence provided in support of the application. Instead, the Officer accepted the financial evidence as presented, but found it to be insufficient, for the reasons set out, to demonstrate sufficiency of funds. No issue of fairness arises.

[14] The Application is dismissed. The parties have not identified a question for certification, and none arises.

JUDGMENT IN IMM-5053-23

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.

2. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5053-23
STYLE OF CAUSE:	NARGES NAZARI AND HODA REZAEIAN AND ELIKA REZAEIAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

Samin Mortazavi	FOR THE APPLICANTS
Michelle Kwong	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Pax Law Corporation Barristers, Solicitors & Notaries Vancouver, British Columbia	FOR THE APPLICANTS
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENTS