Federal Court  Cour fédérale

Date: 20241030

Dockets: IMM-723-23
IMM-721-23
IMM-722-23
IMM-724-23

Citation: 2024 FC 1726

Ottawa, Ontario, October 30, 2024

PRESENT: The Honourable Madam Justice Strickland

Docket: IMM-723-23

BETWEEN:

MOSLEM ATTAR RAOUF

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-721-23

AND BETWEEN:

ALI ATTAR RAOUF

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-722-23

AND BETWEEN:

ELHAM EBRAHIMPOOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-724-23

AND BETWEEN:

MOHAMMAD ATTAR RAOUF

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Moslem Attar Raouf (Court File IMM-723-23) [Principal Applicant], his spouse, Elham Ebrahimpoor (Court File IMM-722-23), and two minor children, Ali Attar Raouf

(Court File IMM-721-23), and Mohammad Attar Raouf (Court File IMM-724-23) [together, the Applicants] are Afghan nationals who were born and reside in Iran.

[2] The Principal Applicant submitted an application for a 12-month work permit as a high-level intra-company transferee (senior manager), under s 205(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRP Regulations*] and exemption code C12. His spouse applied for a work permit under the C41 category as the spouse of a work permit holder and visitor visas were sought for their two children.

[3] The Principal Applicant submitted a business plan, which indicates that he has been employed with Novin Simia Company [Novin] for over ten years and, at the time of the application, was its General Manager. Novin established an affiliate company, 1310489 BC Ltd [Canadian Company], and sought to transfer the Principal Applicant to the Canadian Company as its Vice President. Two other Novin employees were also intended to be transferred. The business plan described Novin as an engineering, procurement, construction and manufacturing company that has operated in Afghanistan since 2008 and as having two main divisions: (i) the provision of engineering, procurement and construction solutions mainly for electrical products, and manufacturing electrical products, and (ii) the provision of engineering services. The Canadian Company was opened with a view to providing professional engineering and management services to Novin, which has existing clients, as well as project management consulting, electrical engineering design review, proposal writing, and business consulting. It intended to commence its operations in 2022.

[4] The Applicants seek judicial review of the refusal of Principal Applicant's work permit and the resultant refusals of the work permit and temporary resident visas of his spouse and children, which were dependant upon the success of the Principal Applicant's work permit application.

[5] These reasons will address the refusal of the Principal Applicant's work permit application. The underlying facts are the same with respect to the work permit application of his spouse and the visitor permits for their children. Those Court files shall be consolidated with this matter and a copy of these reasons will be placed in each of those Court files.

Decision Under Review

[6] By letter dated November 18, 2022, Immigration, Refugees and Citizenship Canada [IRCC] advised the Principal Applicant that his application did not meet the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and the *IRP Regulations*, and was refused on the basis that the Principal Applicant had "not demonstrated that the company has the financial ability to commence business in Canada, compensate employees and support client's managerial function and that both the foreign and Canadian company will be doing business for the duration."

[7] The Global Case Management System [GCMS Notes], which form a part of the reasons for the decision, include the following entries by the deciding visa officer [Officer] with respect to eligibility:

> Have researched the mother company NOVIN SIMIA – limited info on open source but appears established in Afghanistan – working on civil engineering projects – until 2021 - Documents showing contacts with US clients Companies in Afghanistan – witch are likely to have stop when the political changes occurred in Afghanistan –
>
> There is no evidence NOVIN SIMIA existed in IRAN - local staff fluent in Farsi searched internet and could not find evidence of the Company activities in IRAN.
>
> Web site www.novinsimia.com is not working –
>
> Business license from BC issued June 2021 –
>
> Applicant position in Canadian company: vice president –
>
> 3 other applicants applying for similar purpose - Business plan indicates: "The Company will provide engineering design review and audit services for electrical projects as well as project management and business development services."
>
> I have carefully reviewed the business plan submitted. I have found that a large part of the information submitted is general and appears to have been copied from open source websites. Looking more into details of the financials of that business plan, I am not satisfied it is reasonable.
>
> Company is planning to have 19 employees in year 5 from 3 in the year 1 (p53) with sales going from $396,000 to nearly 2 million dollars by year 5 (p. 61), I believe these projections are overly optimistic and speculative in the Canadian context.
>
> Applicant's business line of energy and civil engineer is very competitive in Vancouver. I am not satisfied that the proposed employment would generate significant economic benefits or opportunities for Canadian citizens or permanent residents.
>
> I am not satisfied it was demonstrated that the company has the overall ability to commence business in Canada, compensate employees and support client's managerial function and that in both the foreign and Canadian company. Not satisfied Applicant

> meets requirements for requirements of the exemption under C12 – Intra-company transferees within the meaning described in section 2045(a) of the Regulations.
>
> Case refused

Issues and Standard of Review

[8] The issues in this matter can be framed as follows:

i. Did the visa officer breach the Principal Applicant's right to procedural fairness?

ii. Was the Officer's decision to deny the Principal Applicant's work permit reasonable?

iii. Should costs be awarded against the Respondent?

[9] The standard of review for issues of procedural fairness is correctness (see *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). Functionally, this requires the Court's analysis to focus on whether the procedure followed was fair, having regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[10] The parties submit and I agree that the standard of review applicable to the merits of the Officer's decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25). On judicial review, the Court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility –

and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov*, at para 99).

No Breach of Procedural Fairness

[11] The Applicants acknowledge that significant discretion is owed to officers in considering work permit applications and that the procedural fairness owed is at the lower end of the spectrum. However, they submit that where an applicant provides evidence sufficient to establish that they meet the requirements of the *IRPA* or the *IRP Regulations*, and an officer doubts the credibility, accuracy or genuine nature of the information provided and intends to deny the application based on those concerns, officers must provide applicants with the opportunity to respond. They submit that the Officer refused the Principal Applicant's work permit based on subjective credibility assessments rather than on the evidence found in his application.

[12] The jurisprudence surrounding the obligations of applicants when making work permit applications, and the duty of procedural fairness owed to them when assessing such applications, is well established. The onus is on an applicant to demonstrate that they meet the requirements of the *IRPA* and the *IRP Regulations* by providing sufficient evidence in support of their application. Put otherwise, applicants must put their best case forward and submit all relevant documentation in support of their application (*Sadeghieh v Canada (Citizenship and Immigration)*, 2024 FC 442 at para 29 [*Sadeghieh*]; *Chamma v Canada (Citizenship and Immigration)*, 2018 FC 29 at paragraph 35; *Yang v Canada (Citizenship and Immigration)*, 2023 FC 954 at paragraph 31; *Farboodi v Canada (Citizenship and Immigration)*, 2023 FC 1280 at para 20; *Pastor v Canada (Citizenship and Immigration)*, 2021 FC 1263 at para 18).

[13] The duty of procedural fairness owed by visa officers to an applicant is on the low end of the spectrum. Visa officer are not obliged to: notify an applicant of inadequacies in their applications nor in the materials provided in support of the application; seek clarification or additional documentation; or, provide an applicant with an opportunity to address the officer's concerns when the material provided in support of an application is unclear, incomplete or insufficient to convince the visa officer that the applicant meets all the requirements that stem from the *IRP Regulations*. The duty of procedural fairness will not be breached when a visa officer's concerns could reasonably have been anticipated by the applicant (*Mahmoudzadeh v Canada (Citizenship and Immigration)*, 2022 FC 453 at para 14).

[14] Further, when a concern arises directly from the requirements of the legislation or related regulations, a visa officer is not under a duty to provide an opportunity for an applicant to address their concerns. However, when the issue is not one that arises in that context, such a duty may arise. That is, if the visa officer was concerned with the credibility, the veracity, or the authenticity of the documentation provided by an applicant, as opposed to the sufficiency of the evidence provided, an obligation to provide the applicant with an opportunity to address those concerns may arise (*Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264 at paras 22–25; *Tollerene v Canada (Citizenship and Immigration)*, 2015 FC 538 at para 15; *Gur v Canada (Citizenship and Immigration)*, 2019 FC 1275 at paras 13–17; *Mohammadzadeh v Canada (Citizenship and Immigration)*, 2022 FC 75 at paras 20–29); *Rezaei v Canada (Citizenship and Immigration)*, 2020 FC 444 at para 12).

[15] In this case, the Officer's reasons do not involve credibility findings. Rather, the Officer's concerns were with the sufficiency of the evidence submitted by the Principal Applicant in support of his work permit application.

[16] With respect to the existence of Novin in Iran, the Officer noted that local staff fluent in Farsi searched the internet and could not find evidence of the company's activities in Iran. The Officer also noted that the website "www.novinsimia.com" was not working. It is of note that some documents submitted by the Principal Applicant, such as a Novin company profile, a letter of confirmation of employment from Novin, and a Novin letter concerning a need to transfer the Principal Applicant, contain the link "www.novinsimia.com" while others contain the link "https://www.novinsimia.com". The Principal Applicant does not specifically dispute that the website utilized by the Officer was not working, but instead submits that the Officer should have conducted a Google search or made other inquiries. However, the onus was on the Principal Applicant to provide clear and non-conflicting information to support his application.

[17] The Applicant also asserts that nowhere in his application did he suggest that Novin was a business registered or operating in Iran. Rather, that the documents submitted established that the company was registered, located in, and operating out of Afghanistan and, had the links been accessed or a Google search been conducted, this would have been corroborated. Again, however, I note that the materials submitted by the Principal Applicant in support of his work permit application are unclear on this point. For example, in the Application for Intra-Company Transferee Work Permit, the Principal Applicant's counsel states that the Principal Applicant is currently the General Manager of Novin located in Kabul, Afghanistan. However, a

Confirmation of Employment letter states that the Principal Applicant is among the senior managers and executives of Novin, "working at our office location based in Mashhad, Iran" who would "travel to Kabul for meetings or project development from time to time". A document entitled "Application for a Work Permit Outside of Canada" also indicates that the Principal Applicant has worked for Novin in Mashhad, Iran since 2015. In his affidavit filed in support of the application for judicial review, the Principal Applicant deposes that he works remotely from Iran but travels to Afghanistan when necessary. However, that information was not before the Officer when they assessed the Principle Applicant's work permit application.

[18] The Principal Applicant could reasonably have anticipated that a lack of clarity in his submitted documents relating to the location of Novin's operations could give rise to uncertainty or confusion when reviewed by a visa officer. The Officer was not under a duty to provide an opportunity to the Principal Applicant to address these concerns.

[19] Finally, the Principal Applicant submits that, had he been alerted to the Officer's concern about Novin's business operations following the political changes in Afghanistan in 2021, then he could have provided further evidence confirming continued business operations, including a contract with the International Committee of the Red Cross. In my view, continued operations in Afghanistan following the departure of US troops and a regime change – an event and its consequences which were widely reported internationally – could have been anticipated as a concern about the ongoing operations of Novin in Afghanistan. In fact, the letter of application sent by the Principal Applicant's counsel appears to acknowledge this as it states that "in spite of recent country conditions Novin Simia is actively doing business". However, this general

statement by counsel, without more, does not establish Novin's continued, or the extent of its continued business in Afghanistan. Given that this concern was reasonably anticipated by the Applicants, the Officer was under no duty to request further information or to give the Applicants an opportunity to respond to their concerns.

[20] In my view, the Officer did not make any veiled credibility findings. The Officer did not disbelieve that Novin existed nor that it did not continue its Afghan operations. Rather, the Officer found that there was simply not enough information provided by the Applicants about these matters to support his application. The Officer was not under a duty to provide an opportunity to the Applicants to address these concerns.

[21] There was no breach of the duty of procedural fairness.

The Officer's Decision Was Reasonable

[22] The Applicants argue that the Officer unreasonably assessed the Canadian Company's business plan. In that regard, they submit that: the Officer failed to specify what information in the business plan was allegedly copied from open-source websites; contrary to the Officer's finding that the business plan was general and copied from open source websites, the plan was detailed and specific; the Officer did not explain their conclusion that the business plan and projections were overly optimistic and speculative; and, that the Officer did not explain their broad conclusion that the Principal Applicant's line of business "is very competitive in Vancouver."

[23] Further, the Applicants submit that the Officer did not adequately balance the evidence before them in arriving at their decision to deny the Principal Applicant's work permit. Instead of engaging with the extensive evidence before them, the Officer made a sweeping statement about the economic state of Novin and its ability to commence business in Canada.

Analysis

[24] Upon reviewing the parties' submissions as well as the record, I am satisfied that the Officer's decision was reasonable.

[25] First, I do not agree that the Officer's refusal of the work permit was "inevitably fueled by disbelieving the very existence of the parent company", as the Applicants submit. As indicated above, the Officer did not disbelieve the existence of Novin. Rather, the Applicants failed to provide sufficient information to verify its operations in Iran or the extent of its ongoing business in Afghanistan.

[26] Further, the Principal Applicant applied under the International Mobility Program – LMIA exempt code C12 (intra-country transferees). Among other things, IRCC's Operational Instructions with respect to exemption code C12 indicate that both the Canadian company and the related foreign company must be or will be "doing business" for the duration of the intra-company transferee's intended stay in Canada. Operational instructions, or guidelines, are not legally binding, but may assist decision-makers in exercising their discretion and may assist courts in ascertaining reasonableness (*Shang v Canada (Citizenship and Immigration)*, 2021 FC 633 at para 46; *Babalou v Canada (Citizenship and Immigration)*, 2024 FC 549 at para 23). In

light of the inadequate information as to Novin's operations in Iran and its continued operations in Afghanistan, it was reasonable for the Officer to conclude that the Applicants did not demonstrate that Novin and the Canadian Company would be "doing business" for the duration of the work permit.

[27] The Officer also found that the business plan contained general information that appeared to have been copied from open source websites. The Applicants takes issue with this on the basis that the Officer did not indicate what information was copied from other websites. However, review of the business plan confirms that it does include a considerable amount of information that appears to be taken directly from open source materials, including IBISWorld, Electrical Equipment Manufacturing Industry in Canada, Industry Report 2020, Mordor Intelligence, and elsewhere. The Officer was not required to identify the open sources in their reasons. No error arises.

[28] As to the Applicants' argument that the business plan was detailed and specific, it is not the role of the Court to evaluate the sufficiency of the business plan (*Jamali v Canada (Citizenship and Immigration)*, 2023 FC 1328 at para 18; *Tehranimotamed v Canada (Citizenship and Immigration)*, 2024 FC 548 at paras 16–17; *Lotfikazemi v Canada (Citizenship and Immigration)*, 2024 FC 691 at para 14). To do so would be to engage in a re-weighing of the evidence (*Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 at para 52, citing *Qaddafi v Canada (Citizenship and Immigration)*, 2016 FC 629 at para 59). Further, a visa officer's decision warrants a high degree of deference as officers are presumed to have specific expertise and knowledge regarding the relevant regulatory schemes (*Sadeghieh*, at para 29, citing

Hashmi v Canada (Citizenship and Immigration), 2006 FC 1335 at para 12). Here the Applicants simply disagree with the Officer's finding that their projected sales over the first five years are overly optimistic and speculative. While in support of their position the Applicants refer to portions of the business plan that describe the intended operational roll out of the Canadian Company, this does not demonstrate that the Officer unreasonably viewed the projected sales as overly optimistic.

[29] The Applicants also submit that the Officer's finding that the business line of energy and civil engineering is very competitive in Vancouver does not explain how the Canadian Company would not generate significant economic benefits or opportunities for Canadian citizens or permanent residents specific to Vancouver and the industry.

[30] In that regard, the Applicants submit that the business plan addresses the market in British Columbia and notes several factors that would lead to the demand increase in electrical distribution/transmission industry (this appears to be an extract from IBISWorld). One of these listed factors is "failures of existing infrastructure – the power distribution system in Vancouver". And later, in again what appears to be the continued extract from IBISWorld, that "BC Hydro, the primary supplier of electricity in British Columbia, relies on a variety of independent power producers" to meet its energy needs and to build a "robust competitive market." The Applicants also refer to a statement in the business plan, which appears to be extracted from other websites, that, "major components of [the electricity system] need to be repaired or replaced." The Applicants submit that, in failing to engage with this key evidence, the Officer's decision lacked justification.

[31] It is not apparent to me how this argument assists the Applicants.

[32] The IBISWorld document extract provides predictions as to engineering services industry in Canada. Specifically, it states that the engineering services industry is expected to perform better over the four years to 2025, as public infrastructure investment and the value of non-residential construction increases. The IBISWorld document extract – or possibly the Applicants interpretation of it – then lists three factors that will lead to the demand increase in the electrical distribution/transmission industry, one of which is "failures of existing infrastructure – the power distribution system in Vancouver, BC". The business plan also includes a section entitled "Government's Plan for Developing Infrastructure in BC" which refers to the websites of Infrastructure BC and the Government of British Columbia, and appears to extract or reproduce information contained in same. This includes the statement (possibly taken from the Government of British Columbia's website), partially quoted by the Applicants, that:

> BC Hydro, the primary supplier of electricity in British Columbia, relies on a variety of independent power producers to meet BC's growing energy needs, and to build a robust competitive market for electricity that will help reduce long term costs, create jobs, meet environ-mental goals, and improve infrastructure while keeping electricity rates as low as possible.
>
> Decades ago, BC Hydro built the backbone of BC's electricity system, and today major components of that system need to be repaired or replaced. Meanwhile, British Columbia's population and economy are growing, and new technologies have increased power use for industrial customers like pulp and paper mills, mines, forestry operations, LNG facilities, office buildings, and other on-grid high-capacity consumers who access services directly through provincial transmission lines.
>
> Cost-effective investments in infrastructure, conservation and clean energy are helping to meet the expected 40% increase in demand over the next 20 years, using programs that will also help customers to reduce their bills by using less electricity.

[33] While these publications may demonstrate a future potential market in British Columbia, they do not address the Officer's concern about the existing competitive market in Vancouver. In light of this, it was reasonable for the Officer to conclude that the Applicants had not established how the Canadian Company would be able to compete in the market and thus create "significant economic benefits or opportunities", as required by s 205(a) of the *IRP Regulations*.

[34] In conclusion, based on the record before them, the Officer's reasons were justified, intelligible and transparent, which amounts to a reasonable decision.

Costs

[35] Rule 22 of the *Federal Court Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 states that no costs shall be awarded to or payable by any party in respect of an application for judicial review unless the Court, for special reasons, so orders.

[36] The Applicants submit that this Court should award $3,000 in costs against the Respondent as the Respondent declined to consent to the consolidation of the Applicants' applications for judicial review, which resulted in additional and unnecessary expense.

[37] At the hearing, counsel for the Respondent indicated that they had inherited the Applicants' files and could not speak to why former counsel had not agreed to consolidation. However, attending counsel took the position that costs ought not be awarded because the Applicants' memorandums, though repetitive, essentially involved "cutting and pasting" the Principal Applicant's argument.

[38] In these circumstances, it should have been obvious to the Respondent that the applications of the Principal Applicant's spouse and children were dependant upon the success of his application for a work permit and that the filing of three separate, additional Application Records was not necessary.

[39] That said, these circumstances do not rise the high threshold of "special reasons" warranting an award of costs under Rule 22 (*Ndungu v Canada (Minister of Citizenship and Immigration)*, 2011 FCA 208 at para 7; *Almuhtadi v Canada (Citizenship and Immigration)*, 2021 FC 712 at para 56). Accordingly, no costs shall be awarded.

JUDGMENT IN IMM-723-23, IMM-721-23, IMM-722-23, IMM-724-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;

2. Court files number IMM-723-23, IMM-721-23, IMM-722-23 and IMM-724-24 are consolidated and a copy of these reasons shall be placed in each Court file;

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

DOCKETS:	IMM-723-23, IMM-721-23, IMM-722-23 AND IMM-724-23
DOCKET:	IMM-723-23
STYLE OF CAUSE:	MOSLEM ATTAR RAOUF v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-721-23
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AND DOCKET:	IMM-724-23
STYLE OF CAUSE:	MOHAMMAD ATTAR RAOUF v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE USING ZOOM
DATE OF HEARING:	SEPTEMBER 9, 2024
JUDGMENT AND REASONS:	STRICKLAND J.
DATED:	OCTOBER 30, 2024

APPEARANCES:

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