

Federal Court



Cour fédérale

Date: 20241104

Docket: IMM-8274-23

Citation: 2024 FC 1757

Ottawa, Ontario, November 4, 2024

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

**RAHIL HAJI ALIZADEH
MOHAMMAD NIKDEL**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of the June 19, 2023, decisions of a visa officer [the Officer] refusing to issue a study permit to the Principal Applicant (Dr. Rahil Haji Alizadeh) and refusing to issue a work permit to the co-Applicant and accompanying spouse (Dr. Mohammad Nikdel).

[2] The Officer's reasons for refusing the study permit were, in essence, also the reasons for refusing the work permit of the co-Applicant.

[3] For the reasons that follow the Application for Judicial Review is granted. The Officer's decision is not supported by the facts on the record before the Officer.

I. Background

[4] The Applicants are citizens of Iran. The Principal Applicant is a medical doctor. She has worked in community health centres and in her private clinic since 2018. The Principal Applicant was accepted to study at Mohawk College in Hamilton, Ontario to obtain a college certificate in Digital Health.

[5] In the narrative accompanying the application for the study permit, the Principal Applicant explained that her experiences during the COVID-19 pandemic raised her awareness of the need for and benefits of telemedicine in order to provide care remotely. She explained that she and her spouse invested in a company, Simorgh Digital Health, which was committed to establishing a telemedicine department. Simorgh Digital Health encouraged her to "gain familiarity" and then return to join the company as the head of telemedicine. She explained that she conducted research on programs in digital health and telemedicine and discovered the program at Mohawk College. She applied and was accepted.

[6] The Principal Applicant submitted a range of documents including her study plan and a letter from Simorgh Digital Health noting that they had offered her the position of Head of

Telemedicine at a particular salary and would support her leave of absence for one year to attend the program at Mohawk College.

[7] The co-Applicant spouse, also a medical doctor, explained that he worked as a general practitioner for three years, then pursued studies in Italy in vaccinology and returned to Iran. He explained that he runs a private clinic in Iran and also works remotely as a co-editor and medical writer for an online publisher. He also noted that he is in the final stages of becoming a faculty member at Mashhad University of Medical Sciences.

[8] The Applicants described, among other things, their financial resources, investments and property and their extended family members in Iran.

II. The Decision under Review

[9] The Officer refused the study permit and open work permit because the Officer was not satisfied that the Applicants would leave Canada at the end of their stay; the Officer found that the Applicants did not have significant family ties outside of Canada and that the purpose of their visit was not consistent with a temporary stay given the details provided in the applications for the study and work permit.

[10] The Global Case Management System (GCMS) notes provide the brief reasons for the Officer's refusal to issue the study permit. The Officer notes the factors considered:

PA holds a Doctorate Degree in Medicine and is currently working as a Medical Doctor (General Practitioner). Proposed study content and level appears to overlap or fall below experience already

obtained by the applicant. The applicant's planned studies are poorly connected to their previous academic and professional experience as well as their personal history and do not therefore show a logical progression of studies. As a result, I have doubts about the applicant's real intentions in Canada.

The explanation provided ... Poorly explains why they would like to take this course at this point in their life and what benefit they expect to gain from it. It is often vague and lacking in concrete details that would make it convincing. Overall, it isn't reasonable given their stated intentions, age, as well as academic and professional history.

I note that the intended travel to Canada involves the applicant's immediate family members, thus weakening the applicant's ties to Iran as well as diminishing their motivation to return.

[11] With respect to the refusal of the co-Applicant's open work permit, the Officer notes that "the plan of entry is based on being an accompanying family member to a Study Permit visa. The family member's study permit has been refused, negating the purpose of travel to Canada".

III. The Standard of Review

[12] Whether the decision is reasonable is reviewed in accordance with the principles set out in *Canada (Minister of Citizenship and Immigration v Vavilov*, 2019 SCC 65 [*Vavilov*]). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at paras 85, 102, 105–07). The court does not assess the reasons against a standard of perfection (*Vavilov* at para 91). A decision should not be set aside unless it contains "sufficiently serious shortcomings ... such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

IV. The Applicants' Submissions

[13] The Applicants submit that the Officer's decision is not justified given the evidence they provided regarding their academic and professional experience, professional ties to Iran, financial resources, investments, property and family in Iran. The Applicants submit that the Principal Applicant's narrative provided details about how her proposed plan of study related to her qualifications as a medical doctor and would prepare her to take on the role as head of telemedicine at Simorgh Digital Health upon her return. The Applicants further submit that the Officer ignored the Applicants' ties to Iran and that, although the Principal Applicant was accompanied by her spouse, many other close family members remained in Iran.

V. Respondent's Submissions

[14] The Respondent submits that the Applicants did not meet their onus to prove or to convince the Officer that they would leave Canada at the end of the period of study.

[15] The Respondent acknowledges that the Principal Applicant explained why she sought to set up a telemedicine health department, but submits that there is no evidence that she has an "IT background", which the Respondent suggests would be required to meet her goal. The Respondent submits that the Principal Applicant did not explain how she would continue her medical practice or why the company she invested in and that has hired her does not currently have the necessary expertise.

[16] The Respondent submits that the Officer is presumed to have considered all the evidence, which includes that the co-Applicant's brother and sister-in-law are permanent residents of Canada. The Respondent suggests that although the Applicants have parents and other family members in Iran, the Officer did not err in finding that family in Canada are a consideration and that there are no strong ties to pull them back to Iran.

VI. The Decision is Unreasonable

[17] In *Boukani v Canada (Citizenship and Immigration)*, 2024 FC 1652, Justice Norris cited the principles set out in *Nesarzadeh v Canada (Citizenship and Immigration)*, 2023 FC 568 at paras 5-9, that have been applied in many other similar case regarding the judicial review of study permit decisions, noting at para 5:

[...] Drawing on this summary and the jurisprudence cited in *Nesarzadeh*, I would state these principles as follows:

- A reasonable decision must explain the result, in view of the law and the key facts.
- *Vavilov* seeks to reinforce a “culture of justification” requiring the decision maker to provide a logical explanation for the result and to be responsive to the parties’ submissions.
- The reviewing court must take the administrative context in which the decision was made into account. Visa officers face a deluge of applications, and their reasons do not need to be lengthy or detailed. However, the reasons do need to set out the key elements of the officer’s line of analysis and be responsive to the central aspects of the application.
- The onus is on an applicant to satisfy the officer that they meet the legal requirements for obtaining a study permit, including that they will leave Canada at the end of their authorized stay.
- Visa officers must consider the “push” and “pull” factors that, on the one hand, could lead an applicant to overstay their visa and remain in Canada, or that would, on the other hand,

encourage them to return to their home country when required to.

[18] The Officer's GCMS notes are typically brief and convey the Officer's line of analysis—which in this case boils down to the Officer's assessment that because the program of study is at a lower level than the Principal Applicant's medical degree, it will not lead to career progression. The GCMS notes also convey the Officer's view that because the Principal Applicant's spouse is accompanying her, the Applicants are not likely intending to leave Canada. The Officer noted, "I have doubts as to the applicants' real intentions in Canada".

[19] While the jurisprudence cited by both the Applicants and Respondent refers to the need for the Officer to be "satisfied" or "convinced" that an applicant will leave Canada at the expiry of their visa, and that the decision of the Officer is owed deference, this deference must yield where the Officer finds they are not "convinced" (a high and subjective standard) or "satisfied" without assessing the evidence before them.

[20] In the present case, the Officer's line of analysis is not justified. The Officer's brief reasons do not respond to the Applicants' submissions and supporting documents. The Principal Applicant provided an explanation that, contrary to the Officer's comment that she "poorly explains why" or "what benefit" the program will provide, sets out in some detail why the Mohawk College program would be of benefit to developing skills for a digital health system and for the position she has been offered upon her return to Iran. While the program is college level, the Principal Applicant explained that it provides the skill set she requires to combine her

medical degree with healthcare delivery via telemedicine. The Principal Applicant also explained the motivation for her interest in telemedicine.

[21] The Respondent has suggested reasons that could have informed the Officer's decision, including that the Principal Applicant does not have an IT background, and that the presence of a brother-in-law and sister-in-law in Canada would pull the Applicants to stay in Canada. However these are not the reasons of the Officer and are speculative. The Court has repeatedly noted that it is inappropriate for Counsel or the Court to buttress the reasons of the decision-maker with those that could have been provided. As noted in *Torkestani v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 1469 at para 20, “[t]he decision and its reasons must stand or fall on their own” (see also *Ajdadi v Canada (Citizenship and Immigration)*, 2024 FC 754).

[22] There is no mention in the GCMS notes regarding the need for an IT background to benefit from the Mohawk College program or to fulfill her role upon return to Iran. The notes simply state that the planned studies did not show a “logical progression”.

[23] The Respondent's submission that the presence of the co-Applicant's brother in Canada is a pull factor is speculative given the many close family members remaining in Iran, and does not justify the Officer's conclusion. The Officer noted that the Principal Applicant's travel to Canada “involved family members” yet only her spouse was accompanying her, not other family members. The Officer's brief reference to “weakening the applicant's ties to Iran” is insufficient to provide a rationale for the Officer's conclusion. The Applicants described their family,

economic and professional ties to Iran, all factors that should have been assessed in the push-pull balance.

[24] I acknowledge that the Officer's reasons must be brief given the high volume of applications they assess, that reasons are not held to a standard of perfection, and that the Officer is presumed to have considered all the evidence before them. However, the brevity of the reasons in study permit applications may cause the reviewing court to question whether the supporting evidence was carefully considered, as it does in this case. A few additional sentences could provide a clearer rationale and avoid unnecessary applications for judicial review.

JUDGMENT in file IMM-8274-23

THIS COURT'S JUDGMENT is that

1. The Application for Judicial Review is granted. The applications for the study permit and work permit shall be remitted for reconsideration by a different Visa Officer.
2. There is no question for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8274-23

STYLE OF CAUSE: RAHIL HAJI ALIZADEH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 31, 2024

JUDGMENT AND REASONS: KANE J.

DATED: NOVEMBER 4, 2024

APPEARANCES:

Arvin Afzali FOR THE APPLICANT

Prathima Prashad FOR THE RESPONDENT

SOLICITORS OF RECORD:

AUXILIUM LAW FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario