Federal Court Cour fédérale

Date: 20241112

Docket: IMM-13549-22

Citation: 2024 FC 1786

Ottawa, Ontario, November 12, 2024

PRESENT: Madam Justice St-Louis

BETWEEN:

AMIRMOHAMMAD EMAMIRAD
AMIRKIA EMAMIRAD
MOHAMMADARIA EMAMIRAD
NASRIN CHOOBKAR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants, family members and citizens of Iran, seek judicial review of a decision rendered on November 30, 2022, by an immigration officer [Officer] refusing their applications for temporary residence. Mr. Amirmohammad Emamirad [Principal Applicant] applied for a study permit, his wife applied for an open work permit, and their two children applied for study permits to accompany them.

[2] This application relates to the merits of the decision to deny the Principal Applicant the study permit he sought, as his family's applications were dependent on his [Decision]. The Officer found that the Principal Applicant did not meet the requirements set out in paragraph 216(1)(b) of the Immigration and Refugee Protection Regulations, SOR/2002-227 [Regulations]. The Officer was not satisfied that the principal applicant would leave Canada at the end of his stay as 1) he did not have significant family ties outside Canada; and 2) the purpose of his visit was not consistent with a temporary stay given the details provided in the application.

[3] In his notes, the Officer outlined that:

> The ties to their home country are weaken [*sic*] with the intended travel to Canada involving their immediate family, as the motivation to return will diminish with the applicant's immediate family members residing with them in Canada.
>
> The applicant's travel history is insufficient to build a track record of international travel that would count as a positive in my assessment.
>
> [Principal applicant] is applying to study MBA. Previously obtained Masters in Chemical Engineering and currently employed as Senior Process Engineer. The client has previous studies at a same academic level than the proposed studies in Canada. Chosen program at such expense appears illogical in light of the [principal applicant]'s reported scholarly and employment history. Employment letter noted. No offer for promotion or re-employment upon completion of the program. No explaination [*sic*] provided on how they intend to support/retain their previous career.

[4] In support of this judicial review application, the Applicants submit that (1) the Decision is unreasonable because the Officer unreasonably refused the applications on the grounds of the purpose of the visit and ignored that the Applicants do have strong family ties to Iran; (2) the Officer acted outside the scope of his power; and (3) the Officer failed to appreciate their travel

history. In addition, the Applicants submit there were breaches to procedural fairness as the Officer failed to provide adequate reasons, failed to allow them to respond to his concerns, made veiled credibility findings, and breached the duty of legitimate expectation by ignoring the evidence in the application.

[5] The Minister of Citizenship and Immigration [Minister] responds that the Decision is reasonable, the Officer did not breach procedural fairness, did not ignore evidence and raised no credibility concerns.

[6] The Minister adds that the Applicants' arguments constitute little more than a disagreement with the Officer's conclusions and an invitation to this Court to reweigh the evidence, which is not the Court's role on judicial review. I agree.

[7] The review of the Officer's factual assessment of the application, and of the Officer's conclusion that an applicant will not leave Canada at the end of their stay, is made against the reasonableness standard (*Akomolafe v Canada (Citizenship and Immigration*), 2016 FC 472 at para 9; *Li v Canada (Citizenship and Immigration*), 2008 FC 1284 at paras 14-15; *Bondoc v Canada (Citizenship and Immigration*), 2008 FC 842 at para 6). The onus is on the party challenging the Decision, i.e., the Applicants, to demonstrate that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision, rather, the Court "must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and

transparency" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 100 [*Vavilov*]).

[8] The Officer's Decision is an administrative decision well within their special expertise and "is made in the exercise of a discretionary power based on factual findings" (*Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 13). As such, the Officer is entitled to considerable deference (*Solopova v Canada (Minister of Citizenship and Immigration*) 2016 FC 690 at para 12 [*Solopova*]; *Obeng v Canada (Minister of Citizenship and Immigration*), 2008 FC 754 at para 21).

[9] Regarding the purpose of the visit, the Officer did provide an explanation, cited above, as to why the Principal Applicant's plan was unsatisfactory. The record contains no offer of promotion or re-employment and no evidence on how obtaining another Master's degree would be beneficial for him, and it is reasonable to consider the unsworn and unsigned document insufficient. Likewise, I have not been convinced it was unreasonable for the Officer to consider that the ties with Iran are weakened when the entire immediate family unit travels to Canada to accompany the Principal Applicant.

[10] The argument that the Officer acted outside the scope of his authority is unsubstantiated and in any event, unfounded.

[11] Further, the Officer did not fail to appreciate the travel history nor, as the Applicants asserted at the hearing, did the Officer give it negative weight: rather, the Officer determined that

the travel history was insufficient to be considered a positive factor in their assessment. The Applicants' argument essentially challenges the Officer's assessment of the weight given to the factors and evidence. However, as mentioned by the Minister, the role of this Court on judicial review is not to reweigh the evidence (*Vavilov* at para 125).

[12] Finally, as the Minister outlines, the jurisprudence confirms that where a visa officer's concerns arise directly from the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 or the Regulations, the visa officer is not under a duty to provide an opportunity for the applicant to address the visa officer's concerns. An officer is under no duty to provide a hearing if the officer is simply drawing conclusions from the evidence submitted (*Hassani v Canada (Minister of Citizenship & Immigration)*, 2006 FC 1283 at para 24; *Alaje v Canada (Citizenship and Immigration)*, 2017 FC 949 at para 19). This is the situation here.

[13] The Applicants here conflate an adverse finding of credibility with a finding of insufficient evidence. The Officer's concerns arose from legislation, namely the requirement that the Principal Applicant establish, on a balance of probabilities, that he will leave Canada by the end of the period authorized for his stay (paragraph 216(1)(b) of the Regulations). The onus was on him to provide the Officer with all of the relevant information and with complete documentation in order to satisfy him that all statutory requirements were met (*Solopova* at para 22). Finally, I agree that the doctrine of legitimate expectation is not relevant to the present case. No breach of procedural fairness has been established. I note that the Applicants' arguments relating to procedural breach have often been repeated and that the Court has previously rejected them and found them meritless and a waste of time (*Amirhesari v Canada*

(Citizenship and Immigration), 2024 FC 436 at para 6-8 citing *Amiri v Canada (Citizenship and Immigration)*, 2023 FC 1532 at paras 23-26; *Rajabi v Canada (Citizenship and Immigration)*, 2024 FC 371 at paras 21-27; *Eslami v Canada (Citizenship and Immigration)*, 2024 FC 409 at paras 19-21; *Davoodabadi v Canada (Citizenship and Immigration)*, 2024 FC 85 at paras 17-20; *Soofiani v Canada (Citizenship and Immigration)*, 2023 FC 1732 at para 3; *Zarei v Canada (Citizenship and Immigration)*, 2023 FC 1475 at para 12; *Mehrjoo v Canada (Citizenship and Immigration)*, 2023 FC 886 at para 16-17).

[14] In summary, I can understand from the reasons and the record why the Officer concluded as he did. The Applicants have not shown any serious shortcoming in the Officer's conclusions that justifies the Court's intervention.

[15] No question has been suggested for certification and I am satisfied that none arise in this case.

JUDGMENT in IMM-13549-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed, without costs.

2. No question is certified.

"Martine St-Louis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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