

Federal Court



Cour fédérale

Date: 20190906

Docket: IMM-1188-19

Citation: 2019 FC 1146

Ottawa, Ontario, September 6, 2019

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

MILAD PEIRO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a visa officer's [the Officer] decision refusing Milad Peiro's [the Applicant] application for a study permit.

II. Style of Cause

[2] The Applicant named the Minister of Immigration, Refugees and Citizenship as the respondent in this matter. The correct respondent is the Minister of Citizenship and Immigration (*Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, paragraph 5(2)(b); *Immigration and Refugee Protection Act*, SC 2001, c 27, subsection 4(1)). As such, the respondent in the style of cause is amended to the Minister of Citizenship and Immigration.

III. Background

[3] The Applicant is an Iranian citizen. He first came to Canada in 2012 to study at York University. Soon after arriving in Canada, the Applicant moved to Vancouver. He completed an Associate of Arts degree from Corpus Christi College in May 2015. Later that year, the University of British Columbia [UBC] accepted the Applicant as a 3rd year bachelor's degree student in the Faculty of Arts.

[4] In the Fall 2015 semester, the Applicant took three courses, failing them all. He then decided to take the Winter 2016 semester off. Around this time, the Applicant's father's business was struggling financially, causing the Applicant emotional difficulties and affecting his academic performance. In May 2016, UBC placed the Applicant on academic probation, and required him to sit out for at least 12 months and reapply for admission.

[5] Because the Applicant remained in Canada on a study permit but was no longer actively studying, the Canada Border Services Agency [CBSA] initiated an enforcement action against him.

[6] The CBSA issued a one-year Exclusion Order on March 15, 2017. The Applicant left Canada on April 10, 2017. The Exclusion Order expired on April 20, 2018.

[7] After the Exclusion Order expired, the Applicant applied for a study permit from outside Canada. The application was rejected. The Applicant was accepted for readmission to UBC in June 2018 for studies beginning September 2018. He again applied for a study permit on November 20, 2018.

IV. Decision Under Review

[8] The Officer refused the Applicant's November 2018 application for a study permit.

[9] The Officer decided that the Applicant did not satisfy him that he would leave Canada at the end of his studies. The Officer considered (1) family ties in Canada and in country of residence; (2) purpose of visit; and (3) the Applicant's history of having contravened the conditions of admission on a previous stay in Canada.

[10] The Officer's Global Case Management System notes, dated February 15, 2019, indicate that notwithstanding several positive factors, those factors were outweighed by:

(i) Given family ties or economic motives to remain in Canada, the applicant's incentives to remain in Canada may outweigh his ties to his home country;

(ii) the Applicant was previously issued a study permit in 2012 but did not complete his studies. As a result, the Officer was not satisfied that he will be a genuine student who will comply with the conditions of a study permit based on his personal history;

(iii) the applicant contravened the conditions of a prior stay in Canada and was issued a one year exclusion order 2017/03/15.

[11] Weighing the factors in the application, the Officer was not satisfied that the applicant would depart Canada at the end of the period authorized for his stay.

V. Issue and Standard of Review

[12] The sole issue in this application is whether the Officer's decision was reasonable.

VI. Analysis

[13] A visa officer must issue a study permit to a foreign national if the criteria set out in subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the IRPR] are established. The study permit applicant bears the burden of satisfying the visa officer that they will not remain in Canada once the study permit expires (IRPR paragraph 216(1)(b); *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 10 [*Solopova*]).

[14] Once in Canada, the holder of a study permit must comply with subsection 220.1(1) of the IRPR. This provision states that the permit holder must remain enrolled at a designated

learning institution until they complete their studies, and must actively pursue their course or program of study.

[15] Decisions of a visa officer need not be comprehensive, and the officer can provide brief or limited reasons. However, decisions need to be comprehensible (*Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at paras 25, 30 [*Penez*]). The reasons must permit this Court to understand why the decision was made and determine whether the conclusion falls within a range of possible, acceptable outcomes (*Penez*, above at para 30).

[16] When considering a study permit application, the visa officer must determine whether the applicant is likely to return to their country of origin upon expiration of the study permit. The visa officer has wide discretion in assessing the evidence and coming to a decision, however the decision must be based on reasonable findings of fact.

[17] The Officer's decision includes three factors that the Applicant argues are unreasonable: (1) family ties in Canada; (2) economic motives to remain in Canada; and (3) the Applicant's prior contravention of the conditions of a study permit.

1. *Family Ties*

[18] Based on the record, the Applicant's only family in Canada is his younger brother, who is currently an international student in Vancouver. The Applicant's parents remain in Iran.

[19] The Minister argues that the Applicant is a single adult male with no spouse or dependants in Iran, and the record states that the Applicant was responsible for caring for his brother in Canada. The record is silent on the Applicant's brother's permit status, but as he is an international student, his stay in Canada is temporary.

[20] The Officer's reasons with respect to family ties provide no reasonable basis for his position. While the officer mentioned family ties, he did not explain how the temporary presence of the Applicant's brother in Vancouver would outweigh the Applicant's family ties to Iran, which include his parents and family business which he intends on returning to after his studies.

2. Economic Motives to Remain in Canada

[21] The Officer states that “[g]iven family ties or economic motives to remain in Canada, the Applicant's incentives to remain in Canada may outweigh their ties to their home country,” but does not elaborate on these family ties or economic motives. The Officer has failed to explain whether family ties or economic motives were the cause for concern.

[22] The Officer's finding that economic motives may incentivize the Applicant to remain in Canada appears to be based on mere speculation at best, without any real factual underpinning. In fact, the Applicant's personal statement discloses his intention to help with his father's business in Iran after graduating from UBC. The Applicant's only past employment in Canada is a 4-month position as a Senior Marketing Associate for “Acquisition Group, Telus Marketing Affiliate” in Vancouver in 2014.

[23] Accordingly, the Officer's reasons related to economic motives for the Applicant to remain in Canada are unclear and have no sound basis in the record. His rationale on this front is unreasonable.

3. Prior Contravention of Conditions of a Study Permit

[24] The Officer was not satisfied that the Applicant would comply with the conditions of a study permit based on his personal history. As previously noted, during his last stay in Canada the Applicant failed to remain enrolled at a designated learning institution, contravening the conditions of his study permit.

[25] The Applicant argues that the Officer failed to render a comprehensible decision given the evidence on the record because the Officer overlooked contradictory evidence. The Applicant submits that the Officer overlooked his personal statement with respect to the circumstances of his failed studies at UBC, and his genuine intentions to resume his studies and comply with the conditions of a future study permit.

[26] While the personal statement did express the Applicant's intentions to resume his studies, the omission of this information in the Officer's reasons does not lead to the conclusion that the Officer disregarded this evidence.

[27] Moreover, while the Applicant submits that the Officer's conclusion that the Applicant failed to complete his studies is incorrect, as the Applicant successfully completed his degree at Corpus Christi, the Applicant's stay in Canada was conditional on remaining enrolled in a

designated learning institution. While the Applicant completed a degree at Corpus Christi, his continued stay in Canada was conditional on his continued enrollment at UBC. He failed to complete his bachelor's degree at UBC, failing the three courses he took, and remained in Canada while not permitted to for some fourteen months while not enrolled at UBC.

[28] The Applicant's submissions on this point amount to asking the Court to reweigh the evidence. The Officer's reasons related to the Applicant's contravention of his prior study permit are transparent, intelligible, and supported in the record.

[29] Considering these three factors, the Officer's decision appears unreasonable. While the role of this Court on judicial review is not to reweigh the evidence, two of the three reasons given by the Officer are not reasonable, based on the record.

[30] The reasons do not allow this Court to understand why the decision was made with respect to the Officer's decision relating to family ties or economic motives to remain in Canada. I can only conclude that the Officer misconstrued the evidence as a whole in assessing the Applicant's application.

JUDGMENT in IMM-1188-19

THIS COURT'S JUDGMENT is that

1. The respondent in the style of cause is amended to the Minister of Citizenship and Immigration.
2. The application is allowed and the matter is remitted to a different officer for reconsideration.
3. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: MILAD PEIRO v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

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