

Federal Court



Cour fédérale

Date: 20210617

Docket: IMM-4020-20

Citation: 2021 FC 628

Vancouver, British Columbia, June 17, 2021

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

ARDESHIR HAMEDANI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Vancouver, British Columbia, on June 14, 2021 and edited for syntax and grammar with added references to the relevant case law)

[1] The applicant, Mr. Hamedani, is a 24-year old-citizen of Iran. He was in Malaysia on a student pass. He initially applied for a study permit on January 23, 2020 to study Global Fashion Marketing at Blanche Macdonald in Vancouver, British Columbia. The High Commission of Canada in Singapore refused his study permit on March 2, 2020.

[2] Mr. Hamedani applied a second time on May 6, 2020 in order to address the officer's concerns regarding the previous refusal. A visa officer at the High Commission refused the second application on August 24, 2020. That refusal is the subject of the judicial review that is presently before me, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[3] The applicant completed his secondary school, an advanced diploma in Fashion Design and a Bachelor's degree in Fashion Design in women's wear, all in Malaysia. He also completed an internship at Biji Bjiji Ethical Fashion ("Biji") in Malaysia.

[4] Mr. Hamedani currently has a standing job offer from Biji upon completion of a certificate in Fashion Marketing. He contends the completion of the Global Fashion Marketing program from Blanche Macdonald will satisfy the conditions of the job offer from Biji.

[5] Mr. Hamedani has received a letter of acceptance, and has paid \$7,400 CAN toward his tuition, to Blanche Macdonald. His parents who live in Iran, and an aunt who is a resident of the Netherlands, have promised financial support for the cost of Mr. Hamedani's education in Canada.

[6] When the officer refused Mr. Hamedani's application, he concluded, *inter alia*, that Mr. Hamedani would not leave Canada at the end of his stay, that the proposed studies were not reasonable in light of his qualifications and previous studies. The Officer also expressed concerns about Mr. Hamedani's ability to complete the program.

[7] The relevant provision, section 216(1)(b) of the *Immigration and Refugee Protection Regulations* SOR/2002-227, reads as follows:

216 (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national

216 (1) Sous réserve des paragraphes (2) et (3), l'agent délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

...

...

(b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

[8] Mr. Hamedani raises several issues. I am satisfied the within application can be disposed of by assessing whether the decision by the officer was reasonable in the circumstances, consistent with the jurisprudence set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, and *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

[9] In assessing the reasonableness of the decision, I would first note that the visa officer expressed concern about why Biji did not apply for a work pass or permit for Mr. Hamedani, upon completion of his degree in fashion design in Malaysia. If the officer had engaged fully with the materials, he or she would have found the answer to the very question posed. The letter of offer from Biji clearly states that its job offer is conditional upon Mr. Hamedani completing a certificate in fashion marketing.

[10] Second, the officer raises concerns about why Mr. Hamedani did not apply to study in his home country of Iran; the Netherlands, where his aunt lives; or other locations in mainland British Columbia, including Vancouver and New Westminster. Although it is not unreasonable for a visa officer to consider the availability of similar programs offered elsewhere at lower cost, in my view, it was unreasonable for the officer to determine that there was no information as to why Mr. Hamedani did not choose to go elsewhere. In Mr. Hamedani's study plan, there is a section titled: "The reason why I'm not pursuing a similar program in my country of residence". Under that title, he says: "By studying at Blanche Macdonald, I am able to finish the course within a year and then head back to Kuala Lumpur, to start working. Not only will it help me save a lot of time, but also, I will get my certificate from a well respected college from Canada".

[11] I agree with Mr. Hamedani's assessment that a course completed in one year, even at increased cost, may result in significant savings, if one is eligible for earlier entry into the workforce. Nevertheless, it is not my opinion on that issue that is relevant. What is relevant in judicial review is whether the analysis is justified, transparent and intelligible. On this issue, the evidence from Mr. Hamedani, as set out in his application, was ignored by the officer. Again, the answer to the concern raised by the visa officer was available in the materials had he or she chosen to fully engage with those materials.

[12] The officer expressed concerns about Mr. Hamedani's willingness to leave Canada at the conclusion of his studies. The officer expressed the view that the proposed studies simply constitute a means of entering Canada. I find this aspect of the decision lacks intelligibility. I say this for the following reasons: 1. Mr. Hamedani sets out in his study plan that his long-term

career goal is to return to his home country, Iran, after completing his education in Canada and obtaining work experience in Malaysia; 2. He has a standing job offer in Malaysia upon completion of the program at Blanche Macdonald; 3. He has no family members in Canada, immediate or extended, that would constitute a “pull factor” as a basis for him to remain in Canada, lawfully or unlawfully; and 4. The visa officer offers other programs in Canada as alternatives to the Blanche Macdonald program. How, I ask rhetorically, could the officer offer up those programs as reasonable alternatives if he or she (the officer) was seriously concerned about Mr. Hamedani’s risk of remaining in Canada unlawfully?

[13] Finally, the officer expressed concern about Mr. Hamedani’s ability to successfully complete the program. This conclusion lacks justification and intelligibility. Blanche Macdonald had confidence that Mr. Hamedani could complete the program or it would not have admitted him. The fact Mr. Hamedani has already completed an advanced diploma and a Bachelor’s degree in Fashion Design demonstrates his ability to complete academic studies. There is no evidence to indicate Mr. Hamedani would not be able to complete the program from an academic perspective.

[14] Although I have identified four aspects of the decision that I find troubling, I do not consider my efforts to be a treasure hunt for error. I find that those four areas canvassed by me, when taken together, and, quite frankly, even individually, demonstrate a lack of justification, transparency and intelligibility in the decision making process. The officer failed to engage with the evidence before him or her.

[15] As a result, I grant the application for judicial review and refer the matter to another visa officer for redetermination.

[16] Neither party proposes a question for certification for consideration by the Federal Court of Appeal. In my view, none arises on the record.

[17] Mr. Hamedani brings a motion for costs in conjunction with this application for judicial review. Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 states that no costs will be awarded in an immigration judicial review, except where special reasons exist. The threshold for establishing special reasons is high and must be assessed in the context of the particular circumstances of each case. This Court has found special reasons to exist in situations where, for example, a party has unnecessarily or unreasonably prolonged legal proceedings, acted in an unfair, oppressive or improper manner, or acted in bad faith (*Taghiyeva v. Canada (Citizenship and Immigration)*, 2019 FC 1262 at paras. 16-23; and *Garcia Balarezo v. Canada (Citizenship and Immigration)*, 2020 FC 841 at para. 48). I am not satisfied that costs are appropriate in the circumstances. The errors noted do not constitute special circumstances, which would justify an award of costs.

JUDGMENT in IMM-4020-20

THIS COURT'S JUDGMENT is that this application for judicial review is allowed.

The matter is referred back to another visa officer for re-determination, all without costs.

"B. Richard Bell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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