

Federal Court



Cour fédérale

Date: 20220502

**Dockets: IMM-3257-21
IMM-3436-21**

Citation: 2022 FC 635

Ottawa, Ontario, May 2, 2022

PRESENT: The Honourable Madam Justice Simpson

Docket: IMM-3257-21

BETWEEN:

ELVAN TEKCAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

Docket: IMM-3436-21

AND BETWEEN:

GODZE EDA TEKCAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] These reasons deal with two applications for judicial review of a visa officer's [the Officer] refusal to approve applications made by two sisters for permanent residence in the self-employed person's class [the Decisions]. The Decisions are identical in substance and are both dated March 25, 2021.

[2] Elvan Tekcan is the applicant in court file IMM-3257-21, and her younger sister, Godze Eda Tekcan, is the applicant in court file IMM-3436-21 [together the Applicants]. Their applications for judicial review were heard together. They were represented by the same counsel and the issues raised in both applications were the same.

[3] The Applicants both had backgrounds in art galleries in Istanbul, Turkey. One served as the chief exhibition officer in a gallery and the other served as that gallery's curator and as the director of a second gallery. They intended to rent premises in downtown Toronto and establish an art gallery there. They proposed a combined investment of \$230,000 CDN.

[4] The Applicants' visa applications were dated May 24 and May 25, 2018. They both included a 36-page document titled "Business Plan" dated November 2020 [the Business Plan].

I. The Decision

[5] The Officer focussed on the Business Plan and found it to be insufficient because it did not show that the Applicants had done any research in the form of contacting industry

representatives and gallery owners in Toronto to ascertain whether the market would support their gallery and whether their plans were feasible. Further, they provided no sources to establish whether their financial projections and assumptions were realistic. The Officer was concerned that the plan included only very general, high-level and open-source information about the industry.

II. Issues

[6] The Applicants raised the following issues:

1. Did the Officer breach the requirements of procedural fairness by failing to send a fairness letter to advise the Applicants about his concerns about the sufficiency of the Business Plan?
2. Were the Decisions unreasonable because the Officer considered only the Business Plan?

III. Issue 1: A Fairness Letter?

[7] The Applicants relied on the Overseas Processing Manual (OP-8), Entrepreneur and Self-Employed (2008-08-07) [Manual OP-8], which provided in section 5.14, in part, that “when the Officer has concerns about eligibility or admissibility, the applicant must be given a fair opportunity to correct or contradict those concerns ...”.

[8] However, the evidence before me in the form of an affidavit of Stephanie Pelletier, sworn on February 9, 2022, makes it clear that Manual OP-8 does not apply to the Applicants' visa applications because they postdate August 2, 2016.

[9] The question, therefore, is what fairness requires in this context. In my view, the recent decision of Mr. Justice Gascon in *Mohammadzadeh v the Minister of Citizenship and Immigration*, 2022 FC 75, sets out the governing principles. As applied to this case, the duty of fairness imposed on a visa officer is at the low end and does not require him to alert an applicant about concerns with the sufficiency of a business plan.

[10] For this reason, I have concluded that a fairness letter was not required.

IV. Issue 2: Improper focus on the Business Plan?

[11] The Applicants submit that the Decision is unreasonable because the Officer failed to consider the evidence they presented about their background, education, work in art galleries, connections, past earnings, and management experience. They say he should have balanced that information against the Business Plan.

[12] I have not been persuaded by this submission. Although a business plan was not required to support the Applicants' visa applications, once it was presented, it represented the core of the application. If it had been realistic and reliable, the other evidence about the Applicants would have supported its likelihood of success. However, once the Business Plan was found to be insufficient, the other evidence was not relevant. Experience, education, and connections, etc.,

were of no moment in the absence of a meaningful business plan. Contrary to counsel's submissions, there was no balancing to be undertaken once the Business Plan was found to be insufficient.

[13] Accordingly, the fact that the Officer dealt only with the Business Plan was reasonable.

V. Certification for Appeal

[14] No question was posed for certification for appeal.

JUDGMENT IN IMM-3257-21

THIS COURT'S JUDGMENT is that the application for judicial review is hereby dismissed.

JUDGMENT IN IMM-3436-21

THIS COURT'S JUDGMENT is that the application for judicial review is hereby dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3257-21

STYLE OF CAUSE: ELVAN TEKCAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

AND DOCKET: IMM-3436-21

STYLE OF CAUSE: GODZE EDA TEKCAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY TELECONFERENCE USING ZOOM

DATE OF HEARING: APRIL 7, 2022

JUDGMENT AND REASONS: SIMPSON J.

DATED: MAY 2, 2022

APPEARANCES:

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