

Federal Court



Cour fédérale

Date: 20220725

Docket: IMM-92-22

Citation: 2022 FC 1083

Ottawa, Ontario, July 25, 2022

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

**ZEINAB VAHDATI
VAHID ROSTAMI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of a visa officer [Visa Officer] refusing the application of Zeinab Vahdti [Applicant] for a study permit, under subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRP Regulations], and the related application of her spouse, Vahid Rostami [Spouse], for a visitor visa.

[2] The Applicant and the Spouse [Applicants] are citizens of Iran. On November 6, 2021, the Applicant submitted an Application for Study Permit made outside of Canada. She sought to pursue a 2-year Master of Administrative Science, Specialization: Computer Security and Forensic Administration at Fairleigh Dickinson University of British Columbia.

Decision under review

[3] By letter dated November 22, 2021, the Visa Officer refused her application on the basis that they were not satisfied the Applicant would leave Canada at the end of her stay, as required by subsection 266(1) of the IRP Regulations, based on her family ties in Canada and in her country of residence, and on the purpose of her visit.

[4] The Global Case Management System [GCMS] notes, which form a part of the reasons for the decision that is the subject of this application for judicial review, state as follows:

I have reviewed the application. I am not satisfied that the applicant would leave Canada at the end of their stay as a temporary resident, I note that: -the client is married or has dependents or states to have close family ties in their home country, but is not sufficiently established. PA will be accompanied by spouse. The ties to their home country are weakened 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 study plan does not appear reasonable given the applicant's employment and education history. I note that: - the client's previous studies were in an unrelated field -the client has previous studies at a same academic level than the proposed studies in Canada PA is applying to study Masters in Computer Security and Forensic Administration, previously obtained Masters in Information Technology Information Security and currently employed as Software developer. Considering applicant's education and work experience in the same field, I am not satisfied that applicant would not have already achieved the benefits of this

program. In light of the PA's previous study and current career, I am not satisfied that this is a reasonable progression of studies. Weighing the factors in this application, I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

Issues and standard of review

[5] The Applicant asserts that the Visa Officer's decision not only raises the issue of whether that decision was reasonable, but also whether there was a breach of procedural fairness. In my view, all of the issues raised by the Applicant pertain to the reasonableness of the decision. No issue of procedural fairness arises.

[6] The parties submit, and I agree, that review of the merits of the Visa Officer's decision attracts the reasonableness standard of review (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23, 25 [*Vavilov*]). Applying that standard, the reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at para 99).

Analysis

i. Family ties

[7] The Visa Officer notes that “[...] the client is married or has dependents or states to have close family ties in their home country, but is not sufficiently established”. The reasoning for this finding of a lack of establishment appears to be based on the fact that the Applicant would be

accompanied by her spouse during her studies in Canada. The Visa Officer found that this served to weaken her ties to Iran and her motivation to return at the end of her studies because her immediate family would be residing with her in Canada.

[8] The Applicants make many submission on this point including a policy argument based on paragraph 205(c)(ii) of the IRP Regulations. However, more compelling is that there was evidence in the record before the Visa Officer indicating that:

- the Applicant's parents and six siblings, as well as her Spouse's parents and five siblings, remain in Iran (Family Information forms). They list no relatives in Canada;
- the Applicant has been employed as a software developer since 2014 and the record contains a letter from her employer stating that if she graduates from her proposed course of studies in Canada, she will be employed as a network security and intrusion detection manager with increased salary and benefits; and
- in her letter provided in support of her study permit application, the Applicant explains that she accompanied her Spouse to Malaysia where he completed his Ph.D. and, while there, she completed a Masters of Information Security, graduating in 2020. The costs of these studies were paid for by her Spouse's father who will also pay for the costs of the Applicant's proposed studies in Canada, during which she would be accompanied by her spouse. She states that their parents are building them a home in Iran, which will be ready when they return from Canada, and that they have promised to care for their families to reciprocate the support they have received.

[9] None of this evidence is mentioned by the Visa Officer.

[10] In my view, while it may be relevant to consider that the Spouse intends to accompany the Applicant to Canada (*Balepo v Canada (Citizenship and Immigration)*, 2016 FC 268 at paras 15-16), and, even if it is reasonable to infer from this that the Applicant's family ties to Iran may be weakened, the problem in this case is that the Visa Officer ended their analysis there. The Visa Officer did not weigh this against: (1) the fact that all of the other members of the Applicant's and her Spouse's families will remain in Iran; (2) the fact that the Applicants have no family members in Canada; or (3) the other evidence in the record relevant to establishment such as the letter from the Applicant's employer. I agree with the Applicant that in this case the Visa Officer seems to have simply applied a broad generalization in reaching their finding as to a lack of establishment.

[11] I also do not agree with the submission of the Respondent, when appearing before me, that the Visa Officer's generic statement that "[...] the client is married or has dependents or states to have close family ties in their home country, but is not sufficiently established" serves to demonstrate that the Visa Officer considered and weighed the Applicant's actual family ties or other evidence speaking to establishment. And while the Respondent, in its written submissions, asserts that the fact that the Spouse intends to give up his employment in Iran and apply to accompany her to Canada "[...] seems to go against the Applicant's statement that she and her husband intend to return to Iran once she completes her degree", much like the Visa Officer's reasons, the basis of this assertion is unclear – beyond the mere fact of the intended accompaniment.

[12] In my view, the Visa Officer's finding that the Applicant is not sufficiently established in Iran and, therefore, that they were not satisfied that she would not return there upon the completion of her studies, is not justified, transparent or intelligible. It is therefore unreasonable.

ii. Study plan

[13] I also agree with the Applicants that the Visa Officer's finding as to the Applicant's prior and intended studies are contradictory and unintelligible.

[14] On one hand, the Officer finds that the Applicant's study plan is not reasonable given that her previous studies were "in an unrelated field". The Visa Officer then states that her proposed course of study is a Masters in Computer Security and Forensic Administration, but that she previously obtained a Masters in Information Technology Information Security and is currently employed as a software developer. Given her education and work experience in the same field, the Visa Officer states that they were not satisfied that the Applicant "[...] would not have already achieved the benefits of the program" Therefore, this was not a reasonable progression of her studies.

[15] On its face, this is unintelligible. The programs cannot be unrelated and, at the same time, redundant.

[16] Further, the Applicant explained in her letter supporting her study permit application why the two Master's programs differed, why she wished to pursue the program in Canada, and why this would benefit her career with her current employer – who has offered her a promotion upon

the completion of that program. The Visa Officer was not required to accept it this evidence. However, as it appears to contradict the Visa Officer's finding that the Applicant had already achieved the benefits of the Canadian program, the Officer erred in failing to address it (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998 FCJ No 1425 at para 17]).

[17] While the Applicants make various other submissions, the two errors noted above are sufficient to warrant the Court's intervention as the decision is not justified and intelligible.

JUDGMENT IN IMM-92-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;
2. The decision is set aside and the matter shall be remitted to another visa officer for redetermination;
3. There shall be no order as to costs; and
4. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-92-22

STYLE OF CAUSE: ZEINAB VAHDATI, VAHID ROSTAMI v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE USING ZOOM

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JUDGMENT AND REASONS: STRICKLAND J.

DATED: JULY 25, 2022

APPEARANCES:

Samin Mortazavi FOR THE APPLICANTS

Jessica Ko FOR THE RESPONDENT

SOLICITORS OF RECORD:

Pax Lax Corporation FOR THE APPLICANTS
Vancouver, British Columbia

Attorney General of Canada FOR THE RESPONDENT
Vancouver, British Columbia