Federal Court  Cour fédérale

Date: 20220915

Docket: IMM-1711-20

Citation: 2022 FC 1297

Toronto, Ontario, September 15, 2022

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

SEYED MOHAMMAD ZOIE
NARGES GANJIAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a February 24, 2020 decision [Decision] of an officer of Immigration, Refugees, and Citizenship Canada [Officer] refusing an application for a work permit under the Temporary Foreign Worker Program. The Officer was not satisfied that the principal Applicant would leave Canada at the end of his stay based on his travel history, family ties in Canada and in Iran, limited employment prospects in his country of residence, and current employment situation.

[2] As set out further below, I find that the Decision was unreasonable as it lacked sufficient justification and a rational chain of analysis with respect to all of the factors listed in the decision letter. The application is accordingly allowed.

I. Background

[3] The Applicants are a married couple who are citizens of Iran. They have lived in Canada since 2019 on visitor visas, and subsequently accompanying their son who was granted a study permit in 2019.

[4] On January 24, 2019, Seyed Mohammad Zoie, the principal Applicant, with the help of his brother-in-law, incorporated a specialized construction, procurement and supply company in Canada. Mr. Zoie is the sole owner and a director of the company.

[5] In September 2019, Mr. Zoie applied for a Labour Market Impact Assessment [LMIA] to allow him to be CEO of the company. The application was accepted and the LMIA was issued on October 4, 2019. On December 31, 2019, Mr. Zoie submitted a work permit application, supported by his LMIA. His spouse, Narges Ganjian, is a listed dependent on his application and applied for an open work permit.

[6] On February 24, 2020, the work permit application was refused. The decision letter indicated that the Officer was not satisfied the principal Applicant would leave Canada at the end of his stay based on his travel history, family ties in Canada and in Iran, the principal Applicant's limited employment prospects in his country of residence, and current employment situation.

II. Preliminary Matter – Style of Cause

[7] As a preliminary matter, I note that the style of cause for this proceeding has been amended to reflect the correct Respondent – The Minister of Citizenship and Immigration.

III. Issues and Standard of Review

[8] The overriding issue before the Court on this application is whether the Decision was reasonable. In conducting a reasonableness review, the Court must determine whether the Decision is "based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 85-86; *Canada Post Corp* v *Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A reasonable decision, when read as a whole and taking into account the administrative setting, bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

IV. Analysis

A. *Was the Decision reasonable?*

[9] The Applicants raise a number of arguments as to why the Decision was unreasonable, which boil down to whether the Decision lacks sufficient justification and a rational chain of analysis to support the factors identified by the Officer as forming the basis for why the principal Applicant would not leave Canada at the end of his stay.

[10] As it relates to the factors of the principal Applicant's travel history and his family ties in Canada and in Iran, I find that the reasons do not provide sufficient justification or a rational chain of analysis as to why a negative inference was made in the decision letter.

[11] As noted by the Applicants, the Federal Court has consistently held that an applicant's lack of travel history on a work permit application should be treated as a neutral factor in terms of the applicant's likelihood of returning to his or her country of citizenship: *Ekpenyong v Canada (Citizenship and Immigration)*, 2019 FC 1245 [*Ekpenyong*] at para 31, citing *Ogunfowora v Canada (Citizenship and Immigration)*, 2007 FC 471 at para 42; *Huang v Canada (Citizenship and Immigration)*, 2009 FC 135 at para 13; *Adom v Canada (Citizenship and Immigration)*, 2019 FC 26 at para 15. The Court has found it to be an error for a visa officer to use an applicant's lack of previous travel history as a negative factor in determining whether the applicant will not leave Canada after her employment: *Ekpenyong* at para 32.

[12] The Respondent does not dispute this legal principle. However, the Respondent argues that the Decision does not indicate that a negative inference was drawn from the principal Applicant's lack of travel. It asserts that the reference to Mr. Zoie's travel history is neutral and was noted by the Officer to indicate that travel history could not offset other evidence of strong ties to Canada and weak ties to Iran.

[13] I do not accept this explanation nor do I find any suggestion of this explanation in the reasons provided.

[14] The decision letter expressly lists as the first basis for refusing the application that the Officer is "not satisfied that [the Applicant] will leave Canada at the end of [his] stay, as stipulated in subsection 200(1) of the IRPR based on [his] travel history."

[15] The Officer provides no rationale in the Global Case Management System [GCMS] notes, for the Officer's inclusion of an adverse finding based on travel history in the decision letter. The only statement made in the GCMS notes on travel history is a vague note that the "HOF has provided evidence of entry to Cda in Feb/19, and no other travel." This says nothing about why travel history was identified as a factor suggesting that the principal Applicant would not leave Canada at the end of the stay. The Officer's notes refer to prior visas obtained by the Applicants. There is no suggestion that the Applicants did not comply with the terms of those visas relating to their entry. The Officer's reasons lack a rational connection to the decision letter.

[16] Similarly, the Officer's analysis relating to the principal Applicant's family ties is insufficient when considered with the materials filed and the decision letter.

[17] The decision letter states that the Officer is not satisfied that the principal Applicant will leave Canada at the end of his stay based on his family ties in both Canada and in his country of residence.

[18] However, in his reasons, the Officer states only that the principal Applicant's minor son who is on a study permit is a "strong family tie" to Canada as is the family that worked with the principal Applicant to create the Canadian company. The Officer does not consider the principal Applicant's family ties in Iran.

[19] The Applicants assert that the Officer gave undue weight to the principal Applicant's sister and brother-in-law residing in Canada while all of the Applicants' other siblings and parents reside in Iran, including the principal Applicant's elderly mother, for whom he is responsible.

[20] The Respondent argues that while there was evidence of family in Iran, there was no evidence of close ties with those family members. The Respondent notes that there was no evidence before the Officer that the principal Applicant would be taking trips to Iran to care for his elderly mother.

[21] I note that while there was no affidavit evidence relating to the principal Applicant's relationship to family members in Iran, the many family members that reside in Iran were clearly identified in the application material filed. In my view, there was an obligation on the Officer to demonstrate that he had considered the Applicants' family in Iran, and to explain how he weighed the relationships in Canada against the family that was still present in Iran. This is particularly so as the Officer indicates in the decision letter that the principal Applicant's family ties in both Canada and in Iran were a basis for determining that the principal Applicant would not leave Canada at the end of his stay.

[22] As the majority of the principal Applicant's family members (and those of his spouse) still reside in Iran, it was unreasonable for the Officer to simply refer to family pull factors from Canada as a negative factor, without demonstrating consideration of the full context that includes familial pull factors from Iran: *Azam v Canada (Citizenship and Immigration)*, 2020 FC 115 at

paras 55-56. If the Officer was of the view that there was insufficient evidence on the ties to Iran, this should have been mentioned in the Officer's reasons.

[23] The Applicants additionally argue that the Officer misapprehended evidence in finding that the principal Applicant had limited employment prospects in Iran in view of his extensive work experience and business activities, including a restaurant that he constructed and leased. They argue that the principal Applicant's current country of residence is Canada and therefore this ground is irrelevant. They further take issue with the Officer's identification of the principal Applicant's current employment as being a factor for determining that he will not return after his authorized stay. They assert that it is unclear what the Officer is pointing to, as the principal Applicant is not permitted to work legally in Canada until a work permit is issued.

[24] In my view, it is clear from the Officer's reasons and the nature of the decision that the Officer is referring to limited employment prospects in Iran and current employment opportunities in Canada when he refers to the factors of "limited employment prospects in your country of residence" and the "current employment situation" in the decision letter. I do not consider the Decision to be unintelligible as it relates to the understanding of these factors.

[25] The reasons of the Officer indicate that he considered the principal Applicant's professional qualifications and assets in Iran, but that he was of the view that the principal Applicant's time in Canada and the steps taken by the principal Applicant to create a company and set up a business in Canada demonstrated an intention to give-up his career in Iran. I agree with the Respondent that the establishment of a company with plans for the principal Applicant

to act as CEO was reasonably weighed as a strong tie to Canada, particularly as the business plan and other evidence filed did not show any plans for the company if the principal Applicant were to leave Canada. However, this analysis does not sufficiently address the separate finding that the principal Applicant has limited employment prospects in Iran. While the nature of the principal Applicant's work permit application indicates that he is willing to leave Iran on a temporary basis, it does not on its own, without consideration of the nature of his employment and business activities in Iran, lead to a finding that employment would not be available for the Applicant if he were to return at the end of his stay.

[26] In my view, the inconsistencies between the decision letter and the reasons, coupled with the deficiencies in the reasons, undermines the overall analysis provided by the Officer and the reasonableness of the Decision. Accordingly, it is my view that the application should be allowed.

B. *Other issues*

[27] For completeness, I note that the Applicants also sought to introduce an issue of procedural fairness not raised in the Applicants' initial memorandum of fact and law, but only introduced in the further memorandum of fact and law, after leave was granted. While in view of my disposition above, I need not consider whether this issue should be entertained, I note that even if I had exercised my discretion to consider this issue under the factors in *Al Mansuri v Canada (MPSEP)*, 2007 FC 22 at paragraph 12, I would not have found the Applicants' arguments on this issue persuasive.

[28] The premise of the Applicants' argument was that by not addressing all of the Applicants' evidence, the Officer made veiled credibility findings. However, the Applicants did not identify any portion of the Decision or the Officer's reasons that indicated or even suggested credibility concerns. The fact that an Officer does not conclude in favour of an applicant is not sufficient foundation for an assumption that credibility has been put into issue.

V. Conclusion

[29] In summary, it is my view that the Decision is undermined by the insufficiency of the Officer's analysis. The conclusion that the principal Applicant will not leave Canada at the end of his stay lacks sufficient justification for the reasons I have given. Therefore, I will set aside the Decision and remit this matter for redetermination.

[30] There was no question for certification proposed by the parties and I agree that none arises in this case.

JUDGMENT IN IMM-1711-20

THIS COURT'S JUDGMENT is that

1. The style of cause is amended to correctly identify the Respondent as The Minister of Citizenship and Immigration.

2. The application for judicial review is allowed, the decision of the Officer set aside, and the matter is remitted back to be redetermined by a different officer.

3. No question of general importance is certified.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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