

Federal Court



Cour fédérale

Date: 20221110

Docket: IMM-8221-21

Citation: 2022 FC 1539

Ottawa, Ontario, November 10, 2022

PRESENT: Madam Justice Pallotta

BETWEEN:

KEIVAN ZEINALI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Keivan Zeinali, is a 32-year-old citizen of Iran. He was accepted into a Master's of Business Administration (MBA) program at Trinity Western University (TWU), British Columbia, but an immigration officer (Officer) refused his application for a study permit to enter Canada. The Officer was not satisfied Mr. Zeinali would leave Canada at the end of his authorized stay.

[2] Mr. Zeinali submits the Officer's decision is both unreasonable and procedurally unfair. According to Mr. Zeinali, the decision contains numerous "badges of unreasonableness" that demonstrate it should be set aside: *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 27. He states there is no connection between his study permit application and the reasons for refusing it, raising a suspicion that the Officer did not review his application appropriately. Also, the Officer failed to properly assess his purpose of studying in Canada, and disregarded material evidence about his financial situation, his strong ties to Iran, and the strong employment prospects in Iran after he graduates. Mr. Zeinali contends the Officer's concerns were not based on deficiencies in the evidence as his application was complete. Instead, the Officer refused the application based on veiled credibility concerns (*Al Aridi v Canada (Minister of Citizenship and Immigration)*, 2019 FC 29 at para 29 [*Al Aridi*]) and extrinsic sources of information about the suitability of MBA programs in Iran. Mr. Zeinali states the decision was procedurally unfair because he was not given an opportunity to respond to these concerns.

[3] Whether the Officer unreasonably refused Mr. Zeinali's study permit application is determined according to the Supreme Court of Canada's guidance in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The reasonableness standard of review is a deferential but robust form of review: *Vavilov* at paras 12-13, 75 and 85. The reviewing court does not ask what decision it would have made, attempt to ascertain the range of possible conclusions, conduct a new analysis, or seek to determine the correct solution to the problem: *Vavilov* at para 83. Instead, the court must focus on the decision actually made, including the reasoning process and the outcome, and consider whether the decision as a whole is transparent, intelligible, and justified: *Vavilov* at paras 15 and 83.

[4] Allegations of procedural unfairness are reviewed on a standard that is akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]. The duty of procedural fairness is “eminently variable”, inherently flexible, and context-specific: *Vavilov* at para 77, citing *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at paras 22-23 [*Baker*], among other cases. An applicant must have had a meaningful opportunity to present their case and to have it fully and fairly considered: *Baker* at para 32. The central question is whether the procedure was fair, having regard to all of the circumstances: *Canadian Pacific Railway* at para 54.

[5] The Officer’s reasons for refusing Mr. Zeinali’s study permit application are recorded as notes in the Global Case Management System (GCMS):

I have reviewed the application. Client is seeking entry to obtain an MBA - International Business from Trinity Western University. Client currently holds an undergraduate degree and a Master of Science in Accounting and has been working as an accountant and a financial affairs manager since 2007. Client provided a Non-Financial Letter of Commitment which states that the employer would approve a significant salary increase, subject to the client’s successful completion of an international business management program from a developed country. As the client is planning to be on leave-without-pay for the duration of the studies in Canada, it is unclear as to why the employer is willing to keep the position vacant for at least two years instead of hiring someone else who already has the qualification. Motivation letter provided is vague and states that studying in Canada would provide more time and opportunity for the client to ask questions and to create connections. Client also states, in the letter, that they prefer Canadian schools over local options as the connection between professors and students is not strong in Iran. Liquid funds shown in the form of two bank statements: Client’s own bank statement shows the equivalent of \$34,780, and client’s father’s statement has the equivalent of \$18,594 (using today’s free-market conversion rate). Insufficient transaction history provided in support of the sources of these funds, as I note that the client’s monthly paystub shows the equivalent of \$370, while father’s indicates \$401 (using today’s free-market conversion rate). On balance, [Mr. Zeinali] has failed to satisfy me that the course of study is reasonable given the high cost of international study in Canada when weighed against the potential career/employment benefits, the local options available for similar studies, and

[Mr. Zeinali's] personal circumstances. Client is single and has no dependents. Given family ties and economic motives to remain in Canada, the applicant's incentives to remain in Canada may outweigh their ties to their home country. Weighing the factors in this application, I am not satisfied that the applicant will adhere to the terms and conditions imposed as a temporary resident. For the reasons above, I have refused this application.

[6] Mr. Zeinali argues that the reasons are arbitrary and unsupported by the evidence, and the Officer committed a number of reviewable errors. The Officer: (i) overstepped their role to assume the role of a business consultant regarding the employer's recruitment decisions (*Adom v Canada (Minister of Citizenship and Immigration)*, 2019 FC 26 at paragraphs 16-17 [*Adom*]); (ii) mischaracterized his motivation letter as "vague", and failed to engage with key explanations for pursuing an MBA in Canada instead of in Iran; (iii) failed to justify concerns about the high cost of international study and the source of funds; the evidence demonstrated sufficient funds for the two-year program and living expenses, and it is not an officer's role to determine the value of an education (*Lingepo v Canada (Minister of Citizenship and Immigration)*, 2021 FC 552 at paragraphs 17-18); (iv) based their concern about "family ties and economic motives to remain in Canada" on unfounded generalizations about being single with no dependents, instead of the evidence that Mr. Zeinali has no family in Canada, strong family ties in Iran, and employment prospects and property in Iran (*Rahmati v Canada (Minister of Citizenship and Immigration)*, 2021 FC 778 at paragraph 18 [*Rahmati*]; *Peiro v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1146 at paragraphs 21-23 [*Peiro*]).

[7] I am not persuaded that the Officer's decision was unreasonable or procedurally unfair.

[8] As noted above, the focus of reasonableness review is on the decision maker's reasoning process and outcome: *Vavilov* at para 83. A reviewing court begins its inquiry by examining the reasons and seeking to understand the reasoning process the decision maker followed to arrive at the conclusion: *Vavilov* at paras 84-85. In doing so, the reasons must be read holistically and in context: *Vavilov* at para 97. The context includes, for example, the evidence that was before the decision maker, the submissions made, and the "institutional setting", including the purposes and practical realities of the administrative regime: *Vavilov* at paras 91-98.

[9] A study permit applicant bears the burden of satisfying a visa officer that they will leave Canada at the end of their authorized stay: *Penez v Canada (Minister of Citizenship and Immigration)*, 2017 FC 1001 at para 10 [*Penez*]. Visa officers have wide discretion in assessing the evidence to decide whether this requirement is met, and their decisions are entitled to deference: *Penez* at para 10; *Nimely v Canada (Minister of Citizenship and Immigration)*, 2020 FC 282 at para 7 [*Nimely*]. Visa officers are not required to provide extensive reasons for their decision in view of the large number of decisions they are required to process: *Nimely* at para 7.

[10] In my view, the reasons demonstrate that the Officer weighed the evidence and considered multiple factors to conclude that Mr. Zeinali had not met his burden. I agree with the respondent that the Officer was alive to the details of the application. Mr. Zeinali has not identified any factual inaccuracies in the GCMS notes, and contrary to his assertion, the reasons are not arbitrary and unconnected to the study permit application so as to raise a suspicion that the Officer did not review it. In my view, the notes demonstrate that the Officer read and understood Mr. Zeinali's application.

[11] I do not agree with Mr. Zeinali that the Officer failed to properly assess his purpose of studying in Canada. In my view, the purpose of study was at the centre of the Officer's concerns.

[12] Mr. Zeinali's study permit application explained that his reason for pursuing an MBA in Canada was to advance his career in Iran. The application explained that an advanced degree from a country like Canada would allow him to learn international negotiation techniques and bring an international perspective to his career. Mr. Zeinali stated that his current employer is trying to attract foreign investments and customers, and by supplementing previous degrees in accounting with an MBA he would be promoted to a position managing international business. In this regard, Mr. Zeinali relied on a letter of commitment from the employer, stating that when he graduates from an international business management program in a developed country "with supreme grade" he will be offered a position as manager of planning and international affairs with a 70% increase in salary and, subject to board approval, the possibility of buying shares in the company.

[13] The Officer noted the employer's willingness to offer higher compensation, but was not satisfied that Mr. Zeinali's proposed course of study was reasonable "given the high cost of international study in Canada when weighed against the potential career/employment benefits, the local options available for similar studies, and [Mr. Zeinali's] personal circumstances." Reading the GCMS notes contextually, it is possible to understand the Officer's concern about the reasonableness of the proposed course of study in light of the noted factors.

[14] With respect to potential career or employment benefits, the Officer used the free market conversion rate to convert Iranian to Canadian currency and calculated Mr. Zeinali's monthly salary to be the equivalent of \$370. Mr. Zeinali does not raise an error with the Officer's calculation. When annualized, a 70% salary increase would be the Canadian dollar equivalent of about \$3,100. The cost of completing the two-year program of study in Canada, according to Mr. Zeinali's estimate, is about \$90,000.

[15] The Officer did not assume the role of a business consultant or question the employer's commitment, and the principle in *Adom* is inapplicable. The Officer raised a legitimate concern based on Mr. Zeinali's statements that key reasons for pursuing an MBA in Canada were the needs of his employer and the prospect of filling those needs after returning to Iran with international academic experience two years later. It was not unreasonable for the Officer to question why the employer's needs could not be met more immediately.

[16] While the Officer may have overstated that the motivation letter was "vague", in my view this does not amount to a reviewable error. Mr. Zeinali described his reasons for pursuing a second Master's degree in Canada over Iran in a general way, with broad statements about the perceived shortcomings of the education system and MBA options in Iran. For example, he stated that Iran and neighbouring countries do not have effective and useful MBA courses, and that he expects the Canadian program will offer better connections with professors and classmates, better data analyzing skills, internships in large companies, and courses that are not offered in Iran but are "very important for my purpose". The letter does not identify the local MBA programs that Mr. Zeinali compared, or explain how the shortcomings of particular

programs justify the expense of attending an international program and taking a two-year leave of absence (Mr. Zeinali worked for his employer while he was enrolled in full-time post-secondary studies in Iran). It is possible to understand why the Officer perceived the motivation letter as vague when the Officer's statement is considered in the context of the reasons as a whole, and the record: *Vavilov* at para 94.

[17] Turning to personal circumstances, Mr. Zeinali alleges the Officer erred in assessing his financial circumstances. Mr. Zeinali states the Government of Canada website indicates that students applying for a study permit are only required to demonstrate financial sufficiency for the first year of studies. He has paid close to \$10,000 of his tuition and has enough money to pay the balance. Also, Mr. Zeinali submits the Officer erred by questioning the source of funds in the bank, as his application explained that he receives rental income from three properties, and that part of his bank balance was from liquidating investments in gold and cars.

[18] As I read the Officer's notes, the concern was not insufficient funds to pay for the program, but rather the reasonableness of the proposed course of study in view of various factors that included Mr. Zeinali's financial situation. In this regard, the Officer was not making a determination about the value of learning. Mr. Zeinali's reason for studying in Canada is economic—career advancement and an associated increase in pay. The Officer calculated that Mr. Zeinali and his father together have the equivalent of approximately \$53,000 in the bank. Even with financial assistance from his father, the estimated program costs exceed the money in the bank. Mr. Zeinali points to lease agreements as evidence of regular rental income, but they do not establish that he actually receives money from rent or the net amount after expenses. Mr.

Zeinali did not provide banking transaction or deposit history, or other evidence that would indicate a regular source of future income such as rental income. There is no evidence to indicate how much of the bank balance is from the investments, or the value of Mr. Zeinali's remaining investments.

[19] Mr. Zeinali states it is unclear how the Officer concluded there were economic motives to remain in Canada in view of evidence that he had secured an offer of promotion for significantly higher compensation, and he owns property in Iran. Relying on *Peiro* (at paragraphs 21-23), he states the Officer erred by failing to justify reliance on economic motives as reasons Mr. Zeinali may overstay. In *Peiro*, however, the Court found that the officer's reasoning was mere speculation, without any real factual underpinning: *Peiro* at para 22. The same cannot be said of this Officer's reasoning. The evidence indicates that the expense of attending the TWU program could drain Mr. Zeinali's savings, and the increase in compensation he expects to receive with a promotion, which is a primary motivation for attending an international program, represents a fraction of the expense.

[20] Mr. Zeinali's reliance on *Rahmati* is misplaced because the officer in that case relied on family ties in Canada and Iran as a reason for refusing a study permit without mentioning family ties in the GCMS notes, and without an evidentiary basis. In Mr. Zeinali's case, the Officer correctly noted his family status as single with no dependents, and considered this as one aspect in assessing the strength of his motivation to return to Iran. An officer is entitled to assess the strength of ties that bind or pull an applicant to their home country against the incentives that might induce the applicant to overstay: *Chhetri v Canada (Minister of Citizenship and*

Immigration), 2011 FC 872 at para 14. Mr. Zeinali has not established a reviewable error in the Officer's weighing of economic motives or family ties.

[21] Mr. Zeinali submits he met his obligation to support his application with sufficient evidence, and the Officer did not specify why the evidence was not enough, or what would have been considered to be adequate corroborative evidence for a positive determination: *Ayeni v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1202 at para 28. However, apart from noting the lack of evidence regarding banking transactions, the Officer's decision was not based on a failure to provide "enough" evidence. Mr. Zeinali provided reasons why he would be motivated to return to Iran, and the Officer assessed those reasons in light of the evidence to conclude that he did not meet his burden to satisfy the Officer that he would leave Canada at the end of his authorized stay. The Officer explained why they reached that conclusion. Read holistically and contextually in light of the record, the Officer's reasoning is transparent, intelligible, and justifies the decision: *Vavilov* at paras 97, 103.

[22] As noted above, Mr. Zeinali also submits the decision was procedurally unfair.

[23] Relying on *Al Aridi*, Mr. Zeinali argues the real reasons for the refusal were credibility concerns—about his motivation for studying in Canada, his intention to return to Iran, the source of his funds, and his employer's commitment. In addition, Mr. Zeinali states the Officer relied on extrinsic evidence about unknown local options in Iran: *Afuah v Canada (Minister of Citizenship and Immigration)*, 2021 FC 596 at para 15 [*Afuah*]; *Yuzer v Canada (Minister of*

Citizenship and Immigration), 2019 FC 781 at paras 21-22 [*Yuzer*]. As such, Mr. Zeinali contends the Officer was under a duty to afford him an opportunity to address these concerns.

[24] Where a visa officer raises doubts about the credibility, truthfulness or authenticity of the information submitted in support of an application, it is incumbent on them to provide the applicant with an opportunity to resolve those doubts. That is not the case when an officer's decision is based on the sufficiency of the evidence or an applicant's failure to meet the statutory requirements: *Noulengbe v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1116 at para 10; *Perez Pena v Canada (Minister of Citizenship and Immigration)*, 2021 FC 491 at para 35. Paragraph 35 of this Court's decision in *Ibabu v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1068 provides a helpful explanation of the difference:

[35] An adverse finding of credibility is different from a finding of insufficient evidence or an applicant's failure to meet his or her burden of proof. As stated by the Court in *Gao v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 59, at para 32, and reaffirmed in *Herman v Canada (Minister of Citizenship and Immigration)*, 2010 FC 629 at para 17, "it cannot be assumed that in cases where an Officer finds that the evidence does not establish the applicant's claim, that the Officer has not believed the applicant". This was reiterated in a different way in *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067 at para 23, where Justice Zinn stated that while an applicant may meet the evidentiary burden because evidence of each essential fact has been presented, he may not meet the legal burden because the evidence presented does not prove the facts required on the balance of probabilities.

[25] I am not persuaded that the Officer made veiled findings about the credibility, truthfulness or authenticity of the information Mr. Zeinali submitted in support of his study permit application. The Officer was entitled to assess the weight of the evidence, and the evidence did not satisfy the Officer that the stated purpose of studying in Canada—to improve career prospects in Iran, and more specifically, prospects with Mr. Zeinali's current employer—

was reasonable considering the cost of attending the TWU program, the expected career benefits, the shortcomings of local programs, and Mr. Zeinali's personal circumstances.

[26] I disagree that the Officer relied on extrinsic evidence about MBA programs in Iran. Mr. Zeinali's application stated that local options are available, but that they are inferior or inadequate compared to the program at TWU. As I read the reasons, the alleged shortcomings of the local options were not sufficiently compelling to persuade the Officer that the high cost of international study in Canada was reasonable. In any event, the *Afuah* and *Yuzer* decisions do not support Mr. Zeinali's argument that fairness requires an officer who relies on their knowledge of local options to afford an opportunity to respond. In *Afuah*, the applicant did not allege a breach of procedural fairness. In *Yuzer*, the Court rejected an argument similar to Mr. Zeinali's, finding that the officer did not breach procedural fairness by drawing on their particular expertise about suitable local programs: *Yuzer* at para 18.

[27] For the foregoing reasons, Mr. Zeinali has not established that the Officer's decision was unreasonable or procedurally unfair. Accordingly, this application for judicial review is dismissed. The parties did not propose a serious question of general importance for certification, and I find there is no question to certify.

JUDGMENT in IMM-8221-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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