Federal Court  Cour fédérale

Date: 20230719

Docket: IMM-8879-21

Citation: 2023 FC 970

Ottawa, Ontario, July 19, 2023

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

MAHDIEH TAVASSOLI ROODSARI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mahdieh Tavassoli Roodsari, is a citizen of Iran. She applied to and was accepted into University Canada West's Master of Business Administration [MBA] in Vancouver, British Columbia. On August 26, 2021, she submitted an Application for Study Permit Made Outside of Canada, seeking a study permit to allow her to enter Canada to pursue those studies.

[2] By letter dated October 5, 2021, the Applicant was informed by a visa officer [Officer] that her study permit application was refused as the Officer was not satisfied, pursuant to s 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/200h2-227 [*IRP Regulations*], that the Applicant would leave Canada at the end of a period authorized for her stay. This determination was stated by the Officer to be based on the Applicant's family ties in Canada and in her country of residence as well as the purpose of her visit. The Applicant brought an application for leave and judicial review of that decision.

Decision Under Review

[3] The basis for the Officer's decision is stated above. The Global Case Management System [GCMS] notes also form a part of the Officer's reasons. These state as follows:

> I have reviewed all the documentation provided for this application. Summary of key findings below: PA failed to declare previous refusal, which diminishes the credibility of this application. See statutory questions. The applicant is 39 years old, single, mobile, is not well established and has no dependents. PA states to have close family ties in their home country, but is not sufficiently established. I have concerns that the ties to Iran are not sufficiently great to motivate departure from Canada. PA is applying for a Master of Business Administration. Previous university studies: Bachelor-Clinical Psychology. Currently employed as a Bank Official Employee. Client Explanation letter reviewed. Study plan submitted is vague and does not outline a clear career/educational path for which the sought educational program would be of benefit. It refers to general advantageous comments regarding the value of international education in Canada and makes sweeping statements on how the education will improve the applicant's situation in Iran. The applicant does not demonstrate to my satisfaction compelling reasons for which international educational program would be of benefit as there are similar programs available closer to the applicant's place of residence and the benefits to the applicant of enrolling in an international program do not appear to outweigh the costs, particularly considering cost of living in Canada. Bank statements

> provided show recent lump sum deposits without clear provenance. In the absence of satisfactory documentation showing the source of these funds, I am not satisfied the PA has sufficient funds for the intended purpose. Applicant has weak language scores. I have concerns with the applicant's ability to handle an English-language course load, given the added difficulties for those studying abroad. The PA has not demonstrated to my satisfaction being a genuine student that is actively pursuing studies and as such, I have concerns that the PA may be seeking entry for reasons other than educational advancement. On balance, after review all information including PA's previous educational history, relevance of the proposed course of study and taking into account factors such as personal establishment, the applicant has failed to satisfy me that they are a bona fide temporary resident who will leave Canada following the completion of their studies. For the reasons above, I have refused this application.

Issues and Standard of Review

[4] The Applicant raises two issues in her application for judicial review of the Officer's decision:

i. Was the decision reasonable?

ii. Was the decision rendered in breach of the duty of procedural fairness?

[5] I agree with the parties that, in assessing the merits of the Officer's decision, the standard of review of reasonableness is to be applied (*Canada (Minister of Immigration and Citizenship) v Vavilov*, 2019 SCC 65 at paras 23, 25 [*Vavilov*]).

[6] On judicial review on the reasonableness standard, the Court "must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, 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).

[7] Issues of procedural fairness are to be reviewed on a correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79 and in *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). In *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*CPR*], the Federal Court of Appeal held that although the required reviewing exercise may be best – albeit imperfectly – reflected in the correctness standard, issues of procedural fairness do not necessarily lend themselves to a standard of review analysis. Rather, the Court is to determine whether the proceedings were fair in all of the circumstances. That is, "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond" (*CPR* at paras 54-56; see also *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Ahousaht First Nation v Canada (Indian Affairs and Northern Development)*, 2021 FCA 135 at para 31).

Legislative and General Backdrop

[8] The *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] requires that a foreign national, before entering Canada, apply for a visa (s 11(1)), establish that they hold such a visa and that they will leave Canada by the end of the period authorized for their stay (s 20(1)(b)). With respect to temporary resident visas [TRV], s 7(1) of the *IRP Regulations* states that a foreign national may not enter Canada to remain on a temporary basis without first obtaining a TRV. Section 179 of the *IRP Regulations* sets out the requirements that must be met

before a visa officer will issue a TRV. Among these is the requirement that the visa officer be satisfied that the foreign national will leave Canada at the end of the period authorized for his or her stay.

[9] The student class is prescribed as a class of persons who may become temporary residents (*IRP Regulations,* s 210). A foreign national is a student and a member of the student class if the foreign national has been authorized to enter and remain in Canada as a student (*IRP Regulations,* s 211). An officer shall issue a study permit to a foreign national if, among other things, it is established that the foreign national will leave Canada by the end of the period authorized for their stay (*IRP Regulations,* s 216(1)).

[10] There is a legal presumption that a foreign national seeking to enter Canada is an immigrant, and it is up to him or her to rebut this presumption (*Rahman v Canada (Citizenship and Immigration*), 2016 FC 793 at para 16 [*Rahman*]; *Obeng v Canada (Citizenship and Immigration)*, 2008 FC 754 at para 20). Therefore, in the present case, the onus was on the Applicant to prove to the Officer that she is not an immigrant and that she would leave Canada at the end of the requested period of stay (*Rahman* at para 16; *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at para 9; *Nesarzadeh v Canada (Citizenship and Immigration)*, 2023 FC 568 at para 8 [*Nesarzadeh*]).

[11] The administrative context here is that visa officers are required to make TRV decisions frequently and rapidly. Accordingly, they need not provide lengthy reasons. Further, their

decisions are to be afforded deference. As stated in *Nimely v Canada (Citizenship and Immigration)*, 2020 FC 282:

> [7] In the context of decisions made by visa officers, extensive reasons are not required for the decision to be reasonable given the immense pressure they have to produce a large volume of decisions every day (*Vavilov* at paras 91, 128; *Hajiyeva v Canada (Citizenship and Immigration)*, 2020 FC 71 at para 6 [*Hajiyeva*]). Moreover, it is well established that they are entitled to considerable deference given the level of expertise they bring to these matters (*Vavilov* at para 93; *Hajiyeva* at para 4; *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 12; *Akomolafe v Canada (Citizenship and Immigration)*, 2016 FC 472 at para 22).

[12] That said, even if brief, the reasons read together with the record must allow the Court to understand the rationale behind the officer's findings. As stated in *Nesarzadeh*:

> [7] *Visa Officers face a deluge of applications, and their reasons do not need to be lengthy or detailed. However, their reasons do need to set out the key elements of the Officer's line of analysis and be responsive to the core of the claimant's submissions on the most relevant points*. See, for example*: Lingepo v Canada (Citizenship and Immigration)*, 2021 FC 552 at para 13, cited with approval in *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 [*Ocran*] at para 15; *Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596 at paras 9-10; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 17, cited with approval in *Motlagh v Canada (Citizenship and Immigration)*, 2022 FC 1098 at para 22.
>
> [Italic original]

[13] Further, "[w]here a decision maker's rational for an essential element of the decision is not addressed in the reasons and cannot be inferred from the record, the decision will generally fail to meet the requisite standard of justification, transparency and intelligibility" (*Vavilov* at para 98).

[14] In many ways, this application for judicial review is typical of the current wave of applications for leave and judicial review filed with the Court by which foreign nationals contest the refusal of a study permit. Many of these applications are from citizens of Iran. The student applicants range from those in grade school to mature students seeking a further advanced degree. Typically, the reasons of the visa officer are short – often one paragraph or two in the GCMS notes – given the volume of applications to which they must respond. Conversely, the memorandums of fact and law filed in the applications for leave and judicial review will be lengthy, generally 30 pages and nearly 100 paragraphs. Often these are essentially standard form submissions made by the same law firms, with minor changes made to reflect the circumstances of the current matter. These submissions may or may not be closely connected to the matter at hand. Or, as in this case, the submission will compare the officer's reasons, often on a line-by-line basis, to the submitted study plan to point out that the officer has not reasonably addressed the entire content of same.

[15] Against this backdrop, I will now address the Applicant's submissions.

Was the Decision Reasonable?

A. Family Ties and Establishment in Iran

[16] The Applicant submits that the Officer failed to address her submissions made in support of her student visa application which demonstrated her significant familial ties to Iran, more specifically, considering the role she plays in her family. She had indicated that her mother is ill and that the Applicant is responsible for her care. Further, that all of her immediate family

members reside in Iran and she has no family ties is Canada. Accordingly, she submits that the Officer failed to explain why this evidence was insufficient and failed to meaningfully grapple with this key issue as required by *Vavilov* (at paras 127-128). Instead, the Officer improperly focused on her status as single, mobile and having no dependants which is contrary to the jurisprudence, including *Mouivand v Canada (Citizenship and Immigration)*, 2023 FC 573 at para 10 [*Mouivand*]. She submits that the Officer erred by failing to engage in a weighing of her family ties. The Applicant also takes issue with the Officer's finding that she is not well established in Iran and states that this is clearly contradicted by the evidence in the record including her 15-year employment at a bank and ownership of two properties. She asserts that the Officer failed to explain how her evidence was insufficient to demonstrate sufficiently strong ties to Iran.

[17] Here the Officer stated that the Applicant is "39 years old, single, mobile, is not well established and has no dependents. PA states to have close family ties in their home country, but is not sufficiently established. I have concerns that the ties to Iran are not sufficiently great to motivate departure from Canada".

[18] As I held in *Mouivand*, an applicant's marital status, mobility, and lack of dependents are relevant personal factors that can by considered by a visa officer as part of an overall analysis but, without any further analysis, cannot be considered a negative factor (para 11). Here the Officer did not make this statement in isolation as they also acknowledged the Applicant's submission that she is close to her family in Iran. This is supported by the record before the Officer. However, given this, and without further explanation, it is not possible to know what the

Officer's concerns may have been as to the insufficiency of the Applicant's ties to Iran – beyond her being 39, single, mobile and having no dependants. Why, although she states that she is close to her family, has she failed to establish that she is not sufficiently established in Iran? In other words, how has the Officer weighed the push/pull factors and arrived at this conclusion? This is not apparent from the reasons or the record, which indicates, among other things, that the Applicant's family is all in Iran, she has long-term employment, and property interests there.

[19] I acknowledge the Respondent's position – in response to this and other submissions – that the Applicant is making an adequacy of reasons argument and that this is not an independent basis for review. In that regard, the Respondent submits a tribunal is presumed to have considered the evidence before it, and only if a document is key and contradictory and not mentioned will the court presume it was not considered (citing *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board),* 2011 SCC 62 at para 16 [*Newfoundland Nurses*] ; *Re Flora* [1993] FCJ no 598 at para 1; and, *Cepeda-Gutierrez v Canada (Citizenship and Immigration)*, [1999] 1 FC 54). The Respondent also relies on the Federal Court of Appeal's decision in *Zeifman LLP v Her Majesty the King*, 2022 FCA 160 [*Zeifman*] to assert that an administrative decision cannot be reviewed by a court merely because the decision maker did not specifically mention aspects of the evidence, so long as there is evidence to support the officer's finding and the court is satisfied that the decision is otherwise reasonable.

[20] However, as the Supreme Court held in *Vavilov*, *Newfoundland Nurses* stands for the proposition that close attention must be paid to a decision maker's written reasons and that they

must be read holistically and contextually for the purpose of understanding the basis upon which a decision was made – it is not an invitation for the Court "to provide reasons that were not given, nor is it license to guess what findings might have been made or to speculate as to what the tribunal might have been thinking" (*Vavilov* at para 97 quoting *Komolafe v Canada (Citizenhip and Immigration)*, 2013 FC 431 at para 11). As noted above, the Supreme Court concluded that "[w]here a decision maker's rational for an essential element of the decision is not addressed in the reasons and cannot be inferred from the record, the decision will generally fail to meet the requisite standard of justification, transparency and intelligibility" (*Vavilov* at para 97).

[21] That is the circumstance here. While the Respondent submits that the Officer's reasons demonstrate that the Officer considered a variety of factors and that the finding was reasonably open to the Officer, the Respondent points to no evidence in the record that would explain how the Officer concluded that the Applicant's ties to Iran were insufficient. The Respondent states, "parenthetically" that "the Respondent perceives a significant tension in the Applicant's evidence and position: that her presence in Iran is essential to care for her mother, and that this circumstance ties the Applicant to Iran, while the context of the Applicant's application is a request to come to Canada for a period of years". However, while this may be the Respondent's perception, this point is not raised by the Officer, it is not a reason given by the Officer, and it ignores that the Applicant explained that her brother and sister would care for their mother in her absence.

[22] I acknowledge that the Officer also stated in their reasons that the Applicant failed to declare a previous refusal “which diminishes the credibility of this application”. However, if or how the Officer factored this into the family ties, or other aspect of their analysis, cannot be discerned from the reasons.

B. Purpose of Visit

i. Study plan

[23] In the GPMS notes, the Officer indicates that the Applicant is applying for an MBA, that she previously earned a bachelor’s degree in clinical psychology and is currently employed by a bank. The Officer stated that they reviewed the Client Explanation letter but found that the study plan submitted was vague and did not outline a clear career/educational path for which the sought educational program would be of benefit. Rather, the study plan referred to “general advantageous comments regarding the value of international education in Canada and makes sweeping statements on how the education will improve the applicant’s situation in Iran”.

[24] The Applicant refers to the content of the study plan and submits that this demonstrates that the plan is not vague and that it explains why she seeks to pursue an MBA in Canada and how she intends to use her new education.

[25] In my view, there is no doubt that the study plan contains broad and vague statements as the Officer found. However, the Applicant also explained that after obtaining her bachelor’s degree she obtained a master’s degree in industrial engineering (system management and

productivity). Those studies included research projects regarding banking sciences, focusing on detecting bank system deficiencies. While working at the bank she tried to practically implement some of the solutions that had arisen from her research but, while her knowledge in managerial fields was high, her skills in implementation of knowledge was weak. Further, "[i]n a country like Iran, which is trying to develop but is still involved in traditional management methods, having modern management knowledge is very effective. In our country business programs presented by universities and colleges mainly focus on the theoretical aspect of this discipline. Our domestic universities are not as good as Canadian universities, especially regarding practical administrative training and banking sciences. The students enrolled in such disciplines suffer from the lack of access to modern facilities and up-to-date sources. So I decided to study in a country that is a pioneer in administrative science". For a variety of reasons, including that it has educational programs based on applied research, she chose Canada and the MBA offered by the UCW program, which includes a course in strategic management. Further:

> …the main difference between the Iranian banking system and developed countries is the implementation of the credit-based banking system in other countries of the world that still has not been implemented in Iran. This is one of the topics that my manager is considering implementing a pilot project in one of the small offices of our bank. Since this change in the process requires scrutiny and adequate study, it seems imperative that I achieve this by relying on sufficient knowledge and meeting and reviewing numerous meetings with Canadian banking staff and advisers. It is interesting to know that I will choose this topic as the main issue of my research project for graduating from the University Canada West, which I hope I will be able to complete with the help of the good professors of that university. I also intend to provide the results of the implementation of this project at my place of work as field research in Iran to the professors of that university so that it can be used by other students of that university to implement in other target communities.
>
> …..

> After graduation, I can continue to work as a senior employee in the bank and use my acquired skills and knowledge to improve the organizational system of my workplace. Even with this credential, I am ready to start my own private financial company, both of which will be a huge success for me. I hope I can fulfill my wishes and after returning to my country as a successful female manager, relying on the knowledge gained from your country, to create new events for my country in the field of the banking industry. Studying in Canada is a unique opportunity for me that will greatly improve all aspects of my work and personal life.

[26] In my view, while the study plan may lack some clarity, given its content and without further reasons from the Officer, it cannot be determined if the Officer reasonably concluded that the study plan did not outline a clear career/educational path for which the sought education program would be of benefit.

[27] As Justice Little found in *Zibadel v Canada (Citizenship and Immigration)*, 2023 FC 285 [*Zibadel*], in concluding that the reasoning in *Zeifmans* did not assist the respondent in that case "[f]rom reading the GCMS notes alongside the record, I am not confident that the officer considered the contents of the Study Plan and meaningfully grappled with the corresponding submissions in the immigration consultant's letter. In other words, I have material doubt that the officer was alive to the key concerns raised by the Applicant in those documents given the submitted differences between the education opportunities in Iran and Canada" (at para 48). This is a similar circumstance.

ii. Purpose and Cost

[28] The Officer also found that the Applicant had not demonstrated to their satisfaction compelling reasons for which the international educational program would be of benefit. The

Officer noted that this was because there are similar programs available closer to the Applicant's place of residence and the benefits to the Applicant of enrolling in an international program did not appear to outweigh the costs, particularly considering the cost of living in Canada.

[29] Further, that bank statements provided showed recent lump sum deposits without clear provenance. In the absence of satisfactory documentation showing the source of these funds, the Officer was not satisfied that the Applicant has sufficient funds for the intended purpose.

[30] The Applicant submits that this is a circumstance similar to *Zibadel* where Justice Little held:

> [41] The officer found, without additional explanation, that the course or program in Iran was similar or comparable to that in Canada. In previous cases involving reasons without an express explanation, the Court has concluded that the absence of evidence in the record about the local options available to the applicant, when combined with a failure to account for evidence in the record about the applicant's reasons to study in Canada, disclosed a reviewable error and/or raised serious concerns as to the justification or transparency of the officer's reasons: see *Torkestani*, at paras 10-14; *Afuah*, at para 15; *Aghaalikhani*, at para 20; *Yuzer*, at paras 21-22. In the present case, the absence of any explanation in the GCMS notes implies that the officer did not consider a key basis for the proposed educational advancement at issue in this study permit application, namely, the differences between the educational opportunities for this Applicant in Iran and Canada. When stating that the course or programs were similar or comparable and reaching a conclusion on this issue that was negative to the study permit application, the decision did not acknowledge or account for the evidence that ran contrary to the conclusion, and did not grapple meaningfully with the central submissions made by the Applicant's parents: *Vavilov*, at paras 125-128. Some explanation, even if brief, was required in the circumstances. The decision did not do so and therefore did not provide transparent and justified reasons for the conclusion.

[31] I agree. Here, the Officer failed to consider that one of the reasons that the Applicant is seeking to study in Canada is what she sees as deficiencies in the Iranian educational system (as well as the advantages to her of obtaining a Canadian degree). That is, the Officer did not address the evidence that appears on its face to be contrary to the Officer's conclusion, being the differences in the educational systems. Thus, contrary to the Respondent's submissions, this is not a question of the Officer weighing the evidence and affording the Applicant's study plan submission insufficient weight to support that there was no local option available to her. Rather, the Officer's reasons do not indicate that the Applicant's submission was considered. For this reason, the finding was unreasonable.

[32] As to the source of funds of the program, the Applicant submits that she provided a bank certificate statement showing a balance of 6,518,380,531 IRR with an approximate equivalent Canadian balance of $197,540.10, and included an employment certificate and pay stubs. Further, in her application, the Applicant stated that she was able to save her monthly salary and convert her non-cash assets (gold, currency, capital market share, etc.) to save money for living and studying in Canada and that she recently sold part of her stock exchange assets and personal gold and added the proceeds to her bank account.

[33] However, the Officer's concern is with the lack of objective evidence establishing where those lump sum deposits came from: "Bank statements provided show recent lump sum deposits without clear provenance. In the absence of satisfactory documentation showing the source of these funds, I am not satisfied the PA has sufficient funds for the intended purpose". Given that the onus lies with the Applicant to establish that they are a *bona fide* student with sufficient

evidence (see e.g. *Patel v Canada (Citizenship and Immigration)*, 2020 FC 517 at para 14 [*Patel*]), in my view, the Officer did not err by raising concerns arising from the insufficient objective evidence establishing the source of the Applicant's funds. The Applicant provided no records to confirm the source of the lump sum deposits.

[34] And, although the Applicant relies on *Khansari v Canada (Citizenship and Immigration)*, 2023 FC 17 at paragraph 19, wherein Justice Gleeson found that the officer in that matter erred by failing to refer to the explanations provided by the applicant, this decision is distinguishable on its facts. Here, unlike *Khansari*, the Officer specifically referred to the lack of objective evidence (documentation) of the source of the funds. This does not mean the Officer ignored the Applicant's assertions in her study plan, rather that she failed to support them with sufficient documentary evidence. That said, nor did the Officer speak to the explanation offered by the Applicant for the lump sum deposits

iii. Language Proficiency

[35] The Officer stated that they had concerns with the Applicant's ability "to handle an English – language course load, given the added difficulties for those studying aboard".

[36] The Applicant provided Duolingo scores indicating that she can "understand a variety of demanding written and spoken language including some specialized language use situations", "can grasp implicit, figurative, pragmatic, and idiomatic language", "can use language flexibly and effectively for most social, academic, and professional purposes". Moreover, she indicates on her CV that has scored Band 7 or higher in the International English Language Testing

System [IELTS]. She was also accepted in the MBA program. The Officer offers no explanation for why the Applicant's evidence as to her English proficiency fell short of what was required (or what that is) or why this level of proficiency gave rise to their concerns with the Applicant's likelihood of succeeding in the MBA programme (see *Patal* at para 26).

Conclusion

[37] I have found that the Officer's reasons concerning family ties, establishment and the purpose of the Applicant's visit to be unreasonable as they were not justified based on their reasons or the record. When appearing before me, both counsel agreed that, despite the Officer's concern as to the source of the lump sum deposit which, in my view, was reasonable, were I to find the decision to otherwise be unreasonable overall, then it would not have been saved by that sole consideration. I agree. And, because the decision was unreasonable, it is not necessary for me to also address the Applicant's procedural fairness argument.

JUDGMENT IN IMM-8879-21

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 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

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