

Federal Court



Cour fédérale

Date: 20231117

Docket: IMM-7851-22

Citation: 2023 FC 1532

Ottawa, Ontario, November 17, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**SEPIDEH AMIRI
BEHNAM HAJIJANI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Sepideh Amiri (“Principal Applicant”) and Behnam Hajijani (“Associate Applicant”), seek judicial review of a decision of a visa officer (the “Officer”) of Immigration, Refugees and Citizenship Canada dated June 21, 2022, refusing the Applicants’ study and worker permit applications, respectively, under subsection 216(1)(b) of the *Immigration and*

Refugee Protection Regulations, SOR/2002-227 (“*IRPR*”). The Officer was not satisfied that the Applicants would leave Canada at the end of their stay, concluding the Principal Applicant’s proposed education was redundant and not a logical progression for her career path, and acknowledging the immediate family coming with her to Canada. The Officer refused the Associate Applicant on the basis that he was accompanying the Principal Applicant.

[2] The Applicants submit that the decision is unreasonable because the Officer erroneously ignored evidence of family ties in Iran and the Principal Applicant’s proposed course of study and career path, and unreasonably decided that the Applicants are neither a genuine student nor worker. The Applicants also submit that the Officer breached the requirements of procedural fairness in not giving an opportunity to respond to concerns and ignoring evidence.

[3] For the reasons that follow, I find that the decision is reasonable and procedurally fair. This application for judicial review is dismissed.

II. **Facts**

A. *The Applicants*

[4] The Principal Applicant is a 28-year-old citizen of Iran. Her husband, the Associate Applicant, is a 34-year-old citizen of Iran.

[5] On August 11, 2019, they were married, and they reside in Esfahan, Iran. The Principal Applicant has a 48-year-old mother and an 18-year-old brother who reside in Iran.

[6] In 2018, the Principal Applicant completed a Bachelor's Degree in Midwifery from Shahrekord University of Medical Sciences.

[7] Since September 2019, the Principal Applicant has been working for the Health and Medical Treatment Center in Koohrang as a midwife, supervising the work of midwives and following up on the situation of pregnant mothers.

[8] In a letter dated March 6, 2022, her employer offered her the role of "health deputy." The Principal Applicant states that this is a promotion.

[9] This promotion, however, was subject to the Principal Applicant studying in the "field of Health in an American or Canadian institute," as stated in the job offer letter.

[10] In a letter dated January 7, 2022, the Principal Applicant was accepted to Sir Wilfrid Laurier School Board's International Student Program in Health, Assistance and Nursing. This program confers a Diploma in Vocational Studies.

[11] The Principal Applicant states that she chose this Program because, as the Program website provides, it gives students opportunities to cover the essentials for a balanced administrator and leader in healthcare, human services, and related fields. The Principal Applicant further states that she reviewed the curriculum of the program and found that it offered all of the topics that would be informative for her future career. She also states that this Diploma would qualify her for her promotion.

[12] The Principal Applicant thus sought a study permit to obtain this Diploma in Canada and the Associate Applicant sought a work permit in Canada so that he could accompany her.

B. *Decision under Review*

[13] In a letter dated June 21, 2022, the Applicants' applications were refused. The Officer's decision is largely contained in their Global Case Management System ("GCMS") notes, which form part of the reasons for the decision.

[14] On the Principal Applicant's education history and proposed study plan, the Officer states:

Study plan reviewed and considered. Job offer noted. PA has previous studies at a higher academic level than the proposed studies in Canada. I note that, the PA proposed studies of a diploma in Health, Assistance and Nursing program at Sir Wilfrid Laurier School Board is not reasonable, as the PA indicates previous education of a Bachelor in Midwifery. In light of the PA's previous studies and current career, the intended program is a redundant course of action and does not appear to be a logical progression in their career path.

[15] On the Principal Applicant's ties to Iran, the Officer states:

... I note that 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.

[16] Weighing these factors, the Officer determined that the Principal Applicant would not depart Canada at the end of her stay and refused her application. Being wholly dependent on the Principal Applicant's application, the Officer was therefore not satisfied that the Associate Applicant would depart Canada at the end of his authorized stay.

III. Issues and Standards of Review

[17] The application for judicial review raises the issues of whether the Officer's decision is reasonable and procedurally fair.

[18] The standards of review are not disputed. The parties agree that the applicable standard of review for the merits of the decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”) and that the issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 (“*Canadian Pacific Railway Company*”) at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Vavilov* at paras 16-17). I agree.

[19] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85).

Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[20] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100). The emphasis on reasonableness review is the reasons of the decision-maker, read “in light of the record and with due sensitivity to the administrative regime in which they were given” but not “assessed against a standard of perfection” (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 61, citing *Vavilov* at paras 91, 103).

[21] Correctness, in contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company* at para 54).

IV. Analysis

[22] The Applicants submit that the Officer's decision is unreasonable because the Officer erroneously ignored evidence of family ties and the Principal Applicant's proposed course of study and career path, and unreasonably decided that the Applicants are neither genuine students nor workers. The Applicants also submit that the Officer breached the requirements of procedural fairness in not providing the Applicants an opportunity to respond to concerns and by ignoring the evidence in their applications. I disagree. The Officer's decision is reasonable and procedurally fair.

A. *Procedural Fairness*

[23] The Applicants submit that the Officer's decision breaches the requirements of procedural fairness by making an implicit credibility finding and not providing the Principal Applicant an opportunity to respond, and by ignoring the doctrine of legitimate expectations in failing to address the evidence furnished by the application.

[24] The Respondent submits that the Officer did not have to provide an opportunity to address the Applicants' concerns, an interview, or a procedural letter in this type of decision. The Respondent also maintains that the doctrine of legitimate expectations does not apply to the Officer allegedly ignoring evidence.

[25] I agree with the Respondent. The Applicants do not point to any evidence or jurisprudence to suggest that the Officer made an implicit credibility finding. Nowhere in the

decision did the Officer maintain that the truth of the evidence or the Applicants' statements were doubted. Rather, in both decisions the Officer found that the evidence led to the conclusion that the Applicants would not leave at the end of the period authorized for their stay. As such, the Officer was not under a duty to inform the Applicants of concerns or considerations before rejecting their claims (*Kumar v Canada (Citizenship and Immigration)*, 2020 FC 935 at paras 18-19).

[26] Furthermore, the Respondent is correct that the doctrine of legitimate expectations is irrelevant. The question of whether the Officer considered all of the evidence in a decision is a question relating to the reasons and conclusions of the decision itself, rather than the procedural steps followed by the officers throughout the applications. This consideration is reviewed for its reasonableness (*Aje v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 811 at paras 11-12). There has been no breach of procedural fairness.

B. *Reasonableness*

[27] The Applicants submit that the Officer's decision is unreasonable by: dismissing the Principal Applicant's family ties in Iran; determining that the Applicants did not meet the requirements for the grant of an application; exceeding authority in rendering these decisions with regard to the Principal Applicant's proposed course of study; and concluding that the Applicants are neither a genuine student nor worker, respectively.

[28] The Respondent submits that the Officer's decision is reasonable. The Respondent contends that the Officer reasonably found that: the evidence showed that the purpose of the

proposed visit was not consistent with a temporary stay with regard to the Principal Applicant's redundant proposed course of study in relation to her work; the Principal Applicant's family ties to Iran were diminished by her being accompanied by her spouse; and the Associate Applicant's application, being wholly dependent on the Principal Applicant, also having to be refused.

[29] I agree with the Respondent. The Officer's decision about the Principal Applicant's proposed course of study in relation to her career path and her family ties is justified, transparent, and intelligible (*Vavilov* at para 15). These are the "key issues" that the Officer had to grapple with in these applications (*Vavilov* at para 128). Accordingly, the Officer's conclusion about the Associate Applicant, as wholly dependent upon the Principal Applicant, is reasonable.

[30] I find that *Mehrjoo v Canada (Citizenship and Immigration)*, 2023 FC 886 ("*Mehrjoo*") is determinative of the issue of the Officer's decision on the Principal Applicant's proposed course of study. As my colleague Justice Rochester reasoned, applicants must convince an officer of the merits of their study plan, providing sufficient information about the benefits of the program they wish to pursue (*Mehrjoo* at paras 12, 15). It is not enough to provide general assertions about how the proposed program would benefit an applicant, especially should the proposed course of study appear redundant or not a logical progression (*Mehrjoo* paras 12-13). It was open for the Officer to conclude that the Principal Applicant did not provide enough information to show that the program in Canada was not redundant or an illogical progression in her career path. The Principal Applicant provided general assertions about the program's utility and the proposed job's responsibilities, without specifically justifying how the former benefited the latter. She did not explain how the proposed course of study would advance her education in

light of her Bachelor of Midwifery and the transcript provided to the Officer. The job offer letter is also insufficiently specific in stating that the program must be “in the field of Health” in an “American or Canadian institution” and the Principal Applicant failed to point to specific evidence that shows how or why her proposed course of study would be beneficial to her in light of this vague criteria. The Officer’s finding that the proposed course of study would be redundant and not a logical progression for the Applicant is therefore justified in relation to the legal and factual constraints that bore upon it (*Vavilov* at paras 99-101).

[31] I also agree with the Respondent that the Officer’s conclusion about the Principal Applicant’s motivation to return to Iran is reasonable. The Officer was entitled to weigh the Principal Applicant’s spouse coming with her to Canada and the Principal Applicant’s other family ties in Iran, and determine that her motivation to return to Iran would be diminished. I adopt the reasoning of my colleague Justice Pamel in *Sayyar v Canada (Citizenship and Immigration)*, 2023 FC 494 (“*Sayyar*”) for the proposition that “the assertion that the presence of a spouse would reduce the pull factors for returning to one’s country of origin must be assessed in context as, again, just one element in the overall assessment by the visa officer” (*Sayyar* at para 16). Here, as in *Sayyar*, the Officer did not state that the Principal Applicant had no family ties to Iran (*Sayyar* at para 15); rather, the presence of the Principal Applicant’s spouse reduced her motivation to return to Iran when weighing all of the factors in the overall assessment of the claim. I therefore find the Officer’s decision in this regard to be justified in light of *Sayyar* and the evidence before the Officer (*Vavilov* at paras 99-101).

V. **Conclusion**

[32] This application for judicial review is dismissed. The Officer's decision is justified in light of the relevant legal and factual constraints that bore upon it (*Vavilov* at paras 99-101) and procedurally fair. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-7851-22

THIS COURT'S JUDGMENT is that:

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

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7851-22

STYLE OF CAUSE: SEPIDEH AMIRI AND BEHNAM HAJIJANI v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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