

Federal Court



Cour fédérale

Date: 20231123

Docket: IMM-10271-22

Citation: 2023 FC 1552

Ottawa, Ontario, November 23, 2023

PRESENT: Mr. Justice McHaffie

BETWEEN:

**NASIM KAJBAF AND
ALI BAVARSADIAN AND
SAM BAVARSADIAN**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Nasim Kajbaf applied for a study permit to pursue a Master of Planning degree at Dalhousie University. She is currently working as an urban planner and architect in Iran, where she obtained her master's degree in architecture in 2018. A visa officer refused Ms. Kajbaf's study permit application, questioning her need for a master's degree in planning and noting that her husband, Ali Bavarsadian, and their son were planning to accompany her. The visa officer

also refused a work permit for Mr. Bavarsadian and a visitor visa for their son based on the refusal of Ms. Kajbaf's study permit. The family now seeks judicial review of those refusals.

[2] For the reasons that follow, I conclude the refusals must be set aside, as the visa officer's reasons for refusing the applications are not justified, transparent, and intelligible, particularly as they relate to Ms. Kajbaf's proposed program of study.

[3] Ms. Kajbaf's application for a study permit included a study plan. In it, she described her educational and professional development, which included obtaining a bachelor's degree in architecture in 2008, several years working as an architect at the engineering consulting company still employing her, and ultimately a master's degree in architecture, obtained in 2018 after studying part time and teaching university level courses in urban planning and design. She described how her interests in urban planning developed during her master's program, leading to her current work as both an assistant urban planner and an architect.

[4] Ms. Kajbaf's study plan also sets out why she wants to pursue a master's degree in urban planning, noting a lack of professional planners in Iran, an interest in becoming a professional in the field, and the knowledge gaps she has in the area. She looked into master's programs in planning in Iran, but discovered a number of shortcomings in those programs, leading her to apply to Dalhousie University. Ms. Kajbaf's employer wrote a letter indicating that to be promoted to a new position as a professional planner, she was going to obtain her master's degree in planning, and expressing the company's gratitude for her doing so.

[5] The visa officer's reasons for refusing Ms. Kajbaf's application are set out in a refusal letter dated August 12, 2022, together with notes from the Global Case Management System [GCMS] dated the same day. The refusal letter briefly states the officer's conclusion that they were not satisfied Ms. Kajbaf would leave Canada at the end of her stay based on two factors: (i) she does not have significant family ties outside Canada; and (ii) the purpose of her visit is not consistent with a temporary stay given the details provided in her application. As is typical, the GCMS notes then provide greater detail. They read as follows:

I have reviewed the application. I have considered the following factors in my decision. PA is a 39 years old Iranian national. As for purpose of visit, PA is applying for a Master's program in Planning at Dalhousie University. Study plan reviewed. The applicant does not demonstrate to my satisfaction compelling reasons for which such an educational program would be of benefit. PA indicates previous education of a Master's degree in Architecture. Currently employed as an Assistant (Urban) planner and Architect. There is little indication from PA's previous studies/employment that this intended program is a necessary progression in the PA's study / career path. With regards to the PA's job offer, employment letter only mentions a promotion after graduation but employer did not explain why an international degree is required and there's no mention [of] the necessary skills to perform the new position. I am not satisfied that the applicant would leave Canada at the end of their stay as a temporary resident, I note that PA will be accompanied by spouse and dependent child. The ties to their home country are weaken[ed] 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. 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.

[Emphasis added.]

[6] The decisions of visa officers are entitled to deference, and the Court will only interfere with a visa officer's decision where it is unreasonable: *Canada (Minister of Citizenship and*

Immigration) v Vavilov, 2019 SCC 65 at paras 16–17, 23–25; *Zeinali v Canada (Citizenship and Immigration)*, 2022 FC 1539 at para 3. A decision will be considered reasonable where it is transparent, intelligible, and justified, that is to say, where it is internally coherent, and is justified in light of the legal and factual constraints that bear on it: *Vavilov* at paras 15, 85, 99–100.

[7] In *Nesarzadeh*, Justice Pentney recently reviewed the various principles set out in the many decisions of this Court with respect to judicial review of study permit decisions:

Nesarzadeh v Canada (Citizenship and Immigration), 2023 FC 568 at paras 5–9. I adopt his clear statement of these principles, which I reproduce here without reference to the underlying cases and legislation:

- A reasonable decision must explain the result, in view of the law and the key facts.
- *Vavilov* seeks to reinforce a “culture of justification” requiring the decision-maker to provide a logical explanation for the result and to be responsive to the parties’ submissions, but it also requires the context for decision-making to be taken into account.
- 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.
- The onus is on the Applicant to satisfy the Officer that they meet the requirements of the law that applies to consideration of student visas, including that they will leave at the end of their authorized stay.
- Visa Officers must consider the “push” and “pull” factors that could lead an Applicant to overstay their visa and stay in Canada, or that would encourage them to return to their home country.

[8] Applying these principles, I conclude the visa officer's decision refusing Ms. Kajbaf's study permit application does not meet the standards of justification, transparency, and intelligibility required of a reasonable decision.

[9] It is clear from the refusal letter and the GCMS notes that the visa officer based their decision on two factors: their review of Ms. Kajbaf's study plan, and the fact that Mr. Bavarsadian and their son would also be coming to Canada. On the former issue, the visa officer states that Ms. Kajbaf had not demonstrated "compelling reasons" for which her proposed study would be of benefit, and that the intended program was not shown to be a "necessary progression" in her study or career path. On the latter, the visa officer considered Ms. Kajbaf's ties to Iran and motivation to return there would be weakened since her immediate family would be with her in Canada.

[10] Having reviewed the officer's decision in light of the record before them, and in particular the study plan submitted by Ms. Kajbaf, I find myself unable to understand the visa officer's reasons for concluding that her proposed course of study suggests she would not leave Canada at the end of it. Ms. Kajbaf's study plan sets out a number of reasons why she views the proposed study to be "of benefit," related to both her personal interests in urban planning and her advancement as a professional urban planner, a position she indicated was and would be in demand in Iran. While the visa officer states these reasons are not "compelling," they do not address or respond to the very explanations given by Ms. Kajbaf regarding the benefit of the program. Put another way, while it appears Ms. Kajbaf's study plan was considered, the visa officer's reasons were not responsive to its contents: *Shahrezaei v Canada*

(*Citizenship and Immigration*), 2023 FC 499 at para 17; see also *Fallahi v Canada (Citizenship and Immigration)*, 2022 FC 506 at paras 16–17.

[11] Of further concern is the visa officer’s reference to the program not being a “necessary progression” in Ms. Kajbaf’s studies or career. Many academic choices, whether made for personal or professional reasons, are not strictly necessary. Ms. Kajbaf set out why she considered the academic and professional improvement of her qualifications to be desirable, and it was unreasonable for the officer to conclude she would not leave Canada because that improvement was not a “necessary progression.”

[12] The Minister seeks to justify the visa officer’s decision by noting that Ms. Kajbaf had already obtained two degrees in architecture that included courses in urban planning, that the motivations she gave in her study plan were vague, and that she provided no evidence regarding the shortcomings of local education. However, these observations go beyond seeking to understand the visa officer’s reasons to present new justifications for refusal the officer did not give: *Vavilov* at paras 94–96; *Torkestani v Canada (Citizenship and Immigration)*, 2022 FC 1469 at paras 18–20. The Minister also argues Ms. Kajbaf “appears to be already extremely well qualified as a professional planner,” an argument that seems to suggest there is a level of qualification for an urban planner that cannot be improved upon through further education. This suggestion is unsupported by evidence and is indeed contrary to both Ms. Kajbaf’s education plan and her employer’s indication that she would be promoted from her current post as assistant urban planner to that of professional planner upon completion of her degree.

[13] For completeness, I note that after the refusal, Ms. Kajbaf filed a further submission, including a revised letter from her employer that provides further details regarding the new position and sets out a new salary tripling her prior one. I agree with the Minister that although this correspondence appears in the certified tribunal record sent by Immigration, Refugees and Citizenship Canada, it is not admissible to assess the reasonableness of the visa officer's decision, as it was not part of the record before them at the time of the decision: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19.

[14] With respect to the question of family ties, I agree with the Minister that it was open to the visa officer to consider, as a factor, that Mr. Bavarsadian and the couple's son would be accompanying Ms. Kajbaf to Canada: *Moosavi v Canada (Citizenship and Immigration)*, 2023 FC 1037 at para 22. However, the mere fact of an accompanying spouse and child cannot alone justify the refusal of a study permit. Therefore, the unreasonableness in the visa officer's rationale regarding Ms. Kajbaf's study permit affects the reasonableness of the decision as a whole. Further, I agree with Ms. Kajbaf that the visa officer's analysis suffers from the same flaws described by Justice Strickland in *Vahdati*: "even if it is reasonable to infer from [an accompanying spouse] 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": *Vahdati v Canada (Citizenship and Immigration)*, 2022 FC 1083 at para 10. As in *Vahdati*, the visa officer in this case did not consider the various financial and employment ties to Iran set forth in Ms. Kajbaf's application.

[15] I therefore conclude that the visa officer's refusal of Ms. Kajbaf's study permit was not reasonable and must be set aside. As the parties agree, the visa officer refused the applications of Mr. Bavarsadian and the couple's son based entirely on the refusal of Ms. Kajbaf's study permit. Those refusals must therefore also be set aside.

[16] Neither party proposed a question for certification and I agree that none arises in the matter.

JUDGMENT IN IMM-10271-22

THIS COURT’S JUDGMENT is that

1. The application for judicial review is granted. The decisions of a visa officer with Immigration, Refugees and Citizenship Canada dated August 12, 2022, refusing (a) the study permit application of Nasim Kajbaf; (b) the work permit application of Ali Bavarsadian; and (c) the temporary resident visa application of Sam Bavarsadian, are set aside and the applications are remitted for redetermination by another officer.

“Nicholas McHaffie”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10271-22

STYLE OF CAUSE: NASIM KAJBAF ET AL v THE MINISTER OF
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PLACE OF HEARING: HELD BY VIDEOCONFERENCE

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JUDGMENT AND REASONS: MCHAFFIE J.

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