Federal Court Cour fédérale

Date: 20231129

Docket: IMM-10940-22

Citation: 2023 FC 1596

Ottawa, Ontario, November 29, 2023

PRESENT: Mr. Justice McHaffie

BETWEEN:

HELIA SHAERI AND FARZAD SHAERI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The primary applicant in this application for judicial review is a student from Iran who applied for a study permit to attend high school in British Columbia. Her father, the other applicant, sought a temporary resident visa [TRV] to stay with her for about two months to help her settle in before returning to his wife and other child in Iran.

[2] On October 24, 2022, a visa officer with Immigration, Refugees and Citizenship Canada refused both applications because they were not satisfied the father and daughter would leave Canada at the end of their authorized stay, as required by paragraphs 179(b) and 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. In refusing the primary applicant's study permit application, the officer considered two main factors: (1) a lack of explanation or detail about how expensive studies in Canada would benefit her; and (2) a lack of significant family ties outside Canada and weakened ties to Iran because her father was accompanying her. The father's TRV application was refused as a result.

[3] The applicants now challenge both refusals. The parties recognize that this application turns on the refusal of the primary applicant's study permit, as the refusal of the father's TRV application flowed from the refusal of the study permit.

[4] When reviewing a visa officer's refusal of a study permit, the Court applies the deferential reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at paras 8–9. This standard requires the Court to assess 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: *Vavilov* at para 85. When reviewing a decision on the reasonableness standard, the Court is not to make its own decision on the underlying visa application. It can only set aside a decision to refuse a visa if it shows sufficiently serious shortcomings that it cannot be said to exhibit the requisite degree of justification, intelligibility, and transparency: *Vavilov* at para 100.

[5] Earlier this year, Justice Pentney 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, and which reflect the parties' various submissions on the applicable principles in this case:

> - 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.

[6] Applying the foregoing principles, I conclude the visa officer's decision refusing the primary applicant's study permit is unreasonable, since their analysis of the "family ties" factor does not explain their reasoning in a manner that is responsive to the application or accords with the factual constraints on the decision. As this was one of two central factors that led the officer

to conclude that the primary applicant would not leave Canada at the end of her stay, the unreasonableness of the analysis on this issue undermines the decision as a whole.

[7] As is typical, the visa officer's decision as it relates to family ties is found in the refusal letter sent to the primary applicant and in the notes in the Global Case Management System [GCMS] that set out the officer's reasoning in greater detail. In the letter, the officer states that one of the factors they considered in refusing the application was that "[y]ou do not have significant family ties outside Canada." The GCMS notes with respect to the issue of family ties read as follows, in their entirety: "Father accompanying. The ties to Iran are weaken[ed] with the intended travel to Canada by the client as the travel involves their immediate family; the motivation to return will diminish with the applicant's immediate family members residing with them in Canada."

[8] As the applicants point out, the visa officer's statement in the refusal letter that the primary applicant does not have "significant family ties outside Canada" is simply contrary to the record before them, as the primary applicant's mother and brother were to remain in Iran. The GCMS notes elaborate somewhat on the visa officer's reasoning, but they do not address the apparent conflict between two immediate family members remaining in Iran and the statement that the primary applicant does not have "significant family ties outside Canada."

[9] Two other problems arise in the GCMS notes. First, from a factual perspective, the notes indicate the officer's understanding that the father would be "residing with" the primary applicant in Canada. This statement does not address or respond to the nature of the underlying

applications, which stated that the father was to stay in Canada for about two months before returning to Iran, rather than residing with her throughout her stay. The officer does not indicate how having the father accompany the primary applicant as she settled in would reduce the likelihood of her returning to Iran at the end of the school year.

[10] Second, while considering the diminished motivation to return arising from travelling with her father, the officer does not consider the positive motivation for returning to Iran that comes from having other immediate family members there. I agree with the applicants that in referring only to the father's travel to Canada while ignoring that the mother and brother remained in Iran, the officer unreasonably limits their analysis to one half of the "push/pull" equation: *Vahdati v Canada (Citizenship and Immigration)*, 2022 FC 1083 at para 10; *Seyedsalehi v Canada (Citizenship and Immigration)*, 2022 FC 1250 at para 9; *Nesarzadeh* at para 9, citing *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at para 14 and *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at para 23.

[11] I therefore conclude that the visa officer's analysis of the primary applicant's family ties is unreasonable as it lacks justification, intelligibility, and transparency. As noted above, this was one of two significant factors on which the officer based their refusal. I therefore conclude that the decision as a whole is unreasonable, regardless of the parties' arguments about the visa officer's assessment of the cost and benefit to the primary applicant of studying in Canada.

[12] The refusal of the primary applicant's study permit must therefore be set aside. As the father's TRV application was refused because of the refusal of the study permit, that second

refusal must also be set aside and the two applications must be remitted for redetermination by another officer.

[13] Neither party proposed a question for certification. I agree that no serious question of general importance is involved.

JUDGMENT IN IMM-10940-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted. The decisions of October 24, 2022, refusing the study permit application of Helia Shaeri and the temporary resident visa application of Farzad Shaeri, are set aside and those applications are remitted for redetermination by a different officer.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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