

Federal Court



Cour fédérale

Date: 20240425

Docket: IMM-637-23

Citation: 2024 FC 633

Toronto, Ontario, April 25, 2024

PRESENT: Madam Justice Go

BETWEEN:

SAMAN FATIMA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Saman Fatima, the Applicant, is a citizen of India and she has resided in Saudi Arabia since 2012.

[2] The Applicant applied for a study permit on November 30, 2022 to attend a master program at the University of Prince Edward Island. Her spouse, who is not accompanying the

Applicant to Canada and is working in Saudi Arabia, agreed to sponsor her studies. This was the Applicant's second study permit application for the same program.

[3] On December 11, 2022, a migration officer from the Canadian Embassy in Saudi Arabia [Officer] refused the Applicant's study permit application as they were not satisfied the Applicant would leave Canada at the end of her authorized stay, pursuant to paragraph 216(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The Officer's refusal was based on the Applicant's immigration status in Saudi Arabia, limited employment prospects, current employment situation, and insufficient funds [Decision].

[4] I find the Decision unreasonable because the Officer failed to engage with the Applicant's submission on why Saudization, a policy requiring Saudi companies to hire Saudi nationals on a quota basis, would not impact her spouse's employment and her own employment prospects in Saudi Arabia. As such, I grant the application.

II. Issues and Standard of Review

[5] The Applicant raises four issues of reasonableness. In particular, the Applicant submitted the Officer erred in their assessment on a) the Applicant's status and family ties in Saudi Arabia; b) the Applicant's employment status; c) the Applicant's employment prospects in Saudi Arabia; and d) the Applicant's financial situation and assets.

[6] The parties agree that this issue is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[7] 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. The onus is on the Applicants to demonstrate that the decision is unreasonable: *Vavilov* at para 100.

III. Analysis

[8] The determinative issue in this case is the Officer’s engagement with the Applicant’s submission regarding Saudization, as reflected in the Global Case Management System [GCMS] notes:

The applicant has limited employment possibilities in your country of residence. Despite PA claims in letter of explanation, PA’s sponsor occupation (IT manager) is subject to Saudization. Noting that PA’s field of studies and occupation (teaching), is also subject to Saudization.

[9] The “letter of explanation” the Officer referred to was a letter titled, “Response to concerns noted in the GCMS notes,” in which the Applicant appeared to respond to the concern of Saudization raised in a previous study permit refusal. In brief, the Applicant explained her spouse’s employer company was in the “High Green” category, meaning it had already met the Saudization quota. Therefore, the fact that her spouse’s position was not given to a Saudi national indicates his value to the company and makes it unlikely that his position would be taken away. The Applicant also explained her own employment prospects upon the completion of the desired program were similarly optimistic, as Saudization has not affected higher education (university level) teaching positions.

[10] The Applicant provided details to explain why, despite the Saudization policy, her spouse's employment and her prospects would likely be secure. The Officer did not engage with the Applicant's submission and simply stated that the Applicant's job prospects and her spouse's employment were subject to Saudization. In so finding, the Officer failed to engage with the Applicant's core submission, thus rendering the Decision unreasonable: *Vavilov* at para 127.

[11] At the hearing, the Respondent submitted that there was no objective evidence before the Officer to support the Applicant's position. I reject this submission, since it was not the basis for the Decision.

[12] I acknowledge the cases the Respondent cited including *Khaleel v Canada (Citizenship and Immigration)*, 2022 FC 1385 [*Khaleel*], but I find these cases distinguishable on the facts. In *Khaleel*, the applicant argued the officer ignored his evidence, including a letter from his employer confirming the security of his employment. However, Justice Elliot found the letter did not address the officer's main concern over the nation-wide Saudization policies targeting foreign workers with temporary status in Saudi Arabia: *Khaleel* at para 29. Further, noting that Mr. Khaleel's immigration history showed non-compliance, Justice Elliott concluded it was reasonable for the Officer to determine that Mr. Khaleel was not a *bona fide* visitor who would comply with the conditions of his temporary resident visa.

[13] Unlike *Khaleel*, the Applicant's letter addressed the issue of Saudization head on, but the Officer ignored her submission.

[14] I further acknowledge Justice Brown's comment in *Chaudhary v Canada (Citizenship and Immigration)*, 2024 FC 102 [*Chaudhary*], showing deference to the officer's local and professional knowledge of Saudization: *Chaudhary* at para 40. In the case before me, the issue is not whether the Court should defer to the Officer's knowledge about Saudization. Rather, it is whether the Officer's reasons meaningfully account for the central issues and concerns raised by the parties: *Vavilov* at para 127. Based on the record before me, I find the Decision unreasonable as the Decision was not responsive to the Applicant's submission.

IV. Conclusion

[15] The application for judicial review is granted.

[16] There is no question for certification.

JUDGMENT in IMM-637-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-637-23

STYLE OF CAUSE: SAMAN FATIMA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: APRIL 16, 2024

JUDGMENT AND REASONS: GO J.

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