

Federal Court



Cour fédérale

Date: 20240618

Docket: IMM-76-23

Citation: 2024 FC 941

Ottawa, Ontario, June 18, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

MEHDI KAZEMINAJAFABADI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mehdi Kazeminajafabadi, seeks judicial review of a decision of a visa officer (the “Officer”) of Immigration, Refugees and Citizenship Canada (“IRCC”) dated November 24, 2022, refusing his application for a work permit under paragraph 200(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (“IRPR”).

[2] The Officer was not satisfied that the purpose of the Applicant's visit was consistent with a temporary stay and that he had provided sufficient evidence to establish he had met the requirements for an exemption from a Labour Market Impact Assessment for foreign nationals whose work brings a significant benefit for Canadian citizens or permanent residents under paragraph 205(a) of the *IRPR*.

[3] The Applicant submits that the Officer ignored evidence and that the reasons do not provide a justified basis for the Officer's conclusion.

[4] For the following reasons, I find that the Officer's decision is reasonable. This application for judicial review is dismissed.

II. Analysis

A. *Background*

[5] The Applicant is an Iranian citizen who sought to enter Canada to run an Information Technology ("IT") company in the Greater Toronto Area. He has many years of experience in IT.

[6] In a decision dated November 24, 2022, the Officer refused the Applicant's application. The Global Case Management System notes, which form part of the decision, state that:

PA seeks WP under C11 (Self-Employed / Entrepreneur).
I am not satisfied the proposed business plan is sound.

Client wants to start a company that “will provide a variety IT consulting services, including custom software development and web development, as well as technical training and education” in the GTA. Toronto is a well served market. Company’s website visited on 2022-11-24 and incomplete/basic. One would think a website developing company would have a complete website as it can be developed remotely. Proposed salary for staff are lower than average. Not clear how business will remain competitive.

I am not satisfied there is documentary evidence to establish that the exemption requirements of C11 Significant benefit - Entrepreneurs/self-employed under R205(a) is met. Application refused.

B. *Issue and standard of review*

[7] The sole issue raised in this application for judicial review is whether the Officer’s decision is reasonable.

[8] The standard of review for the merits of the Officer’s decision is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree.

[9] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). 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 decision that is reasonable as a whole 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).

[10] 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).

C. *The decision is reasonable*

[11] The Applicant submits that the Officer’s decision failed to account for the Applicant’s background, business proposal, information about the company, and the explanation for how the company would create significant benefits in Canada. The Applicant submits that the evidence demonstrates that he met the requirements for being granted the relevant exemption and that the Officer did not consider this evidence, especially when considering the relevant IRCC guidelines.

[12] The Respondent submits that the Applicant is requesting that this Court reweigh the evidence submitted in support of the application. The Respondent submits that it was reasonable for the Officer to have concerns about the Applicant’s business plan and find that the market was

already well-serviced. The Respondent maintains that the Applicant has not pointed to evidence that would contradict the Officer's findings and that the Officer's reasons were sufficient for a work permit application.

[13] I agree with the Respondent. The Applicant has not displaced the presumption that the Officer considered all of the evidence (*Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 at para 38, citing *Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36 and *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No. 598 (FCA) (QL) at para 1). There is nothing to suggest that the Officer did not consider the Applicant's background, nor the business plan and how the business would bring an economic benefit to Canada.

[14] The Officer was concerned with the business's competitiveness in the well-serviced market in Toronto, the lack of a complete website for a website-developing business, and the proposed salaries for the business's staff. The Officer was entitled to find that the proposed company would not be competitive in a well-served market and that the proposed salaries were lower than average based on the evidence (see *e.g.*, *Shahbazian v Canada (Citizenship and Immigration)*, 2023 FC 1556 at para 31), especially given the generalized evidence provided by the Applicant about how the company would be competitive and what the average pay was for individuals in Canada's technology sector.

[15] I agree with counsel for the Respondent that it was also reasonable for the Officer to highlight that the website was basic and incomplete, given the nature of the Applicant's company

(see *e.g.*, *Shidfar v Canada (Citizenship and Immigration)*, 2023 FC 1241 at para 28).

Additionally, while the Applicant submits that the Officer did not consider the relevant guidelines, guidelines are nonetheless not binding on an officer (see *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 32).

[16] The Applicant's submissions amount, overall, to a request for the Court to reweigh the evidence. The Court will not do this (*Vavilov* at para 125).

III. **Conclusion**

[17] The application for judicial review is dismissed. The Officer's decision is reasonable.

No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-76-23

THIS COURT'S JUDGMENT is that:

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

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-76-23

STYLE OF CAUSE: MEHDI KAZEMINAJAFABADI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: AHMED J.

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