

Federal Court



Cour fédérale

Date: 20240625

Docket: IMM-12237-22

Citation: 2024 FC 986

Ottawa, Ontario, June 25, 2024

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

**MOHAMMADREZA NADIMIBARFOROUSHI
SAMIRA NIKOEI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decisions dated November 24, 2022, of an officer (Officer) with Immigration, Refugees and Citizenship Canada (IRCC) (together, the Decisions). The first denying Mr. Nadimibarforoushi's (Applicant) application for a study permit under subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR 2002/227 [IRPR] (Study Permit Decision). The second denying the Applicant's spouse, Ms. Nikoei's (Associate Applicant) related application for an open work permit pursuant to paragraph 205(c)(ii) of the IRPR.

[2] Both Applicants are citizens of Iran. The Applicant is 35 years old and the Associate Applicant is 34 years old. The Applicants were married in 2014.

[3] The Applicant has a Bachelors Degree in Cellular and Molecular Biology and a Masters Degree in Biochemistry from the Islamic Azad University. He has worked at his father's pharmaceutical laboratory since 2010. His current role is Laboratory Director. The Associate Applicant is a Freelance Painter and Graphic Designer.

[4] On July 6, 2022, the Applicant received a letter of acceptance for admission to Trinity Western University for a Master of Arts in the Leadership, Health Care program.

[5] The Applicants ask this Court to set the Decisions aside and send the matter back for redetermination by a different officer because the Study Permit Decision is unreasonable and procedurally unfair.

[6] The Officer notes that the Applicant's financial information was insufficient to establish sufficient resources to cover education and living expenses, and the Officer had concerns about the utility of the proposed plan of study, given the Applicant's prior degrees and employment history. The Officer also questions the motivation to return to Iran following the study period, in part because the Applicants were traveling together.

[7] The Applicants commenced this application for leave and judicial review of the Decisions on December 2, 2022. This Court granted leave for judicial review on March 21, 2024.

[8] I am in agreement with the Applicants that the Study Permit Decision breached the requirement of procedural fairness because the Officer made an adverse finding of credibility without providing the Applicant an opportunity to respond.

[9] Applicants bear the burden of demonstrating that they meet the legal requirements to be granted a study permit, pursuant to section 220 of the *IRPR (Ohuaregbe v Canada (Citizenship and Immigration))*, 2023 FC 480 at para 23).

[10] Applicants must provide evidence that establishes “the source, nature and stability of those funds, as well as to determine the likelihood of future income and the ability to pay for subsequent years of education and living expenses” (*Sani v Canada (Citizenship and Immigration)*, 2024 FC 396 at paras 13–32. See also *Sayyar v Canada (Citizenship and Immigration)*, 2023 FC 494 at para 12).

[11] However, as noted by this Court in *Jahanian v Canada (Citizenship and Immigration)*, 2024 FC 581 [*Jahanian*] at paragraph 7, “officers must give applicants a fair opportunity to address concerns about the credibility or accuracy of their evidence (*Ibekwe v Canada (Citizenship and Immigration)*, 2022 FC 728 at para 17).”

[12] In support of his application for a study permit, the Applicant provided documentation to show savings and other assets, with a view to demonstrate the ability to cover the costs of studying and living in Canada. In the reasons for rejecting the application, the Officer wrote, “I have concerns that the property documents are for demonstration purposes only and are not reflective of the applicants [*sic*] legitimate financial resources.”

[13] The Applicants submit that the Officer made an adverse credibility finding without providing them with an opportunity to address the Officer’s concerns. I agree.

[14] I am unable to agree with the Respondent that procedural fairness is not triggered where the Applicant has not satisfied the financial requirements for a study permit pursuant to section 220 of the *IRPR*.

[15] The Officer notes that evidence of property documents from Iran was “for demonstration purposes only.” This is followed by the Officer’s conclusion that the documentation provided in support of the application is not reflective of the Applicant’s “legitimate financial resources.” This is a finding of credibility. This Court has found that this language amounts to a finding of credibility with respect to an applicant’s financial resources (*Taeb v Canada (Citizenship and Immigration)*, 2023 FC 576 at para 6 and *Jahanian* at para 10).

[16] The Officer notes that the Applicant did not provide banking transaction history. However, the Study Permit Decision concerning the ability of the Applicant to finance the proposed plan of study was not limited to the lack of information concerning his banking transaction history. Rather, the Officer’s Study Permit Decision puts into issue the credibility of the Applicant’s property documentation that was included in the application to demonstrate an ability to finance the proposed plan of study.

[17] The Officer has questioned the veracity of the information set out in the Applicant’s application concerning his available financial resources. Procedural fairness requires that an officer, in making such a finding, must provide an applicant an opportunity to respond to the concerns. In this case, the Applicant was not provided this opportunity.

[18] The Officer set out additional reasons for denying the application, notably that, since the Applicants would be traveling together, there may be motives to remain in Canada beyond a

period authorised for study. In addition, the Officer had concerns about the utility of the plan of study. The Applicants challenged the reasonableness of these findings.

[19] In my opinion, the procedural fairness issue is dispositive of the application.

[20] In the context of the Officer's Study Permit Decision to reject the Applicant's application for a study permit, the Officer reasonably rejected the Associate Applicant's application for an open work permit. However, given that I have found that the Officer's rejection of the Applicant's study permit was in breach of his right of procedural fairness, the accompanying spousal work permit application should also be referred back to IRCC for reconsideration.

[21] The parties did not pose any questions for certification, and I agree that there are none.

JUDGMENT in IMM-12237-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The Applicant's application for a study permit shall be remitted back to the IRCC for reconsideration by a different officer.
3. The Associate Applicant's application for an accompanying spousal work permit shall be remitted back to the IRCC for reconsideration by a different officer.
4. No question is certified.

“Julie Blackhawk”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12237-22

STYLE OF CAUSE: NADIMIBARFOROUSHI ET AL. v THE
MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: SASKATOON, SASKATCHEWAN

DATE OF HEARING: JUNE 5, 2024

JUDGMENT AND REASONS: BLACKHAWK J.

DATED: JUNE 25, 2024

APPEARANCES:

Oluwadamilola Asuni FOR THE APPLICANTS

Justin Zelowski FOR THE RESPONDENT

SOLICITORS OF RECORD:

Oluwadamilola Asuni FOR THE APPLICANTS
Barrister and Solicitor
Saskatoon, Saskatchewan

Attorney General of Canada FOR THE RESPONDENT
Saskatoon, Saskatchewan