

Federal Court



Cour fédérale

Date: 20240723

Docket: IMM-9195-23

Citation: 2024 FC 1158

Toronto, Ontario, July 23, 2024

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

REYHANEH RAHMATI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ms. Rahmati [the Applicant], is a 39-year-old citizen of Iran. She is an award-winning artist and craftsperson specializing in Persian art. On June 27, 2019, she submitted an application for permanent residence in Canada under the Federal Self-Employed Persons Class [Application]. Four years later, a visa officer [Officer] requested updated and additional documentation, which she provided. By Decision dated July 17, 2023 [Decision], the Officer denied the Application finding that the evidence submitted by the Applicant failed to

meet the definition of a “self-employed person” set out in subsection 88(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] as she had not satisfied the Officer that she had both the intention and ability to become self-employed in Canada and to make a significant contribution to specified economic activities in Canada.

[2] This is an application for judicial review of the Decision. For the reasons that follow, I find that the Decision was unreasonable as it was unjustified on the record and unresponsive to the Applicant’s submissions. The Officer focused exclusively on the Applicant’s business plan and was not responsive to evidence on the record reflecting the Applicant’s two decades worth of self-employment in Iran based on contract work that matched the nature of the work she was proposing to do in Canada. Accordingly, this application for judicial review is granted.

I. The Legislative Framework

[3] Subsection 100(1) of the *IRPR* prescribes the self-employed persons class as a class of persons: (1) who may become permanent residents on the basis of their ability to become economically established in Canada; and (2) who are “self-employed persons” within the meaning of subsection 88(1) of the *IRPR*.

[4] The definition of a self-employed person in subsection 88(1) of the *IRPR* contains three requirements. An applicant must demonstrate: (i) “relevant experience” as defined in subsection 88(1) of the *IRPR*; (ii) the intention and ability to be self-employed in Canada; and (iii) the intention and ability to make a significant contribution to specified economic activities in Canada which the term is defined include cultural activities.

[5] According to subsection 88(1) of the *IRPR*, relevant experience requires at least two years experience in those cultural activities during the five-year period before the date of the application. Experience is *relevant* where an individual has taken part in cultural activities at a world-class level or has been a self-employed person, or a combination of both.

[6] If a foreign national who applies as a member of the self-employed persons class does not qualify as a self-employed person, their application must be refused (*IRPR*, subsection 100(2)).

II. Facts

A. *Application for Permanent Residence*

[7] On June 27, 2019, the Applicant submitted her Application for permanent residence, with her spouse included as an accompanying family member. The Applicant expressed her intention to move to Toronto, Ontario and establish an art centre [the Rahmati Art Centre], which will offer for sale artwork and crafts and host art exhibitions showcasing local artists. This “hub for artistic expression and collaboration” will offer related services such as painting classes and art restoration.

[8] The Applicant’s submissions attached a 40-page business plan, which detailed the vision and corporate objectives for the Rahmati Art Centre. The plan indicated that the Applicant intends to make a significant contribution in her field because she has already done so in the Middle East where her art and works have been exhibited and received national and international acclaim.

B. *Processing of the Application*

[9] On March 25, 2023, almost four years after the Applicant filed her application, the Applicant was sent a letter [the Request Letter] by Immigration, Refugees and Citizenship Canada [IRCC]. The Request Letter listed information that the Applicant was free to provide by way of updated information relating to how the Applicant meets the definition of “self-employed person.” It also included a list of information that the Applicant was required to provide, including proof of funds; updated travel history form; police clearance certificates, and military service documentation. In response to the Request Letter, the Applicant provided updated documents and forms as well as all of the required documentation.

[10] The Applicant provided additional written submissions in which she argued that she meets the definition of “self-employed person” as she has two decades of experience working as a craftsperson and artist and has significant financial assets. She highlighted her successful career and the widespread recognition she has received for her work, which has been displayed by way of example at the Research Centre for Islamic History, Art and Culture in Abu Dhabi, United Emirates. She also included information showing a diverse array of contract work for which she had been hired over the course of two decades, which include the design of stained glass windows for an architectural firm and the restoration of Quranic manuscripts written during the Qajar Dynasty Era.

C. *The Decision*

[11] The Officer's Global Case Management System notes show that the Officer provided three reasons for the conclusion that the Applicant did not meet the statutory definition of a self-employed person. First, the Officer considered the Applicant's business plan to provide "very general, high-level and open-source information" with "unclear financial assumptions." Second, there was limited evidence of the Applicant's English skills. Finally, the Officer considered that the Applicant had failed to "sufficiently define and quantify how" the Applicant's contribution to Canada would be significant.

III. Issues and Standard of Review

[12] The Applicant has raised the following issues on this application for judicial review:

- A. Was the Applicant denied procedural fairness by reason that the Officer failed to alert the Applicant to concerns with the Applicant's business plan?
- B. Does the brevity of the Decision render it unintelligible?
- C. Was the Decision justified and responsive to the evidence in the record and the Applicant's submissions?

[13] Whether the Applicant was afforded procedural fairness is subject to review on a standard akin to correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific*] at paras 34-56). The ultimate question is whether an applicant knew the case they had to meet and had an opportunity to respond before an impartial decision maker (*Canadian Pacific* at para 41).

[14] The standard of review of the merits of a visa officer's decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 97 and 85). While this Court's review is deferential, it is nevertheless a robust review (*Vavilov* at paras 12-13) which considers both the outcome and rationale of the decision with an eye to the hallmarks of public power which require that it be transparent, intelligible and justified (*Vavilov* at para 15) including to those to whom the decision applies (*Vavilov* at para 127).

IV. Analysis

A. *No breach of procedural fairness*

[15] The Applicant argues that the Officer breached procedural fairness by failing to alert the Applicant to the Officer's concerns regarding her business plan in the Request Letter. The Applicant cites a previous decision of this Court where it was found that an officer's failure to provide an applicant with an opportunity to respond to the Officer's concern that the applicant's business plan was "not realistic" constituted a breach of procedural fairness particularly after a long delay in the processing of the application (*Mohitian v Canada (Citizenship and Immigration)*, 2015 FC 1393 at paras 23-24 citing *Yazdanian v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 411 at para 18).

[16] I agree with the Respondent that the Officer's concerns relating to the Applicant's business plan, do not amount to a veiled concern with the credibility, authenticity or veracity of its contents. The Officer criticized the business plan as "general", "high-level", "lacking in concrete details" and containing "unclear sources", all of which signals a concern with the

ultimate sufficiency of the Applicant's case in making out her intention and ability to become self-employed in Canada. The Officer was entitled and well-positioned to make this assessment of the evidence and concerns with the sufficiency, adequacy or completeness of an application do not give rise to a duty to alert and an opportunity to respond (*Adewunmi v Canada (Citizenship and Immigration)*, 2021 FC 1186 at para 26). The fact that the Applicant provided updated source information for her art dealer industry analysis in response to the Request Letter suggests the Applicant was well aware that her application was lacking in particularity in this respect.

B. *The Decision is not unintelligible*

[17] The Applicant argues that the brevity of the Decision and the Officer's use of boiler-plate language similar to that seen in other cases renders it unintelligible.

[18] The Respondent answers that there is no set format for decisions and all that is required is that the Officer answer the test set out in subsection 88(1) of the *IRPR* on an individualized basis, which the Decision does. I agree.

[19] The Supreme Court warned against holding administrative decision-makers to a standard of perfection (*Vavilov* at para 91). If visa officers cannot be held to the standard of "academic logicians" (*Vavilov* at para 104), neither should they be held to the standard of creative writers since there are only so many ways to criticize an insufficient business plan. To require otherwise would be unfair given the heavy administrative burden immigration officers shoulder.

C. *The Decision is not justified or responsive*

[20] While I do not accept the Applicant's argument that the Decision is unintelligible, I do accept her argument that it is neither justified nor responsive.

[21] The Applicant is critical of the fact that in coming to the conclusion that the Applicant had failed to show that she had the intent and ability to become self-employed in Canada, the Officer focused exclusively on the Applicant's business plan and language proficiency. The Applicant argues that the Officer erred by ignoring other evidence on the record as well as the Applicant's submissions which supported her intention and ability to become self-employed.

(1) Failure to Consider Other Evidence Supporting the Applicant's Ability to Become Self-Employed in Canada

[22] The record included evidence of the Applicant's history of self-employment in Iran between 2005 and 2019, her areas of expertise and evidence of the acclaim and recognition she has received for that work and expertise. In addition to the business plan, the record included:

- a list of the Applicant's areas of expertise (illuminated manuscripts, painting, miniature painting, calligraphy, traditional design, hairpin ornamentation, restoration of art, manuscripts and historical books) and photos of her work;
- education/training documents (e.g., an Associate Degree in Iranian Painting, transcripts from vocational schools reflecting specialty training in painting, painting on cloth and Batik painting as well as academic transcripts showing course work in art and entrepreneurship);
- documents showing her contract work (e.g. her contracts to design children's toys, a cover for the "Alphabet of Christianity

Book”, stain glass windows, and contracts for running specialized workshops); and

- Financial documentation and third party audited financial statements for her business in Iran.

[23] The Respondent suggests that it was open to the Officer to disregard this evidence since it focused on her ability to be self-employed in Iran, whereas the business plan spoke to her intention and ability to become self-employed in Canada. I am not persuaded by this argument for three reasons. First, some of the evidence related to work outside of Iran including in the United States. Second, some of the contract work was work that matched the services the Applicant intended to offer at the proposed Rahmati Art Centre in Canada, such as art workshops. Finally, the Respondent’s argument fails to acknowledge the link between the Applicant’s past work and her business plan, which was reflected in the Applicant’s intention to locate the Rahmati Art Centre in a region in Toronto with a high population of Iranians.

(2) Failure to Respond to the Applicant’s Submissions

[24] The Applicant based her submissions on her proven success and contribution to the arts in Iran, which she argued strongly supports an intention and ability to become self-employed and to make a significant contribution to the arts and culture scene in Canada. The Officer did not address these submissions, which were supported by the evidence of her work in Iran and abroad. This was an error since this failure runs contrary to the Supreme Court’s emphasis on the importance of meaningfully accounting for and responding to key issues or central arguments raised by the Applicant (*Vavilov* at paras 127-128).

[25] I therefore find the Decision to be unjustified and unresponsive and therefore unreasonable. Accordingly, this application for judicial review is granted.

JUDGMENT in IMM-9195-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The decision dated July 17, 2023 is hereby quashed and set aside.
3. The matter is remitted back for reconsideration by a different officer.
4. There is no question of general importance for certification.

"Allyson Whyte Nowak"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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