

Federal Court



Cour fédérale

Date: 20240909

Docket: IMM-13879-23

Citation: 2024 FC 1403

Ottawa, Ontario, September 9, 2024

PRESENT: Mr. Justice O'Reilly

BETWEEN:

MEHRDAD MOHSENI FARD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr Mehrdad Mohseni Fard, a citizen of Iran, applied for a one-month visitor visa to see his wife and child who reside in of Canada. A visa officer denied the application because the officer was not satisfied that Mr Fard's financial documents provided an accurate picture of the funds at his disposal. The officer also noted that Mr Fard has strong family ties to Canada which might outweigh his connection with Iran. On balance, the officer was not satisfied that Mr Fard would leave Canada on the expiry of his visa.

[2] Mr Fard maintains that the officer's decision was unreasonable because there was no valid basis to question his financial statements. In fact, he complied with the applicable document checklist by providing statements for the previous six months, in addition to information about his business. Mr Fard also argues that the officer failed to cite a number of positive factors in his application, such as his ties to Iran, his previous travel history, and his goal of family reunification. Further, Mr Fard suggests that the officer's decision was reached unfairly because he had no opportunity to address the officer's concerns about the source of his savings. Mr Fard asks me to quash the officer's decision and order another officer to reconsider his visa application.

[3] I agree with Mr Fard that he was not provided an opportunity to assuage the officer's concerns about his true financial situation. I will grant this application for judicial review on that basis.

[4] The sole issue is whether Mr Fard was treated unfairly.

II. Was Mr Fard treated unfairly?

[5] The officer noted that Mr Fard's bank account was opened less than one year before his application for a visa and showed numerous lump sum payments. To the officer, this suggested that the account had been "opened and inflated for the visa application" and that Mr Fard might not actually have access to the funds.

[6] The Minister argues that the officer reasonably concluded that Mr Fard had failed to provide sufficient information about the source of the funds. The Minister also contends that the officer did not actually find that the financial documents were inauthentic, so the officer had no obligation to provide Mr Fard with an opportunity to address the officer's concerns.

[7] I disagree with the Minister's submissions.

[8] Where an officer believes that an applicant has provided documentary evidence that misrepresents a material fact, the officer owes the applicant a chance to respond. Otherwise, the applicant can be unfairly tarred by an officer's unanswered allegation of disreputable or even fraudulent conduct (see *Cornea v Canada (Citizenship and Immigration)* 2003 FC 972 at para 8).

[9] For example, where an officer suggests that the applicant's supporting documents serve a "demonstrative purpose" amounting to a "deceptive façade" (*Taeb v Canada (Citizenship and Immigration)* 2023 FC 576 at para 6) or where, as here, the officer states that the applicant's financial data has been "inflated" for purposes of advancing a visa application, a duty of fairness arises. The officer must give the applicant an opportunity to respond. There is a difference between finding that the source of the applicant's funds is unclear (a question of the sufficiency of the evidence) and a conclusion that the applicant has misrepresented their financial means (an opinion about the applicant's honesty).

[10] Here, I find that Mr Fard should have been provided a chance to address the officer's concerns. In the absence of that opportunity, he was treated unfairly.

[11] On that basis, I must grant this application for judicial review.

III. Conclusion and Disposition

[12] Mr Fard should have been provided an opportunity to address the officer's allegation that his documentary evidence showed an "inflated" bank balance. In the absence of that opportunity, the handling of Mr Fard's application was unfair. Accordingly, I will grant this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-13879-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and another officer shall reconsider Mr Fard's application.
2. No question of general importance is stated.

"James W. O'Reilly"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE: MEHRDAD MOHSENI FARD V. THE MINISTER OF
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PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA
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