Federal Court  Cour fédérale

Date: 20241212

Docket: IMM-1523-24

Citation: 2024 FC 2009

Ottawa, Ontario, December 12, 2024

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

SUSAN VAHDAD AND YUNES DOMIRANI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Susan Vahdad, the Principal Applicant, seeks judicial review of the decision by a visa officer [Officer] with Immigration, Refugees and Citizenship Canada [IRCC] refusing her application for an open work permit under the International Mobility Program, Exemption Code C41, which application was made pursuant to paragraph 205(c)(ii) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRP Regulations*]. The Officer also refused the

Temporary Resident Visa [TRV] application of the Principal Applicant's 21-year-old son, Yunes Domirani [Dependant Applicant].

Background and Decisions Under Review

[2] The Principal Applicant and her son are citizens of, and reside in, Iran.

[3] The Principal Applicant is married to Saeed Domirani [Spouse]. Together they have two children, the Dependant Applicant and a daughter currently attending university in Canada under a study permit.

[4] In 1995, the Spouse founded a company in Iran called Abadis Construction Co. [Iranian Company]. In June 2021, a subsidiary of the Iranian Company was established in Canada called Abadis Canada Construction Inc. [Canadian Company]. On June 6, 2023, the Spouse was issued a work permit (valid until June 5, 2025) to work as a construction manager. The Principal Applicant claims that her Spouse is currently employed in that position at the Canadian Company.

[5] By letter dated January 24, 2024, the Officer denied the Principal Applicant's work permit application. The Officer found that her application did not meet the requirements of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [*IRPA*] and the *IRP Regulations.* The Officer was not satisfied the Principal Applicant would leave Canada at the end of her stay, as required by paragraph 200(1)(b) of the *IRP Regulations,* and that the purpose of her visit to

Canada was not consistent with a temporary stay, given the details she had provided in her application.

[6] The global case management system [GCMS] notes, which form part of the Officer's reasons, state that the Officer had reviewed the application and, in making their decision, had considered that the purpose of the Principal Applicant's visit to Canada was not consistent with a temporary stay, given the details provided in her application. The Officer stated that the Principal Applicant's Spouse is in Canada on a work permit and provided limited information about his work, only documents showing that the company exists on paper. No proof that the Canadian Company "is doing business" was provided when, according to the business plan submitted with the original work permit, it should already be very active. The Officer was not satisfied the Principal Applicant's Spouse "is working per condition of their WP". The Officer stated, having weighed the factors in the application, that they were not satisfied the Principal Applicant would depart Canada at the end of the period authorized for her stay. The Officer therefore refused her application.

[7] By letter of the same date, the Officer also denied the Dependent Applicant's TRV application. In determining that the Dependent Applicant did not meet the requirements of the *IRPA* and *IRP Regulations*, the Officer stated that they were not satisfied that the Dependent Applicant would leave Canada at the end of his stay, as required by paragraph 179(b) of the *IRP Regulations*, based on the following factors: the Dependent Applicant's assets and financial situation were insufficient to support the stated purpose of his travel; he has significant family ties in Canada; and, the purpose of his visit to Canada was not consistent with a temporary stay

given the details he had provided in his application. The GCMS notes state that the Officer had reviewed the application and considered the listed factors in their decision, being the same factors set out in the refusal letter. The Officer stated that they were not satisfied that the Dependent Applicant would depart Canada at the end of a period authorized for his stay.

Issue and Standard of Review

[8] The sole issue arising in this matter is whether the Officer's decisions were reasonable. The parties submit and I agree that the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

Decision Was Not Reasonable

Applicants' Position

[9] The Applicants submit that the IRCC Guidelines for Exemption Code C41 [Guidelines] provide that to be eligible for dependent family member status under paragraph 205(c)(ii) of the *IRP Regulations*, the principal foreign national must fulfil certain criteria at the time of the family member's application. However, the Officer misinterpreted this criteria, which clearly stipulates that the principal foreign national must possess authorization to work in Canada and that the work permit should be valid for a minimum of six months after the date of the receipt of the family member's open work permit. In this matter, the Spouse met and satisfied this eligibility criteria as he had a work permit that had been valid for more than six months, and he was employed with the Canadian Company. The Applicants submit that the Officer went beyond the Guidelines and imposed "self-made requirements" by requiring the Spouse to have submitted

evidence of actual business activities in Canada. The Applicants argue that the Principal Applicant was not required to submit proof of the business activities of her Spouse's employer in Canada.

[10] Further, that the Officer's reasons are incoherent. First, the Officer casts doubt on the Principal Applicant's "chance of return", and then "abruptly transitions to her eligibility", before concluding that the Principal Applicant will not depart Canada at the end of her authorized stay. The Applicants submit that this chain of reasoning is disorganized, absurd and unjustifiable and that there is no causal relationship between the Principal Applicant's eligibility and her intent to leave Canada. Second, the Officer's reasons regarding the Principal Applicant's intent to depart Canada appear to be a "copy/paste" from another refusal decision for a TRV – not a work permit. The Principal Applicant "did not wish to visit Canada", as she applied for a work permit and not a TRV. As such, the reasoning that "the applicant's visit to Canada is not consistent with a temporary stay given the details provided in the application" does not apply to work permit applications. On this point, the Applicants submit that the Officer was not expert or experienced in work permit applications. Further, that the reasoning regarding the Principal Applicant's visit to Canada being inconsistent with a temporary stay is vague, ambiguous and unclear.

Respondent's Position

[11] The Respondent submits that under the program in which the Principal Applicant was applying, where the principal foreign national (here, the Spouse) is the holder of an open work permit, the Principal Applicant must submit sufficient documentation to show that the principal foreign Spouse is currently employed in a position under a National Occupation Classification

(or NOC) (citing the Guidelines). The Respondent emphasizes that the eligibility criteria for dependant family members under the Guidelines pursuant to paragraph 205(c)(ii) of the *IRP Regulations*, Exemption Code C41, includes that the principal foreign national must be authorized to work in Canada by reason of a valid work permit, and "be employed or will be employed in a high-skilled occupation (TEER 0, 1 or 3 or if before November 16, 2022, NOC 0, A or B)".

[12] The Respondent submits that the Principal Applicant did not provide sufficient evidence to convince the Officer of her Spouse's employment status in a high-skilled occupation or that his business was actively operating. The Respondent further claims that the documents provided with the Principal Applicant's application did not prove that the business was active or that the Spouse was actively employed. Notably, the business plan attached to the original work permit application of the Spouse indicated active operations. However, no supporting operational or financial records were available at the time the decision was made on the Principal Applicant's application. As such, the Officer's reasons on this point were reasonable.

[13] The Respondent stresses that the Spouse arrived in Canada on June 6, 2023. Yet, when the Principal Applicant filed her work permit application in early August 2023, she did not provide evidence to suggest that her Spouse was actively employed and the business was operational. Therefore, the Officer reasonably assessed the documentation and rejected the Principal Applicant's application because she failed to demonstrate that the Spouse was employed in accordance with the conditions of his work permit. Deference is owed to officers assessing work permit applications because of their expertise regarding the applicable criteria

and because of the largely fact-based nature of this kind of discretionary decision (citing *Shoaib v Canada (Citizenship and Immigration)*, 2020 FC 479 at para 11 [*Shoaib*]).

Analysis

[14] Both parties refer the Court to the Guidelines, being an IRCC webpage entitled "Family members of foreign nationals authorized to work in high-skilled occupations (TEER 0, 1, 2 or 3) [R205(c)(ii) – C41 and C46] – Canadian interest – International Mobility Program (IMP)".

[15] The Guidelines explain that they contain policy, procedures and guidance used by IRCC staff.

[16] With respect to eligibility, the Guidelines state:

> **Eligibility**
>
> For the dependent family member to be eligible under subparagraph R205(c)(ii), administrative codes C41 or C46, the principal foreign national must, **at the time of decision** on the family member application, meet all of the following requirements. The principal foreign national must:
>
> - be authorized to work in Canada by reason of either
> - a valid work permit or provisional approval (that the letter of introduction has been issued) for a work permit (employer-specific or open), ….
>
> ……
>
> And
>
> - be authorized (that the work permit issued) or be provisionally approved (that the letter

of introduction was issued) to work in Canada for a period of at least 6 months or longer after the receipt date of the family member's open work permit application.

…..

- be employed or will be employed in a high-skilled occupation (TEER 0, 1, 2 or 3 or if before November 16, 2022, NOC 0, A or B) (see Note)

- be physically residing or plan to physically reside in Canada while employed For Quebec Selection Certificate (CSQ) holders and provincial nominees: be physically residing or plan to reside in the province of nomination or selection.

- be in one of the following situations:

  - be in a genuine relationship with the applicant as a spouse or common-law partner

  - be the parent of the applicant who is a dependent child as defined in section R2.

Documentary evidence

With the application for an open work permit, officers should be satisfied that they have the following documentary evidence to make an assessment:

1. evidence of a genuine relationship if the applicant is the spouse or common-law partner;

   - For example…..

   or

   evidence that the dependent child meets the definition of R2,

2. evidence that the principal foreign national **is or will be employed in**, in TEER

> category 0, 1, 2 or 3 occupation (or if the application was received before November 16, 2022, in NOC skill type 0 or level A or B)
>
> - For example, job contract, letter from employer indicating NOC TEER category and duties.
>
> …..
>
> 3. evidence that their principal foreign national is authorized or is provisionally approved to work in Canada and the authorization is not within the exceptions stated in Eligibility
>
> - For example, copy of work permit or copy of visitor record indicating work under section R186, or passport stamps showing period of authorized stay, evidence that their principal foreign national has been provisionally approved for a work permit (that the letter of introduction is issued).
>
> 4. evidence that their principal foreign national's authority or provisional approval to work in Canada is valid for 6 months or longer after the receipt date of the family member's work permit application
>
> - For example, copy of a work permit or passport stamps showing period of authorized work (for work-permit exempt foreign nationals) or copy of the letter of introduction.
>
> (emphasis original)

[17] At issue in this matter is whether the Applicants provided evidence that the principal foreign national (here, the Spouse) at the time of decision on the Applicants' applications, is employed in a defined high-skilled occupation. More specifically, whether the Officer

unreasonably imported a new eligibility requirement when they found that the Principal Applicant had provided only documents showing that the company exists on paper but "[n]o proof that the company is doing business".

[18] In her application, the Principal Applicant provided the certificate of incorporation and the articles of incorporation of the Canadian Company, share certificates for the Canadian Company, and also an employment agreement between the Canadian Company and the Spouse employing him as construction manager (NOC 0711). She also provided a copy of her Spouse's work permit, which described his occupation/profession as construction manager, as well as an affidavit of the Spouse which states, among other things, that he is currently in the employ of Abadis Canada Construction Inc. as a Construction Manager (CEO)-NOC 0711, with a 38 percent share interest and an annual salary of $72,800.

[19] I note that operational instructions, or guidelines, are not legally binding, but may assist decision-makers in exercising their discretion and may assist courts in ascertaining the reasonableness of an officer's decision (*Raouf v Canada (Citizenship and Immigration)*, 2024 FC 1726 at para 26, *Shang v Canada (Citizenship and Immigration)*, 2021 FC 633 at para 46; *Babalou v Canada (Citizenship and Immigration)*, 2024 FC 549 at para 23).

[20] In this case, the Guidelines indicate that for dependent family members to be eligible, they must establish that, at the time of decision on their application, the principal foreign national is or will be employed in a high-skilled occupation. As examples of documentation that can be provided to establish this, the Guidelines identify job contracts or letters from employers

indicating NOC TEER category and duties. The Principal Applicant provided her Spouse's employment agreement along with his affidavit indicting that he is employed with the Canadian Company and his annual salary in that regard.

[21] I agree with the Respondent that deference is owed to visa officers when assessing work permit applications because of their expertise regarding the applicable criteria and because of the largely fact-based nature of this kind of discretionary decision (*Shoaib*, at para 11; see also *Khayati v Canada (Citizenship and Immigration)*, 2024 FC 1402 at para 14; *Nazari v Canada (Citizenship and Immigration)*, 2024 FC 546 at para 12).

[22] However, in this case it would appear that the Principal Applicant provided evidence meeting the eligibility provisions of the Guidelines – she provided evidence of her Spouse's employment. The Officer did not assess the sufficiency of the evidence as to the Spouse's employment. Rather, their concern was with whether the Canadian Company was doing business as contemplated by the business plan submitted by the Spouse and whether he was working "per the conditions of" his work permit. A requirement to establish that a principal foreign national is "employed" is different than a requirement to establish that the company employing them is "actively doing business" or that they are working in accordance with the conditions of their work permit. The Respondent does not point to any legislative requirement (nor did the Officer in their reasons), any provision within the Guidelines or any case law supporting that the Principal Applicant was also required to prove that the company employing the Spouse "is doing business".

[23] In my view, the Officer's finding that they were not satisfied that the Spouse "is working per condition of their WP" and their finding that there was "no proof that the company is doing business" imposes a different eligibility threshold and raises different questions than contemplated by the Guidelines, which only require proof that the principal foreign national is "employed or will be employed in a high-skilled occupation". In effect, the Officer made a veiled credibility finding as to the legitimacy of the Spouse's business operations.

[24] In sum, I agree with the Principal Applicant that the Officer's decision was unreasonable as it imposes an eligibility requirement not found in the Guidelines or elsewhere (*Ahmadi v Canada (Citizenship and Immigration)*, 2024 FC 1734 at para 5; *Sharma v Canada (Citizenship and Immigration)*, 2024 FC 1928 at paras 10–12). Given my finding on this point, which was determinative of the Officer's decision, it is not necessary for me to address the other points raised by the Applicants.

[25] At the hearing, the parties agreed that the Dependant Applicant's TRV application was tied to the success of the Principal Applicant's work permit application. As I have found that the Officer's decision with respect to the Principal Applicant's work permit was unreasonable, it follows that the Officer's decision refusing the Dependant Applicant's TRV application was also unreasonable.

JUDGMENT IN IMM-1523-24

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted;

2. The decisions are set aside and the matter shall be remitted to a different officer for redetermination;

3. There shall be no order as to costs; and

4. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	SUSAN VAHDAD AND YUNES DOMIRANI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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