Federal Court  Cour fédérale

Date: 20250116

Docket: IMM-782-23

Citation: 2025 FC 85

Ottawa, Ontario, January 16, 2025

PRESENT: Mr. Justice Pentney

BETWEEN:

SHAHIN NAGHASHYAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a citizen of Iran who applied for a work permit under the International Mobility Program for entrepreneurs and self-employed candidates, which exempts an application from the usual requirement to have a Labour Market Impact Assessment. His application was refused, and he seeks judicial review of that decision.

[2] The Applicant applied for a work permit as an entrepreneur seeking to operate a residential and non-residential construction service business in Canada. He had registered the business in British Columbia, but planned to locate it in Toronto, Ontario.

[3] The application was refused because the Officer was not satisfied that the Applicant's business plan was sound. The Officer noted that Toronto is a well-serviced area that the proposed salaries set out in the business plan were lower than the market average, and it was not clear how the business would remain competitive. Based on these factors, the Officer was not satisfied that the Applicant had demonstrated that his business would be of significant benefit to Canada, and therefore refused the application.

[4] The Applicant seeks judicial review of this decision.

[5] It is necessary to set out the procedural background before addressing whether the Officer's decision is reasonable.

[6] The Applicant initially argued that he had been denied procedural fairness because the Officer had applied new Program Instructions without giving him notice or an opportunity to respond. He also claimed that the decision was tainted by bias because his counsel's office had represented many other claimants whose applications were also refused (although there was no affidavit evidence to support this claim). After leave to seek judicial review was granted, the matter was set for hearing on May 1, 2024.

[7] On April 24, 2024, I issued a Direction drawing the parties' attention to the decision in *Tehranimotamed v Canada (Citizenship and Immigration)*, 2024 FC 548 [*Tehranimotamed*] at paras 8–9, where counsel from the same law firm (and the same counsel who represented the Applicant at the hearing of the present matter) had indicated he was no longer advancing the procedural fairness arguments set out in his memorandum of fact and law (virtually identical to the arguments advanced here). The Direction asked counsel for the Applicant to advise the Court and the Respondent on or before April 26, 2024 whether he intended to withdraw the procedural fairness argument.

[8] By letter dated April 26, 2024, counsel for the Applicant stated: "Based on previous Court decisions regarding similar procedural fairness arguments, those arguments advanced in the Applicant's Memorandum of Fact and Law and Reply Memorandum will be withdrawn." That was an appropriate concession to make. Procedural fairness arguments and allegations of bias that are not supported by affidavit evidence or other material in the record should never be advanced. Moreover, counsel should not need to receive a Direction to stop pursuing arguments that have been repeatedly and resoundingly rejected by this Court in previous decisions.

[9] That leaves only the Applicant's argument that the Officer's decision is unreasonable, which must be assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21.

[10] The Applicant submits that the Officer failed to give due consideration to the information set out in his business plan, and did not explain why it was found to be lacking. He says that the business plan demonstrated how the business would remain competitive. He argues that under the C-11 program he did not need to adhere to national average wages for positions in his company, and thus the Officer's statement about that cannot support the refusal of his application.

[11] In oral submissions, the Applicant also challenged the Officer's statement that he would not leave Canada at the end of his authorized stay. This argument was not raised in the Applicant's written submissions, and so I will not discuss it further: *Tehranimotamed* at para 12.

[12] In judicial review of decisions refusing work permits, a number of guiding principles are now well-established, including that detailed reasons are not required in light of the volume of applications and the interests at stake: *Tehranimotamed* at para 18. As long as the decision indicates that the Officer engaged with the key relevant facts and considered them in light of the legal context (here the statutory requirements for a C-11 work permit), the decision will be reasonable.

[13] Having considered the Officer's decision in light of the record and the submissions of the parties, I am not persuaded that the Officer's decision is unreasonable.

[14] The onus is on the Applicant to demonstrate a sufficiently serious or central flaw in the decision to make it unreasonable (*Vavilov* at para 100). In this case, the Applicant says the

Officer's assessment of the business plan was lacking and the statement that the wages he planned to pay were below the average was not justified because the program did not require that wages correspond to the national average.

[15] It is not the role of a Court on judicial review to evaluate the sufficiency of the business plan, because to do so would involve re-weighing the evidence. That role is assigned by Parliament to the Officer: *Tehranimotamed* at para 16–17. In this case, the reasons demonstrate why the Officer questioned the sufficiency of the business plan, in light of the saturated market for construction services in Toronto and the Applicant's lack of experience in that market. In addition, although the program may not require that average wages be paid to employees of the company, the failure to do so is an obviously relevant consideration because it calls into question the viability of the business.

[16] The Applicant has not demonstrated the type of error or flaw in the decision that would make it unreasonable under the *Vavilov* framework. The application for judicial review is dismissed.

[17] There is no question of general importance for certification.

JUDGMENT in IMM-782-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-782-23
STYLE OF CAUSE:	SHAHIN NAGHASHYAR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VIA ZOOM
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APPEARANCES:

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