

Federal Court



Cour fédérale

**Date: 20250116**

**Docket: IMM-11281-23**

**Citation: 2025 FC 97**

**Vancouver, British Columbia, January 16, 2025**

**PRESENT: The Honourable Mr. Justice Fothergill**

**BETWEEN:**

**HEIDAR SAYEKAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Heidar Sayekan is a citizen of Iran. He seeks judicial review of a decision of a visa officer [Officer] at the Warsaw office of the Consulate General of Canada to refuse Mr. Sayekan's application for permanent residence in Canada under the Self-Employed Person Class, pursuant to s 12(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 and s 100(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations].

[2] Mr. Sayekan lives in Iran with his wife and daughter. He is a calligrapher. He submitted the application for permanent residence in July 2019 with the assistance of a paid representative. A cover letter from the representative stated that a business plan and updated language test results would be forthcoming.

[3] On March 25, 2023, a different visa officer sent Mr. Sayekan a letter offering him the opportunity to submit additional information. According to Mr. Sayekan, he had already provided a complete application and it was therefore unnecessary to submit additional documentation.

[4] The Officer refused Mr. Sayekan's application on July 13, 2023. The Officer's notes in the Global Case Management System read as follows:

[...] Submissions reviewed. Request for updated docs sent 2023. No response. Assessment continued based on docs on file. PA is applying as a calligraphic artist. Letter from rep states that PA is taking English classes to improve his English however I find the time to become fluent in a language is prior to immigrating to a new country and launching a business. Letter from rep indicated they would be submitting ILETS results. None submitted. While ILETS is not required it adds to my concerns as to PA's ability to work in either of Canada's official languages. Self declared language ability in English is moderate however given the statement on letter from the rep for PA's efforts to improve his English I am not satisfied PA's current language ability sufficient to work in a client facing role in Canada. Letter from rep also states PA would be conducting extensive market research and would be submitting evidence of this research along with a business plan. Neither items were received. I note these are not required however while PA has submitted some evidence of his calligraphy work in Iran he has failed to satisfy me he can translate this experience into the CDN context. Per his sched 6A he will work as a calligrapher and teach classes in calligraphy in BC. PA refers to the Iranian diaspora however he has failed to satisfy me

there is sufficient demand from this market for his intended services. Furthermore he has failed to satisfy me there is demand in the wider Canadian mkt or that he has the skills necessary to reach this mkt. There is an overall lack of a reasonable plan for his chosen self employed activities in Canada to satisfy me he has the ability and intent to be self-employed in Canada. PA has failed to sufficiently define and quantify how their contributions would be significant to Canada or provide sufficient evidence to support their assertions related to their contributions to Canada. Decision: After considering all the information on file. I am not satisfied that the applicant has sufficient intention and ability to be self-employed in Canada and to make a significant contribution to specified economic activities in Canada I am not satisfied the applicant meets the provisions of R88/definition of self-employed. Pursuant to R 100(2) no further assessment is required and the application is to be refused. Following requested: Please send refusal letter/refund not required

[5] The Officer’s decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only where “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

[6] The criteria of “justification, intelligibility and transparency” are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[7] Procedural fairness is subject to a reviewing exercise best reflected in the correctness standard, although strictly speaking no standard of review is being applied (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). The ultimate

question is whether an applicant had a full and fair chance to be heard (*Siffort v Canada (Citizenship and Immigration)*, 2020 FC 351 at para 18).

[8] Mr. Sayekan says that the Officer's decision was procedurally unfair in two respects. First, he asserts that the decision was made on the basis of an incomplete record, as the business plan and updated language test results were in fact submitted (citing *Guo v Canada (Citizenship and Immigration)*, 2022 FC 883 [*Guo*]). Second, he argues that it was unfair of the visa officer not to mention the missing business plan and updated language test results in the letter that invited him to submit additional information (citing *Mohitian v Canada (Citizenship and Immigration)*, 2015 FC 1393 [*Mohitian*]).

[9] *Guo* is distinguishable. In *Guo*, the certified tribunal record [CTR] included a cover letter that listed the missing documents, supporting the inference that the documents were submitted but then omitted from the record (at para 18). In this case, the cover letter from Mr. Sayekan's representative indicated that the business plan and language test results would be forthcoming. There is no evidence to support Mr. Sayekan's assertion that his representative subsequently submitted either the business plan or the language test results. This may be contrasted with the affidavit evidence submitted on behalf of the Respondent, confirming that the Officer never received either Mr. Sayekan's business plan or his updated language test results.

[10] Where a document does not appear in the CTR, the Court will presume that it was not before the decision maker unless there is evidence from the applicant establishing the contrary. A bare assertion is not enough (*Adams v Canada (Citizenship and Immigration)*, 2021 FC 1104 at

para 19). Based on the evidence submitted by the parties, I find on a balance of probabilities that neither the business plan nor the updated language test results were ever submitted to the Officer.

[11] *Mohitian* is also distinguishable. A visa officer has no legal obligation to clarify or rectify a deficient application, to help the applicant make his case, to apprise an applicant of concerns about whether the requirements set out in the legislation have been met, to provide the applicant with a running score at every step of the application process, or to offer further opportunities to respond to unresolved concerns or deficiencies (*Lv v Canada (Citizenship and Immigration)*, 2018 FC 935 [*Lv*] at para 23).

[12] The duty of fairness owed in these circumstances is at the low end of the spectrum, and the onus was on Mr. Sayekan to provide sufficient evidence to establish that he met the preconditions for permanent residence under the Self-Employed Person Class (*Lv* at para 22; *Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264 at paras 22-23).

[13] The Respondent notes that the visa officer may not have been aware, when giving Mr. Sayekan the opportunity to submit additional information, that the promised business plan and language test results had not been submitted. It appears that the letter was a standard form that is routinely sent to applicants in advance of a decision being made.

[14] The Officer's decision was procedurally fair. It was also reasonable.

[15] In his application, Mr. Sayekan described his English language skills as "moderate". It was open to the Officer to conclude, based on Mr. Sayekan's own assessment of his abilities and

his stated intention to submit updated language test results, that his existing proficiency level was inadequate. In the absence of any business plan or market research results, it was open to the Officer to conclude Mr. Sayekan had failed to demonstrate that he could succeed as a self-employed person in Canada, or that his proposed business would make a significant contribution to economic activities in this country.

[16] Every application for permanent residence under the Self-Employed Person Class must demonstrate “significant pre-application efforts taken with a view to advancing a well-conceived, researched and executed project that indicates a serious possibility of economic success”; “fundamental to every application is a demonstration that the projects have been thoroughly conceived and concrete steps taken to ensure the implementation that will result in a successful economic activity to meet the requirements of a self-employed immigrant under subsection 88(1)” of the Regulations (*Rassouli v Canada (Citizenship and Immigration)*, 2021 FC 961 at para 25, citing *Wei v Canada (Citizenship and Immigration)*, 2019 FC 982).

[17] The Officer reasonably concluded that the evidence was insufficient to demonstrate Mr. Sayekan had undertaken the necessary market research or developed a coherent and credible plan to establish himself as a self-employed person in Canada. The Officer did not question Mr. Sayekan’s skills as a calligrapher, but was unconvinced that those skills would enable him to establish a viable business. The Officer considered whether there was sufficient market demand for calligraphy, both in the Iranian diaspora in British Columbia and the wider Canadian population, and found that insufficient evidence had been provided.

[18] The Respondent notes that nothing prevents Mr. Sayekan from re-applying for permanent residence in Canada under the Self-Employed Person Class, this time including a business plan and updated language test results.

[19] For the foregoing reasons, the application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

"Simon Fothergill"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-11281-23

**STYLE OF CAUSE:** HEIDAR SAYEKAN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**HEARD BY VIDEOCONFERENCE**

**DATE OF HEARING:** JANUARY 8, 2025

**JUDGMENT AND REASONS:** FOTHERGILL J.

**DATED:** JANUARY 16, 2025

**APPEARANCES:**

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