Federal Court  Cour fédérale

Date: 20230123

Docket: IMM-2777-22

Citation: 2023 FC 107

Ottawa, Ontario, January 23, 2023

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

HASTI SADEGHINIA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by a visa officer [Officer] with Immigration, Refugees and Citizenship Canada [IRCC], dated January 27, 2022 [the Decision], in which the Officer refused the Applicant's study permit application.

[2] As explained in more detail below, this application is allowed, because I find the Decision unreasonable in its analysis of the Applicant's family ties in Canada and in her country of residence.

II. **Background**

[3] The Applicant, a now 14-year-old Iranian citizen, resides with her parents in Iran. She received a letter of acceptance under the Toronto International Student Program to attend a Toronto District School Board elementary school for her grade 8 studies.

[4] This is the Applicant's third study permit application. Her first application was refused on October 12, 2021, and her second application was refused on November 28, 2021.

[5] In the Decision that is under review in this application, the Officer refused the Applicant's third study permit application. The operative portion of the January 27, 2022 letter conveying the Decision states as follows:

> … After careful review of your study permit application and supporting documentation, I have determined that your application does not meet the requirements of the Immigration and Refugee Protection Act (IRPA) and Immigration and Refugee Protection Regulations (IRPR). I am refusing your application on the following grounds:
>
> • I am not satisfied that you will leave Canada at the end of your stay, as stipulated in subsection 216(1) of the IRPR, based on your family ties in Canada and in your country of residence.

> • I am not satisfied that you will leave Canada at the end of your stay, as stipulated in subsection 216(1) of the IRPR, based on the purpose of your visit.

[6] The accompanying Global Case Management System [GCMS] notes, which form part of the reasons for the Decision, further state as follows:

> I have reviewed the application. I am not satisfied that the applicant would leave Canada at the end of their stay as a temporary resident, I note that: -the client is single, mobile, is not well established and has no dependents Applicant is a minor, 13 years old, applying to come to Canada to study grade 8 at TDSB Elementary School from Feb to June 2022. The purpose of the visit itself does not appear to be reasonable, in view of the fact that similar programs are available closer to the applicant's place of residence for a fraction of the cost. The applicant has not submitted enough supporting documents to satisfy me that the applicant has access to sufficient funds for this visit. Bank statements noted however, bank statements provided do not include banking transactions to track the provenance of available funds. Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

[7] Also relevant to the Applicant's arguments in this application for judicial review is the fact that the Applicant's father is pursuing an application for permanent residence in Canada, for himself, his wife, and the Applicant, under the start-up business class pursuant to section 98.01(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

III. **Issues**

[8] The Applicant has raised the following two issues for the Court's determination:

A. Whether the Decision is reasonable; and

B. Whether the Officer breached the Applicant's procedural fairness rights.

[9] As suggested by the articulation of the first issue, the parties agree (and I concur) that the standard of review applicable to the merits of the Decision is reasonableness.

[10] The standard of review for issues of procedural fairness remains correctness (see *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). Functionally, this requires the Court's analysis to focus on whether the procedure followed was fair, having regard to all the circumstances (see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

IV. **Analysis**

[11] As noted above, the refusal letter identified two grounds for rejecting the Applicant's application for a study permit: (a) her family ties in Canada and in Iran; and (b) the purpose of her visit.

[12] The Applicant has raised several arguments in support of her position that the Decision is unreasonable and was reached in a procedurally unfair manner. However, she emphasizes in particular an argument, related to the finding surrounding the purpose of her visit, that the

Officer erred in failing to take into account the "dual intent" component of her application. That is, while her application seeks a study permit, which would entitle her to temporary residence, she is also the subject of her father's permanent residence application under the start-up business class. The Applicant argues that, in this context, it was unreasonable for the Officer to require her to prove the purpose of her visit so as to establish an intention to leave Canada by the end of the period authorized for her stay.

[13] Indeed, at the hearing of this application, the Applicant's counsel proposed in relation to this argument a question for certification for appeal. Reformulated slightly to reflect my understanding of the question, it reads as follows:

> Is an applicant for a study permit, who also has a permanent residence application being processed by IRCC, required to prove the purpose of their visit?

[14] The Respondent submits that the Applicant's argument cannot succeed, because her situation is addressed definitively in subsection 22(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, as a result of which a similar argument was rejected by Chief Justice Crampton in *Ramos v. Canada (Immigration, Refugees and Citizenship)*, 2017 FC 768 at paragraphs 11 to 14:

> 11. Turning to the second issue raised by Mr. Ramos, Mr. Ramos notes that subsection 22(2) contemplates that an applicant for a temporary work permit can have a dual intention to be a temporary resident while also hoping to remain in Canada as a permanent resident. With this in mind, Mr. Ramos maintains that it was unreasonable for the Officer to have focused on whether he would leave Canada by the end of his authorized stay. This is

because those who apply under the visiting homemaker program will invariably, or often, make such an application as the first step in an attempt to become a permanent resident in this country. He suggests that it would be therefore incongruous to require such persons to demonstrate an intention to return to their home country upon the expiry of their temporary work permit. He adds that it is precisely because of insufficient economic ties that many of the Applicant's fellow citizens in the Philippines have come to Canada under the visiting homemaker program, and its predecessor program.

12. This may very well be the case. However, subsection 22(2) of the IRPA states the following:

Dual Intent	*Double intention*
22(2) An intention by a foreign national to become a permanent resident does not preclude them from becoming a temporary resident if the officer is satisfied that they will leave Canada by the end of the period authorized for their stay.	22(2) L'intention qu'il a de s'établir au Canada n'empêche pas l'étranger de devenir résident temporaire sur preuve qu'il aura quitté le Canada à la fin de la période de séjour autorisée.

13. In my view, the plain wording of subsection 22(2) makes it clear that, while an intention to become a permanent resident does not preclude an applicant from becoming a temporary resident, the officer who reviews an application for a temporary work permit must nevertheless be satisfied that the applicant will leave Canada by the end of the period authorized for the applicant's stay.

14. This requirement is reinforced by paragraph 200(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations], which states as follows:

Work permits	*Double intention*

200(1) Subject to subsections (2) and (3) – and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act – an officer shall issue a work permit to a foreign national if, following an examination, it is established that	200 (1) Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis :
(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9	b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9

[15] Based on this statutory and judicial authority, I agree with the Respondent's submission that the Applicant's argument must be rejected.

[16] However, I find merit to the Applicant's position that the Decision is unreasonable in its analysis of the other ground for rejecting her application, i.e. her family ties in Canada and Iran. That analysis is limited to the Officer's statement that the Applicant "is single, mobile, is not well established, and has no dependents". The Applicant argues that, as she is a minor, she cannot be expected to have dependents or to be financially independent. Moreover, her closest ties, which are to her parents, relatives and friends, are in Iran, she has no real connections or ties to Canada, and she is bound to return to her parents' care in Iran at the end of her study term. She relies on *Iyiola v. Canada (Citizenship and Immigration)*, 2020 FC 324 [*Iyiola*] at paragraph 20, in which Justice Fuhrer held as follows:

> 20. As noted above, the High Commission's decision indicates concern that Mr. Iyiola may not leave Canada at the end of his authorized period of stay; Mr. Iyiola bore the onus of satisfying the visa officer in this regard: IRPA s 20(1)(b). Regarding Mr. Iyiola's family ties in Canada and in Nigeria, he has five other family members in Nigeria, including his parents with whom he lives with, none of which was mentioned in the GCMS notes; given this, it would have been unreasonable without further analysis to presume an older brother in Canada would be a more significant pull factor: *Obot v Canada (Citizenship and Immigration)*, 2012 FC 208 [*Obot*] at para 20. Accordingly, I find it unintelligible that there was no explanation whatsoever by the High Commission, nor by the visa officer in the GCMS notes, about the family ties in Nigeria and how these were assessed in the context of Mr. Iyiola's family ties in Canada. Moreover, I agree with Justices Russell and Mosley that an applicant's lack of a dependent spouse or children, without any further analysis [as in this case], should not be considered a negative factor on a study permit application; otherwise, this would preclude many students from being eligible: *Onyeka*, above at para 48; *Obot*, above at para 20. Finally, it is unintelligible in my view to construe a lack documented travel abroad in itself [and without something else, such as a negative travel history] as an indication that an individual will overstay their authorized time in Canada: *Onyeka*, above at para 48; *Ogunfowora*, above at para 42.

[17] The Respondent refers the Court to *Singh v. Canada (Citizenship and Immigration)*, 2012 FC 526 [*Singh*] at paragraph 43, in which Justice Russell confirmed that an applicant's youth and mobility, even if shared with other students, can be relevant to the required analysis. In the Respondent's submission, an officer does not fall into error in taking these characteristics into account, provided that they are not the sole ground for the decision.

[18] In my view, the reasoning in *Singh* is consistent with that in *Iyiola*, in that both authorities focus upon the completeness of a visa officer's analysis. The difficulty with the Decision in the case at hand is that, as the Applicant submits, there is no consideration of the Applicant's substantial family ties to Iran and lack of ties to Canada. In that respect, the Decision

is similar to that which was found unreasonable in *Obot v Canada (Citizenship and Immigration)*, 2012 FC 208 at paragraph 20 and *Onyeka v Canada (Citizenship and Immigration)*, 2009 FC 336 at paragraph 48. These are authorities relied upon in *Iyiola*.

[19] It may be that there is a "dual intent" spillover implicit in the Officer's analysis, in that perhaps the Officer was concerned about the Applicant's family ties in Canada if her parents were successful in moving here through their permanent residence application. However, it would be speculative to infer such an analysis from the Decision, and I therefore offer no comment on whether such an analysis would be reasonable. The Decision fails to articulate reasoning that allows the Court to understand the Officer's analysis surrounding the Applicant's family ties and resulting conclusion that she would not leave Canada at the end of her stay.

[20] Having found unreasonable one of the two grounds for the Officer's conclusion that the Applicant would not leave Canada, it is not possible to know whether the Officer would have arrived at the same conclusion had that ground been reasonably assessed. I therefore conclude that the Decision is unreasonable and that this application for judicial review must be allowed.

[21] Having reached the above conclusion, there is no need for the Court to address the Applicant's procedural fairness arguments or other submissions related to the reasonableness of the Decision.

[22] I note that the Applicant's Memorandum of Argument seeks an order either requiring that a study permit be granted or referring the Applicant's study permit application to another

decision-maker for re-determination. There is no basis for the Court to conclude that the Applicant is necessarily entitled to a positive outcome in her study permit application. As such, the appropriate remedy is to quash the Decision and refer the matter to another decision-maker.

[23] As the outcome of this application does not turn on the Applicant's dual intent argument, her proposed certified question would not be dispositive of an appeal, and it is therefore not appropriate for the Court to certify that question.

JUDGMENT in IMM-2777-22

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, the Decision is set aside, and the matter is returned to another decision-maker for re-determination. No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2777-22
STYLE OF CAUSE:	HASTI SADEGHINIA V THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JANUARY 19, 2023
JUDGMENT AND REASONS:	SOUTHCOTT J.
DATED:	JANUARY 23, 2023

APPEARANCES:

Afshin Yazdani	FOR THE APPLICANT
Andrea Mauti	FOR THE RESPONDENT

SOLICITORS OF RECORD:

YLG Professional Corporation Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT