Federal Court Cour fédérale

**Date: 20230206**

**Docket: IMM-1077-22**

**Citation: 2023 FC 159**

**Ottawa, Ontario, February 6, 2023**

**PRESENT: The Honourable Madam Justice Strickland**

**BETWEEN:**

**MAHYAR HAJI TEHRANI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] Mahyar Haji Tehrani [Applicant] is a citizen of Iran. He applied to and was accepted into Northeastern University's College of Professional Studies, Master of Science in Project Management program [Program] in Toronto, Ontario. He then applied for a study permit to allow him to enter Canada to pursue those studies.

[2] By letter dated January 9, 2022, the Applicant was informed that his study permit application was refused by a visa officer [Officer] as the Officer was not satisfied, pursuant to s 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRP Regulations*], that the Applicant would leave Canada at the end of a period authorized for his stay. This determination was stated by the Officer to be based on the Applicant's family ties in Canada and in his country of residence as well as the purpose of his visit. The Applicant brought an application for leave and judicial review of that decision.

[3] For the reasons that follow, I am allowing this application for judicial review.

**Relevant Legislation**

*Immigration and Refugee Protection Regulations*, SOR/2002-227

Issuance of Study Permits

Study permits

> 216 (1) Subject to subsections (2) and (3), an officer shall issue a study permit to a foreign national if, following an examination, it is established that the foreign national
>
> (a) applied for it in accordance with this Part;
>
> (b) will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;
>
> (c) meets the requirements of this Part;
>
> (d) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and
>
> (e) has been accepted to undertake a program of study at a designated learning institution.

**Decision Under Review**

[4] The basis for the Officer's decision is stated above. The Global Case Management System [GCMS] notes also form a part of the Officer's reasons. These 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 Previous university studies in Bs.c [*sic*] in Industrial Engineering. Currently employed as a Expert (Administrative Affairs) at International Development and Renovation Organization of Iran. Client's Explanation letter reviewed. PA does not demonstrate to my satisfaction compelling reasons for which such an educational program would be of benefit. The applicant demonstrates (through their submitted documentation) that they possess an acceptable combination of education, training and/or experience in their respective field. This negates the necessity for the international education towards their career advancement in Iran and leads to concerns that their motivation of pursuing education in Canada is to seek entry for reasons other than temporary. I note that a minimum tuition payment has been paid to hold their place in the program. No additional payments on file. 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.

**Issues and Standard of Review**

[5] The Applicant raises two issues in his application for judicial review of the Officer's decision:

i. Was the decision reasonable?

ii. Was the decision rendered in breach of the duty of procedural fairness?

[6] In assessing the merits of the Officer's decision, there is a presumption that, as the reviewing court, this Court will apply the standard of review of reasonableness (*Canada (Minister of Immigration and Citizenship) v Vavilov*, 2019 SCC 65 at paras 23, 25 [*Vavilov*]). The parties do not submit that there are circumstances in this matter that would warrant a departure from that presumption and I find that there are none.

[7] On judicial review, the Court "must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99).

[8] Issues of procedural fairness are to be reviewed on a correctness standard (see: *Mission Institution v Khela*, 2014 SCC 24 at para 79 and in *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). In *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*CPR*] the Federal Court of Appeal held that although the required reviewing exercise may be best – albeit imperfectly – reflected in the correctness standard, issues of procedural fairness do not necessarily lend themselves to a standard of review analysis. Rather, the Court is to determine whether the proceedings were fair in all of the circumstances. That is, "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond" (*CPR* at paras 54-56; see also *Canadian Association of Refugee*

*Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Ahousaht First Nation v Canada (Indian Affairs and Northern Development)*, 2021 FCA 135 at para 31).

**Was the Decision Reasonable?**

[9] The Applicant submits that the Officer erred by referencing the Applicant's marital status as a single person with no dependents and then assuming from this that he is mobile and not well-established. Further, that the Officer erred by concluding that the Applicant is not well-established in Iran – despite the evidence suggesting otherwise.

[10] The Applicant also submits that the Officer erred by widely speculating that the Applicant possesses an acceptable combination of education, training, and/or experience in his respective field and, therefore, that he does not require further education – despite the Applicant explaining in his study plan that his prior education was in engineering and that he requires project management skills to advance in his career and that his employer recommended that the Applicant undertake education in Project Management from a reputable institution abroad.

[11] The Applicant also takes issue with the Officer's statement that that the Applicant paid a part of the tuition to hold their place in the Program, but that no additional payments are on file. The Applicant submits that this is a non-issue and that payment of only the minimal fee to hold his place is not relevant to the Officer's determination.

*Analysis*

a) Establishment in Iran

[12] The Officer found that the Applicant is "single, mobile, is not well established and has no dependents".

[13] I would first note that while the Officer states in the refusal letter they were not satisfied that the Applicant would leave Canada at the end of his stay based on his "family ties in Canada and in [his] country of residence", a review of the certified tribunal record [CTR] does not demonstrate that the Applicant has any family ties to Canada.

[14] As stated by Justice Gascon in *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at paragraph 19 [*Aghaalikhani*]:

> [19] First, the Officer concluded that "given family ties or economic motives to remain in Canada," Mr. Aghaalikhani's incentives to remain in Canada might outweigh his ties to Iran. The problem with that conclusion is the deafening silence of the record on Mr. Aghaalikhani's ties to Canada. I accept that a visa officer has to conduct a balancing exercise between an applicant's ties (whether economic, family or emotional) to Canada and to his country of residence. Here, however, the evidence points only to ties to Iran. The evidence shows that Mr. Aghaalikhani has no ties to Canada; conversely, he has a very strong attachment to Iran, given that his family and friends all live there, that he is involved in the Red Crescent Society in Iran, and that he has already secured a job offer in Iran following his studies. Faced with that evidence, I fail to see what logic or rational reasoning could have lead the Officer to conclude that Mr. Aghaalikhani's family ties or economic motives would pull him in the direction of Canada and support a concern that he would not leave Canada at the end of his studies. It is in fact the very opposite situation (i.e., the limited ties to one's country of residence and links to Canada) that typically

> prompts visa officers to question the true intent behind a study permit application.

[15] I do not agree with the Respondent that the Applicant is simply asking that the Court reweigh the evidence as to the Applicant's ties to Canada and Iran and his establishment in Iran. Rather, in this situation, the concern is that, contrary to the reasons given for the decision, there was no evidence of any ties to Canada that would "pull" the Applicant toward remaining here, and the Officer does not appear to have considered or weighed the Applicant's evidence as to his ties to and establishment in Iran – either against any ties to Canada or at all.

[16] For example, in his study plan the Applicant indicates that:

- he is an only child who has a close relationship with his mother who lives in Iran and for whom he will be responsible throughout his life and in his study plan, he explains, "In so doing, I can assure you that I will come back to my only member of the family, my mother, as soon as I graduate";

- that he has been employed by the Industrial Development and Renovation Organisation [IDRO] of Iran since 2017. He needs to acquire more knowledge in the field of project management in order to be promoted and that IDRO had confirmed that it agreed to an unpaid leave of absence to permit him to pursue his studies and, upon achieving his future degree, that the Applicant would receive a promotion, as confirmed by a letter from his employer submitted by the Applicant;

- that in the future he hopes to set up his own company in Iran;

- he considers the Program as a guarantee for his future career success in Iran; and

- that he owns a car, a house, some shares in the Central Securities Depository of Iran and a joint long term deposit in Iran. He provided what he described as related property documents and stated that, because of his mother's physical condition, he is also responsible for managing and monitoring her properties, referencing attached documents said to be related to his mother's properties.

[17] However, the Officer makes no mention of this evidence in making their findings as the Applicant's ties to and establishment in Iran.

[18] The Respondent also submits no error stems from the Officer noting that the Applicant is single, mobile, not well established and has no dependents, as this is directly relevant to the assessment of the Applicant's ties to his country. In my view, the Respondent is not wrong in principle as there is no error in making this observation. However, "this Court has repeatedly recognized that an applicant's lack of a dependent spouse or children, **without any further analysis**, should not be considered a negative factor on a study permit application. Otherwise, this would preclude many students from being eligible" (*Hassanpour v Canada (Citizenship and Immigration)*, 2022 FC 1738 at para 20 [*Hassanpour*]; see also *Barril v Canada (Citizenship and Immigration)*, 2022 FC 400 at para 20; *Gilavan v Canada (Citizenship and Immigration)*, 2022 FC 1698 at para 23 [*Gilavan*]; *Seyedsalehi v Canada (Citizenship and Immigration)*, 2022 FC 1250 at para 11 [*Seyedsalehi*]).

[19] That is, an applicant's marital status, mobility, and lack of dependents are relevant personal factors that can by considered by a visa officer as part of an overall analysis but, without any further analysis, cannot be considered a negative factor (*Hassanpour* at para 19; *Gilavan* at para 22). As was the case in *Seyedsalehi*, here the Officer fails to provide any explanation as to why these factors satisfy them that the Applicant would not leave Canada. Nor is any explanation readily apparent from the record. Accordingly, the decision lacks a rational chain of analysis (*Vavilov* at paras 85, 103-104).

[20] The Respondent also submits that visa officers are not required to refer to every piece of evidence in their reasons, and it is only where the non-mentioned evidence is critical, contradicts the decision and the reviewing court infers that the decision maker must have ignored the material before it, that the decision may be set aside. Again, in principal, I agree. However, the difficulty here is that the evidence before the Officer appears to contradict their apparent inference regarding the Applicant's family ties in Canada (there was no evidence of any such ties) and the Officer also fails to address the evidence of establishment in Iran – yet finds that the Applicant is not well established.

[21] While I acknowledge that the requirement to give reasons in visa cases is typically minimal in light of the administrative setting – the high volume of visa applications that must be processed (*Iriekpen v Canada (Citizenship and Immigration)*, 2021 FC 1276 at para 7; *Khan v Canada (Citizenship and Immigration)*, 2023 FC 52 at paras 13-14) – brief reasons must still be transparent, intelligible and justified. That is, they must be reasonable (*Aghaalikhani* at para 16; *Afuah v Canada (Citizenship and Immigration)*, 2021 FC 596 at para 10). In my view, in this

case the Officer's determination that they were not satisfied that the Applicant will leave Canada at the end of his stay based on his family ties in Canada and in Iran (including that he is single and has no dependants), and on his lack of establishment in Iran, is not intelligible or justified in light of the reasons and record before the Officer (*Rahmati v Canada (Citizenship and Immigration)*, 2021 FC 778 at para 18; *Seyedsalehi* at para 9-11; *Vavilov* at para 126).

b) Purpose of visit

[22] The Respondent submits that the Officer's conclusion that the Applicant was not likely to leave Canada was not based only on his marital status and lack of dependants. Rather, that the Officer weighed this in conjunction with other factors when assessing the purpose of the visit. This included the Applicant's prior education, whether the proposed international education would actually benefit the Applicant's career advancement in Iran and in noting that only minimal tuition had been paid. The Respondent submits that the Officer's assessment of the study plan is owed deference.

[23] There is no doubt that a visa officer's assessment of a study plan is owed deference. However, deference will not be afforded if the assessment is not reasonable.

[24] Here the Officer states that the Applicant's previous university studies was a Bs.c (*sic*) in Industrial Engineering and that he is currently employed as an Expert (Administrative Affairs) at IDRO. The Officer states that they reviewed the Applicant's explanation letter (presumably the study plan) but that the Applicant had not demonstrated to the Officer's satisfaction "compelling reasons for which such an educational program would be of benefit". Rather, the Applicant had

demonstrated that he possesses “an acceptable combination of education, training and/or experience in their respective field”. According to the Officer, this negated the necessity for the international education towards the Applicant’s career advancement in Iran and led to concerns that his motivation of pursuing education in Canada is to seek entry for reasons other than temporary.

[25] With respect to the Officer’s finding that the Applicant was required to provide “compelling reasons” as to why the proposed Program would be beneficial to him, the Applicant points out that in his study plan he explained that his prior education is a master’s degree in Industrial Engineering, but that he is seeking further education in project management because this will assist him in advancing his career given that IDRO’s main purpose is to find useful projects which are mutually beneficial to Iran and to the developing company and to invest in and help them grow into successful businesses. That is, IDRO is project-oriented. He also noted that some courses offered in the Program are “Communication Skills for Project Managers”, “Global Project Management” and “Project Procurement and Contract Management” and that similar courses are not offered in Iran. He explained that he will be promoted if he successfully completes the Program and he provided a letter from his employer confirming this. He also indicated that he eventually would like to start his own company.

[26] Given this, it is difficult to see the factual basis for the Officer’s finding that the Applicant had demonstrated that he already possesses “an acceptable combination of education, training and/or experience in their respective field”. As the Applicant seeks to further his career in the context of project management, and explains why the Program will assist him in that

regard and afford him career advancement, the basis of the Officer's determination that he already has an acceptable level of education and experience is not apparent from the record or their reasons.

[27] As to the Officer's comment that a minimum tuition has been paid to hold the Applicant's place in the Program and that no additional payments are on file, the relevance of this comment is unclear. The comment follows and may, or may not, be tied to the Officer's prior comments as to motivation and the Officer fails to explain why making a minimum tuition payment to secure the Applicant's position in the Program is relevant in assessing whether the Applicant would leave Canada after an authorized stay. In any event, I tend to agree with the Applicant that a student reasonably would not wish to pay more than is necessary to secure their spot, without first being approved for a study permit. This would be particularly so if the tuition is not refundable if the study permit is denied.

[28] Further, s 216(1)(e) of the *IRP Regulations* only requires that an applicant establish that they have been accepted to undertake a program of study at a designated learning institution – it does not require proof that any or all tuition has been paid. Similarly, s 219(1) states that a study permit shall not be issued to a foreign national unless they have written documentation from the designated learning institution where they intend to study that states that they have been accepted to study – but the provision is silent as to the payment of all or any portion of their tuition. Section 220 is concerned student financial resources, stating:

> 220 An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to

> (a) pay the tuition fees for the course or program of studies that they intend to pursue;
>
> (b) maintain themself and any family members who are accompanying them during their proposed period of study; and
>
> (c) pay the costs of transporting themself and the family members referred to in paragraph (b) to and from Canada.

[29] This does not require proof of actual payment of all or a portion of the tuition – only the financial ability to pay the tuition and other expenses. And, as the Applicant points out, the Officer did not find that the Applicant did not have the financial capacity to pursue his studies in Canada. In my view, the purpose of the Officer's comment as to payment of only the minimal tuition to hold the Applicant's spot in the Program is unclear in the context of the Officer's assessment of whether the Applicant would leave Canada at the end of an authorized stay.

[30] In conclusion, for all of the reasons above, I find that the Officer's decision was unreasonable as it lacks justification, is unintelligible and fails to engage with the Applicant's evidence.

**Was the Decision Made in Breach of Procedural Fairness?**

[31] My finding that the decision was unreasonable is determinative. Therefore, I need not consider the Applicant's second issue, being that he was denied procedural fairness

**JUDGMENT IN IMM-1077-22**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is granted;

2. The decision is set aside and the matter shall be remitted to another 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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| **DOCKET:** | IMM-1077-22 |
| **STYLE OF CAUSE:** | MAHYAR HAJI TEHRANI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | BY VIDEOCONFERENCE USING ZOOM |
| **DATE OF HEARING:** | JANUARY 30, 2023 |
| **JUDGMENT AND REASONS:** | STRICKLAND J. |
| **DATED:** | FEBRUARY 6, 2023 |

**APPEARANCES:**

| | |
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| Leila Jawando | FOR THE RESPONDENT |

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