

Federal Court



Cour fédérale

Date: 20230324

**Docket: IMM-4221-22
IMM-4222-22
IMM-4223-22**

Citation: 2023 FC 411

Ottawa, Ontario, March 24, 2023

PRESENT: Madam Justice McDonald

Docket: IMM-4221-22

BETWEEN:

**MOUSA KARIMI, ZAHRA AZIZI,
ROZHAN KARIMI and ROMINA KARIMI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

Docket: IMM-4222-22

BETWEEN:

**BAHAREH AFJEHSOLEYMANI and
VAHID GHASEMI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

Docket: IMM-4223-22

BETWEEN:

**ALLAHYAR BARARI and
MARYAM JAHED**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] These are the Reasons in relation to three judicial review applications heard together. On March 24, 2022, the same visa officer [Officer] denied each of the applications for an open work

permit under the International Mobility Program [Decisions]. In each case, the primary Applicant was seeking a temporary work permit to come to Canada, with their family, pending approval of their applications for permanent residence as entrepreneurs. Although the personal facts of the Applicants differ, the judicial review applications all raise the same legal issues.

[2] For the reasons that follow, these applications are granted, as I have determined that the Decisions are unreasonable.

I. Background

[3] The primary Applicants are citizens of Iran.

[4] The Applicant Karimi has a master's degree in Business Administration (Marketing) from Payame Noor University in Iran and a bachelor's degree in Computer Engineering – Hardware. The Applicant Afjehsoleymani has a doctorate in Dentistry from Guilan University of Medical Sciences and Health Services in Iran. The Applicant Barari has a bachelor's degree in Animal Husbandry from Guilan University in Iran.

[5] They have applied to establish a business in Canada called RAD Smart Smile AI Inc. [Smart Smile]. The Applicant Karimi is the Chief Executive Officer and Information Technology Manager; the Applicant Afjehsoleymani is the Chief Science Officer; and the Applicant Barari as the Animal Care Research Lead. The business of Smart Smile is to scan dental images and convert them into recognizable pictures using Artificial intelligence [AI]

software developed by the Applicants. They have entered into agreements with several dentists across Canada to use their technology.

[6] The Applicants each received a Start-Up Business Class Commitment Certificate Letter of Support [Commitment Certificate] from Biomedical Commercialization Canada Inc., operating as Manitoba Technology Accelerator, which is a designated business incubator under subsection 98.03(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[7] In August 2021, the Applicants applied for permanent residence under the Start-Up Business Class. Each Applicant also applied for a work permit to allow them to come to Canada while their permanent residence applications were pending. The three work permit applications are the Decisions under review.

A. *Decisions Under Review*

[8] The three work permits applications were denied for the same reason: the Officer was not satisfied the Applicants would leave Canada at the end of their authorized stays, based on personal assets and financial status and the purpose of their visits. The Decision letters are identical.

[9] The Global Case Management System [GCMS] notes are also identical for each Applicant, with the exception of noting their specific roles in Smart Smile and their Iranian bank information. The GCMS notes for the Applicant Karimi (with the differences underlined) state:

I have reviewed the application.

Taking the applicant's proposed employment into account, the documentation provided in support of the applicant's financial situation does not demonstrate that the applicant is sufficiently established that travelling to Canada with dependents for the proposed employment would be a reasonable expense.

The bank statement provided by Bank Melli does not include transaction history, meaning I am unable to assess source of funds. I am not satisfied LICO would be met for the family unit over a period of 52 weeks.

The applicant has applied under the Start Up Visa Program as the CEO of RAD Smart Smile AI Inc.

Part of the rationale for the urgent business need to travel to Canada pertains to the need for in-person mentorship with the Manitoba Technology Accelerator in Winnipeg. The application also states that due to sensitivity and confidentiality of information, the dentists are not able to share information with the team as long as they are not in Canada and cite a non-disclosure agreement in support of this. However, despite being goverened [sic] by BC Law, the non-disclosure agreement does not prohibit the sharing of information virtually. Therefore, I am not satisfied that there is an urgent business reason that the applicant needs to come to Canada before permanent residence is obtained.

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.

II. Issue and Standard of Review

[10] The Applicants argue the Decisions are unreasonable and they raise procedural fairness arguments. As the reasonableness analysis is determinative of these applications, I need not address the procedural fairness arguments.

[11] The standard of review for the Decisions is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). As stated by the Supreme Court in *Vavilov*, a reasonable decision is one that possesses the hallmarks of reasonableness – justification, transparency and intelligibility – within the decision-making process (*Vavilov* at paras 86, 99). With respect to justification, it is not enough for an outcome to be justifiable. Instead, where reasons for a decision are required, the decision must also be justified, in those reasons, by the decision-maker to those whom the decision applies (*Vavilov* at para 99).

III. Relevant Regulations and Policies

[12] The applicable sections of the *IRPR* can be found in Schedule A.

[13] The Start-Up Business Class Work Permit program [Program] eligibility requirements, per the Immigration, Refugees and Citizenship Canada website, are as follows:

- the applicant must intend to reside in a province or territory other than Quebec;
- an Offer of Employment to a Foreign National Exempt from a Labour Market Impact Assessment (LMIA) [IMM5802] has been completed by foreign national as ‘self-employed’ and the form and employer compliance fee have been submitted to IRCC;
- a Commitment Certificate must have been issued by a designated entity indicating that the work permit applicant is “essential” and there are urgent business reasons for the applicant’s early entry to Canada (i.e. section 8.0 of the Commitment Certificate is completed);
- letter of support linked to a Commitment Certificate has been issued by a designated entity;

- the applicant must have sufficient funds to meet the low income cut off for their family size for 52 weeks.

(<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/provincial-nominees-permanent-resident-applicants/work-permits-start-business-class-permanent-resident-visa-applicants.html>)

IV. Analysis

A. *Are the Decisions Reasonable?*

[14] As noted, each visa application was denied for the same reasons, being the Officer was not satisfied the Applicants would leave Canada at the end of their authorized stays based on personal assets and financial status and the purpose of their visits. I will address these factors below.

(1) Leave Canada at the End of the Authorized Stay

[15] In the context of this Program, that has as its objective a path to permanent residence, the Officer's finding that the Applicants would not leave Canada at the end of their authorized stay is contrary to the very purpose of the Program.

[16] This Program was considered by Justice Diner in *Serimbetov v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 1130, where he found as follows in a similar context:

[29] It was unreasonable for the Officer to rely on (a) family ties, and (b) purpose of the Applicants' visit, to conclude that they were unlikely to leave Canada at the end of their authorized stay. The Program, as described above, has as its primary objective

permanent residence in Canada on the basis of start-up entrepreneurship. As such, the refusals on the basis of family ties – absent reasonable justification for this basis of refusal – when the work permit applications were expressly intended as a precursor to a forthcoming permanent residency application, was not only inconsistent with the purpose of the Program, but it was also illogical. Indeed, this is a classic case of dual intent as permitted under s. 22(2) of the Act. After all, the Program allows applicants to come to Canada on a work permit before submitting their application for permanent residence, as long as they have a Commitment Certificate, along with a Support Letter from their designated entity.

[30] For the same reasons, the Officer's consideration of the purpose of the Applicants' visit was unreasonable, as guidance from IRCC indicates that work permits allow applicants to enter Canada and begin working while their application for permanent residence is still pending (*Application Guide* at s. 6.5). This is the exact purpose that the Applicants sought to pursue in their applications, and for which due diligence had already been conducted by the Designated Entity. If the Officer doubted their purpose in coming to Canada was for the establishment and launch of the business, or that a lack of due diligence had been done by the Applicants, that should have been explained. Instead, the Decisions also lacked reasonable justification as a basis for refusal. An example of a reasonable justification for finding that the Applicants were unlikely to leave Canada at the end of their authorized stay could have been, for instance, evidence of prior non-compliance with immigration laws (*Gulati v Canada (Citizenship and Immigration)*, 2021 FC 1358 at para 11; *Rosenberry v Canada (Citizenship and Immigration)*, 2012 FC 521 at para 115). However, there is no indication that any of these Applicants have ever breached an immigration law and no justification was provided for any such concern.

[31] In the absence of any other indication of why the Officer was not satisfied the Applicants would leave Canada at the end of the period authorized for their stay, I find the Officer's Decisions were both lacking in rationale and justification, given the parameters of the Program and the work permits filed under it.

[Emphasis added.]

[17] The same situation arises here, where the Officer's reasons do not consider the specific Program under which the Applicants were applying. Given that the very purpose of the work visa is to facilitate the establishment of a business in Canada while a permanent residence application is pending, there should be no reason for the Applicants to plan to leave Canada once their work permits expire.

[18] Furthermore, even if the Officer had concerns despite the Program, the GCMS notes do not provide any explanation to justify these concerns. There is no evidence of any past immigration non-compliance for any of these Applicants. There is also no indication or explanation that the Officer had concerns about the genuineness of the Applicants purpose in coming to Canada, namely to establish Smart Smile.

[19] As noted by Justice Gascon in *Aghaalkhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at paragraph 21 [*Aghaalkhani*], “[i]n the absence of evidence suggesting or implying a risk of not leaving Canada, and faced with evidence indicating exactly the opposite, a justification for the Officer's conclusion to the contrary was required.”

[20] The conclusion of the Officer that the Applicants would not leave Canada at the end of their stays is not justified and is therefore unreasonable.

(a) *Establishment in Iran*

[21] The Applicants argue it is unclear how the Officer could have concluded there was insufficient evidence of establishment in Iran based upon the documents submitted.

[22] The Applicant Karimi's application included evidence of his prior work experience and future employment prospects; proof of financial means; proof of property ownership; and strong family ties to Iran. Further, the Applicant Karimi also has an offer of employment upon his return to Iran.

[23] Likewise, the Applicant Afjehsoleymani provided evidence in her application detailing her prior work experience and future employment prospects; her financial means; proof of property ownership; and her strong family ties to Iran. The Applicant Afjehsoleymani also has an offer of employment upon her return to Iran.

[24] Finally, the Applicant Barari also provided evidence of his prior work experience and future employment prospects; proof of financial means and property ownership; proof of ownership of shares in an Iranian company; proof of his Iranian pension entitlement; and strong family ties to Iran. The Applicant Barari also has an offer of employment upon his return to Iran.

[25] The Officer makes no explicit findings on this evidence whatsoever. As noted in *Aghaalikhani* at paragraph 17 “[w]here parts of the evidence are not considered or are misapprehended, where the findings do not flow from the evidence and where the outcome is not defensible, a decision will not withstand such probing examination.”

[26] For this reason, the Officer's treatment of the Applicants' evidence of establishment in Iran is unreasonable.

(b) *Personal Assets and Finances*

[27] It is useful to briefly summarize the financial information provided by each Applicant.

[28] In his application, the Applicant Karimi included bank account information showing a balance of what would be \$80,183.40 CAD. He also provided an employment letter demonstrating his income, as well as the deed for a property owned in Iran.

[29] In the Decision, the Officer states the Applicant Karimi's proof of funds is insufficient, as it did not meet the Low Income Cut Off [LICO] for a four-person family unit. The Applicant Karimi asserts the 2020 LICO for a family of four is \$48,167 CAD annually. The Applicant argues the Officer's conclusion is not consistent with the evidence demonstrating funds in excess of the LICO minimum, and the evidence of his employment, asset ownership, and monthly income.

[30] The Applicant Afjehsoleymani provided evidence showing a bank account balance of what is \$54,077 CAD, proof of her and her husband's profession in Iran, and the deed for a property owned in Iran.

[31] In the Afjehsoleymani Decision, the Officer also concludes the proof of funds is insufficient and did not meet the LICO for a two-person family unit. The Applicant Afjehsoleymani asserts the LICO for a family of two in 2020 is \$32,270 CAD annually. The Applicant contends she demonstrated funds in excess of the LICO minimum and

provided substantial evidence of her establishment in Iran through proof of employment, asset ownership, and spouse's income.

[32] For the Applicant Barari, the evidence is that he has a bank account balance of what calculates to \$260,143.43 CAD. He also provided proof of his and his spouse's work in Iran, along with deeds for several properties owned in Iran.

[33] Despite this evidence, the Officer concludes that the evidence did not meet the LICO for the family unit. The Applicant Barari asserts the 2020 LICO for a family of two is \$32,270 CAD annually. The Applicant Barari contends he demonstrated funds in excess of the LICO minimum and provided substantial evidence of his establishment in Iran through proof of employment, asset ownership, and monthly income.

[34] The Respondent argues it was reasonable for the Officer to be concerned about the Applicants' personal assets and financial status, as there was no transaction history provided with the bank account statements that would permit the Officer to determine the source of the funds. The Respondent submits this lack of transaction history and corresponding source of funds undermined whether the funds were available for use in Canada. The Respondent relies upon *Muthui v Canada (Citizenship and Immigration)*, 2014 FC 105 at paragraph 38 [*Muthui*], where Justice Strickland held:

The absence of an explanation as to the source of the settlement funds also brings into question whether the funds are really available to the Applicant. That is because, for example, funds could conceivably be transferred from an account of a third party to an applicant's account to document, for purposes of his or her application, that the required funds were at hand. The funds could

then be returned to the third party once a visa was issued. There is, of course, nothing to suggest that this was the situation in this case. I provide this scenario as an example intended only to underscore why such information is relevant, requested and must be provided by an applicant. Other reasons may include ensuring that the source is not from the proceeds of crime or other illegal source.

[35] However, the circumstances in *Muthui* are different from these cases. In *Muthui* the applicant had attended an interview with a Canada Border Services Agency officer, who expressly asked her about her bank accounts and where the funds had come from. She was asked to bring documentation showing her transaction history, as there were genuine questions about the veracity of those accounts that were raised with the applicant. The applicant admitted in the interview that she had not been truthful about the bank accounts held by her and her husband in her initial application. The officer also had concerns about the fact that large amounts of money had been transferred from an undisclosed account and the fact that the funds may be encumbered by certain debts, such as student loans and a mortgage.

[36] In my view, *Muthui* does not assist the Respondent, as the Officer did not request that the Applicants provide detailed banking statements showing a transaction history. Furthermore, the Officer does not articulate any reason to doubt the veracity of the Applicants' banking documents. The Applicants also provided evidence of their employment in Iran, which would appear to support their financial status. There is no evidence, or explanation in the Decisions, that these funds came from an alternative source or are otherwise not genuine.

[37] The Decisions do not provide any explanation as to why the Applicants did not meet the LICO requirements, especially when the bank account figures were in excess of the LICO for their respective family units.

[38] Overall, there is a lack of justification or transparency as to how the Officer reached the conclusions on personal assets and financial status in light of evidence to the contrary. It appears that the Officer simply and unreasonably failed to grapple with the evidence.

V. Conclusion

[39] I acknowledge that a visa officer has discretion in assessing applications and I accept the detailed reasons are neither required nor expected. However, it is expected that on a reading of the officer's decision, however brief, the Court can delineate why the officer reached their decision. I cannot do so here. Perhaps most glaring is the Officer's finding that the Applicants would not leave Canada at the end of their work visas. This finding fails to properly consider these applications within the specific scheme they applied under—which is specifically aimed at individuals intending to become permanent residents in Canada under the entrepreneurship stream. The Program is not designed to be a temporary work visa, but a pathway or a step to facilitate permanent residence, specifically in the context of start-ups.

[40] For these reasons, these judicial review applications are granted.

JUDGMENT IN IMM-4221-22, IMM-4222-22 AND IMM-4223-22

THIS COURT'S JUDGMENT is that:

1. These three applications for judicial review are granted and the applications shall be reconsidered by a different officer.

2. There is no question for certification.

"Ann Marie McDonald"

Judge

Schedule A – Immigration and Refugee Protection Regulations, SOR/2002-227

98.01 (1) For the purposes of subsection 12(2) of the Act, the start-up business class is prescribed as a class of persons who may become permanent residents on the basis of their ability to become economically established in Canada, who meet the requirements of subsection (2) and who intend to reside in a province other than Quebec.

(2) A foreign national is a member of the start-up business class if

(a) they have obtained a commitment that is made by one or more entities designated under subsection 98.03(1), that is less than six months old on the date on which their application for a permanent resident visa is made and that meets the requirements of section 98.04;

(b) they have submitted the results of a language test that is approved under subsection 102.3(4), which results must be provided by an organization or institution that is designated under that subsection, be less than two years old on the date on which their application for a permanent resident visa is made and indicate that the foreign national has met at least benchmark level 5 in either official language for all

98.01 (1) Pour l'application du paragraphe 12(2) de la Loi, la catégorie « démarrage d'entreprise » est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada, qui satisfont aux exigences visées au paragraphe (2) et qui cherchent à s'établir dans une province autre que le Québec.

(2) Appartient à la catégorie « démarrage d'entreprise » l'étranger qui satisfait aux exigences suivantes :

a) il a obtenu d'une ou de plusieurs entités désignées en vertu du paragraphe 98.03(1) un engagement qui date de moins de six mois au moment où la demande de visa de résident permanent est faite et qui satisfait aux exigences de l'article 98.04;

b) il a fourni les résultats — datant de moins de deux ans au moment où la demande est faite — d'un test d'évaluation linguistique approuvé en vertu du paragraphe 102.3(4) provenant d'une institution ou d'une organisation désignée en vertu de ce paragraphe qui indiquent qu'il a obtenu, en français ou en anglais et pour chacune des quatre habiletés langagières, au moins le niveau 5 selon les Niveaux de

four language skill areas, as set out in the Canadian Language Benchmarks or the Niveaux de compétence linguistique canadiens, as applicable;

(c) they have, excluding any investment made by a designated entity into their business, transferable and available funds unencumbered by debts or other obligations of an amount that is equal to one half of the amount identified, in the most recent edition of the publication concerning low income cut-offs published annually by Statistics Canada under the Statistics Act, for urban areas of residence of 500,000 persons or more, as the minimum amount of before-tax annual income that is necessary to support a group of persons equal in number to the total number of the applicant and their family members; and

(d) they have started a qualifying business within the meaning of section 98.06.

(3) No more than five applicants are to be considered members of the start-up business class in respect of the same business.

...

98.03 (1) The Minister must designate the entities referred to in subsection 98.01(2)

compétence linguistique canadiens ou le Canadian Language Benchmarks, selon le cas;

c) il dispose de fonds transférables, non grevés de dettes ou d'autres obligations financières, à l'exception de tout investissement fait par une entité désignée dans son entreprise, d'un montant égal à la moitié du revenu minimal nécessaire, dans les régions urbaines de 500 000 habitants et plus, selon la version la plus récente de la grille des seuils de faible revenu avant impôt publiée annuellement par Statistique Canada au titre de la Loi sur la statistique, pour subvenir pendant un an aux besoins d'un groupe de personnes dont le nombre correspond à celui de l'ensemble du demandeur et des membres de sa famille;

d) il a démarré une entreprise admissible au sens de l'article 98.06.

(3) Le nombre de demandeurs qui peuvent être considérés comme appartenant à la catégorie « démarrage d'entreprise » relativement à la même entreprise ne peut excéder cinq.

...

98.03 (1) Le ministre désigne les entités visées au

according to the following categories:	paragraphe 98.01(2) selon les catégories suivantes :
(a) business incubators;	a) les incubateurs d'entreprises;
(b) angel investor groups; and	b) les groupes d'investisseurs providentiels;
(c) venture capital funds.	c) les fonds de capital-risque.
(2) The Minister may only designate an entity if	(2) Pour être désignée, l'entité doit satisfaire aux exigences suivantes :
(a) it is recognized for its expertise in assessing the potential for and assisting in the success of start-up business opportunities in Canada; and	a) elle est dotée d'une expertise reconnue pour évaluer le potentiel des entreprises et pour faciliter leur réussite au Canada dans le cadre de la catégorie « démarrage d'entreprise »;
(b) it has the ability to assess the potential for and assist in the success of start-up business opportunities in Canada.	b) elle est dotée d'une capacité reconnue pour évaluer le potentiel des entreprises et pour faciliter leur réussite au Canada dans le cadre de cette catégorie.
(3) A designated entity must respect the following conditions:	(3) L'entité désignée doit respecter les conditions suivantes :
(a) it must continue to meet the requirements of subsection (2);	a) elle doit continuer de satisfaire aux exigences prévues au paragraphe (2);
(b) it must enter only into commitments that respect these Regulations;	b) elle ne prend que des engagements qui sont conformes au présent règlement;
(c) it must provide the Minister upon request with information on its activities related to the start-up business class, including information on foreign nationals with whom it has made commitments and the businesses referred to in those commitments;	c) sur demande du ministre, elle fournit les renseignements concernant ses activités liées à la catégorie « démarrage

(d) it must, subject to subsections 98.12(2) and 98.13(4), comply with requirements imposed under subsection 98.12(1) and paragraphs 98.13(2)(b), (c) and (f) and requests made under subsection 98.13(3);

(e) it must comply with the terms of its commitments and with these Regulations; and

(f) it must comply with any federal or provincial law or regulation relevant to the service it provides.

...

98.06 (1) For the purposes of paragraph 98.01(2)(d), a qualifying business with respect to an applicant is one

(a) in which the applicant provides active and ongoing management from within Canada;

(b) for which an essential part of its operations is conducted in Canada;

(c) that is incorporated in Canada; and

(d) that has an ownership structure that complies with

d'entreprise », y compris les renseignements à l'égard des étrangers envers lesquels elle a pris des engagements et des entreprises visées par ces engagements;

d) sous réserve des paragraphes 98.12(2) et 98.13(4), elle se conforme aux exigences prévues au paragraphe 98.12(1) et aux alinéas 98.13(2)b), c) et f) et à toute demande faite en vertu du paragraphe 98.13(3);

e) elle se conforme aux modalités de ses engagements et au présent règlement;

f) elle se conforme à toute loi ou tout règlement fédéral ou provincial qui s'applique au service qu'elle fournit.

...

98.06 (1) Pour l'application de l'alinéa 98.01(2)d), est une entreprise admissible à l'égard d'un demandeur l'entreprise :

a) dont le demandeur assure la gestion de façon active et suivie à partir du Canada;

b) dont une part essentielle des activités est effectuée au Canada;

c) qui est constituée en personne morale au Canada;

d) qui affiche une structure de partage de la propriété conforme aux pourcentages

the percentages established under subsection (3).

(2) A business that fails to meet one or more of the requirements of paragraphs (1)(a) to (c) is nevertheless a qualifying business if the applicant intends to have it meet those requirements after they have been issued a permanent resident visa.

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

(a) the foreign national applied for it in accordance with Division 2;

(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

(c) the foreign national

(i) is described in section 206 or 208,

(ii) intends to perform work described in section 204 or 205 but does not have an offer of employment to perform that work or is described in

établis en vertu du paragraphe (3).

(2) L'entreprise qui ne satisfait pas aux exigences prévues aux alinéas (1)a) à c) est néanmoins une entreprise admissible si le demandeur a l'intention, après s'être vu délivrer un visa de résident permanent, de faire en sorte que l'entreprise satisfasse à ces exigences.

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 :

a) l'étranger a demandé un permis de travail conformément à la section 2;

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;

c) il se trouve dans l'une des situations suivantes:

(i) il est visé aux articles 206 ou 208,

(ii) il entend exercer un travail visé aux articles 204 ou 205 pour lequel aucune offre d'emploi ne lui a été présentée ou il est visé aux articles 207 ou 207.1 et

<p>section 207 or 207.1 but does not have an offer of employment,</p>	<p>aucune offre d'emploi ne lui a été présentée,</p>
<p>(ii.1) intends to perform work described in section 204 or 205 and has an offer of employment to perform that work or is described in section 207 and has an offer of employment, and an officer has determined, on the basis of any information provided on the officer's request by the employer making the offer and any other relevant information, that the offer is genuine under subsection (5), or</p>	<p>(ii.1) il entend exercer un travail visé aux articles 204 ou 205 pour lequel une offre d'emploi lui a été présentée ou il est visé à l'article 207 et une offre d'emploi lui a été présentée, et l'agent a conclu, en se fondant sur tout renseignement fourni, à la demande de l'agent, par l'employeur qui présente l'offre d'emploi et tout autre renseignement pertinent, que l'offre était authentique conformément au paragraphe (5),</p>
<p>(iii) has been offered employment, and an officer has made a positive determination under paragraphs 203(1)(a) to (g); and</p>	<p>(iii) il a reçu une offre d'emploi et l'agent a rendu une décision positive conformément aux alinéas 203(1)a) à g);</p>
<p>(d) [Repealed, SOR/2004-167, s. 56]</p>	<p>d) [Abrogé, DORS/2004-167, art. 56]</p>
<p>(e) the requirements of subsections 30(2) and (3) are met, if they must submit to a medical examination under paragraph 16(2)(b) of the Act.</p>	<p>e) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3).</p>
<p>(2) Paragraph (1)(b) does not apply to a foreign national who satisfies the criteria set out in section 206 or paragraph 207(c) or (d).</p>	<p>(2) L'alinéa (1)b) ne s'applique pas à l'étranger qui satisfait aux exigences prévues à l'article 206 ou aux alinéas 207c) ou d).</p>
<p>(3) An officer shall not issue a work permit to a foreign national if</p>	<p>(3) Le permis de travail ne peut être délivré à l'étranger dans les cas suivants :</p>

- (a) there are reasonable grounds to believe that the foreign national is unable to perform the work sought;
- (b) in the case of a foreign national who intends to work in the Province of Quebec and does not hold a Certificat d'acceptation du Québec, a determination under section 203 is required and the laws of that Province require that the foreign national hold a Certificat d'acceptation du Québec;
- (c) the work that the foreign national intends to perform is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute;
- (d) [Repealed, SOR/2017-78, s. 8]
- (e) the foreign national has engaged in unauthorized study or work in Canada or has failed to comply with a condition of a previous permit or authorization unless
- (i) a period of six months has elapsed since the cessation of the unauthorized work or study or failure to comply with a condition,
- (ii) the study or work was unauthorized by reason only that the foreign national did not comply with conditions imposed under paragraph 185(a), any of subparagraphs
- a) l'agent a des motifs raisonnables de croire que l'étranger est incapable d'exercer l'emploi pour lequel le permis de travail est demandé;
- b) l'étranger qui cherche à travailler dans la province de Québec ne détient pas le certificat d'acceptation qu'exige la législation de cette province et est assujetti à la décision prévue à l'article 203;
- c) le travail que l'étranger entend exercer est susceptible de nuire au règlement de tout conflit de travail en cours ou à l'emploi de toute personne touchée par ce conflit;
- d) [Abrogé, DORS/2017-78, art. 8]
- e) il a poursuivi des études ou exercé un emploi au Canada sans autorisation ou permis ou a enfreint les conditions de l'autorisation ou du permis qui lui a été délivré, sauf dans les cas suivants:
- (i) une période de six mois s'est écoulée depuis soit la cessation des études ou du travail faits sans autorisation ou permis, soit le non-respect des conditions de l'autorisation ou du permis,
- (ii) ses études ou son travail n'ont pas été autorisés pour la seule raison que les conditions visées à l'alinéa 185a), aux sous-alinéas 185b)(i) à (iii) ou

185(b)(i) to (iii) or paragraph 185(c);	à l'alinéa 185c) n'ont pas été respectées,
(iii) section 206 applies to them; or	(iii) il est visé par l'article 206,
(iv) the foreign national was subsequently issued a temporary resident permit under subsection 24(1) of the Act;	(iv) il s'est subséquemment vu délivrer un permis de séjour temporaire au titre du paragraphe 24(1) de la Loi;
(f) in the case of a foreign national referred to in subparagraphs (1)(c)(i) to (iii), the issuance of a work permit would be inconsistent with the terms of a federal-provincial agreement that apply to the employment of foreign nationals;	f) s'agissant d'un étranger visé à l'un des sous-alinéas (1)c)(i) à (iii), la délivrance du permis de travail ne respecte pas les conditions prévues à l'accord fédéral-provincial applicable à l'embauche de travailleurs étrangers;
(f.1) in the case of a foreign national referred to in subparagraph (1)(c)(ii.1), the fee referred to in section 303.1 has not been paid or the information referred to in section 209.11 has not been provided before the foreign national makes an application for a work permit;	f.1) s'agissant d'un étranger visé au sous-alinéa (1)c)(ii.1), les frais visés à l'article 303.1 n'ont pas été payés ou les renseignements visés à l'article 209.11 n'ont pas été fournis avant que la demande de permis de travail de l'étranger n'ait été faite;
(g) [Repealed, SOR/2018-61, s. 1]	g) [Abrogé, DORS/2018-61, art. 1]
(g.1) the foreign national intends to work for an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages; or	g.1) l'étranger entend travailler pour un employeur qui offre, sur une base régulière, des activités de danse nue ou érotique, des services d'escorte ou des massages érotiques;
(h) the foreign national intends to work for an employer who is	h) l'étranger entend travailler pour un employeur qui :
	(i) [Abrogé, DORS/2022-142, art. 6]

- | | |
|--|---|
| <p>(i) [Repealed, SOR/2022-142, s. 6]</p> <p>(ii) ineligible under paragraph 209.95(1)(b), or</p> <p>(iii) in default of any amount payable in respect of an administrative monetary penalty, including if the employer fails to comply with a payment agreement for the payment of that amount.</p> | <p>(ii) soit est inadmissible en application de l'alinéa 209.95(1)b),</p> <p>(iii) soit est en défaut de paiement de tout montant exigible au titre d'une sanction administrative pécuniaire, notamment s'il n'a pas respecté tout accord relatif au versement de ce montant.</p> |
|--|---|

205 A work permit may be issued under section 200 to a foreign national who intends to perform work that

(a) would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents;

(b) would create or maintain reciprocal employment of Canadian citizens or permanent residents of Canada in other countries;

(c) is designated by the Minister as being work that can be performed by a foreign national on the basis of the following criteria, namely,

(i) the work is related to a research program,

(i.1) the work is an essential part of a post-secondary academic, vocational or professional training program offered by a designated

205 Un permis de travail peut être délivré à l'étranger en vertu de l'article 200 si le travail pour lequel le permis est demandé satisfait à l'une ou l'autre des conditions suivantes :

a) il permet de créer ou de conserver des débouchés ou des avantages sociaux, culturels ou économiques pour les citoyens canadiens ou les résidents permanents;

b) il permet de créer ou de conserver l'emploi réciproque de citoyens canadiens ou de résidents permanents du Canada dans d'autres pays;

c) il est désigné par le ministre comme travail pouvant être exercé par des étrangers, sur la base des critères suivants :

(i) le travail est lié à un programme de recherche,

(i.1) il constitue une partie essentielle d'un programme postsecondaire de formation générale, théorique ou

learning institution as defined in section 211.1,

(i.2) the work is an essential part of a program at the secondary level

(A) that is a vocational training program offered by a designated learning institution in Quebec, or

(B) that is a program offered by a designated learning institution that requires students to work in order to obtain their secondary or high school diploma or certificate of graduation, or

(ii) limited access to the Canadian labour market is necessary for reasons of public policy relating to the competitiveness of Canada's academic institutions or economy; or

(d) is of a religious or charitable nature.

professionnelle offert par un établissement d'enseignement désigné au sens de l'article 211.1,

(i.2) il constitue une partie essentielle d'un programme de niveau secondaire:

(A) soit de formation professionnelle offert par un établissement d'enseignement désigné situé dans la province de Québec,

(B) soit offert par un établissement d'enseignement désigné exigeant des étudiants qu'ils occupent un emploi afin d'obtenir leur diplôme d'études secondaires;

(ii) un accès limité au marché du travail au Canada est justifiable pour des raisons d'intérêt public en rapport avec la compétitivité des établissements universitaires ou de l'économie du Canada;

d) il est d'ordre religieux ou charitable.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4221-22

STYLE OF CAUSE: KARIMI ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

DOCKET: IMM-4222-22

STYLE OF CAUSE: AFJEHSOLEYMANI ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

DOCKET: IMM-4223-22

STYLE OF CAUSE: BARARI ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: FEBRUARY 1, 2023

JUDGMENT AND REASONS: MCDONALD J.

DATED: MARCH 24, 2023

APPEARANCES:

Alireza Eftekhardadkhah FOR THE APPLICANTS

Aminollah Sabzevari FOR THE RESPONDENT

SOLICITORS OF RECORD:

Infinity Law Corporation FOR THE APPLICANTS
Victoria, BC

Attorney General of Canada FOR THE RESPONDENT
Vancouver, BC