

Federal Court



Cour fédérale

Date: 20230420

Docket: IMM-3890-22

Citation: 2023 FC 573

Ottawa, Ontario, April 20, 2023

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

VAHID MOUIVAND

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Vahid Mouivand [Applicant] is a citizen of Iran. He applied to and was accepted into Fairleigh Dickinson University's Master of Administrative Science [Program] in Vancouver, British Columbia. He then applied for a study permit to allow him to enter Canada to pursue those studies.

[2] By letter dated April 6, 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 have considered the positive factors outlined by the applicant, including statements or other evidence. The applicant is 31, applying for a Masters of Administrative Science Specialization: Global Technology Administration from Fairleigh Dickinson University. I note that, the applicant obtained a Bachelor's degree in Civil Engineering - Civil in 2014. No indication of further studies since then. The applicant has been employed as a Supervising Structural Engineer since 2016. The study plan does not appear reasonable given the applicant's employment and education history. I note that: - the client's previous studies were in an unrelated field - the client's proposed studies are not reasonable given their career path Client Explanation letter reviewed. The applicant does not demonstrate to my satisfaction reasons for which such an educational program would be of benefit. I am not satisfied that the applicant would leave Canada at the end of their stay as a temporary resident, I note that: - the applicant is single, mobile, not well established and has no dependents. The applicant has not demonstrated sufficiently strong ties to their country of residence. The purpose of visit does not appear reasonable given the applicant's socio-economic situation and therefore I am not satisfied that the applicant would leave Canada at the end of the period of authorized stay. 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] I agree with the parties that, in assessing the merits of the Visa Officer's decision, the standard of review of reasonableness is to be applied (*Canada (Minister of Immigration and Citizenship) v Vavilov*, 2019 SCC 65 at paras 23, 25 [*Vavilov*]) and, for questions of procedural fairness, the standard of review of correctness has application.

Was the Decision Reasonable?

[7] The Applicant submits that the Officer's reasoning that the Applicant will not leave Canada based on his family ties in Canada and in Iran is unreasonable. He submits that the Officer erred by relying on the fact that the Applicant is "single, mobile, not well established and has no dependants" and failing to explain why the Applicant's evidence of his family ties was not satisfactory and how being single lessened those ties. Nor did the Officer assess and weigh the fact that the Applicant's sister resides in Canada or the Applicant's establishment to Iran as explained in his study plan. The Applicant also submits that the Officer's concern about the purpose of the Applicant's visit, based on his employment and education history, is unreasonable as it did not consider all of the evidence presented by the Applicant, including potential promotion upon completion of the Program, his career development and the benefits of the Program to his career. Further, the Applicant submits that the Officer erred in finding that the purpose of the Applicant's visit was not reasonable based on his socio-economic situation, which finding lacks justification.

Analysis

a) Family Ties and Establishment

[8] The Officer stated that they were not satisfied that the Applicant would leave Canada at the end of his stay as a temporary resident, noting that the Applicant is single, mobile, not well established and has no dependents. The Officer found that the Applicant had failed to demonstrate sufficiently strong ties to Iran, his country of residence.

[9] In his study plan, the Applicant states he is the only son of his parents who are in their 50s and 60s, emotionally attached to him and will need him more in the coming years. He states that he has a close bond with his parents and that it will be difficult to be apart from them. He also indicates that he has a sister who is a permanent resident of Canada, lives in Toronto and has offered to provide the Applicant with financial support during his studies in Canada. However, that he will not be living with his sister, his family ties to Iran remain strong and his commitment to return there is not changed by the fact that his sister lives in Canada.

[10] As I found in *Tehrani v Canada (Citizenship and Immigration)*, 2023 FC 159 [*Tehrani*], there is no error in principle in a visa officer noting that an 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. However, that 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 [*Barril*]; *Gilavan v Canada (Citizenship and Immigration)*, 2022 FC 1698 at paras 22, 23 [*Gilavan*]; *Seyedsalehi v Canada (Citizenship and Immigration)*, 2022 FC 1250 at para 11 [*Seyedsalehi*]).

[11] That is, an applicant's marital status, mobility, and lack of dependents are relevant personal factors that can be considered by a visa officer as part of an overall analysis but, without any further analysis, cannot be considered a negative factor (*Tehrani* at paras 18, 19; *Hassanpour* at para 19; *Gilavan* at para 22).

[12] Here, the Officer failed to provide any explanation as to why these factors did not satisfy them that the Applicant would leave Canada at the end of an authorized stay. The Officer does not mention that the Applicant's application indicates that he has two other sisters living in Iran. The Officer does not mention the Applicant's relationship with his parents in Iran, sister in Canada, or weigh the Applicant's submissions about his sister's presence here against the Applicant's ties to Iran. The Officer does not say whether the sister's presence here is overall a negative factor or, given her willingness to provide financial support to the Applicant, a positive one (see *Barril* at para 20; *Bteich v Canada (Citizenship and Immigration)*, 2019 FC 1230 at paras 2, 34; *Rivaz v Canada (Citizenship and Immigration)*, 2023 FC 198 at paras 21-22). Nor is any explanation for the Officer's conclusion readily apparent from the record.

[13] In his study plan, the Applicant also indicated that he had been working for his current employer as a supervising engineer for five years, that following discussion with his employer he

came to understand that he would need a higher education degree to be eligible for a senior management position and, that when he told his employer about his acceptance in the Program, they offered him a promotion to Research and Development Management/Project Manager at a higher salary upon completion of his studies. A letter from his employer confirms the potential change of position. The Applicant said that this would elevate his career path. The Officer did not refer to the Applicant's submissions as to his employment in Iran and did not explain how this factored into their analysis of the Applicant's establishment in Iran.

[14] The Officer does not explain why, given the content of the Applicant's study plan and application, the Applicant failed to demonstrate sufficiently strong ties to Iran. As a result, the finding that the Applicant would not leave Canada based on his family ties and establishment in Iran lacks a rational chain of analysis and justification (*Vavilov* at paras 85, 103-104).

b) Employment and Education History

[15] The Officer noted that the Applicant seeks to complete a Master of Administrative Science Specialization: Global Technology Administration, that in 2014 he had obtained a Bachelor's degree in Civil Engineering and that he has been employed as a Supervising Structural Engineer since 2016. The Officer found that the study plan did not appear reasonable given this employment and education history. The Officer stated that the Applicant's previous studies were in an unrelated field and his proposed studies were not reasonable given his career path, concluding that the Applicant had failed to demonstrate reasons for which such an educational program would be of benefit.

[16] While the Officer indicated that he reviewed the Applicant's explanation letter (presumably the study plan), the Officer does not explain why the rationale given by the Applicant is unsatisfactory. As indicated above, the Applicant set out the potential promotion within his current company, the higher salary and that it would elevate his career path. He also indicated that he wanted to complete the Program because it offered him an opportunity to gain knowledge and skills in management, administration and leadership, which he would need in his new position. He then described how the courses offered would teach him how to apply technology to be used in the company's projects to increase efficiency and profitability as well as other skills, such as strategic management, decision making and critical management and described some of the courses that would assist him in that regard.

[17] While the Officer was not required to refer to every aspect of the Applicant's submissions, this information supported the reasonableness of his proposed course of studies given his intended career path (see *Ahadi v Canada (Citizenship and Immigration)*, 2023 FC 25 at para 15). In my view, by failing to engage with this information the Officer also failed to articulate a rational chain of reasoning supporting their conclusions, rendering the finding unreasonable (*Fallahi v Canada (Citizenship and Immigration)*, 2022 FC 506 at para 17).

[18] The Officer's finding that the Applicant failed to demonstrate reasons for which the Program "would be of benefit" is similarly unreasonable.

c) Socio-economic considerations

[19] The Officer found that purpose of the Applicant's visit did not appear reasonable "given the applicant's socio-economic situation" and therefore the Officer was not satisfied that the applicant would leave Canada at the end of the period of authorized stay. The Officer provides no justification for this conclusion. The materials before the Officer indicated that the Applicant had already paid the first year tuition of CAD\$23,830 in full and had savings to pay for his education in Canada. I am unable to ascertain from the reasons or the record what the Officer thought the Applicant's socio-economic situation was or how the material before them supported the Officer's finding that this would be a reason for the Applicant not to leave Canada after he finished his proposed course of studies (see *Aghdam v Canada (Citizenship and Immigration)*, 2022 FC 1685 at paras 10-11).

[20] For all of these reasons the decision is unreasonable and the application must be granted.

Procedural Fairness

[21] The Applicant submits that, even though there is no clear indication in the GCMS notes that the Officer doubted the veracity of the documents submitted by the Applicant or his information, given the strong evidence provided by the Applicant, the Officer's decision must have been based on credibility findings and, therefore, he was entitled to an opportunity to reply.

[22] I disagree. Nothing in the Officer's reasons suggest that credibility was in issue or that a veiled credibility finding was made.

JUDGMENT IN IMM-3890-22

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

DOCKET: IMM-3890-22

STYLE OF CAUSE: VAHID MOUIVAND v MINISTER OF CITIZENSHIP
AND IMMIGRATION

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DATE OF HEARING: APRIL 5, 2023

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