

Federal Court



Cour fédérale

Date: 20230428

Docket: IMM-6396-22

Citation: 2023 FC 626

Vancouver, British Columbia, April 28, 2023

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

**SALVA ROUDEHCHIANAHMADI
AND MILAD DAMIRCHI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an Application for judicial review of a decision by a Visa Officer [the Officer], dated June 18, 2022, refusing the Applicant's Application for a study permit under section 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2022-227 [IRPR], and denying, by extension, her husband's application for an open work permit [the Decision].

[2] For the reasons that follow, the application is granted.

II. Context

A. *Background facts*

[3] The Applicant is a citizen of Iran. She applied for a study permit to study in Canada with her husband to accompany her. They have no children but family members in Iran. The Applicant had previously earned a Master's Degree in Architectural Engineering and a Bachelor of Science in Information Technology from Iranian universities. She has been employed as an Architectural Engineer since 2019.

[4] In applying for a study permit, the Applicant stated that she sought to advance her education by pursuing a two-year Master's Degree in Energy Management at the New York Institute of Technology [NYIT] campus in Vancouver, BC. The estimated tuition for one academic year at NYIT is USD \$21,207.85, and the Applicant prepaid a USD \$7,781.85 tuition deposit. According to her application, her employer had offered to promote the Applicant to the role of "Senior Architect", contingent upon the completion of a Master's degree in the field of Energy Management from a developed country. The employer also offered a scholarship of approximately CAD \$3,250.00 in return for her continued employment following the completion of the program.

A. *Decision under review*

[5] In a decision dated June 18, 2022, the Officer refused the Applicant's study permit application on the basis that:

- Her assets and financial situation are insufficient to support the stated purpose of travel for herself and any accompanying family member, and
- The purpose of her visit to Canada is not consistent with a temporary stay given the details she has provided in her application.

[6] The accompanying Global Case Management System (GCMS) notes, which form part of the reasons, state:

I have reviewed the application. Evidence of available funds associated with assets such as a vehicle, rental properties, or potential income have not been included in the calculation of available funds. Due to the unstable economic climate in Iran and fluctuations within international exchange rates, I place less value to the purported funds available. Taking the applicant's plan of studies into account, the documentation provided in support of the applicant's financial situation does not demonstrate that funds would be sufficient or available. I am not satisfied that the proposed studies would be a reasonable expense. PA is applying to study Masters in Energy Management. Previously obtained Masters in Architecture and currently employed as Architect. The client has previous studies at a same academic level than the proposed studies in Canada. Offer for Senior Architect upon completion of the program noted. Considering applicant's education and previous work experience, I am not satisfied that applicant would not have already achieved the skills or benefits of this program. In light of the PA's previous study and current career, I am not satisfied that this is a reasonable progression of studies. 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] In the related decision, the Applicant's husband's work permit application was also refused on the grounds that the purpose of his visit to Canada was not consistent with a temporary stay given the details provided in his application.

III. Issues and Standard of Review

[8] While the Applicant has suggested in her written materials that the Decision raises the issues of both reasonableness and procedural fairness, she made no specific submissions on the latter question.

[9] From my review of the evidence and the parties' submissions, the sole issue is whether the Decision is reasonable. Reasonableness is the presumptive standard of review of administrative decisions on their merits: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[10] To determine whether the decision is reasonable, the reviewing court must ask "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 paras 86 and 99.

[11] This matter centers around the two main findings by the Officer: (1) that the Applicant did not demonstrate that she possesses sufficient financial resources to fund the stated purpose of her travel to Canada, and (2) that the Applicant's proposed studies are unreasonable and inconsistent with a temporary stay in Canada.

IV. Analysis

A. *The sufficiency of the Applicant's funds to support the stated purpose of travel*

[12] The Applicant contends that the Officer failed to consider relevant evidence in the record, including evidence of assets, and based the decision on “subjective speculations and unfounded generalizations”. She argues that the Officer did not justify the conclusion that her ability to support herself and her husband was not sufficiently substantiated. The evidence of available funds was enough to support them for the first year of her studies and that is all that is required by the Minister’s operational instructions and guidelines on study permits: *Cervjakova v Canada (MCI)*, 2018 FC 1052 at para 14; *Chantale v Canada (MCI)*, 2021 FC 544 at para 11; *Barril v Canada (MCI)*, 2022 FC 400 at para 15 [*Barril*]; *Naeem v Canada (MCI)*, 2022 FC 391 at para 22; *Motlagh v Canada (MCI)*, 2022 FC 1098 at para 25; *Lingepo v Canada (MCI)*, 2021 FC 552 at para 20; *Jalilvand v Canada (MCI)*, 2022 FC 1587 at para 16.

[13] The Respondent submits that an officer is presumed to have considered the whole of the evidence and is not required to reference each piece of the evidence in their reasons, and the obligation to provide reasons for any temporary resident application is “minimal”: *Solopova v Canada (MCI)*, 2016 FC 690 at para 28; *Zamor v Canada (MCI)*, 2021 FC 479 at para 20-22.

[14] The Respondent concedes that the guidelines indicate that student applicants are required to demonstrate financial sufficiency for only the first year of studies, regardless of the duration of the course or program of studies in which they are enrolled. However, the Respondent argues, officers are not bound by the guidelines and it is reasonable for an officer to refuse a study

permit application on the basis that the applicant has failed to demonstrate sufficient funds to cover the entire duration of the program: *Ibekwe v Canada (MCI)*, 2022 FC 728 at para 29; *Ocran v Canada (MCI)*, 2022 FC 175 at para 44 [*Ocran*]; *Onyeka v Canada (MCI)*, 2017 FC 1067 at para 12; *Kavugho-Mission v Canada (MCI)*, 2018 FC 597 at para 17.

[15] In this instance, the Respondent argues, based on the information provided by the Applicant, the funds available to her would not be sufficient to pay the expenses anticipated over the duration of the two-year program for tuition and living expenses.

[16] The Minister's Operational Guidelines for visa officers considering study permits state that:

Students are required to demonstrate financial sufficiency for only the first year of studies, regardless of the duration of the course or program of studies in which they are enrolled. In other words, a single student entering a four-year degree program with an annual tuition fee of \$15,000 must demonstrate funds of \$15,000 to satisfy the requirements, and not the full \$60,000 which would be required for four years. Officers should be satisfied however that the probability of funding for future years does exist (i.e., parents are employed); scholarship is for more than one year.

[emphasis added]

[17] It is therefore open to an officer to conclude that the probability of funding for future years is not established as would be the case, for example, if an applicant has depleted her assets and has failed to demonstrate that there is any other possible source of funding for the remainder of the program. There is no indication in the reasons in this matter that the Officer meaningfully grappled with the evidence that showed the potential of future income. Moreover, the Officer's emphasis on the "unstable economic climate" in Iran failed to take into account the Applicant's

personal factors that may have made it feasible for her to fund her studies. This was, in my view, unreasonable.

B. *The reasonableness of the proposed studies*

[18] The Applicant argues that it is unclear from the reasons how the Officer arrived at the conclusion that her proposed educational program would not be beneficial for her career objectives. The fact that the program is at the same academic level as her previous education should not have been a significant factor, she argues. It was necessary for the Officer to consider the differences between the two programs: *Barril* at para 26.

[19] The Respondent contends that the Applicant bears the onus to satisfy the officer of the merits of the study plan and an officer may refuse to grant a permit in the absence of a plan specifying the program's utility to the applicant in light of their background and professional objectives: *Charara v Canada (MCI)*, 2016 FC 1176 at para 36 and 38; *Ocran* at para 24.

[20] In her statement of purpose, the Applicant explained in considerable detail why she wants to study Energy Management and how she believed that it would advance her career and the work of her employer. She wrote:

Since the company intends to develop energy-efficient architectural designs and green buildings services, they need knowledgeable staff to execute the relevant projects proficiently. What they require is infusing energy-saving tools and techniques into architectural engineering to be able to respond to the market requirement. They believe that adding this feature to the company services will immensely increase the projects' financial returns. Therefore, the academic knowledge of energy management is a prerequisite for the role. The availability of such a position in a

well-known company that will bring further recognition and increased salary strengthened my determination to make a concerted effort and study at university.

[...]

Organizational skills, decision-making abilities, and human resourcing management are fundamental regarding my duties in the new post. Therefore, I searched for a decent program that presents both energy management and managerial knowledge since I lack specialized knowledge of both fields.

[Emphasis added]

[21] The Officer needed to consider the difference between the Applicant's previous Master's degree and the proposed program: *Barril* at para 26. Thus, the Officer's belief that the Applicant may have already achieved the skills or that there are no clear benefits to the program is speculation that has no basis on the record.

[22] The reasons for the Decision are silent on the positive factors that lean in favour of the Applicant being a *bona fide* student and her ties back to Iran. For example, in addition to the factors outlined in the Applicant's submissions, the Applicant stated in her statement of purpose that caring for her beloved parents as an only child is a strong motivator to return to her home country and that she has no relatives in Canada. Additionally, the Applicant explained that she enjoys her work as an architect in Iran, that it is a well-respected job with a good salary, which would be augmented on her return after the completion of the proposed program.

V. Conclusion

[23] I am satisfied that the Officer's findings regarding the Applicant's available funds and purpose of study are not reasonable based on the reasons provided. The Officer did not

meaningfully engage with the evidence provided by the Applicant and the decision is not justified by the reasons.

[24] The application is therefore granted and the matter remitted for reconsideration by another officer. No serious questions of general importance were proposed and none will be certified.

JUDGMENT IN IMM-6396-22

THIS COURT'S JUDGMENT is that the application is granted and the matter is remitted for reconsideration by a different officer. No questions are certified.

"Richard G. Mosley"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6396-22

STYLE OF CAUSE: SALVA ROUDEHCHIANAHMADI AND MILAD
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