Federal Court  Cour fédérale

Date: 20230524

Docket: IMM-6478-22

Citation: 2023 FC 732

Vancouver, British Columbia, May 24, 2023

PRESENT: Mr. Justice Gascon

BETWEEN:

SEYEDEHSEPIDEH NOURANI AND ALIREZA KARBASI

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The main applicant, Ms. Seyedehsepideh Nourani, is a citizen of Iran. Ms. Nourani seeks judicial review of a decision rendered on June 23, 2022 [Decision] by a visa officer [Officer] of Immigration, Refugees and Citizenship Canada, denying her study permit application. The Officer was not satisfied that Ms. Nourani would leave Canada at the end of her stay, as required

by paragraph 216(1)b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[2] Ms. Nourani submits that the Decision is unreasonable, because the Officer misconstrued and ignored the evidence and failed to provide justification for their findings. In addition, Ms. Nourani claims that the Officer breached her procedural fairness rights by failing to give her an opportunity to respond to their concerns.

[3] For the reasons that follow, Ms. Nourani's application for judicial review will be granted. Having considered the Decision, the evidence before the Officer and the applicable law, I am satisfied that Ms. Nourani discharged her burden of proving that the Decision is unreasonable, as it fails to grapple with the key submissions made by Ms. Nourani with respect to her study plan. However, I do not agree that the Officer breached Ms. Nourani's procedural fairness rights in rendering the Decision, since the Officer determined that, in their view, the evidence adduced by Ms. Nourani was insufficient to meet the applicable legislative and regulatory requirements.

II. **Background**

A. ***The factual context***

[4] In January 2014, Ms. Nourani, who is now 30 years old, obtained her Bachelor's Degree in Business Management from Mazandaran University in Babol, Iran.

[5] After completing her studies, Ms. Nourani held various managerial positions in different companies. Since March 20, 2020, Ms. Nourani has been working as a Store and Sales Manager at TAC Bed Linens Agency [TAC], in Iran.

[6] On March 25, 2022, Ms. Nourani received her letter of acceptance from Thompson Rivers University located in Kamloops, British Columbia, in order to obtain a Post-Baccalaureate Diploma in Entrepreneurship [Program].

[7] On May 11, 2022, Ms. Nourani applied for a study permit in Canada. In her study permit application, she presented a detailed statement of purpose explaining her study plan and provided supporting documentation. Ms. Nourani also mentioned that her husband, Mr. Alireza Karbasi, would accompany her to Canada, but that her parents and sibling would remain in Iran. Mr. Karbasi, who is also an applicant in this matter, sought an open work permit from the Canadian immigration authorities for the duration of Ms. Nourani's studies.

B. *The Officer's Decision*

[8] As is typically the case for refusals of study permits, the Decision takes the form of a standard letter where the Officer indicates that they were not satisfied that Ms. Nourani will leave Canada at the end of her authorized stay. In the letter, the Officer mentioned that the refusal was based on two factors, namely, that Ms. Nourani did not have significant family ties outside Canada, and that the purpose of her visit was not consistent with a temporary stay given

the details she provided in her application. Mr. Karbasi's work permit application was also refused by the Officer.

[9] The Decision includes the Officer's notes located in the Global Case Management System [GCMS] (*Sharma v Canada (Citizenship and Immigration)*, 2020 FC 381 at para 7), where the Officer details the reasons for the conclusion reached.

[10] The GCMS notes reveal that the Officer was first concerned with Ms. Nourani's study plan. The Officer noted that while the Program has a "business focus reinforcing the education purpose", Ms. Nourani demonstrated that she already possesses this set of skills from her work experience. Additionally, the Officer observed that Ms. Nourani's letter from her employer did not refer to any guaranteed promotion upon her return from Canada, contrary to what she stated in her application. The employer's letter simply says that Ms. Nourani is expected to return to work for TAC after her studies.

[11] The Officer also considered that Ms. Nourani's ties to her country of citizenship would be weakened because her husband would accompany her to Canada during her studies. Consequently, the Officer held that he was not satisfied that Ms. Nourani would have sufficient motivation to go back to Iran at the end of her studies in Canada.

C. *The relevant provisions*

[12] The relevant provisions of the *Immigration and Refugee Protection Act*, SC 2001, c 27 are subsections 11(1) and 22(2), which provide that a person wishing to become a temporary resident of Canada must satisfy an officer that "she or he meets the requirements of the Act" and that "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". Paragraph 216(1)(b) of the IRPR further requires a study permit applicant to establish that he or she "will leave Canada by the end of the period authorized for their stay". Thus, it is well accepted and clear that an applicant for a study permit bears the burden of satisfying the visa officer that he or she will not remain in Canada once the visa has expired (*Kavugho-Mission v Canada (Citizenship and Immigration)*, 2018 FC 597 at para 7; *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 [*Solopova*] at para 10).

D. *The standard of review*

[13] Ms. Nourani and the Minister of Citizenship and Immigration [Minister] both submit that the correctness standard applies to issues of procedural fairness, while the standard of reasonableness applies to the remainder of the Decision. I agree with them on the latter.

[14] It is well established that the standard of reasonableness applies to an officer's assessment of an application for a study permit when the officer is not satisfied that the applicant

will leave Canada at the end of their stay (*Ilaka v Canada (Citizenship and Immigration)*, 2022 FC 1622 at para 10; *Hasanalideh v Canada (Citizenship and Immigration)*, 2022 FC 1417 at para 4; *Abbas v Canada (Citizenship and Immigration)*, 2022 FC 378 [*Abbas*] at para 14; *Marcelin v Canada (Citizenship and Immigration)*, 2021 FC 761 at para 7; *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 11; *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 11; *Solopova* at para 12). Moreover, since the Supreme Court of Canada decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], there is a presumption that reasonableness is the applicable standard of judicial review whenever a reviewing court considers the merits of an administrative decision.

[15] Reasonableness focuses on the decision made by the administrative decision maker, which encompasses both the reasoning process and the outcome (*Vavilov* at paras 83, 87). Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). The reviewing court must therefore consider whether the “decision bears the hallmarks of reasonableness—justification, transparency and intelligibility” (*Vavilov* at para 99).

[16] A judicial review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must begin its inquiry by examining the reasons provided with “respectful attention”, and seek to

understand the reasoning process followed by the decision maker to arrive at its conclusion (*Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13), without "reweighing and reassessing the evidence" before it (*Vavilov* at para 125).

[17] The onus is on the party challenging the administrative decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 [*Mason*] at para 36).

[18] However, the standard of review applies differently on procedural fairness issues. It is true, as both Ms. Nourani and the Minister argue, that many courts have stated that the standard of correctness applies to procedural fairness issues. But the Federal Court of Appeal has repeatedly held that procedural fairness does not truly require the application of the usual standards of judicial review (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24–25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General*), 2018 FCA 69 [*CPR*] at para 54). Rather, it is a legal question that must be assessed on the basis of the circumstances and which requires the reviewing court to determine whether or not the procedure

followed by the administrative decision maker respected the standards of fairness and natural justice (*CPR* at para 56; *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paras 51–54).

[19] Thus, when procedural fairness and alleged breaches of fundamental justice are the object of an application for judicial review, the reviewing court must take into account the particular context and circumstances at issue. Its role is to determine whether the process followed by the administrative decision maker was fair and offered the affected parties a right to be heard as well as a full and fair chance to know and respond to the case against them. The reviewing court owes no deference to the decision maker when considering issues of procedural fairness.

III. **Analysis**

A. ***Reasonableness of the Decision***

[20] Under paragraph 216(1)(b) of the IRPR, applicants for a study permit bear the burden of satisfying the visa officer that they will leave Canada at the end of the period authorized for their stay. This Court held, on multiple occasions, that "[t]he visa officer has wide discretion in assessing the evidence and coming to a decision. However, the decision must be based on reasonable findings of fact" (*Akomolafe v Canada (Citizenship and Immigration)*, 2016 FC 472 at para 12, citing *Zhang v Canada (Minister of Citizenship and Immigration*), 2003 FC 1493 at para 7).

[21] Ms. Nourani maintains that the Decision is unreasonable because the Officer failed to explain their insufficiency findings and disregarded relevant and substantial evidence she had submitted regarding her study plan and her family ties in Iran.

[22] With respect, I am not persuaded that, as far as Ms. Nourani's family ties are concerned, the reasons do not allow Ms. Nourani or the Court to understand the rationale for the conclusion reached by the Officer. While the reasons for the Officer's findings could have been more elaborated or better explained, I am of the opinion that they provide a logical explanation for the result. However, I agree with Ms. Nourani that the Officer's conclusions on her study plan are neither logical nor justified, and are not responsive to her main submissions. This error is a serious shortcoming that taints the Officer's underlying reasoning and the outcome of the Decision (*Vavilov* at para 100), to a point that warrants the Court's intervention.

(1) **Family ties outside Canada**

[23] Regarding Ms. Nourani's family ties outside Canada, the Officer noted that "[t]he ties to Ms. Nourani's home country are weaken[ed] with the intended travel to Canada involving their immediate family, as the motivation to return will diminish with the applicant's immediate family members residing with them in Canada." The ties to an applicant's home country, such as family or economic ties, are often assessed against the incentives that might induce a foreign national to overstay in Canada (*Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at para 14).

[24] In the circumstances, I do not agree with Ms. Nourani that the Officer overlooked the evidence in her Family Information form that she still has strong ties in Iran, despite her husband accompanying her. I am rather of the opinion that the Officer's statement acknowledges Ms. Nourani's family ties in Iran, but that the Officer determined that these ties were undermined by her husband travelling with her. Such a finding is a factual one for which the Officer is owed deference, as nothing indicates that contradictory evidence was ignored or that the Officer's analysis relies on an illogical reasoning (*Khaleel v Canada (Citizenship and Immigration)*, 2022 FC 1385 [*Khaleel*] at para 50). I am mindful of the fact that Ms. Nourani stressed in her application that she and her husband were close to their respective families and that they "are determined to return to Iran and live near [their] beloved ones in [their] homeland." However, in light of the fact that Ms. Nourani's most important family tie — her husband — would accompany her in Canada, I find that it was open to the Officer to determine that Ms. Nourani was left with weaker family ties in Iran.

[25] It is trite law that a visa officer is presumed to have considered all the evidence (*Khaleel* at para 38; *Ahmed v Canada (Citizenship and Immigration)*, 2013 FC 1083 at para 34). In this case, I am not persuaded that the Officer failed to account for contradictory evidence or misapprehended some of it. I would perhaps not have reached the same conclusion as the Officer, but this is not the test to be applied on an application for judicial review. What I have to determine is whether the conclusion arrived at by the Officer meets the standard of reasonableness.

[26] In my view, that part of the Decision bears the hallmarks of reasonableness, which are justification, transparency, and intelligibility (*Vavilov* at para 99). Ms. Nourani's arguments are

grounded in her criticism of the Officer's assessment of the evidence she submitted. However, on judicial review, a reviewing court must not re-weigh and reassess the evidence brought before the decision maker. A reviewing court is only permitted to interfere with factual findings of an administrative decision maker in exceptional circumstances (*Vavilov* at para 125; *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55). While the Court might not agree with the decision maker, if its reasoning is internally coherent and justified in light of the legal and factual constraints that bear on the decision, the reviewing court should refrain from intervening. As long as all the evidence has been properly examined, the question of the weight remains entirely within the expertise of the visa officer. This is the case for the Officer's conclusion on Ms. Nourani's family ties.

[27] I pause to observe that, at the hearing, counsel for the Minister reviewed the record to emphasize the fact that Ms. Nourani and her husband apparently both had professional activities related to TAC, and that this element somehow supported the Officer's conclusion that Ms. Nourani had failed to demonstrate that she would leave Canada at the end of her studies. With respect, nothing in the Decision, including in the GCMS notes, allows the Court to conclude that this evidence played any role in the Officer's analysis. None of it was mentioned, let alone analyzed by the Officer. It goes without saying that the Minister cannot, in argument, attempt to fill the gaps in a decision maker's reasons and to create a narrative that does not arise from the Decision itself.

(2) **The study plan**

[28] I now turn to Ms. Nourani's study plan. In her motivation letter, Ms. Nourani indicates that her reasons to pursue the Program are: 1) the quality of education in Canada; 2) the

improvement of her career and finances, as she expects to receive a promotion with her current employer upon her return; and 3) the ability to start an entrepreneurship in Iran, which she qualifies as her “biggest goal”. Further, Ms. Nourani mentions that her intentions after her graduation from the Program are to start an entrepreneurship in Iran to help small businesses, to become an expert in business and marketing, to assume leadership positions with companies that she has already worked with, and to be close to her family in Iran.

[29] On the relevance of Ms. Nourani’s study plan, the Officer first noted the support of Ms. Nourani’s employer to her study plan. However, the Officer underlined that “[t]hough the [P]rogram does possess a business focus reinforcing the education purpose, the applicant demonstrates in their study plan that they already possess such skills through their work experience.”

[30] Ms. Nourani maintains that the Officer failed to engage with contradictory evidence regarding her job prospects in Iran and her plan to open a business of her own. Ms. Nourani submits that her own statement and the letter submitted by her employer both indicated that she would resume her current work upon her return from Canada, and that the Program would help her progress in her career.

[31] I agree with Ms. Nourani on this front. *Vavilov* directs the reviewing court to examine the reasonableness of an administrative decision in terms of the legal and factual constraints that bear on the decision maker’s discretion. Among the constraints that bear on the reasonableness of a decision are the governing statutory scheme, the evidence before the decision maker, the

impact of the decision on the affected individual, as well as the submissions of the parties. “The principles of justification and transparency require that an administrative decision maker’s reasons meaningfully account for the central issues and concerns raised by the parties” (*Vavilov* at para 127). The reasons must be responsive to the parties’ arguments, a requirement that is inherently bound with the principles of procedural fairness and the right to be heard.

[32] Here, the Officer’s reasons on Ms. Nourani’s study plan leave the distinct impression that the Officer did not actually listen to or read Ms. Nourani’s submissions in support of her study permit. Ms. Nourani listed the expected promotion upon her return and the improvement in her career as a main benefit she would receive from her study plan. The Officer acknowledged Ms. Nourani’s statement that her employer supports her study plan. In the GCMS notes, the Officer indicated the following:

> Currently employed as a Sore & Sales Manager. PA states on their study plan that their employer supports their transitioning of careers into a higher managerial type role which will be obtained after the completion of their studies and subsequent return to Iran.

[33] It appears from the GCMS notes that the Officer’s reasons for refusing Ms. Nourani’s study permit had little to do with whether she would be able to reclaim her job at TAC upon her return to Iran, and more with the promotion she claimed she would receive. The Officer pointed to the absence of evidence on the certainty of such promotion — besides Ms. Nourani’s own statement—, as the letter from Ms. Nourani’s employer does not mention any agreement or guarantee to that effect. In her memorandum, Ms. Nourani maintains that a verbal agreement was reached with her employer about the promotion. Yet, as the Minister underscored, there is no

evidence to support such a claim. Additionally, at no point was this "verbal agreement" ever alleged before the Officer.

[34] I pause to point out that, while Ms. Nourani states, in her application letter, that she "will receive" a promotion as senior sales manager at TAC, she uses more nuanced terms elsewhere in her application, referring to "more chances to get a leadership position" or to "getting a promotion as a senior sales manager" at TAC as part of her future goals. At the very least, Ms. Nourani's statement, as well as the employer's letter, both confirm that Ms. Nourani had some concrete employment prospects upon completion of her program in Canada and her return to Iran.

[35] In my view, the Officer's treatment of Ms. Nourani's study plan was unreasonable. The Officer unduly focused on the sole aspect of the promotion, and failed to engage with the evidence on the other benefits Ms. Nourani would receive from her intended studies.

[36] Most importantly, the Officer only had eyes for Ms. Nourani's short-term goals in terms of her employment prospects. The Officer was completely blind to the long-term goals pursued by Ms. Nourani with her study permit application, even though those long-term goals were eminently transparent in her study plan. On a plain reading of her study plan, it is clear that Ms. Nourani's "biggest goal" is to start her own business. Ms. Nourani used those words twice in her statement of purpose. Ms. Nourani expressly stated that her first intention after her graduation is to be an entrepreneur and "to return to Iran and use what [she has] learned to improve [her] career and start [her] business in Iran." She repeatedly refers to her objective of starting her business as her "biggest goal".

[37] Despite this evidence, the Officer's Decision does not contain a single word on the entrepreneurship aspirations of Ms. Nourani. The Officer only refers to Ms. Nourani's "education purpose", which is far from sufficient to reassure the Court that the Officer was alive to Ms. Nourani's purpose as a whole.

[38] In my view, the Officer's treatment of this key dimension of Ms. Nourani's study plan offends common sense just as much as the rule of law.

[39] As far as common sense is concerned, Ms. Nourani was accepted in a Program called a Post-Baccalaureate Diploma in Entrepreneurship [emphasis added]. And Ms. Nourani repeatedly states, in her study plan, that her biggest goal is to open her own business, which is the essence of what being an entrepreneur is all about. There cannot be a more direct connection between the Program Ms. Nourani was accepted into and the purpose of her studies as she describes them in her study plan.

[40] Turning to the rule of law, the Officer's reasons and analysis on Ms. Nourani's study plan fail to grapple with the key issue and central argument raised by Ms. Nourani to support her study permit application (*Vavilov* at para 128). Ms. Nourani's intent to "start entrepreneurship in Iran" was the beating heart of her study permit application and the core of the general factual matrix of her case. This was entirely concealed in the Officer's reasons. Either the Officer ignored the evidence adduced by Ms. Nourani or they were not alert and sensitive to the matter before them. Either way, the Officer's failure to engage with this central element of Ms. Nourani's study plan suffices to render the Decision unreasonable.

[41] I appreciate, as ably pointed out by counsel for the Minister at the hearing, that Ms. Nourani's study plan focused on both short-term and long-term goals. Ms. Nourani indeed mentioned that her studies will improve her chances to get leadership positions in companies (including a senior sales manager position at TAC) and to transition into a higher managerial role after the completion of the studies. The problem is that the Decision strictly focused on these short-term employment prospects and on the promotion contemplated by Ms. Nourani. In the Decision, the Officer completely left out the more fundamental raison d'être of Ms. Nourani's study permit application, namely, to learn entrepreneurship skills in order to fulfill her ultimate goal of having her own business in Iran.

[42] This clearly does not pass the test of reasonableness laid out in *Vavilov*, and calls for the Court's intervention.

[43] I agree with counsel for the Minister that applicants for temporary visas have a positive obligation to present sufficient evidence to support their application and must put their best case forward in order to satisfy the visa officers. However, there is also a positive obligation for the decision maker to engage with the evidence and not to overlook or ignore the evidence.

[44] I do not dispute that reviewing courts must not "ask how they themselves would have resolved [the] issue", try to determine "what the correct decision would have been" or take it upon themselves to decide the issues (*Vavilov* at paras 75, 83, 116). Instead, reviewing courts must exercise "judicial restraint" and respect "the distinct role of administrative decision-makers" (*Vavilov* at para 75). They are to do this by examining the administrative decision

maker's reasons with "respectful attention" and by "seeking to understand the reasoning process" (*Vavilov* at para 84).

[45] Moreover, reasons of administrative decision makers are to be "read holistically and contextually" in "light of the record and with due sensitivity to the administrative regime in which they were given" (*Vavilov* at paras 97, 103). In addition, the basis for a decision may also be inferred from the circumstances, including the record, or from the nature of the issue before the administrative decision maker and the submissions made (*Vavilov* at paras 94, 123). For this reason, the failure of the reasons to mention something explicitly is not necessarily a failure of "justification, intelligibility or transparency" (Vavilov at paras 94, 122). A reviewing court is allowed to "connect the dots on the page where the lines, and the direction they are headed, may be readily drawn" (*Komolafe v Canada (Minister of Citizenship and Immigration*), 2013 FC 431 at para 11; see also *Vavilov* at para 97).

[46] I also recognize that the written reasons given by an administrative body must not be assessed against a standard of perfection (*Vavilov* at para 91). An administrative decision maker's reasons do not need to be comprehensive or perfect. But an important consideration in assessing whether a reasoned explanation has been given is whether the reasons are "responsive" to the submissions made by the parties in the sense that they "meaningfully account for the central issues and concerns raised by the parties" or "meaningfully grapple with key issues or central arguments raised by the parties". i.e. to "assur[e] the parties that their concerns have been heard", demonstrate that they "have actually listened to the parties" and were "actually alert and sensitive to the matter before it" (*Vavilov* at paras 127–128; *Mason* at para 32). This is where, in my view, the Officer's Decision stumbles.

[47] A reviewing court must also be satisfied that any alleged shortcomings or flaws relied on by the party challenging a decision are sufficiently central or significant to render the decision unreasonable (*Vavilov* at paras 96–97, 100). Here, I find that this is a situation where, on a determinative issue, there is a flawed logical process by which the facts were drawn from the evidence, as the Officer failed to account for relevant evidence on the central element anchoring Ms. Nourani's study permit application.

[48] This omission to deal with Ms. Nourani's expressed primary stated goal in her study permit application constitutes a "fundamental gap" in express or implied reasoning, a "fail[ure] to reveal a rational chain of analysis", an unintelligible analysis in the sense that "the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point" (*Vavilov* at paras 96, 103—104). It points to a sufficiently serious shortcoming in the Decision.

B. ***Procedural fairness***

[49] Turning to her procedural fairness argument, Ms. Nourani submits that she was entitled to a meaningful opportunity to respond to the Officer before a final decision was made on her application. In the circumstances of this case, I find that this argument has no merit.

[50] It is well accepted that, in the context of applications for study permits, procedural fairness obligations lay at the low end of the spectrum (*Patel v Canada (Citizenship and Immigration)*, 2020 FC 517 [*Patel*] at para 12). Generally, an officer "is not under any obligation to seek out additional information from an applicant to assuage concerns that arise on the face of

the application" (*Patel* at para 12). Visa officers have no duty to provide an applicant with an opportunity to respond to their concerns unless credibility, accuracy, or genuine nature of information submitted is at issue (*Hassani v Canada (Minister of Citizenship and Immigration*), 2006 FC 1283 at para 24).

[51] In the context of visa applications, the Court has distinguished between findings based on the sufficiency of evidence, which do not trigger a duty to inform an applicant, and adverse credibility findings, which require that a visa officer provides the applicant with an opportunity to respond (*Perez Pena v Canada (Citizenship and Immigration)*, 2021 FC 491 at para 35). Perceived inconsistency in information provided by an applicant engages a procedural fairness obligation only if it results in the visa officer losing confidence in the applicant's reliability (*Thedchanamoorthy v Canada (Citizenship and Immigration)*, 2018 FC 690 at para 27). I acknowledge that the line between an insufficiency of evidence and a veiled credibility finding is sometimes difficult to draw and that "[t]he reference to a *bona fide* concern in the [d]ecision must not be conflated with a credibility concern" (*Abbas* at para 22, citing *D'Almeida v Canada (Citizenship and Immigration)*, 2019 FC 308 at para 65 and *Patel* at para 14).

[52] Here, nothing in the GCMS notes suggests that the Officer was concerned with inconsistencies in the evidence of Ms. Nourani or doubted the credibility or the veracity of her statements. I can detect no inherent contradiction in Ms. Nourani's evidence that could have prompted the Officer to prefer some part of her evidence over another. In fact, Ms. Nourani was unable to identify any specific credibility issue raised by the Officer with respect to her evidence. Further to my review of the record and the GCMS notes, I find that the Officer's determinations, while unreasonable for the reasons outlined above, were nonetheless based on Ms. Nourani's

perceived failure to meet her positive obligation to provide sufficiently convincing evidence in accordance with the statutory requirements (*Abbas* at para 21).

[53] Accordingly, since the Officer made no veiled credibility finding, the Officer did not have a procedural fairness duty to alert Ms. Nourani of their concerns.

IV. **Conclusion**

[54] For the above-mentioned reasons, Ms. Nourani's application for judicial review is granted. The Decision is not based on an internally coherent and rational analysis, as the Officer's conclusions on the purpose of Ms. Nourani's visit and her study plan do not constitute a reasonable outcome having regard to the legal and factual constraints to which the decision maker is subject and to the evidence. Therefore, the matter must be referred back to a new visa officer for redetermination.

[55] The parties proposed no question of general importance for certification and I agree that none arises in this case.

JUDGMENT in IMM-6478-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted, without costs.

2. The June 23, 2022 decision of the visa officer, denying Ms. Seyedehsepideh Nourani's study permit application, is set aside.

3. The matter is referred back to Immigration, Refugees and Citizenship Canada for redetermination on the merits by a different visa officer.

4. There is no question of general importance to be certified.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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