

Federal Court



Cour fédérale

Date: 20230728

Docket: IMM-7337-22

Citation: 2023 FC 1037

Ottawa, Ontario, July 28, 2023

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

**AZIN MOOSAVI AND
SEYED ALI MALAEKEH AND
SEYED ARASH MALAEKEH**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. **Overview**

[1] This is an Application for judicial review of a decision dated June 6, 2022, by an officer [the Officer] refusing the Applicant's application for a study permit pursuant to subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], and by extension, refusing her spouse's application for a work permit and a visitor visa for her young son.

II. **Facts**

A. *Background Facts*

[2] The Applicant is a 34 year old citizen of Iran who wishes to study in Canada and to have her husband and 4-year-old son accompany her on an open work permit and a temporary resident visa, respectively.

[3] On June 2, 2021, the Applicant received an acceptance letter from Trinity Western University in British Columbia to enroll in a two-year Master in Leadership program in Fall 2021. She previously earned a Bachelor degree in architectural engineering from Khayyam University in 2011 and worked as a junior architect from 2011 to 2012. From 2014 to 2018, she was employed as a manager of architecture and interior design. Since 2020, she has been working as a manager of architecture projects for her current employer.

[4] The Applicant claims she has held different managerial positions but felt that she needed to develop her management skills further. She states that she received a job offer for the position of Project, Recruitment and Training Manager from her current employer. She adds that she has plans to start her own architectural company in a few years and that this education is “vital” for this purpose.

[5] The Applicant applied for a study permit on August 3, 2021. In her application, the Applicant indicated that she had \$53,153 in available funds. She estimated the cost of her studies

at \$28,472 for tuition, \$18,000 for room and board and \$7,000 in other expenses, for a total of \$53,472. The Applicant prepaid a \$9,990 tuition deposit.

B. *Decision under review*

[6] In a decision dated June 6, 2022, the Officer refused the Applicant's application for a study permit on the grounds that the Officer was:

- A. not satisfied that the Applicant will leave Canada at the end of her stay, as stipulated in subsection 216(1) of the *IRPR*, based on her personal assets and financial status;
- B. not satisfied that the Applicant will leave Canada at the end of her stay, as stipulated in subsection 216(1) of the *IRPR*, based on her family ties in Canada and in her country of residence;
- C. not satisfied that the Applicant will leave Canada at the end of her stay, as stipulated in subsection 216(1) of the *IRPR*, based on the purpose of her visit.

[7] The accompanying Global Case Management System [GCMS] notes, which form part of the reasons for the decision, stated that:

I have reviewed the application. I note that a minimum tuition payment has been paid to hold their place in the program. No additional payments on file to support their first tuition year. 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. I am not satisfied that the applicant would leave Canada at the end of their stay as a temporary resident, I note that: PA will be accompanied by spouse and dependent child. The ties to their home country are weakened [sic] 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. PA is applying to study Masters in Leadership. Previously obtained Bachelors in Architectural Engineering and currently employed as Manager of architecture project. Considering applicant's education and previous work experience, I am not satisfied that applicant would not have already achieved the 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.

[8] Similarly, the Officer refused the Applicant's husband application for a work permit under the International Mobility Program on the grounds that the Officer was not satisfied he would leave Canada at the end of his stay based on family ties in Canada and in his country of residence and based on the purpose of his visit, as stipulated in subsection 200(1) of the *IRPR*.

The accompanying GCMS notes read:

I have reviewed the application. I am not satisfied that the applicant would leave Canada at the end of their stay as a temporary resident, I note that: PA will be accompanied by spouse and dependent child. The ties to their home country are weakened [sic] 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. Client is seeking entry to accompany a family member who is applying for a study permit. Family member's study permit has been refused. 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.

[9] The Applicant's child application for a temporary residence visa was refused on the same grounds pursuant to paragraph 179(b) of the *IRPR*. The accompanying notes read:

I have reviewed the application. The ties to their home country are weaken [sic]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. Client is seeking entry to accompany a family member who is applying for a study permit. Family member's study permit has been refused. 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.

III. **Issues and standard of review**

[10] The parties agree that the sole issue in this Application is whether the Officer's decision was reasonable: *Canada (MCI) v Vavilov*, 2019 SCC 65 [*Vavilov*].

IV. **Analysis**

A. Applicant's submissions

[11] On the first finding regarding the Applicant's lack of required funds to study in Canada, the Applicant argues that the Officer misapprehended the evidence before them as the evidence showed the Applicant prepaid \$9,990 in tuition, which is a significant contribution towards their first-year fees considering the full tuition for two years is \$28,472. The Applicant submits that the Officer did not justify why the documentation provided was insufficient: *Ayeni v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1202 at para 28. The Applicant also submits

that they have provided evidence of sufficient funds as the record shows bank statements from the Applicant and her spouse containing \$53,153 in savings and immovable assets including property in Iran. The Applicant argues they only have to show evidence of sufficient funds for their first year of studies: *Cervjakova v Canada (Minister of Citizenship and Immigration)*, 2018 FC 1052 at para 14.

[12] On the second finding, the Applicant argues that the Officer arbitrarily ignored public policy and based the decision on a hunch. The Officer refused the Applicant partly because they were being accompanied by their spouse and child. The Applicant notes that as per exemption C42 of the International Mobility Program, an applicant's spouse is eligible for an open work permit if the applicant is a *bone fide* student: the Minister is encouraging applicants' partners to apply for work permits in Canada.

[13] The Applicant also submits that the Officer did not grapple with the evidence supporting the Applicant's strong ties and establishment in Iran. The Officer did not provide an analysis justifying why the Applicant's family ties to their country of residence would weaken because of her accompanying family members and did not weigh this against the fact that all other family members remained in Iran and other evidence such as their continued employment and property ownership: *Ahadi v Canada (Minister of Citizenship and Immigration)*, 2023 FC 25 at para 17; *Jafari v Canada (Minister of Citizenship and Immigration)*, 2023 FC 183 at para 18; *Vahdati v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1083 at para 10. The Applicant submits that an officer's failure to mention the Applicant's family ties to her home country is

unreasonable: *Seyedsalehi v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1250 at para 9.

[14] The Applicant argues that the Officer applied a broad generalization that visa applicants who are accompanied by their spouse or children will not depart Canada at the end of their authorized stay. This unfounded assumption renders the decision unreasonable: *Vavilov* at para 104.

[15] On the third finding related to the Applicant's purpose of visit, the Applicant argues this finding was not supported by evidence. The Applicant notes that her previous degree was at the Bachelor degree level in a different field, and that when she will go back to Iran she will continue her employment with increased duties, and that she plans to establish her own company in the future. The Applicant submits it is not clear why the Officer found the program unreasonable when the evidence points in the direction that the program would benefit the Applicant's career advancement and is a logical progression in her career path. The Applicant submits the Officer assumed the role of a career advisor and acted beyond their jurisdiction when they stated that she had already achieved the benefits of the program.

[16] The Applicant adds that the Officer was unduly concerned about the disproportionate cost of studying in Canada. The Applicant argues it is her choice to decide how much she wants to invest in her education to a better life. The Applicant submits that jurisprudence has shown it is unreasonable for an officer to have suspicions merely because an individual puts a higher value

on education: *Caianda v Canada (Minister of Citizenship and Immigration)*, 2019 FC 218 at para 5; *Lingepo v Canada (Minister of Citizenship and Immigration)*, 2021 FC 552 at paras 17-18; *Rajasekharan v Canada (Minister of Citizenship and Immigration)*, 2023 FC 68 at para 33. It is not the role of the officer to determine the value of learning to an applicant: *Jalilvand v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1587 at para 18.

[17] Finally, the Applicant submits that there is no evidence supporting the Officer's finding that the Applicant and her family could not be trusted to comply with Canadian law. It is unreasonable to conclude that an applicant would not leave Canada at the end of their stay without explaining how they reached that conclusion: *Cervjakova v Canada (Minister of Citizenship and Immigration)*, 2018 FC 1052 at para 12; *Jalilvand v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1587 at para 21.

B. Respondent's submissions

[18] The Respondent submits that the burden rests on the Applicant to provide all the relevant information to establish that they meet the statutory requirements set out in *IRPA* and *IRPR* and satisfy the Officer that they will leave Canada at the end of their stay: *Singh v Canada (Minister of Citizenship and Immigration)*, 2012 FC 526 at para 32. The Respondent submits that it must be established that the Applicant will leave at the end of their visa and that there isn't much benefit of the doubt: *Hashem v Canada (Minister of Citizenship and Immigration)*, 2020 FC 41 at para 31 citing *Chhetri v Canada (Minister of Citizenship and Immigration)*, 2011 FC 872 at para 9.

[19] The Respondent contends that the Officer reasonably determined that the Applicant's documents did not demonstrate that sufficient funds would be available to cover the program costs and the family's living expenses. In her study plan, the Applicant refers to two saving accounts, a vehicle and a piece of land as sources of funding but does not provide evaluations in Canadian dollar for the two properties. The Applicant's application stated that she had \$53,153 in savings, which the Respondent states corresponds with the total in the two savings accounts. With an estimated cost of \$53,472, factoring in that she already paid \$9,990 in tuition, the Respondent argues this leaves the family with insufficient funds for the program and living costs. The Respondent adds that the Applicant did not explain how she and her husband will convert their assets into available funds without also severing their financial ties to Iran. She did not indicate whether more funds would be made available, her spouse does not indicate what sort of work he will pursue in Canada and offered no idea of what his income would be.

[20] The Respondent submits that even if the Applicant's funds were sufficient for the first year of her studies, she has nonetheless failed to provide sufficient evidence of funding for her second year: IRCC Guidelines, Study permits: Assessing the application, Financial sufficiency, 2021-07-27. According to the IRCC guidelines, in addition to the remaining tuition (\$18,482), \$34,000 would be required to fund the family's full stay in Canada (\$20,000 for the student, \$8,000 for the spouse and \$6,000 for her son). This means the family would have \$671 remaining without including the costs of travel.

V. Analysis

[21] I agree with the Respondent that on the basis of the documents submitted in support of the applications, the family's funds would be almost entirely depleted in the first year of the study program. This case is therefore similar to *Onyeka v Canada (Minister of Citizenship and Immigration)* 2017 FC 1067 at paras 12-17; see also *Ibekwe v Canada (Minister of Citizenship and Immigration)*, 2022 FC 728 at paras 31-32. It was therefore open to the officer to find that the Applicant lacked sufficient or available funds for the program and to conclude that the proposed studies did not appear to be a reasonable expense.

[22] On the second finding, the Officer reasonably determined that the Applicant's ties to Iran would weaken if her husband and son accompanied her to Canada for the program. In Iran, the Applicant lives with her husband and son and not her parents and siblings. Thus, it was open and reasonable for the Officer to weigh that the Applicant's ties to her husband and son are more likely to pull towards staying in Canada. Whether a relationship exhibits significant ties to the Applicant's home country is a factual finding for which officers receive deference: *Khaleel v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1385 at para 50. I agree with the Respondent's argument that the Applicant failed to provide enough information to establish that her ties to her parents and sisters in Iran were stronger than her ties to her husband and son should they be in Canada.

[23] On the third finding, the Officer reasonably determined that the Applicant's study plan offered little benefit to the Applicant. She already has a successful career as a manager and in

leadership in the architecture industry and eight years of experience working in a managerial role. Thus, it was reasonable for the Officer to be satisfied that the Applicant would have already achieved the benefits of the program she proposed to take considering her previous education and work experience.

[24] This is not a case in which the Officer was acting in the role of a career advisor as discussed in *Adom v Canada (Minister of Citizenship and Immigration)*, 2019 FC 26 at paras 16-18. An officer may refuse a study permit due to the “absence of a study plan specifying the program’s utility to the applicant in light of her background and the professional objective pursued by the applicant”: *Charara v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1176 at paras 36-38. Here the Applicant expressed her intent to return to her work place with the possibility of opening her own business at a later date. It was reasonable for the Officer to conclude that her application did not indicate how the program would support either objective.

VI. Conclusion

[25] I find as a result that the Application must be dismissed. No serious questions of general importance were submitted and none will be certified.

JUDGMENT IN IMM-7337-22

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7337-22

STYLE OF CAUSE: AZIN MOOSAVI AND SEYED ALI MALAEKEH
AND SEYED ARASH MALAEKEH V THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

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