Federal Court Cour fédérale

Date: 20230907

Docket: IMM-7395-22

Citation: 2023 FC 1208

Ottawa, Ontario, September 7, 2023

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

HOMAN AHMADI
MARZIEH RASHVANDBOKANY

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are citizens of Iran. Homan Ahmadi, the Principal Applicant [PA], is an 11-year-old elementary school student who applied for a study permit to attend the 4th grade in a North Vancouver school. The Associate Applicant [AA], Marzieh Rashvandbokany, is his

mother. She sought a Temporary Resident Visa [TRV] in order to accompany her son, as it was one of the conditions of the PA's school admission.

[2] In decisions dated July 17, 2022, a Visa Officer [Officer] refused the visa applications on the basis that the Officer was not satisfied that the Applicants would leave Canada. The Officer found that "[t]he purpose of [their] visit to Canada [was] not consistent with a temporary stay given the details [they had] provided in [their] application." The Global Case Management System [GCMS] notes supporting the Officer's decision with respect to the PA are brief, and read:

> I have reviewed the application. Minor Iranian national applying for a study permit to attend North Vancouver School District – Grade 4 [*sic*] The purpose of the visit itself does not appear to be reasonable, in view of the fact that similar programs are available closer to the applicant's place of residence. Motivation to pursue studies in Canada does not seem reasonable given that a comparative course is offered in their home country for a fraction of the cost. The purpose of visit does not appear reasonable given the applicant's socio-economic situation. Weighing the factors in this application. [*sic*] I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. Application refused.

[3] The Applicants apply for judicial review of the Officer's decisions pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Applicants raise two issues in arguing that the Officer erred in refusing the PA's study permit:

A. The Officer's decision to refuse the study permit was unreasonable because they inappropriately focused on the availability of local education alternatives and did not justify their reliance on the Applicant's socio-economic situation.

B. The process was procedurally unfair because the Officer failed to provide the Applicants an opportunity to address the credibility concerns.

[4] The Applicants submit that, if the PA's study permit was unreasonably refused, there was no specific basis to refusing the AA's application.

[5] The Applicants note that the Officer relied solely on the PA's study permit in refusing the AA's TRV. Consequently, in the absence of an independent basis for having refused AA's TRV, the TRV decision must also be set aside if the Court concludes that the refusal of the study permit was unreasonable.

[6] Visa Officers are owed a high degree of deference, but this cannot shelter decision makers from accountability on judicial review. A decision maker's rationale for having reached conclusions that are essential to the decision must be addressed in the reasons or inferred from the record. In this case, the decision does not satisfy that standard, and for that reason, the Application is granted. I am not persuaded that the process was unfair.

II. Standard of review

[7] The parties agree that the standard of review to be adopted in considering issue 1 is reasonableness. The Applicants stress the importance of an internally coherent decision supported by a rational chain of analysis that respects the statutory scheme and the evidence presented (*Iyiola v Canada (Citizenship and Immigration)*, 2020 FC 324 at paras 11 and 12

[*Iyiola*] and *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 23, 85, 106, 110, 111, 126).

[8] The Respondent submits that Officers in the visa context are owed a high level of deference, and argues that visa decisions are only unreasonable if they present sufficiently serious shortcomings, or if the Officer fundamentally misapprehended or ignored the evidence (*Vavilov* at paras 10, 85; *Musasiwa v Canada (Citizenship and Immigration)*, 2021 FC 617 at para 22 [*Musasiwa*]; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 266 at paras 16-18; *Charara v Canada (Citizenship and Immigration)*, 2016 FC 1176 at paras 36, 38 [*Charara*]; *Ocran v Canada (Citizenship and Immigration)*, 2022 FC 175 at paras 16, 34 [*Ocran*]).

[9] The Parties submit that the correctness standard applies when reviewing issues of fairness. I agree that correctness best reflects the nature of the review process where substantive rights are in issue. However, issues relating to fairness are more precisely reviewed on the basis of whether the procedure provided was fair having regard to all of the circumstances. This is done with a focus on the substantive rights that are engaged and the consequences for the impacted individuals (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 para 54).

III. Analysis

A. *Was the Officer's decision is unreasonable?*

[10] The Respondent argues that the refusal decision was justified, based on the Officer's assessment of the evidence and the factors disclosed in the study permit application. The Respondent submits that the Officer's reasons were responsive to the submissions made and the evidence provided, and that the Applicants simply disagree with the Officer's weighing of the evidence. I disagree.

[11] The Respondent submits that, where evidence has been properly examined by an Officer, a reviewing court will defer to the decision maker on questions of weight, a matter that is within the expertise of the decision maker (*Monteza v Canada (Citizenship and Immigration)*, 2022 FC 530 at para 8; *Abbas v Canada (Citizenship and Immigration)*, 2022 FC 378 at para 29; *Musasiwa* at para 22). I do not take issue with the Respondent's statement. Nevertheless, for a decision to be reasonable, the rationale supporting the essential elements of that decision must be readily identified in the reasons or inferable from a review of the record (*Vavilov* at para 98).

[12] In this instance, the PA's application detailed a series of reasons for pursuing the PA's grade 4 education in Canada. The reasons advanced in the application explained that: (1) studies outside of Iran were viewed as beneficial to the PA; (2) efforts to have the PA study in Turkey had not been successful; (3) the objective of studying abroad was to help the PA improve his English skills; (4) Canada was a more affordable option than the United Kingdom; (5) the family

had the financial means to pay for the PA to study abroad; and (6) the presence of family friends and a Farsi speaking community in North Vancouver would assist the PA in integrating.

[13] The GCMS notes address the rational for seeking the study permit: "similar programs are available closer to the applicant's place of residence. Motivation to pursue studies in Canada does not seem reasonable given that a comparative course is offered in their home country for a fraction of the cost." This explanation might well be sufficient where an applicant seeking a study permit has relied on circumstances that could evidently be satisfied or fulfilled by similar grade 4 study programs closer to home. This was the situation in *Jafari v Canada (Citizenship and Immigration)*, 2022 FC 1761 [*Jafari*] on which the Respondent relies. In *Jafari*, the Applicant intended to pursue grade 2 studies in Canada for the primary purpose of improving English language skills. The evidence in that case demonstrated that the applicant's mother was an English language teacher. The Court concluded that it was reasonable for the Officer to rely solely on the availability of similar programs in making their decision.

[14] This matter is distinguishable from *Jafari*. As noted above, the PA has cited a series of factors to explain why he seeks to complete grade 4 in Canada. The Officer's reliance on the availability of similar programs closer to home simply fails to address or engage those factors. Unlike the situation in *Jafari*, justification is not readily inferable or obvious on review of the record. The absence of some justification supporting the conclusion reached by the Officer renders the decision unreasonable.

[15] In light of the evidence provided in support of the application, the Officer's generalized reliance on socio-economic factors is similarly flawed.

B. *No breach of procedural fairness*

[16] The Officer does not raise the question of the Applicants' credibility or the authenticity of the documentation provided. As no issue of credibility was raised, there is no basis to therefore conclude that the Applicants were entitled to notice of any concerns or an interview (*Hamid v Canada (Citizenship and Immigration)*, 2022 FC 886 at para 16).

IV. Conclusion

[17] The Application is granted. The parties have not identified a question of general importance for certification, and I am satisfied none arises.

JUDGMENT IN IMM-7395-22

THIS COURT'S JUDGMENT is that:

1. The Application is granted.

2. The matter is returned for redetermination by a different decision maker.

3. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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