Federal Court  Cour fédérale

Date: 20231010

Docket: IMM-7898-22

Citation: 2023 FC 1601

Ottawa, Ontario, October 10, 2023

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

DARIUSH SEDGHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT

UPON application for judicial review to set aside a decision of an officer of Citizenship and Immigration Canada (the "Officer"), dated August 8, 2022, in which the Officer refused the Applicant's application for a Labour Market Impact Assessment exempt work permit under administrative code C11 pursuant to the International Mobility Program. The Officer found the Applicant failed to demonstrate his proposed business would generate significant economic, social or cultural benefits or opportunities for Canadian citizens or permanent residents under section 205(a) of the Immigration and Refugee Protection Regulations, SOR/2002-227 ("IRPR");

AND UPON reading the written submissions and hearing the oral representations of counsel for the parties;

AND UPON reviewing the Certified Tribunal Record ("CTR");

AND UPON determining that this application should be granted for the following reasons:

[1] The Applicant alleges the Officer erred by misconstruing publicly available guidance for visa officers under the C11 administrative code, known as "Entrepreneurs or self-employed individuals seeking only temporary residence – [R205(a) – C11] – International Mobility Program" (the "Guidelines"). The Applicant argues the Officer also erred by requiring the Applicant to meet requirements which were not set out in the Immigration and Refugee Protection Act, SC 2001, c 27 ("IRPA"), the IRPR or the Guidelines.

[2] In the Global Case Management System ("GCMS") notes, the Officer highlighted four points about the Applicant's application: 1) the business premises, 2) the initial investment, 3) the hiring plan and 4) whether the company created a significant benefit. Under the Guidelines, the first three factors are all considerations that visa officers can assess to determine the last point; that is, whether the business establishes a significant benefit. As noted, the Officer ultimately denied the application on that basis, finding the proposed business would not create a significant benefit as required under section 205(a).

[3] The Applicant alleges the Officer erred on several points in their decision, particularly their reasoning process on the first two considerations: the premises and the investment. I will also address the Applicant's arguments concerning the interpretation and application of "significant benefit."

[4] First, the Applicant alleges the Officer erred by requiring him to lease physical premises, while rejecting any other type of office arrangement. In the GCMS notes, the Officer states, "An account statement for virtual office address at … has been provided. Given the generic needs for office space (for only himself at first), it is not known why the applicant has not secured a lease/physical premises where he will go to work."

[5] Upon review, the Applicant's business plan does not specify that physical premises are required. Rather, pages 21-22 of his business plan state that, "Upon the approval of Mr. Dariush Sedghi's work permit, the Company will search the local area to identify the best-suited premises for its specific operations. From its office, the Company will be able to reach potential clients nationwide, as the majority of its consulting activities can be conducted online." From this wording, the business plan uses qualifying language when discussing the proposed office space, meaning that, even if the Officer presumed physical premises were required, the business plan clearly states the company will search for such space upon approval of the work permit. Second, the business plan never actually specifies what type of premises are needed (i.e. physical or virtual). Third, the business plan indicates a large portion of the company's activities will be conducted online, which would suggest a virtual office is acceptable to some degree.

[6] The Officer does not provide an explanation of their reasoning process on this point, despite implying the lack of premises is a negative factor in the application. In my view, the decision is unreasonable as the Officer has failed to provide their rationale for why the Applicant is required to lease a property, particularly given his business plan.

[7] Second, in relation to finances, the Applicant argues the Officer erred in law by requiring the Applicant to have an initial investment amount in the form of liquid cash. The Applicant states liquidity is not mandated by the IRPA, the IRPR or the Guidelines. At the hearing, the Applicant argued he provided proof of his finances and they were more than adequate to be viable. The Applicant claims he submitted three forms of assets and has approximately $358,775.53 in liquid assets, even though the initial investment amount was only $200,000. Therefore, the Applicant argued he had more cash than is necessary. The Applicant's affidavit states, "In addition, should the business in Canada require more cash, two of the fixed assets, namely Bahar Property, which is currently being rented, and the Mazandaran Villa, can also be liquidated which will provide an additional $323,289.00 CAD for further investment in Canada."

[8] The Applicant presented a second asset, the Adak Control Arya Company (Ltd.) ("Adak Control") shares, of which he owns 80% and his wife owns 20%. The Applicant argues the Officer misinterpreted the Adak Control share valuation, however he did not provide an explanation for the 2012 valuation in his application. In the GCMS notes, the Officer acknowledged it was not immediately clear what the value of the shares was presently.

[9] The third asset the Applicant provided was real estate, including property appraisals, title deeds and a rental agreement. The Applicant showed these properties were valued at more than $600,000 and could be liquidated. The Officer did not find the Applicant's real estate constituted a positive factor given it was not representative of available liquid cash. The Applicant contends that, in any event, he has provided proof of sufficient financing with his liquid assets, even without the consideration of the other two fixed assets (one of which is rented and could be liquidated to provide additional investment funds).

[10] As such, the Applicant argues the Officer's reasoning is vague and ignores evidence about the liquidity of his equity investments. I agree that the Officer fails to explain why liquid assets are necessary for commencing the company and paying employees. As well, the Officer does not clarify why the Applicant's real estate and subsequent rental agreement are insufficient to show the Applicant's financial position. The reasoning is absent from the GCMS notes themselves, meaning there is no adequate justification for liquid cash as opposed to equity investments.

[11] In determining whether the business presented a significant benefit under section 205(a), the Guidelines indicate that the criteria of the business premises, financial ability and hiring plan all should form part of the "significant business" analysis.

[12] On a final note, the Applicant claims the Officer made an error of law and ignored evidence in their interpretation and application of "significant benefit." The Applicant argues the Officer improperly concluded that the company would not be distinguishable in the marketplace,

noting the identification of potential competitors is a routine practice. Additionally, the Applicant argues the Officer ignored evidence showing how the company would provide cultural, economic and social benefits. The Applicant said these benefits would include boosting efficiency in the manufacturing sector, improving the competition mix, providing high value training, transferring knowledge, creating jobs, contributing to Canadian tax revenues, ameliorating the impact of Covid-19 on manufacturing and contributing to the standard of living via foreign direct investment.

[13] I note the submission letter from the Applicant's immigration consultant (in the completed application package), on page 21 of the CTR, lists cultural benefits of the proposed business and states that:

> Enhancing cultural diversity in the Canadian manufacturing sector: Increasingly the Canadian manufacturing sector (ranging from manufacturers of furniture, doors and windows to medical devises, etc.) are coming from business immigrant community with diverse cultural backgrounds. The management consulting sector increasingly need to cope with such a transformational cultural change in Ontario and beyond. Coming from a Middle Eastern background and having worked with a variety of clients from various countries particularly in Asia, Mr Sedghi's company will significantly contribute to filling the existing gap in the manufacturing consulting industry in Canada.

[14] While this statement is not included within the business plan itself, it formed part of the application and would have been placed in front of the Officer and should have been considered as one factor and it appears it was not considered.

[15] In conclusion, the issue of finances and business premises are significant parts of the decision, forming half of the rationale. Here, however, the Officer has failed to explain why their reasoning on these issues is justified. Thus, the lack of reasoning on these factors, which are material, render the decision unreasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 100). I will grant this application.

THIS COURT ORDERS THAT:

1. The application for judicial review is granted and is sent back to be re-determined by a different officer.

2. No question of general importance is certified.

"Glennys L. McVeigh"
Judge