Federal Court  Cour fédérale

Date: 20231221

Docket: IMM-10206-22

Citation: 2023 FC 1744

Ottawa, Ontario, December 21, 2023

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

Fatemeh KHOSRAVIMASHIZI
And
Mohammad SAFARI
And
Parmis SAFARI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Fatemeh Khosravimashizi [Principal Applicant], her spouse, and their minor child are from Iran. The Principal Applicant applied for a study permit, while her spouse and child applied for a temporary work permit and a temporary resident visa, respectively. All of

their applications were denied [Decisions]. The visa officer [Officer] was not satisfied that the Principal Applicant and her family would leave Canada at the end of their stay because they do not have significant family ties outside Canada and the purpose of the visit was not consistent with a temporary stay.

[2] The Applicants seek judicial review of the Decisions. The overarching issue is their reasonableness. Stated another way, the Court must determine whether the Decisions are intelligible, transparent and justified, further to the applicable, presumptive standard of review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25, 99. In my view, none of the situations rebutting this presumption is present here: *Vavilov*, above at para 17.

[3] I find that the Applicants have met their burden of showing that the Decisions are unreasonable: *Vavilov*, above at para 100. The determinative issue is the Officer's unreasonable treatment of the family's ties to their home country. For the reasons below, the Decisions will be set aside and the matters sent back for redetermination by a different officer.

II. Analysis

[4] The decision denying the Principal Applicant's study permit application is the focus of this analysis, because the Decisions regarding her spouse and child are premised on the refused study permit.

[5] The Officer erred by failing to engage with the Principal Applicant's ties in her home country, simply because her immediate family would be travelling with her: *Jafari v Canada (Citizenship and Immigration)*, 2023 FC 183 at para 18; *Vahdati v Canada (Citizenship and Immigration)*, 2022 FC 1083 [*Vahdati*] at para 10.

[6] I am not persuaded by the Respondent's argument that *Vahdati* is substantively distinguishable because the Officer's analysis regarding the family ties here did not end at the same point. In comparing the GCMS notes in both *Vahdati* (at para 4) and the case presently before the Court, the conclusions regarding family ties are virtually identical:

> PA will be accompanied by spouse [and dependent child]. 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.

[7] The only difference is that, in the present case, the words "and dependent child" are added. The notes even contain the same typographical error, i.e. "weaken" instead of "weakened." Further, the Applicants' establishment in Iran in evidence here resembles the applicant's points of establishment in Iran described at paragraph 10 of *Vahdati*.

[8] I determine that the Officer failed to mention, explain or weigh the Principal Applicant's family ties in Iran. The Officer's finding that the Principal Applicant did not demonstrate establishment in Iran is not justified, in my view, because the Officer ignored evidence contradictory to this finding and failed to explain how they weighed this evidence in assessing the Applicants' family ties and establishment.

[9] I also am sympathetic to the Applicants' argument that the Officer's reasoning is circular (or, in my view, non-transparent), contrary to *Vavilov* (at para 104). Specifically, the reasons treat the factor of the accompanying spouse and child as a negative, while the applicable policy guidance points to spousal eligibility for a work permit if the applicant is a *bona fide* student.

[10] Further, the Officer's reasons assume that the accompanying spouse and child create a pull to Canada, but the pull is the spouse and child who happen to be in Canada, as opposed to Canada *per se*. In other words, there is an underlying, speculative assumption not supported by the evidence that the spouse will stay in Canada and not return to Iran, thus creating the pull for the Principal Applicant. This assumption in my view is unreasonable in the circumstances, absent supporting evidence.

III. Conclusion

[11] For the above reasons, the Decisions are not justified, intelligible or transparent and, thus, they are unreasonable.

[12] There was no proposed question for certification by either side, and I agree that none arises in the circumstances.

JUDGMENT in IMM-10206-22

THIS COURT'S JUDGMENT is that:

1. The Applicants' judicial review application is granted.
2. The September 2, 2022 decisions of the visa officer refusing the Applicants' respective applications for a study permit, temporary work permit, and temporary resident permit are set aside.
3. The matters will be remitted to a different officer for redetermination.
4. There is no question for certification.

"Janet M. Fuhrer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10206-22
STYLE OF CAUSE:	FATEMEH KHOSRAVIMASHIZI, AND, MOHAMMAD SAFARI, AND, PARMIS SAFARI V THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE
DATE OF HEARING:	AUGUST 15, 2023
JUDGMENT AND REASONS:	FUHRER J.
DATED:	DECEMBER 21, 2023

APPEARANCES:

Samin Mortazavi	FOR THE APPLICANT
Zahida Shawkat	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Samin Mortazavi Pax Law Corporation Vancouver, British Columbia	FOR THE APPLICANT
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT