Federal Court Cour fédérale

Date: 20240612

Docket: IMM-248-23

Citation: 2024 FC 899

Ottawa, Ontario, June 12, 2024

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

SUSAN SADAT AMIRI NAEINI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicant seeks judicial review of a decision by an officer of Immigration, Refugees and Citizenship Canada [IRCC], dated November 23, 2022, refusing her work permit application under the International Mobility Program [Program] pursuant to section 200 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[2] The Respondent asks the Court to refuse to exercise its discretion to consider new issues raised for the first time by the Applicant in her Further Memorandum of Argument [Further Memorandum]. If the Court refuses to entertain these new issues, the application for judicial review will be dismissed because the Applicant abandoned the issues raised in her Memorandum of Argument filed at the leave stage.

[3] In almost identical cases involving work permit applications under the Program with applicants represented by the same solicitors of record, my colleagues Justice Tsimberis and Justice Blackhawk refused to consider the new issues and dismissed the applications: *Mousavimianji v Canada (Citizenship and Immigration)*, 2024 FC 726 [*Mousavimianji*]; *Khodayarinezhad v Canada (Citizenship and Immigration)*, 2024 FC 818 [*Khodayarinezhad*]. For the reasons that follow, I am following suit.

II. Background

A. *The Applicant's work permit application*

[4] The Applicant is a citizen of Iran who applied for a work permit in May 2022 under the Program. She sought to operate a business in the Greater Vancouver area specializing in technical support services for industrial automation technologies.

[5] By letter dated November 23, 2022, the Applicant's work permit application was refused on three grounds: (i) the officer was not satisfied that the Applicant would leave Canada at the end of her stay as required by paragraph 200(1)(b) of the *IRPR*; (ii) the purpose of the Applicant's visit

is not consistent with a temporary stay based on the details in her application; and (iii) the documentary evidence did not establish that the Applicant met the exemption requirement under subsection 205(a) of the *IRPR*.

[6] Based on an entry in the Global Case Management System [GCMS], which form part of the officer's reasons, the IRCC officer stated that they were not satisfied that the Applicant's "proposed business plan is sound". In particular, the officer noted that the Greater Vancouver area is "well-serviced" and that the proposed salaries are "well below the average". On these grounds, the officer concluded that it was unclear how the Applicant's business "will remain competitive".

B. *The Applicant's application for leave and judicial review*

[7] The Applicant filed an application for leave and for judicial review, challenging the refusal of her work permit application on procedural fairness and reasonableness grounds. However, in her Memorandum of Argument, the Applicant did not pursue any of the broad-based reasonableness grounds listed in her Notice of Application. Rather, the Applicant only raised the following procedural fairness issues: (i) the mass refusal of 83 work permit applications filed by the same solicitors of record demonstrated bias; (ii) the change in the IRCC's eligibility criteria, without informing the Applicant, deprived her of the right to know the case to be met; and (iii) the Applicant did not receive the reasons of the refusal.

[8] In its responding Memorandum of Argument, the Respondent noted that "the Applicant did not substantively address any of the [o]fficer's findings" nor make any arguments about the reasonableness of the findings: Respondent's Memorandum of Argument at para 21. Accordingly,

the Respondent's Memorandum of Argument focused on responding to the Applicant's procedural fairness arguments. In her Reply Memorandum of Argument [Reply Memorandum], the Applicant confirmed that "she did not address the specific reasons for refusal of her application in the Memorandum of Argument": Applicant's Reply Memorandum at para 10.

[9] Leave was granted by the Court in November 2023. The Applicant filed a Further Memorandum in which she did not address the procedural fairness issues raised in her Memorandum of Argument. Rather, her Further Memorandum raised new arguments challenging the reasonableness of the refusal of her work permit application.

[10] In several recent decisions, this Court has rejected procedural fairness arguments similar to those raised by the Applicant in her Memorandum of Argument (referred to in paragraph 7 above): *Edalat v Canada (Citizenship and Immigration)*, 2024 FC 738 at para 5; *Lotfikazemi v Canada (Citizenship and Immigration)*, 2024 FC 691 at paras 12, 15; *Shidfar v Canada (Citizenship and Immigration)*, 2023 FC 1241 at para 31; *Shahbazian v Canada (Citizenship and Immigration)*, 2023 FC 1556 at paras 23-24. The same solicitors of record, as in this application, represented the applicants in those cases.

[11] The Applicant's counsel advised the Court, at the outset of her oral submissions, that she was withdrawing the procedural fairness arguments based on this recent jurisprudence, and only pursuing the reasonableness arguments raised in the Applicant's Further Memorandum. As such, the Court did not consider the Applicant's now-abandoned procedural fairness arguments.

III. Analysis

A. *The Court refuses to consider the new issues raised by the Applicant*

[12] The following non-exhaustive factors are relevant to whether the Court should exercise its discretion to allow issues to be raised for the first time in a party's further memorandum of argument:

> (i) Were all of the facts and matters relevant to the new issue or issues known (or available with reasonable diligence) at the time the application for leave was filed and/or perfected?
>
> (ii) Is there any suggestion of prejudice to the opposing party if the new issues are considered?
>
> (iii) Does the record disclose all of the facts relevant to the new issues?
>
> (iv) Are the new issues related to those in respect of which leave was granted?
>
> (v) What is the apparent strength of the new issue or issues?
>
> (vi) Will allowing new issues to be raised unduly delay the hearing of the application?
>
> *Al Mansuri v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 22 at para 12.

[13] As set out below, taking into account these relevant factors, I decline to exercise my discretion to consider the new issues raised by the Applicant.

(1) Relevant facts were known at the time of the Applicant's leave application

[14] I am satisfied that the facts relevant to the reasonableness arguments made for the first time in the Applicant's Further Memorandum were known to the Applicant at the time that she perfected her leave application. The letter refusing her work permit application explained the reasons why

her application was denied. Furthermore, the GCMS notes were provided to the parties before the Applicant perfected her leave application. There is therefore no reason why the Applicant could not have raised these new issues in a timely manner.

(2) No prejudice to the Respondent if the new issues are considered

[15] The Respondent argues that they were prejudiced given that the Applicant only raised the reasonableness arguments in her Further Memorandum. While I agree that the Respondent's Memorandum of Argument was limited to addressing the procedural fairness issues raised by the Applicant, I am not persuaded that the Respondent will suffer any prejudice if the new arguments are considered by the Court. The Respondent had the opportunity to file a Further Memorandum and fully canvassed the Applicant's reasonableness arguments at that time.

(3) The record discloses all the relevant facts

[16] There is no suggestion that the record does not disclose the evidence relevant to the new issues raised by the Applicant. On that basis, a lack of evidence would not hamper the Court's consideration of the new issues raised.

(4) The new issues are not related to the issues in respect of which leave was granted

[17] The Applicant argues that she addressed the reasonableness of the decision in her Reply Memorandum and thus these are not "new" issues raised for the first time in her Further Memorandum. I do not agree.

[18] As this Court recently held, proper reply submissions are to be confined to matters raised by the opposing party: *Mousavimianji* at para 4; *Khodayarinez* at para 21. A reply memorandum is not an opportunity "to flesh out new arguments" that should have been raised at first instance in the applicant's memorandum of argument: *Khodayarinez* at para 21.

[19] Here, the Respondent's Memorandum of Argument simply pointed out that the Applicant failed to address the substance of the officer's findings in her Memorandum of Argument and did not attempt to undermine the findings or point to any evidence to suggest that they were unreasonable. The Respondent did not address the reasonableness of the underlying decision given that it was not challenged by the Applicant. As a result, to the extent that the Applicant's Reply Memorandum addresses the reasonableness of the decision, it is not a proper reply.

[20] Of further significance, the Applicant's Reply Memorandum only addresses the reasonableness of the officer's decision in very vague and general terms. In contrast, her Further Memorandum makes detailed arguments about the reasonableness of the decision. In that vein, the Applicant's Further Memorandum raises reasonableness grounds of review that extend far beyond what was raised in her Reply Memorandum.

(5) The new issues raised

[21] Finally, I must assess the strength of the new issues in deciding whether to exercise my discretion to consider them. In doing so, it is important to bear in mind the applicable standard of review of reasonableness.

[22] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]. A decision should only be set aside if there are "sufficiently serious shortcomings" such that it does not exhibit the requisite attributes of "justification, intelligibility and transparency": *Vavilov* at para 100; *Mason* at paras 59-61.

[23] In her Further Memorandum, the Applicant challenges the reasonableness of the underlying decision on the following grounds: (i) the officer provided no specific analysis for their conclusion that they were not satisfied that the business plan was sound; (ii) the officer's determination that the salary was below average imposed a requirement outside the scope of the IRCC's criteria to meet subsection 205(a) of the *IRPR*; (iii) the officer did not explain and ignored evidence in respect of their finding that it was not clear how the business will remain competitive; and (iv) the officer ignored evidence and provided no analysis with respect to their conclusion that they were not satisfied that the Applicant would leave at the end of her stay and that the purpose of her visit to Canada was not consistent with a temporary stay.

[24] Viewed as a whole, the Applicant's arguments amount to a disagreement with the officer's assessment and weighing of the evidence before them. It is not for a reviewing court to reassess and reweigh the evidence: *Vavilov* at para 126. I have nonetheless addressed each issue raised below.

(a) *The officer's reasons are sufficient*

[25] Officers are not required to provide extensive reasons in decisions on applications for temporary resident visas, including work permits. Simple, concise justifications will suffice: *Tehranimotamed v Canada (Citizenship and Immigration)*, 2024 FC 548 at para 18 [*Tehranimotamed*]; *Sadeghieh v Canada (Citizenship and Immigration)*, 2024 FC 442 at para 33 [*Sadeghieh*]. Visa officers are presumed to have reviewed all the evidence (unless the contrary is shown) and do not need to refer to every piece of evidence: *Sadeghieh* at para 29.

[26] Furthermore, the jurisprudence is clear that assessments of an applicant's business plan, without evidence that the visa officer overlooked or misconstrued evidence, fall within the trained officer's expertise and are entitled to considerable deference: *Tehranimotamed* at para 17; *Chaudhary v Canada (Citizenship and Immigration)*, 2024 FC 102 at paras 56-57.

[27] In my view, there is no merit to the Applicant's argument that the officer's decision lacks the requisite attributes of justification, intelligibility, and transparency. While brief, the officer's letter, together with the GCMS notes, explain in sufficient detail why the Applicant's work permit application was refused.

(b) *The officer reasonably considered the proposed salaries*

[28] The Applicant further argues that the officer erred in concluding that the proposed salaries are "well below average". In particular, the Applicant asserts that this finding is outside the scope of the eligibility requirements set out in the *IRPR* and the relevant IRCC guidelines. The Applicant argues that there is no requirement to offer a particular salary level for employees. In my view, this argument is without merit.

[29] This Court has held that it is reasonable for work permit officers to consider whether proposed wages fall below the average wage in assessing whether a proposed business will promote job creation: *Rahimi v Canada (Citizenship and Immigration)*, 2024 FC 70 at paras 20-24; *Sadeghieh* at paras 30-31.

[30] In this case, the officer considered the projected salaries as a factor in their assessment of the viability of the Applicant's business plan. This was a reasonable approach given that a main consideration in issuing a work permit under subsection 205(a) of the *IRPR* is whether it "would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents". If proposed salaries are "well below the average", this is a relevant factor for an officer to consider.

(c) *The officer reasonably considered how the business would compete in the market*

[31] I similarly find no merit to the Applicant's argument that the officer unreasonably concluded that it was not clear how the business would remain competitive. The officer's conclusion reasonably flows from two findings: (i) the Greater Vancouver area is well-serviced with companies offering technical support services of industrial automation technologies to industrial establishments; and (ii) the Applicant's proposed salaries are well below average.

[32] In light of these findings, it was entirely reasonable and logical for the officer to question how the Applicant's proposed business would be able to compete in the market and thus create "significant economic benefits or opportunities", as required by subsection 205(a) of the *IRPR.*

(d) *The officer reasonably found that the Applicant's visit was inconsistent with a temporary stay*

[33] Finally, the Applicant asserts that the officer erred in concluding, without any analysis and ignoring the Applicant's supporting evidence, that the purpose of her visit was inconsistent with a temporary stay. In particular, the Applicant points to the exit and transition plans set out in her business plan. I agree with the Respondent that, in the absence of a viable business plan, it was reasonable for the officer to question the Applicant's motivation for travelling to Canada.

[34] This same issue was raised in *Khodayarinez*. Justice Blackhawk held that the officer's conclusion in this regard was reasonable "because of the findings with respect to support for the application under C11, the purpose of the Applicant's visit was not consistent with a temporary stay": *Khodayarinez* at para 46.

[35] Moreover, given that the officer found that the Applicant's business plan was not viable (and therefore failed to meet the eligibility requirement in subsection 205(a) of the *IRPR*), it was unnecessary for the officer to address the Applicant's exit and transition strategy. The fact that the Applicant had an exit and transition strategy did not remedy the absence of a viable business plan.

(6) Allowing the new issues to be raised would not unduly delay the hearing of the application

[36] Allowing the Applicant to raise these new issues would not result in any delay in hearing the application. However, considering the various relevant factors in the circumstances of this case,

I refuse to exercise my discretion to consider the new issues raised by the Applicant in her Further Memorandum.

[37] As a final note, I would add that the Court is concerned with the solicitors of record's repeated attempts to raise new issues in judicial review applications of refused work permit applications, after leave has been granted. This is the third application in which the same solicitors of record abandoned all the legal issues raised in the applicants' memoranda of argument and then raised new issues in their further memoranda of argument once leave was granted. In each case, the Court declined to consider the new issues and dismissed the applications.

[38] Notably, a total of 83 work permit applications were prepared by the same solicitors of record, and subsequently refused by the IRCC: Applicant's Memorandum of Argument at para 17. It is uncertain how many of these refused work permit applications have been challenged by way of judicial review. The prospect of additional judicial review applications with improperly-raised new issues, however, is especially concerning as it would result in an undue strain on the Court's scarce judicial and administrative resources. It would also subject the Respondent to unnecessary time and effort.

IV. Conclusion

[39] For these reasons, I refuse to exercise my discretion to consider the new issues raised by the Applicant in her Further Memorandum. Given that the Applicant abandoned the procedural fairness issues raised in her original Memorandum, there remains nothing left for the Court to adjudicate on this application. Consequently, this application is dismissed.

[40] The parties did not raise a question for certification and none arises in this case.

JUDGMENT in IMM-248-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified for appeal.

"Anne M. Turley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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