

Federal Court



Cour fédérale

Date: 20241108

Docket: IMM-15891-23

Citation: 2024 FC 1787

Ottawa, Ontario, November 8, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

**HASSAN GHASEMIZADEH  
BAHRAMABADI  
MAHBOOBEH NEZHADAKBARI MAHANI  
AMIRALI GHASEMIZADEH BAHRAMABADI  
AMIRPARSA GHASEMIZADEH BAHRAMABADI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr. Hassan Ghasemizadeh, his wife, Ms. Mahboobeh Nezhadakbari, and his sons, Amirali Ghasemizadeh and Amirparsa Ghasemizadeh Bahramabadi (together, the “Applicants”)

seek judicial review of a visa officer's (the "Officer") decision denying each of their visa applications.

[2] Mr. Ghasemizadeh is employed by an Iranian company that plans to establish a Canadian subsidiary. He applied as an inter-company transferee ("ICT") for a Labour Market Impact Assessment ("LMIA") exempt work permit under exemption code C61, which applies to employees establishing a branch, subsidiary or affiliate of a multi-national corporation. His work permit was refused because the Officer was not satisfied that the Iranian business is currently multi-national, that the business plan for the Canadian subsidiary is viable, or that the plan presents a significant benefit to Canada, as required by section 205(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "IRPR").

[3] The Applicants argue that the decision refusing Mr. Ghasemizadeh's work permit was unreasonable because the Officer misapprehended the evidence, failed to follow the guidelines for visa officers under exemption code C61, applied a more stringent evidentiary standard than a "balance of probabilities", and failed to justify their conclusion that the business plan was not viable or presented a significant benefit to Canada.

[4] The Respondent says that the Officer carefully reviewed the record and provided intelligible reasons for refusing Mr. Ghasemizadeh's work permit. The Respondent argues that it was open to the Officer to find that Mr. Ghasemizadeh failed to provide evidence demonstrating that the business plan was viable and his intended employment reasonable.

[5] The Applicants ask that the Court make an order granting their visa applications, or alternatively, that their applications be sent back for redetermination within 30 days. The Applicants also seek costs against the Respondent.

[6] For the reasons that follow, this application for judicial review should be granted. The Officer misapprehended the evidence that shows that the Iranian parent company continues to own a factory in Kerman, Iran. The decision also lacks transparency with respect to the Officer's concern about the availability of the funds required for the parent company to finance a Canadian start-up and remain continually viable in Iran.

[7] However, the outcome of the applications are not inevitable and do not warrant an order granting the visas. Nor are there special reasons to justify a cost award. The matter should be remitted for redetermination by a new officer, without the 30-day deadline requested by the Applicants.

## II. Background

### A. *The Factual Context*

[8] Mr. Ghasemizadeh applied for a work permit as an ICT under LMIA exemption code C61, pursuant to sections 200 and 205(a) of the *IRPR*. He seeks a work permit to become the CEO of a wholly owned Canadian subsidiary ("Canada Co") of an Iranian wholesale food manufacturing business ("Parent Co").

[9] Mr. Ghasemizadeh co-founded Parent Co in 2014, and is currently its managing director, a member of its board, and a 25% shareholder. Parent Co owns two factories in Iran: one in Eslamshahr and the other in Kerman. As of September 2023, Parent Co had \$388,268 CAD in liquid funds, and Mr. Ghasemizadeh had \$241,371 CAD in personal funds.

[10] Mr. Ghasemizadeh submitted a five-year business plan for Canada Co with his work permit application. The business plan states that Parent Co will provide \$300,000 CAD as start-up capital for Canada Co. The business plan further states that Canada Co will hire three full-time employees in its first year of business.

[11] Mr. Ghasemizadeh's wife applied for an open work permit under section 205(c)(ii) of the *IRPR*, as the spouse of a skilled worker. His elder son, Amirali, also applied for an open work permit as the dependent of a skilled worker. His younger son, Amirparsa, applied for a visitor visa to accompany his parents.

B. *The Officer's Decision*

[12] The Global Case Management System ("GCMS") notes state that the Officer evaluated the application as a start-up business. The Officer identified the following deficiencies with Mr. Ghasemizadeh's application and business plan:

- A. The business plan indicates that Parent Co is a wholesale distributor throughout the Middle East and North Africa region. However, no documentation was provided showing that Parent Co is currently multi-national and operates a subsidiary, branch

or affiliate enterprise outside of Iran, which is required for Mr. Ghasemizadeh to be an inter-company transferee;

- B. The business plan states that Parent Co will import foods from Middle Eastern markets to Canada, but does not specify how Canada Co will distribute or sell imported products;
- C. The business plan states that Parent Co will expand to purchasing crops from Canadian farmers, but no documentation of contracts or correspondence with farmers or agricultural bodies were provided;
- D. The business plan specifies an address for Canada Co in Brampton, Ontario, but no evidence of a lease or rental agreement was provided;
- E. Parent Co is purported to have two factories in Iran, however sale documents show the factory in Kerman was sold, with no further evidence provided of another factory in Kerman to replace it;
- F. The business plan states that Canada Co will hire three full time employees in its first year of operation, which the Officer found would not provide significant employment opportunities or economic benefit to the Brampton region; and
- G. The business plan states that Parent Co will provide Canada Co with \$300,000 CAD in start-up capital, while it only has \$388,268 CAD in liquid assets. The

Officer found it was not feasible for Parent Co to leave only \$88,268 CAD to maintain its operations in Iran, and that there was no evidence that Mr.

Ghasemizadeh could use his personal funds to maintain Parent Co or Canada Co.

[13] For these reasons, the Officer was not satisfied that the business plan is viable and represents a significant benefit to Canada. The Officer found that there was insufficient evidence of Parent Co's ability to commence business in Canada.

[14] Therefore, the Officer concluded that Mr. Ghasemizadeh failed to meet the requirements under section 205(a) of the *IRPR*, and that a LMIA would be required. The Officer also refused the applications of his wife and sons as they were dependent on Mr. Ghasemizadeh's application.

### C. *Relevant Provisions*

[15] The relevant statutory provisions governing an officer's decision to grant or refuse LMIA-exempt work permits for start-up businesses are sections 200(1)(c)(ii.1) and 205(c)(ii) of the *IRPR* (see Appendix A). There are also guidelines for visa officers assessing ICT applications under section 205(a) [General ICT Guidelines] and the guidelines for officers assessing applications under exemption code C61 [C61 Guidelines] (see Appendix B).

### III. Issues

[16] The main issue is: did the Officer err in refusing the Applicant's inter-company transfer for a labour market impact assessment exempt work permit under exemption code C61?

[17] This can be broken down into two specific questions:

1. Did the Officer misapprehend the evidence of Parent Co's operations and assets in Iran?
2. Did the Officer fail to follow the C61 Guidelines?

#### IV. Standard of Review

[18] The applicable standard of review for all issues is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 25).

#### V. Analysis

A. *Did the Officer misapprehend the evidence of Parent Co's operations and assets in Iran?*

[19] The Applicants argue that the Officer misapprehended the evidence that shows that Parent Co continues to own a factory in Kerman, Iran. They submit that the Officer overlooked the title deeds for the land and office in Kerman and ignored other assets of Parent Co.

[20] I agree with the Applicants that the GCMS notes suggest the Officer misapprehended the evidence regarding the factory in Kerman. The Officer noted that there were sale documents for the factory, and that no further documentation was provided to show another factory was

established in Kerman. However, the contract of sale, which was included in the work permit application, names Mr. Ghasemizadeh as the purchaser of the property in Kerman, not the seller.

[21] Parent Co's financial position and assets were material to the Officer's analysis and conclusion regarding Parent Co's ability to finance the start-up of Canada Co and remain continually viable. The Officer's decision on this front was unreasonable.

B. *Did the Officer fail to follow the C61 Guidelines?*

(1) No evidence of Canada Co's lease

[22] The Applicants are correct that the C61 Guidelines do not require evidence showing a physical premises has been secured; rather they state that "the enterprise may initially use its counsel's address until a premise in Canada can be purchased or leased."

[23] However, I agree with the Respondent that it was reasonable for the Officer to note the absence of a lease or rental agreement. Mr. Ghasemizadeh's work permit application states that Parent Co has already leased an office for Canada Co at 45 Bramalea Road, 28-140, Brampton Ontario. It follows that the Officer noted the absence of a lease or rental agreement because Mr. Ghasemizadeh represented that Parent Co has already secured physical premises, not because the Officer imported a new requirement into the C61 Guidelines.



(2) Inquiry into Parent Co's financial position

[24] The Applicants submit that it was inappropriate for the Officer to inquire into Parent Co's financial position after it provides Canada Co with \$300,000 CAD in start-up capital, and that this went beyond the analysis required under the C61 Guidelines.

[25] The Officer was not confined to considering whether \$300,000 CAD is sufficient to support a Canadian subsidiary. The C61 Guidelines explicitly state that "the continuing viability of [the] foreign operation" and its "financial ability to establish and support the new business operation" should be taken into account. Therefore, it was reasonable and open to the officer to consider the sufficiency of the start-up capital for Canada Co, as well as the continuing viability of Parent Co after its investment.

(3) Availability of liquid funds

[26] In assessing Parent Co's continuing viability, the Applicants argue that the Officer either overlooked the evidence of Parent Co's illiquid assets (real property, machinery, goods/materials and receivables valued at \$17M+ CAD) and expected annual profits (\$1,672,194 CAD), or imposed a requirement not found in the C61 Guidelines that Parent Co have greater liquidity to demonstrate a sufficient financial position.

[27] The Applicants further argue that the Officer failed to justify their finding that Mr. Ghasemizadeh may not have access to, or may not be able to utilize, his personal funds to support Parent Co or Canada Co.

[28] As stated by Justice McVeigh, it is unreasonable for an officer to fail to explain why liquid assets are necessary for commencing a company and paying employees, and why an applicant's real estate and other equity investments were insufficient to establish their financial position (*Sedghi v Canada (Citizenship and Immigration)*, 2023 FC 1601 at paras 10, 15).

[29] Thus, while it may be reasonable for the Officer to consider Parent Co's liquidity as a part of the required analysis of the foreign operation's continuing viability, the Officer should address all the relevant evidence establishing the Applicants' financial position and ability to fund the business.

[30] I agree with the Applicants that the Officer's findings regarding the availability of funds to commence Canada Co and keep Parent Co operationally viable were not transparent. The Officer failed to explain why they had any concerns with Mr. Ghasemizadeh's ability to utilize his personal funds.

(4) Viability of the business plan

[31] The Applicants argue that none of the Officer's findings have a logical nexus to the conclusion that the business plan is not viable, rendering the decision unjustified and unintelligible. They make two specific arguments with respect to the Officer's assessment of their business plan. First, they submit that the Officer's conclusion, that hiring three full time employees in Canada Co's first year of operation presents insufficient economic benefit to Canada, lacks rationale because it would be too onerous to expect a start-up to hire more employees in its first year, and that the Officer should have considered the five-year plan.

Second, they argue that the Officer applied a higher standard of proof than a “balance of probabilities” by requiring evidence of contracts or correspondence with farmers or agricultural governing bodies in Canada.

[32] With respect to the first issue, the Officer’s conclusion that the job creation contemplated by the business plan presents an insufficient benefit to Canada is entitled to deference (*Sadeghieh v Canada (Citizenship and Immigration)*, 2024 FC 442 at para 29). Moreover, the General ICT Guidelines state that applicants must demonstrate that their work will generate significant benefits or opportunities for Canadians “within the validity period of the work permit being sought”, which in this case is two years. Therefore, only the first two years of hiring were relevant to the Officer’s decision.

[33] With respect to the second issue, the Officer did not apply too onerous a standard of proof by noting the absence of evidence showing that Canada Co has reached out to Canadian suppliers, who are key stakeholders in the business plan. The C61 Guidelines state that an applicant “must provide a timeline and supporting evidence to establish that the new enterprise will become actively engaged once the new branch, subsidiary, or affiliate is established.” The Officer’s analysis notes a lack of supporting evidence to show that Canada Co will become actively engaged in purchasing and distributing products once established.

[34] The Officer’s conclusion that the business plan may not be viable is supported by the deficiencies highlighted in the GCMS notes. Specifically, the Officer took issue with the lack of evidence to show that key steps were taken to secure Canadian suppliers and distribution channels. The Officer was also concerned with Parent Co’s ability to finance Canada Co and

remain operationally viable. It was open to the Officer to question the business plan's viability on the strength of these findings.

VI. Conclusion

[35] The Officer made two reviewable errors in their analysis of the work permit application and business plan. First, the Officer misapprehended the evidence of the title deeds and contract of sale for the factory in Kerman. Second, the Officer's analysis of the funds available to finance Canada Co while maintaining Parent Co's operations lacked transparency. Together, these errors amount to more than a minor misstep and are sufficiently serious to warrant remitting the case back to a new officer (*Vavilov* at paras 100, 141).

**JUDGMENT in IMM-15891-23**

**THIS COURT'S JUDGMENT is that:**

1. The matter is remitted to a different officer for reconsideration.
2. There is no question for certification.

"Michael D. Manson"

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Judge

## APPENDIX A

Sections 200(1)(c)(ii.1) and 205(c)(ii) of the *IRPR*:

**IRPR****Work permits**

**200 (1)** Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that

[...]

**(b)** the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;

**(c)** the foreign national

[...]

**(ii.1)** intends to perform work described in section 204 or 205 and has an offer of employment to perform that work or is described in section 207 and has an offer of employment, and an officer has determined, on the basis of any information provided on the officer's request by the

**RIPR****Permis de travail — demande préalable à l'entrée au Canada**

**200 (1)** Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis :

[...]

**b)** il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;

**c)** il se trouve dans l'une des situations suivantes :

[...]

**(ii.1)** il entend exercer un travail visé aux articles 204 ou 205 pour lequel une offre d'emploi lui a été présentée ou il est visé à l'article 207 et une offre d'emploi lui a été présentée, et l'agent a conclu, en se fondant sur tout renseignement fourni, à la demande de l'agent, par l'employeur qui présente

employer making the offer and any other relevant information, that the offer is genuine under subsection (5)...

### **Canadian interests**

**205** A work permit may be issued under section 200 to a foreign national who intends to perform work that

**(a)** would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents...

l'offre d'emploi et tout autre renseignement pertinent, que l'offre était authentique conformément au paragraphe (5)...

### **Intérêts canadiens**

**205** Un permis de travail peut être délivré à l'étranger en vertu de l'article 200 si le travail pour lequel le permis est demandé satisfait à l'une ou l'autre des conditions suivantes :

**a)** il permet de créer ou de conserver des débouchés ou des avantages sociaux, culturels ou économiques pour les citoyens canadiens ou les résidents permanents...

## APPENDIX B

The guidelines for visa officers assessing ICT applications under section 205(a) [General ICT Guidelines] specify the following eligibility criteria:

### **Eligibility**

To be eligible under R205(a) as an ICT, **all applicants** must:

[...]

be transferring to a Canadian enterprise that

has the qualifying relationship of parent, subsidiary, branch, or affiliate of their current employer

is actively engaged in the business in respect of which the offer is made

[...]

All applicants must demonstrate that their work will generate significant economic, social or cultural benefits, or opportunities for Canadian citizens or permanent residents within the validity period of the work permit being sought.

### **Actively engaged**

Both the Canadian and the foreign enterprise of the MNC must continue to exist and operate for the duration of the intra-company transferee's intended stay in Canada.

As required by R200(5)(a), in order to ensure that an enterprise, not only legally exists but also can demonstrate the ability to provide stable employment for the requested period, they must be:

doing business on a regular and systematic basis

continuously providing goods or services

It does not include the mere presence or establishment of an agent or office in Canada.



The guidelines for officers assessing applications under exemption code C61 [C61 Guidelines] specify the following considerations and eligibility criteria:

**Occupational capacity – Establish a branch, subsidiary or affiliate enterprise (administrative code C61)**

[...]

Factors such as the ownership or control of the enterprise, the commercial premises, the investment commitment, the organizational structure, the goods or services they will provide and the continuing viability of foreign operation should be considered. The financial ability to establish and support the new business operations should also be taken into consideration.

**Assessing whether a new enterprise is actively engaged**

Foreign nationals applying for an ICT work permit (administrative code C61) to establish a new qualifying enterprise in Canada, must provide a timeline and supporting evidence to establish that the new enterprise will become actively engaged once the new branch, subsidiary or affiliate is established.

Important: Both the Canadian and the foreign enterprises must be doing business for the duration of the intended stay in Canada. The foreign national must be able to transfer back to the foreign enterprise at the end of their assignment in Canada.

[...]

Employees entering Canada to establish a qualifying enterprise

Employees of foreign enterprises of [multi-national corporations] may be eligible as an ICT if they are seeking to establish a qualifying enterprise in Canada on behalf of their current employer.

To be eligible as an ICT under administrative code C61, in addition to meeting the eligibility requirements for all ICTs, the employee must:

be at the executive or management level, or be an employee demonstrating specialized knowledge;

be entering Canada to secure physical commercial premises for the new Canadian enterprise;

the enterprise may initially use its counsel's address until a premise in Canada can be purchased or leased

provide reasonable human resource (HR) plans to maintain or hire staff for new enterprise;

These plans must demonstrate that the Canadian enterprise will be large enough to support an executive, management or specialized knowledge function throughout the entire duration of the foreign national's work permit.

provide a business plan and financial documentation as evidence that the foreign enterprise has the capacity and financial ability to cover the costs to establish an enterprise in Canada as well as the costs to continue to operate the enterprise during the initial ramp-up period.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-15891-23

**STYLE OF CAUSE:** HASSAN GHASEMIZADEH BAHRAMABADI,  
MAHBOOBEH NEZHADAKBARI MAHANI,  
AMIRALI GHASEMIZADEH BAHRAMABADI, AND  
AMIRPARSA GHASEMIZADEH BAHRAMABADI v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

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**DATED:** NOVEMBER 8, 2024

**APPEARANCES:**

Babak Vosooghi FOR THE APPLICANTS

Laoura Christodoulides FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Vosooghi Law Professional Corporation FOR THE APPLICANTS  
Barrister and Solicitor  
Richmond Hill, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario