

Federal Court



Cour fédérale

Date: 20131011

Docket: IMM-3136-13

Citation: 2013 FC 1035

Ottawa, Ontario, October 11, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

MARYAM ATTARZADEH NIYASARY

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms Maryam Attarzadeh Niyasary, a citizen of Iran, applied for a multiple-entry temporary resident visa (TRV) that would allow her to visit her husband, Mr Hamidi, in Canada. Mr Hamidi works as an Imam in Markham, Ontario and possesses a valid work permit for that purpose.

[2] An immigration officer was not satisfied that Ms Niyasary would leave Canada when her TRV expired, so denied it. The officer believed that Ms Niyasary's family circumstances in Iran and the unstable political situation there would be unlikely to draw her back to her country of origin. Similarly, employment, educational, and financial opportunities would likely cause her to wish to stay in Canada.

[3] Ms Niyasary argues that the officer's decision was unreasonable as it was out of keeping with the evidence. She asks me to overturn the officer's decision and order another officer to reconsider her application.

[4] I agree that the officer's decision was unreasonable. The bulk of the evidence supported Ms Niyasary's application. The officer did not explain, with reference to the evidence, why the TRV was denied.

[5] The sole issue is whether the officer's decision was unreasonable.

II. The Evidence

[6] Ms Niyasary had previously had applied for a TRV and was turned down. In that decision, the officer pointed out that Ms Niyasary's children were all adults, she was not employed in Iran, she had not applied for a visa at the same time as her husband had, and she possessed large cash deposits whose origins were unknown. On her second application, Ms Niyasary tried to address concerns that arose from her first application. Accordingly, she supplied the following:

- a description of her strong family commitments in Iran, which explained why she could not leave Iran when her husband left;
- evidence that the cash deposits resulted from the sale of property;
- details of her remaining assets in Iran;
- reference to her compliance with a previous visa to visit Canada; and
- an expression of her desire to apply for permanent residence in the future and her concern that failure to abide by the terms of her TRV would jeopardize her application.

III. Was the officer's decision unreasonable?

[7] It is not clear to me why the officer felt that the evidence pointed to denial of the TRV. From my review of it, the evidence favoured granting the visa. While the officer's conclusion merits deference, it must be overturned when it not intelligible, transparent and justified. The officer need not review the evidence extensively, but must convey to the applicant why her application was dismissed. In my view, the officer failed to make any reference to evidence that might have justified dismissal of the application; nor does the record disclose an explanation.

[8] Accordingly, I find that the decision was unreasonable.

IV. Conclusion and Disposition

[9] The officer failed to provide a justification for turning down Ms Niyasary's application for a TRV when, in fact, the evidence supported her request. In the circumstances, I must conclude that the officer's decision was unreasonable, grant this application for judicial review, and order another officer to consider her application.

[10] Neither party proposed a question of general importance to be certified, and none is stated.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is allowed and the matter is referred back to another for reconsideration.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3136-13

STYLE OF CAUSE: MARYAM ATTARZADEH NIYASARY v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 9, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: OCTOBER 11, 2013

APPEARANCES:

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