

Federal Court



Cour fédérale

Date: 20241129

Docket: IMM-6029-23

Citation: 2024 FC 1925

Ottawa, Ontario, November 29, 2024

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

MOHAMMAD SHARIFI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mohammad Sharifi [Applicant], an Iranian national, seeks a judicial review of an April 25, 2023 decision [Decision] refusing his application for a temporary resident visa [TRV]. The Applicant applied for a TRV to visit his sister, who is a Canadian citizen. The visa officer [Officer] was not satisfied that the Applicant would leave Canada at the end of his stay as

required by paragraph 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[2] The application for judicial review is allowed.

II. Background

[3] The Applicant submitted two separate TRV applications, one in 2018 and another in 2022, both of which were refused. The Applicant challenged the 2022 decision and reached a settlement with the Respondent to have the matter redetermined.

[4] The Applicant provided updated versions of the following documents: Schedule 1 with updated travel history; a statutory declaration from his sister; a letter confirming his employment and authorizing a vacation period during the proposed trip; bank statements; employment and property ownership information from his sister; and proof of travel insurance.

III. Decision

[5] On April 25, 2023, the Officer refused the TRV because he was not satisfied that the Applicant would leave Canada at the end of his stay as required by *IRPR* paragraph 179(b). The Officer based his findings on the following factors: the purpose of the Applicant's visit was not consistent with a temporary stay given the details provided in the application; the Applicant has significant family ties in Canada; and the Applicant does not have significant family ties outside Canada. The Officer's Global Case Management System [GCMS] notes are reproduced below:

I have reviewed the application for re-determination. After re-opening the application, PA was given 30 days to provide updated documentation. PA provided updated proof of funds. I have reviewed all the documentation provided for this application. Summary of key findings below: The applicant is a 34 year old Iranian national, single, no dependents. As for purpose of visit, PA is coming to visit family, as he has two siblings residing in Canada. PA is currently working as a Marketing Manager, since August 2021. In regard to the PA's finances, PA's gross salary is IRR\$180,000,000 per month, according the employment letter provided. Amounts seen in bank statements provided do not commensurate with the stated income. Also, I note that bank statement provided consists of a variety of lumps sums deposited within a six month timeframe of the PA potential international travel. No explanation was provided regarding the source of funds. In the absence of satisfactory documentation showing the source of these funds, I am not satisfied the PA has sufficient funds for the intended proposed stay in Canada. The applicant does not have significant family ties outside Canada. Although PA is employed, he's been working for the company for over 1 year only. Also, limited assets were provided to count as a positive factor in my assessment. PA does country and has not demonstrated sufficiently strong ties to their country of residence. Given family ties or economic motives to remain in Canada, the applicant's incentives to remain in Canada may outweigh their ties to their home country. The applicant's travel history is not sufficient to count as a positive factor in my assessment. Weighing the factors in this application. I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay. For the reasons above, I have refused this application.

IV. Preliminary Issue

[6] The Respondent submits that the Applicant improperly seeks to supplement the Certified Tribunal Record with new evidence not before the Officer. It is trite law that a judicial review should proceed only based on the evidence that was before the decision-maker (*Samsonov v Canada (Citizenship and Immigration)*, 2006 FC 1158 at para 7; *Sidhu v Canada (Citizenship and Immigration)*, 2008 FC 260 at para 9; *Deol v Canada (Citizenship and Immigration)*, 2009 FC 406 at para 56).

[7] The Applicant submits that the evidence is admissible under the exception in *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at para 25 [*Bernard*], as it addresses a breach of natural justice.

[8] The general rule is that on application for judicial review, the Court may only consider evidence that was before the decision-maker. In my view, the exception from *Bernard* does not apply to this matter. The impugned paragraphs of the Applicant's affidavit contain argument on the fairness of the Decision. Furthermore, new evidence concerning the Applicant's savings, deposits in his bank account, and use of his accounts, could reasonably have been placed before the Officer at the time. It is the Applicant's duty to put his best foot forward anticipating concerns to meet the requirements for a TRV, including those related to his financial situation. The Court will not consider this evidence.

V. Issues and Standard of Review

[9] After considering the parties' submissions, the matter raises the following issues:

1. Was the Decision reasonable?
 - a. Did the Officer reasonably assess the Applicant's sufficiency of funds?
 - b. Did the Officer reasonably assess the Applicant's family ties?
2. Was the Decision procedurally fair?

[10] The parties agree the merits of the Decision are reviewable on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65

[*Vavilov*]). This case does not engage one of the exceptions set out by the Supreme Court of Canada in *Vavilov*, therefore, the presumption of reasonableness is not rebutted (at paras 16-17).

[11] Because I have found the Decision to be unreasonable it is unnecessary to consider procedural fairness issues.

VI. Analysis on Reasonableness of the Decision

A. *Applicant's Position*

(1) Sufficient Funds

[12] The Applicant submits the Officer erred by giving no consideration to the means of support of family members or third parties (*Yameogo v Canada (Citizenship and Immigration)*, 2023 FC 667 at para 21).

[13] The Applicant's sister provided an affidavit and supporting documents detailing: her employment, income, savings, and property ownership; her sworn commitment to cover the costs of the trip aside from the plane ticket; the purpose of the Applicant's visit; and the guest service room of her building where the Applicant would stay. The Officer did not engage with any of these details. Instead, the Officer remained silent on this highly relevant, contradictory evidence (*Askari v Canada (Citizenship and Immigration)*, 2023 FC 1318 at para 25).

[14] The Officer found the Applicant's bank statements "do not commensurate with" his salary. This is not justified by the evidence. The Applicant is a man in his mid-30s who has

worked for six years, earns the equivalent of CAD \$3,500 a month (\$42,000 a year), and lives with his parents in a house that they own. His employment is well-documented and his several bank accounts show savings over multiple years. The Officer does not explain why the Applicant could not have accumulated USD \$37,000 in savings.

[15] The Officer appears to question lump sum deposits in one of the Applicant's accounts. This account held only about \$14,000 of the Applicant's \$37,000 total savings and showed day-to-day use and frequent activity of deposits and withdrawals. This is not a case of deposits made to bolster an application. The Officer's inferences do not demonstrate an internally coherent and rational chain of analysis within applicable factual and legal constraints.

(2) Family Ties

[16] The Officer found the Applicant does "not have significant family ties outside Canada[.]" This is incorrect. Though the Applicant has two siblings living and working in Canada, the Applicant's other relatives are outside Canada. One of the Applicant's brothers lives in the United States. The Applicant's parents have green cards in the United States, however, they live in Iran with the Applicant, and have a large extended family in Iran.

[17] One objective of the *Immigration and Refugee Protection Act*, SC 2001, c 27, s 3(1)(d) is family reunification, which may be temporary (*Guillermo v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 61 at para 8;). There is nothing implicitly unreasonable about temporarily visiting a close relative in Canada (*Cao v Canada (Citizenship and Immigration)*, 2010 FC 941 at para 11).

[18] Finally, in rejecting the genuineness of the trip, the Officer disregarded factors set out in the *Immigration, Refugees and Citizenship Canada's Operational Instructions and Guidelines on TRV Applications* [Guidelines]. The Guidelines ask an officer to consider details regarding the purpose of the trip and the applicant's plans. The Officer did not consider the Applicant's clear purpose to visit his sister, his well thought out schedule, arranged accommodations, health insurance coverage, and plan for costs.

B. *Respondent's Position*

[19] It is the Applicant's onus to satisfy the Officer with sufficient evidence showing he will leave Canada at the end of his authorized period of stay (*Abdulateef v Canada (Citizenship and Immigration)*, 2012 FC 400 at para 10). The Applicant failed to do so. The application lacks both sufficient information and detail (*Nimely v Canada (Citizenship and Immigration)*, 2020 FC 282 at para 13). Though the Applicant disagrees with the Officer's conclusions he does not demonstrate the Decision was unreasonable.

(1) *Sufficient Funds*

[20] The Officer must conduct a detailed and fulsome analysis of the source, origin, nature, and stability of the Applicant's funds (*Aghvamiamoli v Canada (Citizenship and Immigration)*, 2023 FC 1613 at para 29 [*Aghvamiamoli*]). The absence of adequate documentation confirming the availability of funds is sufficient on its own to refuse an application (*Aghvamiamoli* at para 31; *Abdisoufi v Canada (Citizenship and Immigration)*, 2024 FC 164 at para 11).

[21] The Officer's findings with respect to the sufficiency of the Applicant's funds to support his stay in Canada were reasonable (*Saif v Canada (Citizenship and Immigration)*, 2021 FC 680 at paras 19-21). The Officer noted the employment letter and bank statements, but found the lump sum deposits were not commensurate with the Applicant's salary. The Applicant did not explain why the lump sums were deposited in the six months prior to the TRV application. These explanations were only provided to the Court on application for judicial review.

[22] It is presumed the Officer considered all the evidence. Though the Officer did not mention the financial support from the Applicant's sister in their reasons, the financial support does not established the Applicant would leave Canada at the end of his authorized stay.

(2) Family Ties

[23] It is not an error for the Officer to consider strong family connections to Canada as a reason why the Applicant might remain in Canada (*Gomes v Canada (Citizenship and Immigration)*, 2020 FC 451 at para 18). In addition, the Officer had concerns with the Applicant's ties to his home country given the evidence of limited assets in Iran coupled with current employment of only one year.

C. Conclusion

[24] The Decision was unreasonable in its consideration of both sufficiency of funds and family ties.

(1) Sufficient Funds

[25] It is true that an officer is entitled to assess the source, nature and stability of an applicant's funds (*Aghvamiamoli* at para 29). However, evidence in the form of two statutory declarations before the Officer showed the Applicant's sister had undertaken to pay for the Applicant's expenses in Canada. The Applicant only had to pay for his plane ticket. The Applicant's sister also provided supporting documentation.

[26] While there is also a presumption that an officer has reviewed the entire application, the Officer did not address how this contradictory evidence factored into their findings. The Officer found the Applicant had insufficient funds without reference to the evidence of his sister's undertaking and finances. This is unreasonable (*Iyiola v Canada (Citizenship and Immigration)*, 2020 FC 324 at para 19; *Etwaroo v Canada (Citizenship and Immigration)*, 2021 FC 1160 at paras 20-21, 23).

(2) Family Ties

[27] The Officer was required to engage with the contradictory evidence on finding the Applicant did not have significant family ties outside Canada (*Shirazi v Canada (Citizenship and Immigration)*, 2024 FC 822 at paras 17-18). In the GCMS notes, the Officer acknowledged the Applicant had two siblings residing in Canada. However, the record also provided evidence that the Applicant's brother lives in the United States, his parents have green cards in the United States but live in Iran, he resides with his parents, he and his siblings own a share of the family home, and he has a large extended family in Iran. The Officer failed to provide transparent

reasons for finding the Applicant does not have significant family ties outside Canada in light of this evidence. I agree with the Applicant that the Officer has ignored contradictory evidence (*Vavilov* at para 126) rendering the Decision unreasonable.

VII. Conclusion

[28] For the reasons above, this application for judicial review is allowed.

[29] The parties do not propose a question for certification and I agree that none arises.

JUDGMENT in IMM-6029-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is remitted for re-determination by a different officer.
2. There is no question for certification.

"Paul Favel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6029-23

STYLE OF CAUSE: MOHAMMAD SHARIFI v HE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 2, 2024

JUDGMENT AND REASONS: FAVEL J.

DATED: NOVEMBER 29, 2024

APPEARANCES:

LEIGH SALSBERG	FOR THE APPLICANT
MARGHERITA BRACCIO	FOR THE RESPONDENT

SOLICITORS OF RECORD:

LEIGH SALSBERG TORONTO, ON	FOR THE APPLICANT
ATTORNEY GENERAL OF CANADA TORONTO, ON	FOR THE RESPONDENT