

Federal Court



Cour fédérale

Date: 20240423

Docket: IMM-11680-22

Citation: 2024 FC 610

Toronto, Ontario, April 23, 2024

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

SHAYAN EFTEKHARI ASLI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of the decision of an officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC] dated November 18, 2022 [Decision]. The Officer concluded that the Applicant, a citizen of Iran, had failed to meet the criteria for the issuance of a work permit pursuant to the *Immigration and Refugee Protection Act*, SC 2001, c 27 and the *Immigration and Refugee Protection Regulations*, SOR/2022-227 [IRPR].

[2] As explained in greater detail below, this application is allowed, because the Decision is not transparent as to the basis for the Officer's conclusion that the Applicant's intended initial investment, in the business that he proposed starting in the greater Toronto area, would not be forthcoming.

II. Background

[3] The Applicant is a citizen of Iran. He has worked in various marketing roles, and in December 2021, he started his own marketing research company in Iran called Shayan Ideh Gostar Novin.

[4] On August 2, 2022, the Applicant filed an application for a work permit under *IRPR* paragraph 205(a), using published guidance from IRCC applicable to entrepreneurs or self-employed individuals seeking only temporary residence (exemption C11). The Applicant proposed to start a marketing research and consulting services business in the greater Toronto area. His application included a business plan and written submissions from his counsel.

III. Decision

[5] The Officer's November 18, 2022 letter, which conveyed the Decision refusing the work permit application [Decision Letter], stated that the Applicant's application had not met the requirements of the *IRPR*. In particular, the Decision Letter listed the following grounds for refusing the Applicant's application:

I am not satisfied that you will leave Canada at the end of your stay as required by paragraph 200(1)(b) of the *IRPR* (<https://laws.justice.gc.ca/eng/regulations/SOR-2002-227/section-200.html>). I am refusing your application because you have not

established that you will leave Canada, based on the following factors:

The compensation (monetary or other) indicated in your job offer and your assets and financial situation are insufficient to support the stated purpose of travel for yourself (and any accompanying family member(s), if applicable).

I am not satisfied there is documentary evidence to establish that you meet the exemption requirements of C11 Significant benefit -Entrepreneurs/self-employed under R205(a).

[6] The Certified Tribunal Record in this matter includes Global Case Management System

[GCMS] notes, which include the following excerpt dated November 18, 2022:

PA seeks WP under C11 (Self-Employed / Entrepreneur) to open a Marketing research and Consulting services – Shaz Marketing Solution Inc.. Not satisfied the business will be of significant benefit to Canada or remain competitive as the client wants to have its main office in the greater Toronto area where the market both online and in stores is already well-serviced and competitive.

Given the initial business investment is noted as 167K Cdn, with \$113,000 in payroll for year one and forecasting approximately \$230K Cdn in sales. I am not satisfied the investment will be available as stated based upon the documents before me nor am I satisfied that the projections are accurate based upon the competitive market of such a firm. I am not satisfied that the applicant has demonstrated that he meets the eligibility criteria. Application refused.

IV. Issues

[7] The sole issue raised for consideration by the Court is whether the Decision is reasonable.

While the Applicant's written submissions had raised issues of procedural fairness, those issues were withdrawn during the oral hearing of this application.

[8] Consistent with the above articulation of the issue in this matter, the merits of the Decision are reviewable on the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]).

V. Relevant Provisions

[9] Relevant provisions of the *IRPR* include:

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;

[...]

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;

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;

[...]

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;

VI. Analysis

[10] My decision to allow this application for judicial review turns on the Officer's finding related to the Applicant's intended initial business investment. As identified in the above-quoted GCMS notes, which form part of the reasons for the Decision, the Officer noted the intended initial business investment of \$167,000, as well as payroll of \$113,000 in the first year of the business and a forecast of approximately \$230,000 in sales. The Officer then made two findings: (a) based on the documents provided, the Officer was not satisfied that the investment would be available as stated; and (b) based upon the competitive market in which the Applicant's business would be operating, the Officer was not satisfied that the Applicant's projections are accurate.

[11] The Applicant submits that the Decision is unreasonable, because it provides no explanation for the Officer's concern that the Applicant's investment of \$167,000 in the business would not be available. The Applicant points to bank records and records of his tangible assets, which were included with his application to the IRCC to support the availability of the initial investment. As the Applicant argues, neither the Decision Letter nor the GCMS notes provide any analysis of this evidence or otherwise explain the Officer's finding.

[12] When asked about this point at the hearing of this application, the Respondent was unable to identify any analysis supporting this aspect of the Decision. However, the Respondent urged the Court to consider the Officer's reasons holistically, focusing in particular on the fact that, based on the competitive market in which the Applicant's firm would be operating, the Officer was not satisfied that the Applicant's financial projections were accurate.

[13] The Respondent points to information in the Applicant's submission to the IRCC identifying that in the first year of business, the firm's projected \$230,000 in sales and payroll of \$113,000, combined with other expenses, were forecast to result in a loss of 0.04%. The Respondent notes the Applicant's assertion that he has personal funds to cover the year-one losses. However, the Respondent submits that the fact that this entrepreneurial business would operate at a loss does not support a conclusion that it will provide employment opportunities to Canadians and contribute to the economic or social development of the region where the business is based.

[14] The difficulty with the Respondent's submission is that it departs from the Officer's reasoning, as evidenced by the GCMS notes. I accept that the Officer arrived at an overall conclusion that the requirements of *IRPR* paragraph 205(a) were not met, *i.e.*, that the business would not generate the required economic benefits or opportunities. However, I do not read the GCMS notes as evidencing a conclusion that the business was not viable notwithstanding the \$167,000 investment. Rather, the Officer concluded that the business was not viable, in part, because the Officer was not satisfied that the \$167,000 investment would be available. In other words, the finding surrounding the investment is linked to the overall adverse conclusion as to the business's ability to generate economic benefits or opportunities.

[15] As such, in the absence of a transparent analysis supporting the Officer's finding related to the availability of the initial investment, the requirements of *Vavilov* have not been met in connection with a material aspect of the Decision. As a result, the Decision is unreasonable, and

this application for judicial review will be allowed. It is therefore unnecessary for the Court to consider the Applicant's other arguments surrounding the reasonableness of the Decision.

[16] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-11680-22

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, the Decision is set aside, and the matter is returned to a different IRCC officer for redetermination. No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11680-22

STYLE OF CAUSE: SHAYAN EFTEKHARI ASLI v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 22, 2024

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: APRIL 23, 2024

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