

CANADA / JUDGMENT

Vandalvand v. Canada (Citizenship and Immigration)

2024 FC 1805

COURT

Federal Court

DECIDED

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PRESENT: The Honourable Madam Justice Strickland BETWEEN: MOHAMAD VANDALVAND
Applicant and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT
AND REASONS

- [1] The Applicant, Mohamad Vandalvand seeks judicial review of the decision of Immigration, Refugee and Citizenship Canada [IRCC] rejecting his application for a Temporary Resident Visa [TRV]. Background [2] The Applicant is an Iranian citizen. In July 2023, he applied for a TRV. In his application, he stated that the purpose of his visit was to be with his family from whom he had been separated and had last seen two years ago. His sister and brother-in-law, who are Canadian citizens, provided a statutory declaration in which they invited the Applicant to Canada and confirmed that they would be responsible for all of his related expenses. That statutory declaration also indicated that the purpose of the Applicant's visit was to visit his family and Canada. The invitation was supported by bank statements and other documentation.
- [3] The TRV application also included, among other documentation, an April 6, 2022, Notice of Decision of the Refugee Protection Division, which determined that the Applicant's wife and their two children are Convention refugees That same year, the Applicant's wife applied for permanent residence under the Protected Persons class. Her application included the Applicant and their children.
- [4] On September 21, 2023, an IRCC officer [Officer] refused the Applicant's TRV application.

- [5] The Officer's letter explained that they refused the Applicant's TRV application because they were not satisfied that he 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 [IRP Regulations]. The Officer based this conclusion on two factors. First, that the Applicant has significant family ties in Canada. Second, that the purpose of the Applicant's visit to Canada was not consistent with a temporary stay given the details provided in his application.
- [6] The Global Case Management System [GCMS] Notes, which also constitute part of the Officer's reasons, state: I have reviewed the application. I have considered the following factors in my decision. I note that the applicant has strong ties to Canada with immediate family members residing in Canada. Host is not sufficiently established to finance applicants stay. The presence of family members in Canada creates a pull to remain, thus diminishing their motivation to return. The applicant's stated travel purpose appears poorly motivated or substantiated. Applicant intends to visit an extended family member. Invitation letter on file. Taking the applicant's travel plans into consideration, the applicant does not appear to be sufficiently well established that the proposed travel would be a reasonable expense. I am not satisfied the PA is a genuine visitor that will leave Canada at the end of the authorized stay. 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. Issues and Standard of Review Preliminary Matter [7] As a preliminary point, although in his written submissions the Applicant raised as issues matters of procedural fairness, as well as whether the temporary public policy exempting certain applicants applying under the spouse or common-law partner in Canada class or the Family Class from work permit requirements breached his s 15 Charter rights, counsel advised at the hearing that the Applicant was abandoning both of those arguments. Instead, he would only address and rely on the issue of whether the Officer's decision was reasonable.
- [8] Accordingly, these reasons will address only that issue.
- [9] The parties submit and I agree that the standard of review on the merits of the Officer's decision is reasonableness. On judicial review the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 25, 99 [Vavilov]). The Decision Was Not Reasonable Applicant's position [10] The Applicant submits that the Officer failed to properly consider factors relevant to his application and misapprehended evidence before them, resulting in an unreasonable decision.
- [11] In that regard, the Officer found that the host was not sufficiently established to finance the Applicant's stay. The Applicant submits that this finding fails to acknowledge the financial and other information provided by the Applicant, nor does it explain how this did not demonstrate sufficient establishment.

- [12] Further, that the Officer erred in not assessing the Applicant's family ties in Iran, which included his parents and extended family. Nor did the decision take into consideration that the Applicant has visited his wife and children in Canada on several occasions and has never overstayed. The Applicant submits that his travel history and his previous visits to Canada are strong indicators that he would comply with the requirements of his TRV and that this evidence should have been given significant weight. Instead, the Officer did not consider this evidence.
- [13] The Applicant also submits that the Officer overlooked his proof of employment and his financial establishment in Iran. This evidence further demonstrated that he would not remain in Canada and his bank statements in particular demonstrate that he could indeed afford the expenses for his proposed trip to Canada. However, the Officer's decision was made without regard to his actual financial situation.
- [14] The Applicant asserts that the Officer's determination that the purpose of his stay was not consistent with a temporary stay is unintelligible. His application detailed that he was coming to Canada for the purpose of visiting his wife and children. The Officer failed to provide sufficient reasons as to why the Applicant's stated purpose was not consistent with a temporary stay. He submits that his purpose for visiting is even more reasonable considering that most of his family and his livelihood is based in Iran, and that there is nothing compelling that would keep him in Canada and overstay his TRV.
- [15] As such, the Applicant submits that the Officer's finding has no basis in fact or in law. Rather, it is illogical and based purely on speculation. Respondent's position [16] The Respondent submits that the Officer reasonably determined that the Applicant has strong family ties to Canada and, consequently, he failed to meet his burden under s 11 of the IRPA and s 179 of the IRP Regulations. Further, based on the information included in the Applicant's TRV application, which the Respondent sets out, the Officer also reasonably determined that the Applicant's plans were inconsistent with a temporary stay in Canada and instead indicated a permanent stay.
- [17] The Respondent submits that in *Zeifmans LLP v Canada*, 2022 FCA 160 [Zeifmans] the Federal Court of Appeal held that the need for quick and efficient administrative decision-making necessarily implied that "the reasons on key points do not always need to be explicit", and that a decision can be reasonable if the reviewing court is satisfied that the decision-maker was "alive to the key issues" and "reached a decision on them", having regard to the entire record (para 10). The Respondent further asserts that *Zeifmans* has been applied in the context of overseas visas. In the present case, a review of the record will allow the Court to confirm that the Officer "engaged with the evidence and provided a clear explanation for why the Applicant failed to satisfy the requirements of the Regulations for the issuance of a [TRV]" (*Wang v Canada (Citizenship and Immigration)*, 2021 FC 1002 at para 32 [Wang]).

- [18] The Respondent also submits that the Applicant raises no reviewable error with the merits of the Officer's decision and instead argues with the negative outcome and seeks reassessment of his evidence by the Court. Analysis [19] When assessing TRV applications, the onus is on the applicant to establish that they meet the requirements of the IRPA and the IRP Regulations, including that they will leave Canada at the end of the authorized period of stay that they are seeking (IRPA, s 11(1); IRP Regulations, paragraph 179(b)). Visa officers have wide discretion in their assessment and are to be afforded considerable deference by the Court. Given the high volume of cases dealt with by visa officers, extensive reasons are not required. However, the reasons, when considered along with the record that was before the officer, must justify why the application was refused (see e.g., *Sayarbahri v Canada* (Citizenship and Immigration), 2024 FC 131 at paras 10–12; *Khan v Canada* (Citizenship and Immigration), 2023 FC 52 at paras 14–18; *Wang v Canada* (Citizenship and Immigration), 2023 FC 62 at paras 41–43; *Zeifmans*, at paras 9–10; *Vavilov*, at para 86).
- [20] I agree with the Applicant that the Officer's finding that the host is not sufficiently established to finance his stay is unreasonable. His sister and brother-in-law provided a bank statement with a balance of over \$34,000, a Mississauga tax bill, copies of their driver's licences, a Notice of Assessment from CRA for the 2021 tax year (showing a refund) as well as another bank statement with a balance of over \$4,000. I am unable to discern the basis for the Officer's finding from the Officer's reasons or the documentation on record.
- [21] The Officer also found that the Applicant does not appear to be sufficiently well established, such that his proposed travel plans would be a reasonable expense. On this point, the record includes the Applicant's representative's submissions, which indicate that the Applicant has a bank account with over \$25,000 CAD, and that the Applicant's company has a bank account with more than \$79,000 CAD. Bank statements to that effect are also in the record. I agree with the Respondent that the Applicant did not establish in his application that the \$79,000 CAD in business funds would be available to the Applicant for personal use. However, even if this was the Officer's rationale, they did not consider the availability or sufficiency of the funds in the Applicant's personal account to support a three-month visit. Given those funds, along with his host's financial evidence, it is unclear why the Officer found that the Applicant's intended visit was not a reasonable expense, from a financial perspective.
- [22] Further, the TRV application indicates that the Applicant has been a shareholder and commercial manager of Ahrom Company from 1995 to 2020. From 2020 to the time he submitted his application, he has been a shareholder and managing director of that company. The Applicant also indicates in his TRV application that he must return to Iran because he is the CEO of his company and is critical to its success. As such, although he wishes he could stay longer with his loved ones in Canada, his leadership responsibilities at the company required him to return to work as soon as possible. Given evidence of the Applicant's long-term and continuing employment in Iran, I am again unable to discern from the record the basis for the Officer's finding that, taking his travel plans into consideration, the Applicant is not sufficiently well established that the proposed travel

would be a reasonable expense.

- [23] With respect to the Officer's finding that the Applicant has strong ties to Canada as his immediate family members reside here, which creates a "pull" to remain and thus diminishes his motivation to return to Iran, I would first note that it was open to the Officer to weigh the Applicant's ties to his immediate family against the push to return to Iran, as a factor to be considered, amongst others, in their analysis. Whether there are significant ties to an applicant's home country is a factual finding for which a visa officer is owed deference (*Moosavi v Canada (Minister of Citizenship and Immigration)*, 2023 FC 1037 at para 22, citing *Khaleel v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1385 at para 50). And, with respect to the Applicant's ties to Iran, in circumstances where a spouse intended to travel to Canada with an applicant, this Court has held that it was reasonable for an officer to find that the applicant might be less motivated to return given that their spouse would be with them in Canada (*Sayyar v Canada (Minister of Citizenship and Immigration)*, 2023 FC 494 at para 15). However, this alone cannot be the sole basis for the refusal of an application (see e.g., *Abdisoufi v. Canada (Citizenship and Immigration)*, 2024 FC 164 at para 12 citing *Vahdati v Canada (Citizenship and Immigration)*, 2022 FC 1083 at para 10; *Balepo v Canada (Citizenship and Immigration)*, 2016 FC 268 at paras 15–16).
- [24] The difficulty here is that the Officer does not address any other metrics of the Applicant's establishment in Iran, other than whether the expense of travel was reasonable, which I have addressed above.
- [25] I acknowledge, as the Respondent points out, that the record contains materials indicating that the Applicant and his family have struggled with the Applicant's absence. For example, a letter from the Applicant's psychologist states that the Applicant's major depressive disorder symptoms have arisen due to being away from his family; a doctor's letter states that separation of the Applicant's son from the Applicant for the past 3.5 years has significantly affected the son's well-being and mental health condition and that he would greatly benefit from his father's presence and support; and, a letter from the Applicant's spouse to IRCC describes the family's "desperate situation", and that the "whole family is experiencing significant amount of distress and misery" which has become damaging to their health and well being.
- [26] Based on this evidence and the circumstances it describes, it was open to the Officer to conclude that the Applicant would experience a "pull to remain" with his wife and children, thus diminishing the likelihood that he would return to Iran. But the Officer still needed to demonstrate that they weighed this evidence against the evidence of the Applicant's establishment in Iran.
- [27] Further, and conversely, this same evidence seems to contradict the Officer's finding that the Applicant's stated travel purpose appears "poorly motivated or substantiated". It is clear from his TRV application that the Applicant has been separated from his family for an extended period, that the family has suffered from the separation, and that the purpose of his travel is

to visit and support them. The Applicant also indicates in his application that he has been included with his spouse's protected person application for permanent residence. This could be seen as motivation to overstay, as the Respondent suggests. Or, it could be seen as motivation to not contravene Canadian immigration laws while the Applicant's permanent residence application is being processed. However, the Officer does not refer to the pending permanent residence application in their reasons. Therefore, there is no way of knowing what, if any, view they held as to the impact of the pending permanent resident application on the TRV application. That is, whether the pending application for permanent residence was justification for the refusal of the TRV application.

- [28] Finally, as to the Applicant's travel history, the record shows that the Applicant has travelled to Turkey, Bulgaria, the United Arab Emirates and Sweden, amongst other countries. More significantly, the Applicant obtained a visitor visa in 2017, which the Applicant used to visit Canada in 2018 and 2019. The Applicant submits that the Officer erred in failing to consider his travel history, which supports that he would not overstay a visit to Canada.
- [29] This Court has held that previous travel history may be a good indicator as to the likelihood of compliance to immigration laws (see e.g., *Singh v Canada (Citizenship and Immigration)*, 2015 FC 1210 at para 16, citing *Momi v Canada (Minister of Citizenship & Immigration)*, 2013 FC 162; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 266 at para 24), although the mere fact that travel history is not mentioned in the reasons does not render the decision unreasonable (*Sani v Canada*, 2024 FC 396 at para 11). In this case, the family ties are connected to the Applicant's travel history. The Applicant held a prior multi-visit visa and visited his family in Canada on two prior occasions and did not overstay. In my view, in these particular circumstances, the Officer should have considered the Applicant's prior visits to Canada to be with his family and explained why the Officer concluded that the outcome would likely differ this time if the current TRV application were granted.
- [30] The Respondent submits that the difference between now and the Applicant's previous visits is that the Applicant has since applied to become a permanent resident and the family is no longer able to endure separation. However, it is not apparent from the Officer's reasons or the record that they considered the Applicant's past travel to Canada or that they discounted it on this basis.
- [31] Finally, the Respondent submits that, even if the Officer did overlook or fail to adequately address certain evidence in their reasons, the "family ties" factor was dominant and therefore sufficient to sustain the decision. However, while the Officer does say that, having weighed the factors, they were not satisfied that the Applicant would depart Canada at the end of the period of an authorized stay, the reasons do not indicate or suggest that the "family ties" factor was determinative.
- [32] In sum, the Officer's reasons lacked justification, transparency and intelligibility. The decision is therefore unreasonable. JUDGMENT IN IMM-13132-23 THIS COURT'S JUDGMENT is that The application for judicial review is granted; The decision is set aside

and the matter shall be remitted to a different officer for redetermination; There shall be no order as to costs; and No question of general importance for certification was proposed or arises. "Cecily Y. Strickland" Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-13132-23 STYLE OF CAUSE: MOHAMAD VANDALVAND v THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: By videoconference using Zoom DATE OF HEARING: November 6, 2024 JUDGMENT AND REASONS: STRICKLAND J. DATED: november 14, 2024 APPEARANCES: Vakkas Bilsin For The Applicant Bernard Assan For The Respondent SOLICITORS OF RECORD: Lewis & Associates LLP Barristers and Solicitors Toronto, Ontario For The Applicant Attorney General of Canada Toronto, Ontario For The Respondent

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