Federal Court  Cour fédérale

Date: 20210823

Docket: IMM-6318-19

Citation: 2021 FC 861

Ottawa, Ontario, August 23, 2021

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

ZAO YING ZHONG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Zao Ying Zhong, fled to Canada in 2005 because she had two children when China maintained a one-child policy. She obtained refugee status in 2007 and subsequently became a permanent resident. The Applicant also sponsored her husband and two children–both now adults–to come to Canada. They obtained Canadian citizenship, but she did not.

[2] Both before and after China relaxed the one-child policy in 2013, the Applicant made several trips to China and other places using her Chinese passport. She replaced the passport after it was reported lost in Canada in 2010 and later renewed it. As a result, the Minister of Public Safety and Emergency Preparedness brought an application to cessate the Applicant's refugee status, under section 108 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] on the basis that she willingly re-availed herself of China's protection by obtaining, renewing and repeatedly using her Chinese passport. On October 4, 2017, the Refugee Protection Division [RPD] of the Immigration and Refugee Board granted the application and ceased the Applicant's status as a convention refugee.

[3] Soon after the RPD's decision, the Applicant submitted an application for permanent residence from within Canada based on humanitarian and compassionate [H&C] grounds, namely her establishment in Canada and the best interests of the child [BIOC]. A Senior Immigration Officer refused the application because of insufficiency of evidence regarding establishment in Canada and because the BIOC consideration was not applicable, the daughter being 18 years old at the time the Applicant submitted her application.

[4] The Applicant brings this judicial review application to challenge the Officer's decision to refuse her H&C application. The sole issue for determination is whether the Officer's decision was reasonable. The parties agree, as do I, that the applicable standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10. I find that none of the situations that can rebut this presumptive standard is present in the circumstances: *Vavilov* at para 17.

[5] I further find that the Officer's decision as a whole is transparent, intelligible and justified: *Vavilov*, at para 15. The Applicant has not met her onus of demonstrating that the decision is unreasonable: *Vavilov*, at para 100. For the more detailed reasons that follow, I therefore dismiss the Applicant's judicial review application. See Annex "A" below for relevant provisions.

II. Analysis

[6] As a preliminary matter, I note the Applicant confirmed at the hearing of this matter that she no longer is pursuing the BIOC consideration.

[7] The Court must not engage in reassessing and reweighing the evidence that was before the decision maker: *Vavilov*, at para 125; *Gesite v Canada (Citizenship and Immigration)*, 2017 FC 1025 [*Gesite*] at para 18. Yet I find this is the essence of what the Applicant requests the Court to do in the matter before me.

[8] The Applicant argues that the decision is unreasonable because the Officer failed to consider all evidence before them, including counsel's H&C submissions. I disagree for several reasons.

[9] I start with the premise that an applicant for exceptional H&C relief has the burden of providing proof in support of any claims on which the application is based, in other words, of "putting their best foot forward." The decision maker thus may conclude the application is

baseless, absent sufficient or any evidence: *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 5; *Gesite*, above at para 19.

[10] Further, an exemption under section 25 of the *IRPA* from any applicable criteria or obligations of the *IRPA* on H&C grounds is an extraordinary remedy based on the particular circumstances of the foreign national applicant. It is an exception and not intended to be an alternative immigration route. An H&C officer's decision is owed a significant degree of deference.

[11] I find the Officer's conclusion that "the [A]pplicant provided such limited and unclear information that the [H&C] grounds are difficult to ascertain" justified in the circumstances. For example, the Applicant's H&C application lists her spouse and two children, all having the same address in Toronto. Her counsel's H&C submissions confirm that they live together and add that the son is a Canadian citizen and married with two children, and the daughter is still in school. The Applicant's documentary evidence includes a "Proof of Enrollment for Part-time Students" for the daughter. There is no other information or documentation about the Applicant's family members in Canada and no evidence from the family members themselves. It was not unreasonable, in my view, for the Officer to conclude further that the Applicant "has hardly mentioned, much less documented, the fact that she has family members in Canada."

[12] Concerning the Applicant's establishment in Canada, she demonstrated significant savings, as well as ownership of income-generating real estate and business holdings she was able to acquire by liquidating her assets in China. The Officer noted that notwithstanding the

significant documentary evidence comprising banking and tax documents, including notices of assessment, the Applicant provided no explanation about what these details mean in terms of her establishment in Canada. The Applicant argues essentially that this is self-explanatory. I disagree.

[13] The test of whether H&C relief is warranted is not whether the Applicant would make a welcome addition to Canada: *Irimie v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16640 [*Irimie*] at para 26. Rather, the test is whether there are "facts, **established by the evidence**, which would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another… 'warranting the granting of special relief'" [emphasis added]: *Chirwa v Canada (Minister of Citizenship and Immigration)*, [1970] IABD No 1.

[14] The tax documentation confirms that the business (operated through one or more numbered companies) paid wages and salaries, while her counsel's submissions confirm the Applicant works in the business and has employed five other Canadian people. According to her affidavit filed in support of her judicial review application, she also employed unspecified family members. Because this evidence was not before the Officer and, in my view, does not fall within any recognized exceptions, I find it inadmissible: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20. Further, the Applicant's information and documentation does not detail the nature of the work performed by the Applicant in the business in Canada or who looked after the business when she travelled to China. Nor is there any evidence from any of the employees confirming their employment or the Applicant's role in the business.

[15] There also is no evidence regarding any community or volunteer engagement by the Applicant or involvement with social or cultural activities. Nor is there any evidence from any of the very good friends the Applicant allegedly made, the "other extended family" as she describes them in her supporting affidavit in this application. The latter evidence, however, was not before the Officer for consideration and thus, also inadmissible in my view. Based on the foregoing, I find the Officer concluded, not unreasonably, that "[p]erhaps while she was here, she accomplished much in terms of establishment[; h]er evidence does not demonstrate that." The Officer ultimately held that "given the evidence on the record, …her establishment in and ties to Canada are not sufficiently compelling to allow the requested exemption."

[16] At the hearing, the Applicant submitted that the Officer did not address the issue of hardship. As noted by Justice Pelletier (as he then was), however: "[t]he degree of attachment [i.e. establishment in Canada] is relevant to the issue of whether the hardship flowing from having to leave Canada is unusual or disproportionate": *Irimie,* above at para 20. I find the Applicant provided virtually no evidence in this regard that would enable the Officer to make any concrete hardship determination.

[17] Turning again to her counsel's H&C submissions, for example, there is simply the statement "Business/property will suffer" under the heading HARDSHIP FACTORS but with no explanation and no evidence in support. This is followed by a restatement that she built a business based on the properties she sold in China, bringing the investment to Canada, and a reference to her family in Canada, as well as her mother in China, her father having died some years ago.

[18] There is no evidence about what would happen to the business, however, were the Applicant to return to China and pursue permanent resident status while outside Canada, or whether someone could manage the business and property in her absence. Nor is there any evidence that the Applicant would be forced to liquidate any of her Canadian assets. There also is no evidence from the Applicant or her family in Canada about the impact her returning to China would have on them. Again, the Applicant suggested this is self-evident but given the lack of evidence about or from her family, I disagree.

[19] Further, "[t]here will inevitably be some hardship associated with being required to leave Canada[; t]his alone will not generally be sufficient to warrant relief on humanitarian and compassionate grounds": *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 23. The Applicant did not adduce evidence to support, nor argue, that any hardship she might suffer would rise above the consequent hardship flowing from having to leave Canada.

[20] Finally, the counsel's H&C submissions state that the only family member remaining in China is the Applicant's mother but her H&C application lists three sisters and two brothers, all living in the same province as their mother. Regardless, there is no evidence regarding what relationship the Applicant enjoys with her siblings, or what support the Applicant's family in China could offer if she were to return there and whether this could alleviate any need to sell Canadian assets, as alleged at the hearing of this matter.

III. Conclusion

[21] For the foregoing reasons, I am not persuaded, given the record before the Officer, that the Officer's penultimate conclusion to the effect that the Applicant's personal situation does not warrant an exemption based on H&C grounds was unreasonable. I therefore dismiss the Applicant's judicial review application.

[22] Neither party proposed a serious question of general importance for certification and I find that none arises in the circumstances.

JUDGMENT in IMM-6318-19

THIS COURT'S JUDGMENT is that:

1. The Applicant's judicial review application is dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"
Judge

Annex "A" – Relevant Provisions

***Immigration and Refugee Protection Act,* SC 2001, c 27**

Humanitarian and compassionate considerations — request of foreign national **25 (1)** Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger** **25 (1)** Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.
Rejection **108 (1)** A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances: **(a)** the person has voluntarily reavailed themself of the protection of their country of nationality; **(b)** the person has voluntarily reacquired their nationality; **(c)** the person has acquired a new nationality and enjoys the protection of the country of that new nationality;	**Rejet** **108 (1)** Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants : **a)** il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité; **b)** il recouvre volontairement sa nationalité; **c)** il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;

(d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or	**d)** il retourne volontairement s'établir dans le pays qu'il a quitté ou hors duquel il est demeuré et en raison duquel il a demandé l'asile au Canada;
(e) the reasons for which the person sought refugee protection have ceased to exist.	**e)** les raisons qui lui ont fait demander l'asile n'existent plus.
Cessation of refugee protection	**Perte de l'asile**
(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1).	**(2)** L'asile visé au paragraphe 95(1) est perdu, à la demande du ministre, sur constat par la Section de protection des réfugiés, de tels des faits mentionnés au paragraphe (1).

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6318-19
STYLE OF CAUSE:	ZAO YING ZHONG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE
DATE OF HEARING:	AUGUST 19, 2021
JUDGMENT AND REASONS:	FUHRER J.
DATED:	AUGUST 23, 2021

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