Federal Court Cour fédérale

Date: 20220209

Docket: IMM-7412-19

Citation: 2022 FC 166

Ottawa, Ontario, February 9, 2022

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

ISMAIL IBRAHIM

Applicant

and

THE MINISTER OF CITIZENSHP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicant, Mr. Ismail Ibrahim, is a citizen of Lebanon. He is applying for judicial review of a decision by a Senior Immigration Officer [Officer] dated November 6, 2019, refusing his request to apply for permanent residence from within Canada on humanitarian and compassionate grounds under section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicant submits that the Decision is unreasonable on the basis that the Officer (a) failed to consider key evidence, notably the Applicant's periods of depression and clinical level of anxiety, and the Applicant's inability to qualify for permanent resident status from abroad; (b) based her determination on a selective reading of the evidence and engaged in speculation; and (c) failed to provide adequate reasons. Furthermore, the Applicant submits that the Officer breached procedural fairness and erred in law.

[3] The Respondent submits that, contrary to the Applicant's submissions, the Officer reasonably assessed all the relevant factors, did not ignore relevant evidence, and reasonably found that there were insufficient grounds to grant the Applicant's request.

II. **Standard of Review**

[4] Having considered the record and the submissions of counsel, I find that the numerous issues raised by the Applicant are properly reviewed on a standard of reasonableness.

[5] The Applicant, in his written submissions, sought to frame certain issues as errors of law and breaches of procedural fairness, notably the Officer's alleged assessment on a hardship basis and her alleged lack of consideration of key evidence. The Respondent submits that reasonableness is the standard of review applicable to the matter at hand.

[6] I agree with the Respondent. In *Vavilov*, the Supreme Court of Canada was clear: on judicial review of an administrative decision, a reviewing court should start with the presumption that the applicable standard of review for all aspects of that decision is reasonableness (*Canada*

(Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 [*Vavilov*] at para 25) and then determine whether one of the issues raised warrants a departure from this presumption. In my view, no such departure is warranted in the present case.

[7] The Supreme Court of Canada confirmed in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], that the applicable standard when reviewing humanitarian and compassionate [H&C] decisions is reasonableness. A reasonable decision is one that it justified in relation to the facts and the law that constrain the decision maker (*Vavilov* at para 85). *Vavilov* instructs that the reviewing court must be satisfied that there is a line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived (*Vavilov* at para 102, citing *Law Society of New Brunswick v Ryan*, 2003 SCC 20 at para 55).

III. **Analysis**

[8] Subsection 25(1) of the IRPA provides the Minister with the discretion to exempt foreign nationals from the ordinary requirements of that statute and to grant permanent resident status to an applicant in Canada if the Minister is of the opinion that such relief is justified by H&C considerations. The H&C discretion is a flexible and responsive exception that provides equitable relief, namely to mitigate the rigidity of the law in an appropriate case (*Rainholz v Canada (Citizenship and Immigration)*, 2021 FC 121 at paras 13 - 14). H&C considerations are facts, established by evidence, that would excite in a reasonable person in a civilized community the desire to relieve the misfortunes of another provided these misfortunes warrant the granting

of special relief from the otherwise applicable provisions of IRPA (*Kanthasamy* at paras 13 and 21).

[9] Subsection 25(1) has been interpreted to require an officer to assess the hardship that an applicant will experience upon leaving Canada. In an application for H&C relief, an applicant may raise a wide variety of factors to show hardship, with such commonly raised factors including establishment in Canada, ties to Canada, the consequences of separation from relatives, the best interests of the children, and health considerations (*Rainholz* at para 16).

[10] In the matter at hand, the Applicant raised, among other factors, health considerations. In particular, the Applicant raised as factors his two bouts of depression, clinical-level anxiety, the emotional impact of the breakdown of his marriage in Canada, and the role his family in Canada has played in relation to those periods of depression. This Court has noted, especially in recent years, "the growing recognition and acceptance that mental health issues are real, common (but often ignored or misunderstood), and can pose significant challenges for both the people who suffer from them and others around them" (*Rainholz* at para 40).

[11] The Applicant raised his mental health issues in his affidavit from 2017, his submissions in support of his H&C application filed in 2017, his affidavit from 2019, and his further submissions filed in support a visitor extension in 2019. By way of a letter dated July 29, 2019, counsel for the Applicant provided an update for the H&C application that enclosed the submissions and affidavit from the 2019 visitor record application. The cover letter highlighted that the enclosures spoke to the Applicant's "ongoing mental distress". The submissions and

evidence on the record refer to, among other things, the Applicant's anxiety; the onset of a severe depression following his divorce; a second bout of depression; the Applicant's decision to start "seeing a doctor to help me manage my anxiety and depression, as it was more severe than what I had managed through myself after my divorce"; and evidence from Dr. K. Leung.

[12] I note, as did counsel for the Respondent, that while several references are made to Dr. Leung's evidence being included with the 2019 submissions, and it is referenced in several places in the submissions, a copy of Dr. Leung's evidence is not included in the CTR. Counsel for the Applicant informed the Court during the hearing that it was in fact included with the application for a visitor extension as it is listed in the enclosure but that she had been unaware that it was not in the CTR for the H&C application. Given the other evidence in the CTR, however, I do not find the failure to file Dr. Leung's evidence with the H&C application to be determinative for the purpose of this judicial review.

[13] As stated recently by my colleague Justice Little, "Officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them" (emphasis in original) (*Rainholz* at para 17, relying on *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 and *Kanthasamy*). The Decision did not address or refer to the Applicant's mental health issues, nor the role his family played in helping to "pull [him] out of [his] state of depression".

[14] It is clear from the record that the Applicant's mental health issues were a relevant factor in the H&C application. I acknowledge that a decision-maker is presumed to have considered all

evidence brought before them (*Burai v Canada (Citizenship and Immigration*), 2020 FC 966 at para 38). This present application, however, does not involve the situation where an officer has simply not referred to particular pieces of evidence when considering a factor generally. Rather, in the matter at hand, the Officer omitted to address a relevant factor along with all the evidence that spoke to it. The Officer failed to identify and weigh any of the mental health issues raised by the Applicant. I am therefore not satisfied that the Decision is justified in relation to the facts that constrained the Officer (*Vavilov* at para 85). As recently stated by the Chief Justice, for a decision to survive review on a standard of reasonableness, it has "to be appropriately justified by reference to the evidence that was adduced" (*Mohammadi v Canada (Citizenship and Immigration)*, 2022 FC 127 at para 17).

[15] The Officer ought to have substantively considered and weighed the mental health issues raised by the Applicant, regardless of whether her ultimate conclusion would have changed. For this reason, I find the Decision unreasonable. Having so found, I find it is unnecessary for me to address the remaining issues raised by the Applicant.

IV. **Conclusion**

[16] For the foregoing reasons, this judicial review is allowed. The Decision is hereby set aside and the matter is remitted to a different officer for redetermination. No serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

JUDGMENT in IMM-7412-19

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is allowed;
2. The Decision is hereby set aside and the matter is remitted to a different officer for redetermination;
3. There is no question for certification arising.

"Vanessa Rochester"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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