

Federal Court



Cour fédérale

Date: 20220704

Docket: IMM-6235-20

Citation: 2022 FC 985

Ottawa, Ontario, July 4, 2022

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

ARMAAN MEHTA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Armaan Mehta, is a citizen of India. His application for permanent residency based on humanitarian and compassionate [H&C] grounds was refused.

[2] The Applicant brings this judicial review application challenging the H&C decision on two bases. First, the Senior Immigration Officer ignored evidence regarding the Applicant's

establishment in Canada. Second, the Officer conflated the H&C hardship test with the section 97 test for protection by requiring the Applicant to demonstrate personalized risk. See Annex “A” for relevant legislative provisions.

[3] In my view, the Applicant has not met his onus of demonstrating that H&C decision is unreasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10, 25, 100. For the reasons that follow, I therefore dismiss this judicial review application.

II. Analysis

A. *Officer Did Not Ignore Evidence of Establishment*

[4] The Applicant argues that the Officer ignored certain evidence of establishment and advocates that the Officer should have given it more weight, and that it demonstrates the Applicant has achieved more than “minimal” establishment in Canada. I disagree for two reasons.

[5] First, there is a presumption that the Officer considered all the evidence: *Mashal v Canada (Citizenship and Immigration)*, 2020 FC 900 at para 29. Section 4 of the H&C decision, under the heading “Factors for Consideration,” summarizes the facts and evidence the Officer considered and includes the very evidence the Applicant says the Officer ignored, such as his volunteerism and donations to charities, his employment with Pride Logistics, as well as the support he and his mother provide to his sister who is a permanent resident in Canada.

[6] Second, the Applicant's submissions express disagreement with the way the Officer weighed the evidence, rather than describe the manner in which the H&C decision is unreasonable. For example, the Applicant points to various evidence, such as his employment and volunteer activities, in support of the argument that the Applicant demonstrated more than minimal establishment in Canada. The Officer concludes that "these are not uncharacteristic activities undertaken by newcomers to a country[r]ather, the applicant has demonstrated a **typical** level of establishment for persons in similar circumstances." [Emphasis added.]

[7] I find that it was reasonably open to the Officer to come to this conclusion based on the Applicant's evidence and the applicable jurisprudence regarding the issue of establishment in the context of H&C relief: *Ikeji v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1422 at paras 61-64. It is not the reviewing Court's role to reweigh the evidence that was before the administrative decision maker: *Vavilov*, above at para 125.

B. *Officer Did Not Conflate H&C Test with Section 97 Test*

[8] I also disagree with the Applicant's argument that the Officer improperly imported the concept of "personalized risk" into the H&C assessment of hardship.

[9] The Applicant states that the Officer erroneously required the Applicant to demonstrate a well-founded fear based on a person in need of protection, instead of the hardship of applying from India given the applicable country conditions: *Miyir v Canada (Citizenship and Immigration)*, 2018 FC 73 at para 30.

[10] I find, however, that the Officer responded to the H&C submissions of the Applicant and his mother to the effect that, because of his mother's political activities, "on a balance of probabilities their lives would be in danger and they are at a very real risk of being subjected to torture and death" and that they "escaped imminent danger."

[11] Further, the jurisprudence of this Court underscores the burden on an H&C applicant to link their personalized situation, including any asserted risk, to the country conditions: *Lalane v Canada (Citizenship and Immigration)*, 2009 FC 6 at paras 38, 42-43; *Ibabu v Canada (Citizenship and Immigration)*, 2015 FC 1068 at para 44.

[12] I thus find it was reasonably open to the Officer to conclude that "the applicant has not established an adequate link between the country condition information and his personal circumstances" and that "insufficient evidence has been submitted in regards to the applicant's stated risk in returning to India." The Applicant has failed to convince me that that the Officer's reasoning and conclusions regarding the Applicant's asserted danger in India were unreasonable in light of the evidence and submissions that were before the Officer for consideration.

III. Conclusion

[13] For the above reasons, I conclude the H&C decision does not disclose any reviewable error warranting the Court's intervention in this matter.

[14] Neither party proposed a question for certification and I find that none arises in the circumstances.

JUDGMENT in IMM-6235-20

THIS COURT'S JUDGMENT is that: the Applicant's application for judicial review is dismissed; and there is no question for certification.

"Janet M. Fuhrer"

Judge

Annex “A”: Relevant Provisions

Immigration and Refugee Protection Act, SC 2001, c 27
Loi sur l’immigration et la protection des réfugiés (L.C. 2001, ch. 27)

<p>Entering and Remaining in Canada Humanitarian and compassionate considerations — request of foreign national</p> <p>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.</p>	<p>Entrée et séjour au Canada Séjour pour motif d’ordre humanitaire à la demande de l’étranger</p> <p>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.</p>
<p>Person in need of protection</p> <p>97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally</p> <p>(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or</p> <p>(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if</p>	<p>Personne à protéger</p> <p>97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :</p> <p>a) soit au risque, s’il y a des motifs sérieux de le croire, d’être soumise à la torture au sens de l’article premier de la Convention contre la torture;</p> <p>b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :</p>

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris de normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6235-20

STYLE OF CAUSE: ARMAAN MEHTA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: JUNE 30, 2022

JUDGMENT AND REASONS: FUHRER J.

DATED: JULY 4, 2022

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