Federal Court  Cour fédérale

Date: 20220630

Docket: IMM-5410-20

Citation: 2022 FC 963

Toronto, Ontario, June 30, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

IMRE EMIL AJTAI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by a senior immigration officer dated October 14, 2020. The officer denied the applicant's request for permanent residence with an exemption based on humanitarian and compassionate ("H&C") grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA"*).

[1] The applicant is a citizen of Romania and Hungary. He alleged that he left Romania due to hardship and harassment he faced because of his Roma ethnicity.

[2] The applicant arrived in Canada in April 2012 and claimed refugee protection under the *IRPA*. By decision dated March 27, 2018, the Refugee Protection Division refused his claim.

[3] On July 4, 2019, the applicant submitted an application for permanent residence in Canada with an exemption on H&C grounds. The principal H&C factors were establishment in Canada and the hardship he would face if he returned to Romania and Hungary because of his Roma ethnicity. Specifically, he referred to difficulties finding employment and persecution of Roma people by far right groups.

I. The Decision under Review

[4] By letter dated October 14, 2020, the officer advised that the applicant's H&C application was refused. The officer's reasons for the decision dated April 14, 2020, assessed the application under two headings: Establishment, and Adverse Country Conditions.

[5] With respect to Establishment in Canada, the officer found that the applicant has been in Canada since April 2011. The officer noted the applicant's employment status and income, proven by a letter of employment and notices of assessment. The officer also noted the applicant's bank statements and a tenancy agreement for an apartment, as well as a training certificate. The officer also recognized a letter of support from a friend in Canada. The officer gave some positive consideration to the applicant's establishment in Canada.

[6] However, the officer also noted that the applicant has been arrested in October 2020, as Canada Border Services Agency ("CBSA") did not believe he was likely to comply with his

removal. The officer also noted that the applicant failed to appear for a removal interview with CBSA in May 2018. The officer found that the failure to appear showed a disregard for Canadian immigration laws and gave it negative consideration.

[7] With respect to Adverse Country Conditions, the officer considered information about assault charges faced by the applicant in Romania, for which he was eventually acquitted. The applicant argued that he was falsely accused due to his Roma ethnicity and that he was harassed by prosecutors. Because the proceeding was decided in the applicant's favour and the prosecutor's appeal was denied, the officer found that this information showed that recourse was available for such abuse in Romania. The officer noted that the RPD found that the applicant was not at risk from this incident and gave that finding considerable weight.

[8] The officer confirmed having reviewed the objective documentation on both Romania and Hungary's country conditions as submitted by the applicant. With respect to discrimination, the officer stated:

> I recognize that the Roma community does face discrimination in employment, education and healthcare. I recognize that the Roma population is more likely to suffer from poverty, general violence and inadequate protection from the authorities.

[9] The officer found no documentation to support the applicant's claim that he experienced bullying, assault and anti-Roma discrimination and had not shown that his family experienced discrimination during the time he was in Canada.

[10] The officer found that having family in Romania would likely help the applicant reintegrate and mitigate from hardship he may face. The officer noted that the applicant listed his employment as “general labour” in Romania from 2004 to 2012, which was the same as he listed for his employment in Canada. The officer found that the applicant had gained significant work experience and certifications in Canada that would increase his employability. Nevertheless, the officer accepted that he may have faced trouble from the public in the past for being Roma and accepted that returning to Romania or Hungary may cause hardship and may be challenging for him.

[11] Overall, the officer concluded:

- the applicant had shown establishment in Canada and was able to financially support himself, but did not show a level of establishment to justify a waiver of regulatory requirements in the *IRPA*;
- the applicant’s lack of compliance with the CBSA showed a disregard for Canadian immigration laws. The officer weighed this negatively in the decision;
- the applicant had not provided sufficient evidence to support the ethnicity-based discrimination he may face upon return given his personal circumstances. The officer stated that the “lack of documentation on his family’s current living conditions, and any discrimination faced by the applicant personally lessens the level of hardship indicated by the applicant.” However, the officer accepted that Roma people suffer from discrimination as described in the country condition documents for Romania and Hungary. The officer gave some positive consideration to the risk and adverse country conditions factor.

[12] The officer decided that the application for permanent residence with an exemption on H&C grounds was not justified in this case.

II. Legal Principles

[13] The parties agreed that the standard of review of the officer's decision is reasonableness: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909, at para 44.

[14] The reasonableness standard was described in *Vavilov*. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15. The reviewing court starts with the reasons of the decision maker, which are read holistically and contextually with the record that was before the decision maker: *Vavilov*, at paras 84, 91-96, 97, and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at paras 28-33.

[15] A reasonable decision is one that is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov*, esp. at paras 85, 99, 101, 105-106 and 194; *Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100, at paras 24-36. The Court's review considers both the reasoning process and the outcome: *Vavilov*, at paras 83 and 86.

[16] Subsection 25(1) of the *IRPA* gives the Minister discretion to exempt foreign nationals from the ordinary requirements of that statute and grant permanent resident status in Canada, if the Minister is of the opinion that such relief is justified by humanitarian and compassionate considerations. The H&C discretion in subsection 25(1) is a flexible and responsive exception to the ordinary operation of the *IRPA*, to mitigate the rigidity of the law in an appropriate case: *Kanthasamy*, at para 19.

[17] The discretion in subsection 25(1) must be exercised reasonably. Officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them: *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at paras 74-75; *Kanthasamy*, at paras 25 and 33.

III. Analysis

[18] In this Court, the applicant took the following positions in his written submissions to challenge the reasonableness of the officer's decision:

a) the officer erred in the assessment of hardship the applicant would face on a return to Romania or Hungary as a Roma person and failed to approach hardship in accordance with *Kanthasamy*, at para 56;

b) the officer erred in the assessment of establishment (citing the principles in *Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336); and

c) the officer failed to adopt an empathetic approach to the H&C application and failed to consider it globally, contrary to *Kanthasamy*.

[19] At the hearing, the applicant focused on the officer's consideration of hardship and the conditions Roma people experience in Romania and Hungary.

A. *Did the Officer Make a Reviewable Error in Assessing Hardship and Adverse Country Conditions?*

[20] The applicant submitted that the officer failed to apply the correct legal approach to hardship as required by the Supreme Court in *Kanthasamy*. According to the applicant, the officer took an approach akin to an assessment under sections 96 and 97 of the *IRPA*, rather than properly considering hardship under subsection 25(1). Specifically, the applicant submitted that there was considerable evidence in the country condition documents provided to the officer that the applicant will face discrimination in Romania and Hungary as a Roma person, yet the officer was still looking for "something more". That "something more" was some evidence that the applicant would be personally targeted. However, the applicant submitted, there is no legal requirement to show personal targeting. He relied on *Kanthasamy*, at paragraph 56:

> [56] As these passages suggest, applicants need only show that they would likely be affected by adverse conditions such as discrimination. Evidence of discrimination experienced by others who share the applicant's identity is therefore clearly relevant under s. 25(1), whether or not the applicant has evidence of being personally targeted, and reasonable inferences can be drawn from those experiences. Rennie J. persuasively explained the reasons for permitting reasonable inferences in such circumstances in *Aboubacar v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 714:
>
> > While claims for humanitarian and compassionate relief under section 25 must be supported by evidence, there are circumstances where the conditions in the country of origin are such that they support a reasoned inference as to the challenges a particular applicant would face on return . . . . This is not speculation, rather it is a reasoned inference, of a non-speculative nature, as to the hardship an

> individual would face, and thus provides an evidentiary foundation for a meaningful, individualized analysis . . . .

[21] In addition, the applicant submitted that the officer was required by the *IRPA* to consider all circumstances related to hardship under subsection 25(1.3), which provides:

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
Non-application of certain factors	**Non-application de certains facteurs**
25(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.	**25(1.3)** Le ministre, dans l'étude de la demande faite au titre du paragraphe (1) d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face.

[22] The applicant submitted that the officer failed to do so. The officer did consider certain paragraphs in the applicant's sworn affidavit filed to support his H&C application related to charges he faced and for which he was acquitted and relating to an incident on a bus when he was aged 14. However, according to the applicant, the officer failed to consider several other paragraphs describing incidents or problems the applicant faced because of his Roma ethnicity. Those paragraphs related to his negative experiences in school, obtaining employment and healthcare, and being subject to scrutiny by shopkeepers owing to his Roma ethnicity.

[23] The applicant's argument was that the country condition evidence was not mixed: it was clear that the Roma people experience widespread discrimination in Romania and Hungary. Therefore, the issue for the officer could not have been insufficient country condition evidence. In addition, the officer erred by considering the absence of evidence that the applicant's family in Romania was not experiencing hardship because, in fact, it is all Roma people who suffer discrimination owing to their ethnicity. The applicant submitted that the officer expected too much by requiring documentation about the incident on a bus when the applicant was 14 years old, some 30 years ago. The applicant argued that as a matter of law, it was not necessary in all cases to show that the applicant had suffered past hardship or discrimination, in order to support a claim of hardship on return to a country of origin under subsection 25(1).

[24] The respondent generally submitted that the officer's reasons on adverse country conditions and hardship were reasonable and that the officer found that the applicant provided insufficient evidence of hardship. The respondent observed that the officer's reasons demonstrated an understanding of the distinction between the required analysis under sections 96 and 97 and the assessment under subsection 25(1). According to the respondent, the officer also recognized that Roma people experienced discrimination but found that it did not rise to the level of hardship to this applicant, for the purposes of the H&C application. The officer found that there was insufficient evidence to show that the applicant would suffer hardship, either based in his past history or his family's experiences living there now.

[25] In addition, the respondent submitted that the H&C provision in the *IRPA* contemplates narrow and discretionary relief by way of an exemption from the usual requirements of the

statute. The respondent submitted that it was not Parliament's intention under subsection 25(1) to provide an exemption to all Roma persons in Eastern Europe which, according to the respondent, was the implication of the applicant's submissions on hardship.

[26] For the following reasons, I am not persuaded that the officer's assessment of hardship to the applicant contained a reviewable error.

[27] First, the officer's reasons strongly suggest that the officer understood the proper approach to an H&C assessment of the hardship that an applicant may face in the country of origin. The officer expressly stated that the H&C process was not an assessment about whether the applicant was at risk under sections 96 or 97, but instead would be assessing "any hardship the applicant may face" from country conditions.

[28] Second, the officer's reasons stated that the officer reviewed the objective documentation on both Romania and Hungary's country conditions submitted by the applicant. Based on that review, the officer accepted that the Roma community "does face discrimination" in employment, education and healthcare and was more likely to suffer from poverty, general violence and inadequate protection from the authorities.

[29] Beyond the content of that finding, it may also be noted that the officer's acceptance of the existence of discrimination in employment, education and healthcare directly parallels most of the issues raised in the additional paragraphs of the applicant's affidavit identified during the

applicant's submissions at the hearing (beyond the issues related to the charges for which he was acquitted).

[30] Third, reading the officer's reasoning on adverse country conditions and hardship as a whole, I agree with the respondent that the officer's approach was consistent with the legal requirements in *Kanthasamy* and *IRPA* subsection 25(1.3).

[31] I read the officer's reasons as an assessment of the circumstances, including possible hardship, likely faced by this applicant on return to Hungary and Romania. Unlike the applicant, I do not infer from the reasoning that the officer was seeking evidence that the applicant was personally targeted. Instead, the officer considered the strength of the evidence related whether the applicant would suffer the kind of hardship identified in the country condition evidence: *Browne v Canada (Citizenship and Immigration)*, 2022 FC 514, at para 48; *Arsu v Canada (Citizenship and Immigration)*, 2020 FC 617, at para 16; *Trach v Canada (Citizenship and Immigration)*, 2019 FC 747, at para 21; *Uwase v Canada (Citizenship and Immigration)*, 2018 FC 515, at paras 40-43; *Gonzalez v Canada (Citizenship and Immigration)*, 2015 FC 382, [2015] 4 FCR 535, at para 55.

[32] The officer concluded that the applicant has not provided sufficient evidence to support the ethnicity-based discrimination he may face on return given his personal circumstances. While one sentence in the officer's overall conclusion was somewhat awkwardly worded, as I read it, the officer supported the conclusion of insufficient evidence by referring to a lack of documentation of his family's current living conditions and any past discrimination experienced

by the applicant himself. Importantly, however, because the officer accepted that the Roma people suffer from discrimination as described in the country condition documents, the officer still gave some positive consideration to the risk and adverse country conditions factor in the overall assessment of the H&C application.

[33] I therefore conclude that the officer did not make a reviewable error in the assessment of hardship and the adverse country conditions the applicant will face on his return to Romania or Hungary.

B. ***Did the Officer Make a Reviewable Error in Assessing Establishment in Canada?***

[34] The applicant submitted that the officer failed to respect the principle established by the Court in *Lauture*, because the officer found that the applicant has gained significant work experience and certifications in Canada that would increase his employability in Romania. The applicant further submitted that while skills acquired in Canada could, in some cases, alleviate some kinds of hardship in a country of origin, this was not one of those cases because the applicant's experience as a labourer in Canada would not diminish the discrimination he would experience on return to Romania.

[35] In my view, the applicant has not demonstrated a reviewable error in the officer's assessment of the applicant's establishment in Canada on this basis.

[36] The officer reasonably and properly considered factors related to the applicant's establishment in Canada, including his employment, income, savings, tenancy agreement,

training certificate and a letter of support: *Peshlikoski v. Canada (Citizenship and Immigration),* 2022 FC 154, at para 31; ***Lauture,*** at para 23.

[37] In addition, the officer's statement did not offend the principles set out in *Lauture*. I agree with the respondent that in this case, the officer did not find that the applicant's establishment was unusually high as the Court did in *Lauture*: at paras 19-21; *Singh v Canada (Citizenship and Immigration),* 2016 FC 1350, at para 12. In addition, the officer's assessment of establishment did not diminish or counterbalance the applicant's accomplishments in Canada generally, and did not state that he would be able to establish himself in the same way in his country of origin as he had done while in Canada: *Lauture,* at paras 24-26.

[38] I do not agree with the applicant's submission that the officer diminished the discrimination that the applicant may face in Romania through conclusions about his work experience in Canada. Rather, in assessing hardship, the officer considered that the applicant's ability to gain employment on a return to Romania would be increased by his significant work experience and certifications in Canada. I am not persuaded that doing so constituted a reviewable error: *Pretashi v. Canada (Citizenship and Immigration),* 2021 FC 817, at para 57; *Zhou v. Canada (Citizenship and Immigration),* 2019 FC 163, at para 17. See also *Liu v Canada (Citizenship and Immigration),* 2022 FC 223, at paras 39-41.

[39] In fact, as the respondent observed, the officer's discussion of establishment gave "some positive consideration to the establishment the applicant has made in Canada". The officer's later overall assessment gave "positive weight" to the applicant's establishment.

[40] Accordingly, I conclude that the officer did not make a reviewable error by failing to respect the Court's decision in *Lauture*.

C. ***Did the Officer fail to respect other legal principles in Kanthasamy?***

[41] The applicant contended that the officer failed to adopt an empathetic approach to the H&C application (citing *Damte v Canada (Citizenship and Immigration)*, 2011 FC 1212, at para 34) and failed to consider the matter "globally" as required by *Kanthasamy* (at paras 28 and 45). The applicant submitted that the officer minimized the humanitarian and compassionate aspects of the applicant's application by focusing on his alleged disregard for immigration laws.

[42] While I agree that the officer was required to implement the requirements set out by the Supreme Court in *Kanthasamy*, I do not agree with the applicant's submission that the officer failed to do so in this case.

[43] Humanitarian and compassionate considerations in *IRPA* subsection 25(1) refer to "those facts, established by the evidence, which would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another — so long as these misfortunes 'warrant the granting of special relief' from the effect of the provisions of the [*IRPA*]": *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, at p. 350, as quoted in *Kanthasamy*, at paras 13 and 21.

[44] Considering the evidence before the officer and the officer's reasons, I am not persuaded that the officer failed to adopt the approach to an H&C application contemplated by *Kanthasamy*

and *Chirwa*. In my view, the officer's reasons displayed sufficient sensitivity to the applicant's circumstances and were not callous, cold or crass. The applicant has not shown that the officer's reasons were unreasonably selective in the assessment of the evidence, ignored any material humanitarian or compassionate factor, or arrived at an overall conclusion that was not reasonably open to the officer on the entirety of the record. Overall, the reasons do not indicate that the officer failed to implement the equitable purpose of *IRPA* section 25 or failed to consider all factors relevant to the exercise of discretion under that provision: *Kanthasamy*, at paras 25, 32-33 and 45; *Gregory v Canada (Citizenship and Immigration)*, 2022 FC 277, at paras 36 and 40; *Bawazir v Canada (Citizenship and Immigration)*, 2021 FC 1343, at paras 32-39; *Gutierrez v Canada (Citizenship and Immigration)*, 2021 FC 1111, at para 20; *Senay v Canada (Citizenship and Immigration)*, 2021 FC 200, at paras 34 and 35-42; *Mebrahtom v Canada (Citizenship and Immigration)*, 2020 FC 821, at paras 23-26; *Braud v Canada (Citizenship and Immigration)*, 2020 FC 132, at paras 47-49; *Salde v Canada (Minister of Citizenship and Immigration)*, 2019 FC 386, at paras 21-25; *Nagamany v Canada (Citizenship and Immigration)*, 2019 FC 187, at para 30-33 and 39; *Miyir v Canada (Citizenship and Immigration)*, 2018 FC 73, at paras 15-16.

[45] The officer found that the applicant's lack of compliance with a CBSA requirement to appear at an interview showed a disregard for Canadian immigration laws. The applicant objected.

[46] An officer may consider non-compliance with Canadian immigration laws as a (negative) factor with other factors on an H&C application: *Browne v. Canada (Citizenship and Immigration)*, 2022 FC 514, at paras 26-27; *Lin v. Canada (Citizenship and Immigration)*, 2021

FC 1452, at para 46; *Garcia Garcia v Canada (Citizenship and Immigration)*, 2020 FC 300, at para 71-75; *Shackleford v Canada (Citizenship and Immigration)*, 2019 FC 1313, at para 24 (citing amongst other cases, *Legault v Canada (Minister of Citizenship & Immigration)*, 2002 FCA 125, [2002] 4 FC 358, at para 19). However, subsection 25(1) presupposes that an applicant has failed to comply with one or more of the provisions of the *IRPA* – the provision expressly contemplates an exemption from the strict application of the statute. Therefore, a decision-maker must assess the nature of the non-compliance and its relevance and weight, against the applicant's H&C factors in each case: see *Dela Pena v. Canada (Citizenship and Immigration)*, 2021 FC 1407 at para 17; *Garcia Balarezo v. Canada (Citizenship and Immigration)*, 2020 FC 841 (both citing *Mitchell v Canada (Citizenship and Immigration)*, 2019 FC 190, at para 23). If disproportionate or undue weight is placed on an applicant's non-compliance, the decision may be unreasonable: see *Mateos de la Luz v. Canada (Citizenship and Immigration)*, 2022 FC 599, at para 28; *Wang v. Canada (Citizenship and Immigration)*, 2022 FC 368, at para 25.

[47] In the present case, I am not persuaded that the officer gave the applicant's lack of compliance disproportionate or undue weight in the overall H&C assessment. The officer weighed that factor, negatively, alongside other factors. The officer made no reviewable error.

IV. Conclusion

[48] Despite Ms Lee's able submissions at the hearing, I must conclude that the applicant has not shown that the officer's decision was unreasonable, applying the principles in *Vavilov*.

[49] The application is therefore dismissed. Neither party proposed a question to certify for appeal and none will be stated.

JUDGMENT in IMM-5410-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified for appeal under paragraph 74(*d*) of the *Immigration and Refugee Protection Act.*

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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