Federal Court  Cour fédérale

Date: 20220725

Docket: IMM-5954-21

Citation: 2022 FC 1096

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 25, 2022

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

FIRAS BOUZGARROU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Firas Bouzgarrou, is seeking judicial review of a decision by a case processing officer [the officer] with Immigration, Refugees and Citizenship Canada [IRCC] dated August 11, 2021, denying his application for permanent residence based on humanitarian

and compassionate [H&C] considerations made under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The applicant alleges, among other things, that the officer misapprehended the evidence before him and ignored evidence in support of his application, thus making the decision unreasonable.

[3] For the reasons that follow, the application for judicial review is allowed.

II. Facts

[4] The applicant is a citizen of Tunisia. He arrived in Canada on April 28, 2014, with a permanent resident visa. Upon his arrival, he filed a sponsorship application for his spouse, who was pregnant at the time. However, because his spouse's pregnancy was difficult and the unborn child's life was in danger and because he needed to be with his spouse during this trying time, the applicant had to make an anticipated return to Tunisia after having spent only a few days in Canada.

[5] Because of the serious health and developmental issues his daughter struggled with at birth; the illness, paralysis and the passing of the applicant's father-in-law; and his spouse's major depression and grief after her father's passing, the applicant was unable to comply with his 730-day residency obligation in Canada under section 28 of the IRPA.

[6] On August 8, 2018, the applicant returned to Canada. On the same day, a removal order was issued against him for failing to comply with the residency obligation.

[7] On September 5, 2018, the applicant appealed the removal order to the Immigration Appeal Division [IAD]. Although the applicant did not dispute the validity of the order, he asked that his appeal be allowed on the basis of his personal circumstances and his daughter's best interests, which warranted special relief from the IAD. In the meantime, he continued to live and work in Canada.

[8] The IAD was of the view that his daughter's health problems from the time of her birth until her condition stabilized reasonably justified the applicant's absence from Canada. However, it concluded that the positive factors did not sufficiently outweigh the negative factors in the file, including the significant degree of the non-compliance with his residency obligation and the fact that the applicant did not show that he tried to return to Canada at the first opportunity. The applicant's appeal was dismissed on November 26, 2019. He then applied for judicial review of that decision.

[9] On December 12, 2019, the applicant submitted an application for permanent residence based on H&C considerations.

[10] While waiting for a decision on his permanent residence application, the applicant sent in detailed updates with submissions and supporting documents on May 5, 2020, August 11, 2020, December 31, 2020, and June 9, 2021. The last update informed the officer that, the day before,

the Court had dismissed the application for judicial review of the IAD decision in *Bouzgarrou v Canada (Citizenship and Immigration),* 2021 FC 564.

III. The officer's decision

[11] On August 11, 2021, the officer concluded that the factors stated in the application were insufficient to warrant H&C relief and wrote the following:

> [TRANSLATION]
>
> First, I am very sympathetic to the situation of the applicant, who was unable to fulfill his obligation with respect to maintaining his permanent resident status in Canada. I understand that there are sometimes events in our lives, which shake our entire world and make us change course. The applicant had two of those. However, this application is an exceptional measure and applies to cases not covered by the Act where warranted. This is not another way to apply for permanent residence in Canada.
>
> Thus, I am sympathetic to the medical conditions of the applicant's daughter, Farah. Although Mr. Bouzgarrou's contributions merit a positive weight, the evidence provided does not satisfy me that they were indispensable to Farah's well-being. In other words, this application being denied will not prevent Farah's needs from being met.
>
> With respect to his establishment in Canada, I was able to give positive weight to the fact that the applicant has gained Canadian work experience. In addition, I am satisfied that he was able to establish some ties in Quebec. Although those factors weigh in his favour, I have reservations about his finances and his participation in community life. All in all, I afford neutral weight to his establishment in Canada.
>
> Regarding risk and unfavourable conditions in his country of origin, I admit that there will be a period of adjustment should the applicant return to Tunisia. At the same time, he provided very few details about his previous lifestyle to satisfy me that the hardships surrounding his adaptation would be too difficult for him should he return to Tunisia. Accordingly, I can afford only very little weight to this aspect.

> In conclusion, even though I was able to give positive consideration to some aspects above, it was limited due to a lack of information. Accordingly, I am not satisfied that the collective weight of these factors is sufficient for me to grant an exception based on H&C considerations. The application is denied.

IV. Standard of review

[12] It is very well established that the decision whether to grant relief based on H&C considerations is reviewed on the standard of reasonableness (*Chen v Canada (Citizenship and Immigration)*, 2021 FC 1041 at para 9, citing (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 16–17; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at paras 10, 44).

[13] In light of *Vavilov*, to determine whether a decision is reasonable, the reviewing court must ask 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 (*Vavilov* at para 99). Furthermore, a reasonable decision is one "that is justified in light of the facts".

V. Analysis

[14] The applicant submits that he filed numerous pieces of evidence in support of his professional, economic and social integration, which were not considered by the officer, making his decision unreasonable. The officer also lacked compassion in several aspects of his analysis, contrary to the Supreme Court of Canada's requirements in this respect stated in *Kanthasamy*. Given my answer to the first argument, I will not address the second.

[15] To begin with, it was for the officer to assess the evidence filed and to give it the weight it deserved (*Vavilov* at para 125). In addition, it is presumed that the officer considered and weighed all of the evidence filed.

[16] It should be noted that the reasons for the decision under review are properly substantiated. However, some pieces of evidence seem not to have been considered during the officer's decision-making process. The applicant confirmed under oath that four updates had been submitted to IRCC before the decision was made. Yet, the last update is not in the Certified Tribunal Record, and the officer did not mention the other three updates anywhere in his decision.

[17] In addition, regarding the applicant's integration in Canada, although the officer attributed positive weight to the fact that the applicant had found work, noting that he had been working for CAD Railway Industries ltd [CAD Railway] since April 8, 2019, the evidence on the record showed that the applicant had worked in Canada since April 13, 2018, and that he had been working full-time for CAD Railway since November 2018. He had also worked part-time since March 2019 as a client services representative at Ultramar, and since September 14, 2020, as a general labourer at ManPower.

[18] The respondent alleges that the officer must have mentioned the job with CAD Railway to highlight the employer's glowing letter and that it is presumed that the officer took into consideration all the other jobs and supporting letters. A closer look at the file shows, however,

that the officer—likely by mistake—failed to consider some probative evidence in his analysis of the applicant's professional integration in Canada.

[19] Although I cannot say whether the updates would have influenced the outcome of the decision, the fact that the officer failed to take them into account in his decision violated the applicant's right to a fair hearing, as acknowledged by counsel for the respondent at the hearing.

[20] In light of the foregoing, I accept the applicant's argument that this decision does not bear the hallmarks of reasonableness.

VI. Conclusion

[21] The application for judicial review is allowed, and the matter is referred back to IRCC so that a different officer reconsiders the applicant's application for permanent residence.

JUDGMENT in IMM-5954-21

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed.
2. The matter is referred back to Immigration, Refugees and Citizenship Canada so that a different officer reconsiders the applicant's application for permanent residence based on humanitarian and compassionate considerations.
3. No question of general importance is certified.

"Roger R. Lafrenière"
Judge

Certified true translation
Margarita Gorbounova

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5954-21
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