Federal Court  Cour fédérale

Date: 20221216

Docket: IMM-3501-21

Citation: 2022 FC 1751

Ottawa, Ontario, December 16, 2022

PRESENT: Madam Justice McDonald

BETWEEN:

NINA GORELOVA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision of a Senior Immigration Officer [Officer], dated May 18, 2021 [Decision], refusing her application for permanent residence on humanitarian and compassionate [H&C] grounds. The H&C application was based upon her establishment in Canada, the best interests of her grandchildren, her mental health conditions, and adverse country conditions. The Officer was not satisfied the H&C considerations justified

an exemption under section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and rejected the application.

[2] For the reasons that follow, I am dismissing this judicial review, as the H&C Decision is reasonable.

I. Background

[3] The Applicant is a 73-year-old citizen of Israel who is now widowed following the death of her husband in September 2020. The Applicant's son and his family immigrated to Canada in 2008. The Applicant and her husband first arrived in Canada in August 2016 and had been living continuously in Canada since that time. The Applicant has been issued multiple visitor visas.

[4] She submitted her first H&C application in January 2017. That application was refused in January 2019.

[5] This judicial review is with respect to her second H&C application filed in November 2019. Although the H&C application was filed for both the Applicant and her husband, as a result of his death, the Decision only considers the Applicant's evidence.

II. H&C Decision Under Review

[6] The Officer was not satisfied the H&C considerations put forward by the Applicant justified an exemption under section 25(1) of *IRPA*.

[7] The Officer afforded some weight to the Applicant's establishment in Canada, noting that she had been in Canada for almost five years and was financially self-sufficient. The Applicant lives with her son, daughter-in-law, and two grandsons, who were 17 and 18 years old at the time of the Decision. The Applicant attended language classes to improve her English and participated in community programs, supported by letters from community members. The Officer acknowledged that family reunification is an important factor, but not necessarily determinative. Thus, the Officer gave family reunification some weight.

[8] While noting the Applicant wants to remain in Canada with her son and his family, the Officer also remarked that family separation was a reality following her son's immigration to Canada in 2008. Although the Officer accepted it would be easier for her son to care for the Applicant if she were in Canada, the Officer also noted there was little evidence the Applicant required care or was unable to care for herself. The Officer acknowledged the Applicant might face some emotional hardship living separately from her son and his family.

[9] As a citizen of Israel, the Officer noted the Applicant could continue to travel to Canada without the need of a visa. The Officer noted there was no evidence of any impediments to her ability to travel.

[10] With respect to the best interests of the children [BIOC] affected, the Applicant's two grandsons, the Officer gave this factor some weight. The Officer accepted the Applicant had developed a meaningful relationship with her grandsons and that the Applicant's departure could be upsetting for all of them. The Officer found the boys' parents were their primary caregivers and would support them through any transition. The Officer also noted the boys were 17 and 18 years old at the time of the Decision, but that neither had submitted any letters of support for the Applicant, despite being old enough to communicate their thoughts on their grandmother's H&C application. The Officer was satisfied the bonds between the boys and the Applicant would not be severed if she returned to Israel, as they could maintain a relationship using telecommunications. The Officer reiterated his finding there was little evidence the Applicant could not continue to visit the family in Canada.

[11] On the Applicant's mental health considerations, the Officer considered the clinical report of Dr. Pilowsky, dated August 28, 2019, but gave it little weight. The psychological report notes the Applicant's main stressors were related to her status in Canada and her husband's health. The Officer acknowledged the assessment stated the Applicant was suffering "entrenched clinical symptoms of anxiety and depression" and that the psychologist believed the Applicant would suffer undue physiological hardship if she were removed from Canada. The Officer noted "the clinical opinion provided by Dr. Pilowsky does not describe how the assessment proceeded, how long the assessment took, what testing was done, what methodology was employed in conducting the assessment, or how the diagnosis was reached". The Officer gave the assessment little weight.

[12] Finally, the Officer gave the adverse country conditions little weight. The Officer found there was little documentary evidence on the record to corroborate the Applicant's statement that terrorist attacks had increased in Israel. Further, the Officer noted there was insufficient evidence the Applicant would be unable to re-integrate or re-establish herself in Israel, given her residence there for over 20 years. The Officer also found the Applicant had a brother, mother-in-law, and brother-in-law still in Israel who could support her on a short-term basis. The Officer found there was little evidence the Applicant was estranged from her family in Israel. The Officer further found there was no evidence of the emotional support the Applicant received from her son and his family would cease upon her return to Israel.

III. Issues

[13] The Applicant raises the following issues with the H&C Decision:

A. Did the Officer apply the wrong test when assessing the H&C factors?

B. Did the Officer err in the assessment of the BIOC?

C. Did the Officer err in assessing the psychological report?

IV. Standard of Review

[14] The parties agree the applicable standard of review is reasonableness, as articulated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. In assessing the reasonableness of the Decision, the court "asks 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). "[W]here reasons are provided but they fail to provide a transparent and intelligible justification […] the decision will be unreasonable" (*Vavilov* at para 136).

V. Analysis

A. *Did the Officer Apply the Wrong Test when Assessing the H&C Factors?*

[15] The Applicant argues the Officer considered her H&C factors through a lens of hardship, rather than applying a compassionate approach as required by *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*]. The Applicant points to various phrases in the Decision on establishment, family reunification, the best interests of her grandchildren, and the adverse country conditions to argue the Officer wrongly focused on hardship.

[16] However, considerations of hardship do not–on their own–render an H&C Decision unreasonable. In *Kanthasamy*, the Supreme Court states:

> 23 There will inevitably be some hardship associated with being required to leave Canada. This alone will not generally be sufficient to warrant relief on humanitarian and compassionate grounds under s. 25(1) […] Nor was s. 25(1) intended to be an alternative immigration scheme…
>
> …
>
> 25 What *does* warrant relief will clearly vary depending on the facts and context of the case, but officers making humanitarian and compassionate determinations must substantively consider and weigh *all* the relevant facts and factors before them. [Citations omitted; emphasis in original.]

[17] An H&C Officer's consideration of hardship can be problematic if the Officer focuses on hardship to the exclusion of any other considerations or factors. However, that is not the case here. While the Applicant objects to some of the words used by the Officer, that is not sufficient to establish the Officer adopted a hardship lens in considering the H&C application. As Justice Gleeson stated in *Alexander v Canada (Citizenship and Immigration)*, 2019 FC 881 at para 18, "judicial review of the Officer's decision cannot be restricted to the consideration of a single sentence … of the Officer's reasons. A reference to hardship does not, in itself, establish an error on the part of a decision-maker" (also see *De Sousa v Canada (Citizenship and Immigration)*, 2019 FC 818 at para 31).

[18] On this issue, the Applicant has not demonstrated that the Officer applied a hardship lens too strictly, nor has she identified any factors or evidence that were not considered by the Officer owing to a hardship focused analysis.

B. *Did the Officer Err in the Assessment of the BIOC?*

[19] The Applicant argues the Officer was not alert, alive, or sensitive to her grandsons' best interests.

[20] The BIOC assessment must be considered in context and against the evidence. This is not a case where a parent or primary caregiver is being removed. While the Applicant undoubtedly has a close relationship with her grandchildren, the BIOC is a contextual analysis, based on the circumstances and impact on children directly affected.

[21] This case is similar to the decision in *Meniuk v Canada (Citizenship and Immigration)*, 2021 FC 1374 [*Meniuk*], where the Applicant had a grandson in Canada and raised similar arguments about the sufficiency of the BIOC analysis. In *Meniuk*, Justice Bell concluded the officer was mindful of the best interests of the grandchild and properly weighed the factors (at para 26).

[22] Here, the Officer considered the age of the Applicant's grandsons who were 17 and 18 years old, at the time of the Decision. He considered the emotional relationship the boys had with the Applicant and acknowledged that separation would be difficult. The Officer also noted the Applicant was not the primary caregiver for the boys and was satisfied the Applicant could maintain her relationships with them, either electronically or through future visits to Canada. Further, there was no direct evidence from either of the grandsons, so their perspective on the Applicant's removal from Canada could not be determined.

[23] As noted by Justice Favel in *Harder v Canada (Citizenship and Immigration)*, 2022 FC 1260 at paragraph 41:

> The burden is on the Applicants to provide the Officer with "sufficient" evidence to support their case for H&C relief (*Daniels v Canada (Citizenship and Immigration)*, 2018 FC 463 at para 32). While the BIOC must be "'well identified and defined' and examined 'with a great deal of attention'", a decision-maker is still constrained by the evidence presented (*Kanthasamy* at para 39).

[24] It is well established that the onus is on the Applicant to present H&C evidence generally, and to provide evidence to support the BIOC in particular: *Owusu v Canada (Minister of*

Citizenship and Immigration), 2004 FCA 38 at paras 5 and 8; *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189, at paras 35, 45, and 61 [*Kisana*].

[25] In the circumstances, the BIOC assessment is reasonably based upon the evidence provided by the Applicant.

C. *Did the Officer Err in Assessing the Psychological Report?*

[26] The Applicant submits the Officer did not properly assess the psychological report prepared by Dr. Pilowsky, which states the Applicant is suffering from anxiety and depression. The Applicant relies on *Rezagh Sarab v Canada (Citizenship and Immigration)*, 2012 FC 969 where Justice Mactavish found the officer's "failure to appreciate the implications of [the physician's] professional opinion and to take that opinion into account renders the decision unreasonable" (at para 16).

[27] The Pilowsky medical report indicates the Applicant's psychological distress stemmed, in part, from worries about returning to Israel. The report expressly states the concerns about her immigration status were secondary. The report also states the Applicant had pre-existing psychological conditions resulting from separation from her family, and that a second separation would be psychologically punitive for the Applicant.

[28] The Officer considered the report and noted that the Applicant's stressors were related to her status and inability to stay in Canada. The Officer considered Dr. Pilowsky's report and opinion. Although it was incorrect for the Officer to say the report did not describe the

methodology used or how the diagnosis was reached, that alone is not a sufficient basis upon which to conclude that the Officer was unreasonable in his treatment of the report. The Officer considered the report and gave it little weight, which was within his discretion.

[29] In my view, any shortcoming in the Officer's treatment of the psychological report is not sufficiently central or significant to render the whole Decision unreasonable (*Vavilov* at para 100).

VI. Conclusion

[30] The Officer considered and weighed the H&C factors and the supporting evidence but was not satisfied the Applicant met the burden of establishing that an H&C exemption was warranted in her circumstances (*Kisana* at paras 35, 45, and 61).

[31] Overall, the Officer's Decision is reasonable.

JUDGMENT IN IMM-3501-21

THIS COURT'S JUDGMENT is that:

1. The application is dismissed; and

2. No question is certified for appeal under paragraph 74(d) of the *IRPA.*

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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