Federal Court  Cour fédérale

Date: 20230321

Docket: IMM-3368-21

Citation: 2023 FC 385

Ottawa, Ontario, March 21, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

ERICK ALEJANDRO BARRON SALINAS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a 32 year-old citizen of Mexico. He first came to Canada in June 2016 on a temporary resident visa. After returning to Mexico briefly in November and December 2017, the applicant has remained in Canada since then. While he was able to secure a study permit in 2017, the applicant is now without status in Canada. He lives with his mother and his sister, who are both permanent residents of Canada.

[2] In June 2020, the applicant applied for permanent residence in Canada on humanitarian and compassionate ("H&C") grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"). He based this application on his establishment in Canada and the hardship that would be caused to him and to his mother if he were required to return to Mexico.

[3] In a decision dated April 27, 2021, a Senior Immigration Officer with Immigration, Refugees and Citizenship Canada refused the application. The officer concluded that the factors the applicant relied on were insufficient to justify granting an exemption on H&C grounds from the usual requirements of the law.

[4] The applicant now applies for judicial review of this decision under subsection 72(1) of the *IRPA*. He contends that the decision is unreasonable. As I explain in the reasons that follow, I agree. This application must, therefore, be allowed and the matter remitted for redetermination by a different decision maker.

[5] Subsection 25(1) of the *IRPA* authorizes the Minister to grant relief to a foreign national seeking permanent resident status who is inadmissible or otherwise does not meet the requirements of the Act. The Minister may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations under the Act only if the Minister "is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national." This discretion to make an exception provides flexibility to mitigate the effects of a rigid application of the law in appropriate cases (*Kanthasamy v Canada (Citizenship*

and Immigration), 2015 SCC 61 at para 19). Whether relief is warranted in a given case will depend on the specific circumstances of that case (*Kanthasamy* at para 25).

[6] It is well-established that the merits of an H&C decision should be reviewed on a reasonableness standard (*Kanthasamy* at para 44). That this is the appropriate standard has been reinforced by *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10.

[7] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). For a decision to be reasonable, a reviewing court "must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that there is a line of analysis within the reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived" (*Vavilov* at para 102, internal quotation marks and citation omitted). On the other hand, "where reasons are provided but they fail to provide a transparent and intelligible justification [. . .], the decision will be unreasonable" (*Vavilov* at para 136).

[8] The onus is on the applicant to demonstrate that the officer's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[9] I am satisfied that the applicant has established that the officer's decision is unreasonable in a key respect.

[10] In support of his submission that requiring him to leave Canada would cause undue hardship, the applicant had provided a report from a clinical psychologist who had diagnosed the applicant as suffering from a major depressive disorder ("MDD"). The report discussed the risks of significant decompensation on the applicant's part if he returned to Mexico as well as the treatment options in Mexico for the applicant's condition. Considering the nature of the applicant's mental health condition, its causes, and the high degree of codependency between the applicant and his mother, the psychologist predicted a significant risk of decompensation if the applicant were to return to Mexico. Citing an empirical study of mental health treatment in Mexico, the psychologist also stated that mental health treatments for depression are inadequately delivered in that country. The psychologist therefore concluded that "it is not recommended that Mr. Barron return to Mexico with any expectation that psychotherapy or psychiatric treatment would offset the effects of his chronic MDD or that treatment, apart from his mother, would enable a restoration of his functional fitness."

[11] The H&C officer accepted that the applicant "has mental health issues" but assigned "only some value in the assessment's other conclusions without further documentary evidence to support the statements." (The officer's concerns appear to relate primarily to the information the applicant had provided to the psychologist about "the circumstances of [his] life," including past experiences, which the officer characterized as "not objective since it is likely based on information that was provided to the assessor by the applicant (and his mother).") As a result,

the officer "attributed some weight to the applicant's mental health as a negative component (in case of the applicant's removal) of this application."

[12] Later in the decision, the officer notes that the applicant had submitted that, if he were required to return to Mexico, "he will not be able to find adequate employment or improve his skills" and that "following the applicant's mental health diagnosis, in case of a return, the applicant will not benefit from acceptable treatment." The officer goes on to discuss evidence relating to general economic and employment conditions in Mexico. However, the officer never addresses the applicant's contention (supported by the psychologist's report) that he would not be able to access appropriate mental health treatment there. Nor does the officer explain how this latter factor figured in the overall assessment of the merits of the request for H&C relief.

[13] The applicant submits that the officer's failure to address the unavailability of appropriate mental health treatment in Mexico calls into question the reasonableness of the decision. The respondent acknowledges that the officer did not address this factor expressly but submits that it is implicit in the reasons that the officer did not find it to be sufficient to warrant relief. Reading the decision as a whole in light of the result, it meets the requirements of *Vavilov* despite the absence of an explicit finding on this issue.

[14] I cannot agree with the respondent. While it is true that the officer must not have found this factor sufficient (whether on its own or in combination with other factors) to warrant H&C relief (otherwise the application would not have been refused), the reasons shed no light on why the officer found this to be the case. Indeed, we do not even know whether the officer

accepted that the applicant would not be able to access appropriate treatment in Mexico or, if this was accepted, how this consideration was weighed in the overall decision. This was not a peripheral matter; it was central to the applicant's request for relief. Although we know the ultimate result, we cannot understand (with respect to a central question) the path the officer took to reach that result.

[15] Given that the officer accepted that the applicant has "mental health issues," given the psychologist's evidence of a risk of decompensation if the applicant had to return to Mexico (which the officer gave "some weight" to), and given the psychologist's evidence that the applicant would not be able to access appropriate mental health treatment in Mexico, the officer was required to make a determination in this latter regard and then explain how this factor weighed in the overall analysis. As *Vavilov* holds, "a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it" (at para 128). I find this to be the case here.

[16] This application for judicial review will, therefore, be allowed. The decision of the Senior Immigration Officer dated April 27, 2021, is set aside and the matter is remitted for redetermination by a different decision maker.

[17] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA.* I agree that no question arises.

JUDGMENT IN IMM-3368-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision of the Senior Immigration Officer dated April 27, 2021, is set aside and the matter is remitted for redetermination by a different decision maker.
3. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3368-21
STYLE OF CAUSE:	ERICK ALEJANDRO BARRON SALINAS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	AUGUST 9, 2022
JUDGMENT AND REASONS:	NORRIS J.
DATED:	MARCH 21, 2023

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