Federal Court  Cour fédérale

Date: 20230424

Docket: IMM-3416-21

Citation:2023 FC 588

Ottawa, Ontario, April 24, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

ANWAR KAMRAN, DANISH ZUBARI, RAMSHA ZUBARI and DANIYAL ZUBARI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a father, Anwar Kamran ("Mr. Kamran") and his three adult children. Mr. Kamran applied to sponsor his children to become permanent residents of Canada. Paragraph 117(9)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] bars the sponsorship of children who were not medically examined at the time that their parent included them as a non-accompanying dependent in their application for permanent residence. For this reason, the Applicants sought humanitarian relief under subsection 25(1) of

the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], raising both the circumstances surrounding the non-examination of Mr. Kamran's children at the time of his permanent residence application as well as concerns about his children's current well-being in Pakistan.

[2] The Applicants' sponsorship application and request for humanitarian relief were refused by a Migration Officer ("the Officer") in the Family Reunification Unit of Immigration, Refugees, and Citizenship Canada [IRCC]. The Applicants are challenging this refusal on judicial review.

[3] I am granting the application for judicial review. The Officer's approach to their discretion to consider humanitarian and compassionate factors was unduly narrow, inconsistent with the Supreme Court of Canada's guidance in *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*]. For the reasons provided below, the matter must be sent back to be redetermined by a different officer.

II. Background

[4] Mr. Kamran applied for permanent residence in Canada in 2007. At that time, he was married and had three children with his wife. In 2008, while Mr. Kamran's application was pending, he and his wife divorced and a dispute over the children's custody followed. Mr. Kamran removed his ex-wife as a dependent from his permanent residence application, changed his children's status to "non-accompanying dependents," and advised IRCC that he still wanted to have his children medically examined.

[5] Mr. Kamran alleged that his ex-wife would not allow the children to undergo medical examinations and that he was unable to convince her otherwise. Mr. Kamran worried about the delays in the processing of his application. In 2010, Mr. Kamran's friend, who is not a legal professional, advised Mr. Kamran to remove the children as dependents and to submit a declaration he found online that he understood should be used in these circumstances. Mr. Kamran advised IRCC that his ex-wife would not allow the children to be medically examined and submitted the declaration his friend had found online. The declaration included this statement: "I further acknowledge that my decision to have the persons named above not undergo a medical examination will exclude them from membership in the family class by virtue of their relationship to me."

[6] Mr. Kamran immigrated to Canada in 2010. He became a Canadian citizen in 2014.

[7] Mr. Kamran's dispute with his ex-wife over the children's custody continued until 2013, when Mr. Kamran obtained custody of the children. The children moved out of their mother's house and went to live with their paternal uncle. Mr. Kamran applied to sponsor his children for Canadian permanent residence and IRCC refused his application in 2015.

[8] From 2016 to 2019, the children returned to live with their mother. During this period, the Applicants allege that their mother was violent, neglectful, and asked them to leave her home in 2019. At that point, Mr. Kamran's children returned to his brother's home.

[9] In December 2019, Mr. Kamran again applied to sponsor his children and sought humanitarian and compassionate relief from the requirements in paragraph 117(9)(d) of *IRPR*. He submitted evidence that the children had been in an abusive home and that they were close to and dependant on him. At the time he filed this sponsorship application, Mr. Kamran's children were 21, 19, and 17 years old.

[10] The Officer refused the application, declining to provide relief from the requirements in paragraph 117(9)(d) of *IRPR*. The Officer found that there was insufficient evidence to conclude that "the only way to relieve the challenges claimed to be facing the siblings is for them to relocate to Canada to be with their father, or that these issues are directly and exclusively related to separation from their father." The Officer also found insufficient evidence to demonstrate that alternative options, such as more regular contact with family or a more stable home in Pakistan, are not possible.

III. Issue and Standard of Review

[11] The determinative issue on this judicial review relates to the Officer's evaluation of the humanitarian and compassionate factors raised in the sponsorship application. The parties agree, as do I, that I should review the Officer's decision on a reasonableness standard. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

IV. Analysis

[12] Foreign nationals applying for permanent residence in Canada can ask the Minister to use its discretion to relieve them from requirements in *IRPA* because of humanitarian and compassionate factors (*IRPA*, s 25(1)). The Supreme Court of Canada in *Kanthasamy*, citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, confirmed that the purpose of this humanitarian and compassionate discretion is "to offer equitable relief in circumstances that 'would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another'" (*Kanthasamy* at para 21).

[13] Given that the purpose of humanitarian and compassionate discretion is to "mitigate the rigidity of the law in an appropriate case," there is no limited set of factors that warrant relief (*Kanthasamy* at para 19). The factors warranting relief will vary depending on the circumstances, but "officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them" (*Kanthasamy* at para 25; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 74-75).

[14] The Respondent argues that the Officer considered all the relevant facts and factors raised by the Applicants and the Applicants are simply asking this Court to reweigh the evidence on judicial review. I do not agree. In my view, the Officer took an unduly narrow approach to the humanitarian factors raised by the Applicants, which limited their consideration of the relevant factors raised.

[15] The Officer required the Applicants to demonstrate that the hardship they were facing was "directly and exclusively related to separation from their father" and further that the "only way to relieve the challenges claimed to be facing the siblings is for them to relocate to Canada to be with their father." Imposing these requirements for relief—that it is the *only* way that hardship can be alleviated or that the hardship was *only* caused by the separation—is not in line with the approach set out by the Supreme Court of Canada in *Kanthasamy*. The Officer was required to "substantively weigh and consider all the relevant facts and factors before them" in order to determine whether relief under subsection 25(!) of *IRPA* was warranted (*Kanthasamy* at para 25).

[16] The Officer's approach significantly limited their consideration of the relevant facts and factors. The hardship factors that were raised were considered relevant only if: i) granting the application was the sole way the hardship could be resolved and ii) the hardship was exclusively caused by the children's separation from their father. The Officer's analysis focused on whether there was sufficient evidence to establish these two points. In these circumstances, I cannot find that the Office substantively weighed and considered all the relevant factors and facts that were raised by the Applicants, including the difficulties that have arisen for Mr. Kamran's children during the years of separation from their father, the circumstances surrounding the initial decision to not have the children medically examined, and interdependence between Mr. Kamran and his children. In my view, the Officer's narrow focus may have led to a distorted evaluation of the evidence. This is a sufficient basis to set aside the decision and remit it for redetermination.

[17] The application for judicial review is allowed. Neither party raised a question for certification and I agree that none arises.

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed;

2. The decision of IRCC dated April 16, 2021 is set aside and sent back to a different officer for redetermination; and

3. No serious question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3416-21
STYLE OF CAUSE:	ANWAR KAMRAN, DANISH ZUBARI, RAMSHAZUBARI and DANIYAL ZUBARI v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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