Federal Court  Cour fédérale

Date: 20231213

Docket: IMM-10824-22

Citation: 2023 FC 1682

Ottawa, Ontario, December 13, 2023

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

RONGJUN SHEN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicant seeks judicial review of a decision of a Senior Immigration Officer [Officer] dated October 14, 2022 [Decision] denying her application for permanent residence on humanitarian and compassionate [H&C] grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] I am dismissing the application because the Officer's Decision is both reasonable and procedurally fair. The Officer reasonably exercised their discretion and found that an H&C exemption was not justified in this case based on the evidence before them. The Applicant is essentially asking this Court to reweigh and reassess the evidence, which is not the Court's role on judicial review.

[3] Furthermore, I find that the Officer did not breach procedural fairness in referring to June 2022 news articles about COVID-19 measures in China, without giving the Applicant an opportunity to make submissions. The articles were neither novel nor significant, in that they simply updated publicly-available information already submitted by the Applicant in support of her application and, ultimately, had no impact on the Officer's determination on the hardship the Applicant will face if she returns to China.

II. Background

[4] The Applicant, a citizen of China, first entered Canada on a Temporary Resident Visa [TRV] in September 2004.

[5] The Applicant was sponsored by her daughter and was granted permanent residence in December 2011. However, due to her late husband's medical condition, the Applicant returned to China in November 2012. Nearly ten years later, in November 2021, the Applicant abandoned her permanent resident status. The Applicant was issued a TRV on November 8, 2021, and re-entered Canada on January 21, 2022. She has remained in the country since then.

[6] The Applicant submitted an H&C application in May 2022, which is the subject of this judicial review. In support of that application, she relied upon her strong family ties in Canada, the hardship she would face as an 80-year-old widow without family in China, and the hardship she would face due to COVID-19 measures in China.

[7] By Decision dated October 14, 2022, the Officer refused the Applicant's application, finding that there were insufficient grounds to grant an H&C exemption.

III. Issues and Standard of Review

[8] The Applicant raises two issues on this application. First, she challenges the reasonableness of the Officer's Decision. Reasonableness is a respectful, yet robust form of review that considers whether an administrative decision is transparent, intelligible, and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 12-13, 15, 99 [*Vavilov*]. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision-maker: *Vavilov* at para 85.

[9] Second, the Applicant asserts that the Decision is procedurally unfair because the Officer relied on news articles without giving her the opportunity to make submissions on them. Where breaches of procedural fairness are alleged, no standard of review is applied, but the Court's reviewing exercise is "best reflected on a correctness standard": *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*]. When assessing

whether procedural fairness was met, a reviewing court must ask whether the "procedure was fair having regard to all of the circumstances": *CPR* at para 54.

IV. Analysis

A. *The Officer's Decision is reasonable*

[10] In my view, the Decision is reasonable. The Officer thoroughly and comprehensively reviewed the Applicant's evidence and submissions on each of the three main grounds advanced, namely establishment, COVID-19 hardships in China, and the best interests of the child [BIOC].

[11] The Applicant's arguments, both in written and oral submissions, centered on the reasonableness of the Officer's analysis of her establishment in Canada. She does not challenge the reasonableness of the Decision concerning the hardship caused by COVID-19, but rather alleges that the Officer breached procedural fairness in that regard. Furthermore, the Applicant does not take issue with the Officer's conclusion that BIOC does not apply to her adult grandson.

(1) Establishment reasonably afforded little weight

[12] An H&C exemption is an exceptional and highly discretionary remedy: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 94; *Miyir v Canada (Citizenship and Immigration)*, 2018 FC 73 at para 12; *Nguyen v Canada (Citizenship and Immigration)*, 2017 FC 27 at para 29. The onus is on the applicant to provide sufficient evidence to justify an exemption based on H&C grounds: *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 45; *Toor v Canada (Citizenship and Immigration)*, 2022 FC 773 at para 16.

[13] Significantly, as detailed below, many of the Officer's conclusions on the Applicant's establishment are based on findings of "little evidence" or "little information": Officer's Reasons for Decision dated October 14, 2022 at p 3 [Officer's Reasons].

[14] The Officer determined that the Applicant provided "little explanation" about why she did not return to Canada for over 10 years before abandoning her permanent resident status. While the Officer sympathized with the fact that the Applicant left Canada due to her husband's health issues in 2012, the Officer concluded that there was "little further information or updates" concerning his health condition and their inability to travel to Canada after his November 2013 hospitalization, as they had previously done in 2007: Officer's Reasons at p 4.

[15] The Applicant asserts that the Officer failed to consider her age and that "it will be difficult to live by herself due to her old age": Applicant's Further Memorandum of Argument at para 27. I do not agree. The Officer expressly referred to this allegation, but found that there was "little corroborating evidence to indicate that the applicant is experiencing issues where she has been unable to care for herself due to her age": Officer's Reasons at p 4.

[16] The Applicant also argues that the Officer erred in finding that her sister could take care of her, given that her sister is 82 years old. Again, the Officer's finding was based on a lack of evidence submitted by the Applicant. According to the Officer's reasons, the Applicant's representative stated that the Applicant has no family abroad. However, the Officer noted that based on the Applicant's application forms, the Applicant still has a sister living in Shanghai. The Officer nevertheless found that "little information" had been provided about their relationship or

the support available. As a result, the Officer concluded that "[w]ithout evidence of [*sic*] the contrary, I find that the applicant's sister may support the applicant if needed": Officer's Reasons at p 4 [emphasis added].

[17] The Applicant alleges that the Officer failed to acknowledge that her daughter stayed with her in China after her husband's death: Applicant's Further Memorandum of Argument at para 28. However, the Applicant has not cited any evidentiary support that this information was before the Officer. In fact, the Officer quoted verbatim from the Applicant's representative's May 3, 2022 letter, filed in support of her H&C application, stating that "the applicant's daughter visited her and her husband in China almost every year since they returned to Canada": Officer's Reasons at p 4. That same letter also stated that the Applicant's daughter had been unable to travel to China to attend the funeral due to COVID-19 restrictions in China: Certified Tribunal Record at p 34. I am therefore unable to find that the Officer, based on the record before them, disregarded any evidence. Indeed, the Officer reasonably found "little evidence" that the daughter could not keep travelling to China to visit the Applicant, as she has done in the past: Officer's Reasons at p 4.

[18] Finally, contrary to the Applicant's assertion, the Officer did not fail to consider family reunification, but rather expressly acknowledged it as an important objective of Canadian immigration. Furthermore, the Officer acknowledged the Applicant's close bond with her family members in Canada and assigned "positive consideration" to this factor: Officer's Reasons at p 3.

[19] The Officer found that "a certain degree of separation should have been reasonably expected when the applicant's daughter moved abroad, and again when the applicant returned to

China in 2012 after becoming a permanent resident": Officer's Reasons at p 3. Notably, the Officer pointed out that the Applicant could apply for the Super Visa program, available to parents and grandparents since July 2022, which furthers the objective of family reunification: Officer's Reasons at pp 4-5.

[20] After considering the Applicant's evidence and submissions, the Officer reasonably granted little weight to the Applicant's overall establishment in Canada, concluding that "separation is one of the inherent and unfortunate outcomes which may arise from the immigration process, especially when residing in a country without permanent status": Officer's Reasons at p 6.

B. *Officer did not breach procedural fairness*

[21] The Applicant alleges that the Officer breached procedural fairness in relying on two June 2022 news articles without giving her an opportunity to make submissions. In support of her allegation that she would face hardship in China based on COVID-19 measures, the Applicant submitted news articles dated April 2022 that addressed the lockdown conditions in Shanghai. In their reasons, however, the Officer referred to the June 2022 news articles, finding that the "strict lockdowns" ended in June 2022.

[22] The only authority cited by the Applicant to support her procedural fairness argument is *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*]. *Baker* certainly stands for the broad proposition that a duty of fairness applies to humanitarian and compassionate decisions and participatory rights are important to ensuring a fair and open

procedure: *Baker* at paras 20, 22. However, the decision does not address the specific issue at hand, namely whether an officer's reliance on extrinsic evidence, without affording an applicant an opportunity to respond, breaches procedural fairness.

[23] This Court has held that the use of extrinsic evidence "does not automatically trigger a duty to provide an applicant with an opportunity to respond or result in a breach of procedural fairness": *Bhujel v Canada (Citizenship and Immigration)*, 2023 FC 828 at para 18 [*Bhujel*]. Rather, the Court applies a contextual approach to determine whether the duty of fairness requires disclosure in the circumstances of the case: *Heidari v Canada (Citizenship and Immigration)*, 2023 FC 1604 at para 27 [*Heidari*]; *Bhujel* at para 18; *Babafunmi v Canada (Citizenship and Immigration)*, 2022 FC 948 at para 22 [*Babafunmi*].

[24] Relevant considerations in this regard include the source, public availability, novelty, and significance of the information, as well as the extent to which the applicant could reasonably be expected to know about the information: *Heidari* at para 27; *Bhujel* at para 18; *Babafunmi* at para 22; *Alves v Canada (Citizenship and Immigration)*, 2022 FC 672 at para 30.

[25] Applying this contextual approach, I find that the Officer did not breach procedural fairness for two main reasons. First, the information was not novel given that the Applicant had already raised hardship concerns due to COVID-19 measures in China. The Applicant submitted news articles dated April 2022 and, given her submissions, could have reasonably anticipated that the Officer may consult more recent news articles: *Ashiru v Canada (Citizenship and Immigration)*,

2021 FC 1313 at para 48 [*Ashiru*]; *De Vazquez v Canada (Citizenship and Immigration)*, 2014 FC 530 at para 28.

[26] Given the evolving nature of the pandemic, it is reasonable to assume that the Officer may seek to update the information in the articles submitted by the Applicant. Notably, the Applicant's representative stated in their submissions that "cities in China have been in lockdown several times since 2020": Certified Tribunal Record at p 36. In fact, the Officer noted that "little further evidence had been submitted to show that Shanghai is currently under any further lockdowns": Officer's Reasons at p 5.

[27] Second, the information was not a significant factor in that it did not influence the Officer's finding concerning the Applicant's allegation about the hardship caused by COVID-19 measures: *Heidari* at para 28; *Harripersaud v Canada (Citizenship and Immigration)*, 2022 FC 1368 at para 63; *Ashiru* at para 48; *Majdalani v Canada (Citizenship and Immigration)*, 2015 FC 294 at para 52.

[28] In my view, it is clear that the June 2022 news articles did not ultimately influence or impact the Officer's conclusion on the hardship caused by COVID-19. Rather, the Officer's finding turned on the fact that COVID-19 was a global phenomenon "faced by the general population around the globe" and that lockdowns are "a public health safety measure which could be implemented anywhere in the world, even in Canada". Moreover, the Officer held that the Applicant did not adduce evidence establishing that she "has faced or is currently facing any physical or psychological challenges due to COVID-19": Officer's Reasons at p 5.

[29] Indeed, the news articles were immaterial to the outcome of the Officer's Decision: *Yang v Canada (Minister of Citizenship and Immigration)*, 2013 FC 20 at para 29. I therefore find that the Officer did not breach procedural fairness.

V. Conclusion

[30] Based on the foregoing, the application is dismissed. The Officer's Decision is both reasonable and procedurally fair. The parties did not raise a question for certification and none arises in this case.

JUDGMENT in IMM-10824-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Anne M. Turley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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