Federal Court  Cour fédérale

Date: 20240408

Docket: IMM-1357-23

Citation: 2024 FC 540

Ottawa, Ontario, April 8, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

SARAH HUGNU

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Sarah Hugnu, is seeking a Judicial Review under section 72(1) of the *Immigration and Refugee Protection Act* [IRPA] concerning the rejection of her permanent resident application on humanitarian and compassionate grounds (H&C). The Judicial Review is granted for the following reasons.

II. Facts

[2] The Applicant is a 73-year old woman living in Bristol, United Kingdom (UK). The Applicant was born in Zambia, and went to the UK from Zimbabwe with her late common-law partner. The Applicant and her partner were in a common-law relationship from 1974 until his death in 2000.

[3] The Applicant is Jewish. Her mother and siblings were deported to Auschwitz concentration camp in 1943. The Applicant's mother, who died in 1981, was the only survivor in her family. The Applicant's father, who died in 1998, was also the last survivor in his family.

[4] The Applicant's immediate family consists of two sisters, both of whom live in Canada.

[5] After her youngest sister immigrated to Canada, the Applicant was keen to join her. However, her late common-law partner was suffering from clinical depression, and she could not move. After her common-law partner's death in 2000, the Applicant tried to apply for permanent residence under the federal skilled worker class. However, this application was refused in 2010.

[6] The Applicant was diagnosed with breast cancer in 2015 and had to undergo chemotherapy and radiotherapy. The Applicant's only support during this time was a close friend named Brenda who offered emotional and caretaking supports during her treatment and recovery. Brenda died recently and her death left the Applicant without any social or religious support in the UK.

[7] While the Applicant and her sisters have travelled between the UK and Canada, their circumstances is becoming increasingly challenging. One of the Applicant's sisters is unable to

travel to visit her due to severe arthritis. The Applicant is retired and living on a fixed pension income and no longer has the financial means to travel frequently. She is also not allowed to sublet her apartment in the UK should she seek to stay in Canada for extended visits.

[8] There no Jewish community in Bristol. The Applicant had submitted evidence of a thriving Jewish community in Toronto into which she would be welcomed and that her sisters are already part of it.

III. Legislative Overview

[9] The following sections of the IRPA is relevant:

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35, 35.1 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35, 35.1 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	**25 (1)** Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35, 35.1 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35, 35.1 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

IV. Issues and Standard of Review

[10] The parties submitted and I agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[11] 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). The onus is on the Applicant to demonstrate that the decision is unreasonable (*Vavilov* at para 100). 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).

V. Analysis

[12] H&C applications are exceptional in the sense that an applicant requests the Minister to exercise Ministerial discretion to relieve them from requirements in the IRPA. The Supreme Court of Canada in *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 [*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] I agree with my colleague, Madam Justice Sadrehashemi in *Tuyebekova v Canada (Citizenship and Immigration)*, 2022 FC 1677 at para 11 that the purpose of humanitarian and

compassionate discretion is to "mitigate the rigidity of the law in an appropriate case," and there is no limited set of factors that warrants relief (*Kanthasamy* at para 19).

[14] 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 citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 74-75 [*Baker*]).

[15] Therefore, context matters in assessing H&C applications and the officers must be alert and alive to the individual circumstances of the applicants before them.

[16] The following is part of the undisputed documents and evidence before the Officer that is relevant to the Applicant's particular circumstances:

- A detailed submission letter by counsel;
- Written statements from both sisters and the Applicant's niece;
- A sworn affidavit from the Applicant detailing her particular circumstances;
- Proof of the Applicant's retirement and pension;
- Proof of the Applicant's prior permanent residence application and refusal;
- A medical letter confirming the Applicant's history of breast cancer;
- A reference letter from a Jewish community organization in Toronto;
- Articles on the psychological consequences of loneliness and isolation in the elderly.

[17] In this case, the Officer concluded that the Applicant should not be granted permanent

residence on H&C grounds and their conclusion is summarized as follows in the decision letter:

> Although you have family in Canada and travel during COVID was difficult or restricted for approximately 18 months, you lived apart from your family since they immigrated to Canada in the 1990s. The circumstances that you outlined are not unusual in that many families are separated by immigration decisions. Although you may not be able to reside in Canada permanently, you have the ability, to regularly visit your family and they have the ability to do the same. I am not satisfied that there are sufficient Humanitarian and Compassionate considerations as per A25 to overcome your ineligibility. [Applicant's emphasis]

[18] The Officer's key findings from the GCMS are summarized as follows:

- The Applicant has been "residing alone for the past 22 years".
- It is unclear if the PA has remaining ties with her common-law partner's family.
- It is reasonable to believe that the PA has some support within her social and/or religions [sic] community, and that the lifting of Covid restrictions can resume them.
- The Applicant did not make any attempt to apply to immigrate to Canada since her common-law partner's passing in 2000.
- On health considerations – the Officer stated the following: "I give limited weight to this argument. The PA states that she is a cancer patient survivor and immune-compromised and this has lead to loneliness and the inability to travel during the pandemic. I give limited weigh to this argument. The UK health care system is one of the best in the world with significant resources put towards both hospital and home care. There is a well-established vaccination scheme (COVID), which heavily favors those who are immune-compromised. The situation as described

would have been similar for many people across the globe given government regulations which were enforce both in the UK and Canada."

- On close relationships the Officer mentioned that the sisters had immigrated to Canada in the 1990s and stated the following: "SPR [one of the two sisters in Canada] stated to also have arthritis and difficulty in traveling, however Co-SPR [the other sister in Canada] does not have this issue. Consequences of separation of relatives: I give limited weight to this argument."
- Ultimately, the Officer concluded that: "The circumstances outlined by the PA are not unusual in that many families are separated by immigration decisions."

[19] In my opinion, there are two main flaws with the Officer's reasons. They are interconnected and the Officer's lack of engagement with them resulted in a breakdown of a logical chain of reasoning: (a) The Officer made some findings based on pure speculation where the Applicant had submitted evidence to the contrary, and (b) The Officer segmented approach to the evidence missed the point on assessing the Applicant's profile holistically.

[20] In addition to these two factors, I find that the Officer assessed the application through the high exceptionality threshold that *Khantasamy* has since rejected.

[21] The focal point of the Application was the Applicant's profile with the intersection of relevant factors. Her arguments were made though the lens of her profile as an elderly woman of limited financial means whose loss of partner and close friend in the UK have left her alone and isolated, with no social support (including religious). Rather than looking at context and the Applicant's "circumstances as a whole" (*Khantasamy*, para. 45), the Officer made isolated findings of facts on individual factors, such as health considerations, travel history, social

connection. While each finding might be accurate on its own, without examining the Applicant's circumstances as a whole with a holistic approach to her profile, the Officer's findings failed to show responsiveness with the true nature of the H&C application.

[22] *Kanthasamy* underscores the necessity of a holistic approach to ensure the integrity and accuracy of the decision-making process. I find that without it, the chain of reasoning is lost and the reasons are no longer intelligible.

[23] Putting it differently, the Officer's approach was overly fixated on scrutinizing each individual piece of evidence in isolation and without stepping back to consider the broader context or the overarching profile. By becoming consumed with the minutiae of each isolated detail, the Officer failed to provide a cohesive analysis that integrated these findings into a comprehensive understanding of the case. This confused the point of an H&C application with one's ability to visit and ultimately led to an incomplete and flawed decision. I will elaborate further.

A. *The Officer's findings based on pure speculation where the Applicant had submitted evidence to the contrary*

[24] The Officer made two flawed findings that in and of themselves are not determinative. However, they are relevant in the context of the Officer's analysis. The first was when the Officer found that "it is reasonable to believe that the PA has some support within her social and/or religions [sic] community". The Applicant's affidavit and supporting documents, including statements by family members in Canada, provided evidence to the contrary that with the death of her partner and then friend, she was left with no support.

[25] The second was when the Applicant had provided copies of a failed permanent resident application, and the Officer found that she had never applied for permanent residence after her partner's death, and that she was separated by "immigration decisions".

[26] While neither might be determinative in isolation, they are relevant to how the Officer may have weighed the evidence. The Officer never questioned the credibility of the Applicant's evidence that she was old, lonely and isolated. The Officer just decided to purely speculate that "it was reasonable" to believe that she had social and religious support and that she was probably still in touch with her common-law partner's relatives (when they had no evidence of it). This simply prevented the Officer to apply the relevant factors to the Applicant's "particular circumstances". In short, the Officer's speculation made them ignore the Applicant's particular circumstances.

[27] The Officer was mistaken that the Applicant had not attempted to immigrate to Canada after her partner's death. She had and she had submitted a copy of her application as part of her H&C materials that was before the Officer. This was a factor for rejecting the claim because in the Officer's opinion, the family separation was caused by their "immigration decisions". This Court cannot speculate as to whether getting the fact right would have changed the weight that Officer assigned to this factor. However, the fate of H&C applications are determined by how Officers weigh the evidence. Therefore, making an erroneous factual finding, when the fact is a determinative factor, also results in a breakdown of the chain of reasoning.

[28] I agree with the Applicant that the Officer's reasoning effectively sought to "diminish" the impact of family separation as merely a product of the Applicant's choice (*Reducto v Canada*

(Citizenship and Immigration), 2020 FC 511 at para. 51). I agree that stating that she "did not make an attempt to apply" for immigration to Canada since the passing of her common-law-partner in 2000 was not only erroneous, it is also an example of minimizing the evidence that Applicant wished to join her family in Canada.

B. *The Officer's failure to assess the Applicant's "circumstances as a whole" and to unreasonably apply a high threshold.*

[29] The Officer's segmented approach in their reasons demonstrate that the Officer failed to apply the compassionate and flexible approach to H&C relief mandated by the Supreme Court in *Kanthasamy*.

[30] The Officer's reasoning, which focused on the ability to visit, the UK healthcare system, and speculation about the availability of support despite sworn evidence to the contrary, missed the point of the H&C request: that the Applicant's profile is one of an elderly woman who is living alone and is isolated and that as she and her sister grow older, they are increasingly limited – both financially and due to health considerations – from travelling. The Officer repeatedly framed the Applicant's circumstances as merely the same as any family that had been living apart due to their choices. It appears that rather than applying the "compassionate and flexible approach" of *Kanthasamy*, the Officer applied a veiled approach to a high threshold of exceptionality. In fact, the main decision argued by the Respondent's counsel was a pre-Kanthasamy decision where this Court had upheld the exceptionality standard (*Pervaiz v Canada (Citizenship and Immigration)*, 2014 FC 680). It is not disputed that *Kanthasamy* provided a decisive guidance and roadmap that a case decided a year earlier could not have applied.

[31] This kind of “exceptionality” analysis has repeatedly been rejected by this Court in applying the lead Supreme Court of Canada decision, *Kanthasamy* (see also *Zhang v Canada* (*Citizenship and Immigration*), 2021 FC 1482, at paras 20-24 and 28 [*Zhang*], *Solis Olvera v Canada* (*Citizenship and Immigration*), 2023 FC 1760 at para 24 and *Farhat v Canada* (*Citizenship and Immigration*), 2023 FC 1427 at paras 27-33).

[32] I do not agree with the Respondent that the Applicant’s argument is a request for the Court to reweigh the evidence. The Respondent also pointed to how the Officer had listed the factors that they had considered. I do not find that a mechanical listing of factors, divorced from the *Khantasamy* framework and ignorant of the Applicant’s overall circumstances, amounted to responsiveness to the Applicant’s submissions.

[33] I also find that the Respondent’s submissions largely argue that the outcome was reasonable. *Vavilov* has provided guidance that reasonableness is not about the overall outcome, but the analysis and justification provided by the decision-maker. For example, while the Officer acknowledges that one sister in Canada suffers from arthritis and cannot travel, they do not explain how this factored into the conclusion that the Applicant and her sisters can merely visit each other when they wish.

[34] As *Vavilov* states at para 127: “The principles of justification and transparency require that an administrative decision-maker's reasons meaningfully account for the central issues and concerns raised by the parties […] The concept of responsive reasons is inherently bound up

with this principle, because reasons are the primary mechanism by which decision-makers demonstrate that they have actually listened to the parties."

[35] For all these reasons, I find that the Officer's Decision was unreasonable.

VI. Conclusion

[36] The application for judicial review is granted.

[37] There is no question for certification.

JUDGMENT in IMM-1357-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.

2. There is no question for certification.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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