Federal Court  Cour fédérale

Date: 20240426

Docket: IMM-11951-22

Citation: 2024 FC 644

Ottawa, Ontario, April 26, 2024

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

MANJIT SINGH KAILA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Manjit Singh Kaila [Applicant], a citizen of India, seeks judicial review of an immigration officer's [Officer] April 29, 2022 decision [Decision] refusing his application for permanent residence on humanitarian and compassionate [H&C] grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act,* SC 2001, c 27 [*IRPA*]. The Officer determined that the Applicant did not meet the family class requirements for a permanent

resident visa pursuant to paragraph 117(1)(h) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations] and H&C considerations did not justify an exemption from the criteria.

[2] The application for judicial review is dismissed. The Officer reasonably engaged with the evidence in making the Decision.

II. Background

[3] On December 7, 2016, the Applicant's brother applied to sponsor the Applicant for permanent residence and to seek an exemption under H&C grounds since the application did not fall strictly under the family class [H&C Application]. The H&C considerations, generally, are that the Applicant contracted polio as a child, resulting in a physical disability and his dependence on his family. On November 6, 2017, an officer refused the application after finding that H&C considerations did not justify an exemption from the meaning of family class member under paragraph 117(1)(h) of the Regulations [2017 Decision]. On November 16, 2017, the Applicant filed an application for judicial review of the 2017 Decision. The Minister of Immigration, Refugees and Citizenship Canada and the Applicant ultimately settled the matter, resulting in the matter being set aside and re-determined by a different officer. The Applicant discontinued that application for judicial review on March 8, 2018.

[4] The Applicant attended an interview in May 2018. After not receiving any updates, the Applicant filed an application for judicial review in the nature of mandamus in March 2020 [Mandamus Application]. The Respondent sent the Applicant a procedural fairness letter on

October 16, 2020 [Procedural Fairness Letter]. In response, the Applicant discontinued the Mandamus Application and submitted additional documentation.

III. Decision

[5] The Officer determined that the Applicant did not meet the family status requirements of paragraph 117(1)(h) of the Regulations. The Applicant's brother has a spouse, so the Applicant is ineligible to apply for permanent residence as a member of that family class. The Officer noted that the Applicant received the Procedural Fairness Letter and had an opportunity to respond to this concern; however, the Officer was not satisfied that the response overcame this concern. The Officer also examined the Applicant's circumstances in accordance with subsection 25(1) of the *IRPA* and determined that it would not be justifiable to grant the Applicant permanent residence status or exempt him from any applicable criteria or obligation of the *IRPA*.

IV. Issue and Standard of Review

[6] The sole issue for determination is whether the Decision is reasonable.

[7] I agree with both parties that the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). This case does not engage any of the exceptions set out by the Supreme Court of Canada in *Vavilov*; therefore, the presumption of reasonableness is not rebutted (at paras 16-17).

[8] A reasonableness review is a robust form of review that requires the Court to consider both the administrator's decision-making process and the outcome of the decision (*Vavilov* at

paras 83, 87; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at para 58). A reviewing Court must take a "reasons first" approach to assess whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justifiable in relation to the relevant factual and legal constraints (*Vavilov* at paras 15, 99; *Mason* at paras 59-61). A decision will be unreasonable where there are shortcomings in the decision that are sufficiently central or significant (*Vavilov* at para 100). Two types of fundamental flaws render a decision unreasonable: a failure of rationality internal to the reasoning process and a failure of justification given the legal and factual constraints bearing on the decision (*Vavilov* at para 101; *Mason* at para 64). If the reasons of the decision-maker allow a reviewing Court to understand why the decision was made and determine whether the decision falls within a range of acceptable outcomes, the decision will be reasonable (*Vavilov* at paras 85-86).

V. Analysis

A. *Applicant's Position*

[9] The Officer failed to consider important evidence and failed to provide reasons for conclusions that ran counter to evidence. The Officer's determinations that there was no indication that the Applicant could not receive appropriate medical treatment in India, his disability was not severe, and the level of social stigma he faces is unlikely to be significant, were unintelligible in light of the evidentiary record. The record consisted of the documents in the H&C Application, the 2018 interview responses, and the response to the Procedural Fairness Letter. The Applicant also presented evidence of his similarity with the applicant in *Dhillon v Canada (Citizenship and Immigration)*, 2012 FC 192 [*Dhillon*], who also suffered from post-

polio residual paralysis, was reliant on his parents, experienced discrimination and could not support himself in India.

[10] In written submissions, the Applicant submitted that the Officer failed to consider evidence that would render him a *de facto* family member. However, in oral submissions, the Applicant submitted that case law on *de facto* family members provided guidance for the consideration of the Applicant's H&C Application, but the issue of whether the Officer should have considered the Applicant a *de facto* family member was not before the Court.

[11] The Officer also rendered a perfunctory decision that is unresponsive to the evidence. The Court has identified that "[i]f the conclusion does not flow from the premises, or if the use of boilerplate gives cause to doubt that the decision-maker duly considered the facts of the case, the decision may well be unreasonable" (*Boukhanfra v Canada (Citizenship and Immigration)*, 2019 FC 4 [*Boukhanfra*] at para 9). The reasons for refusal bear a remarkable similarity to the reasons in the 2017 Decision, although the Decision has less detail than the 2017 Decision. In both the 2017 Decision and the Decision, the officers wrote that the H&C considerations are insufficient because "his disability is not severe" and "the level of social stigma that the applicant is reasonably likely to face is unlikely to be significant". The similarity in reasons are concerning because the Officer did not engage with the Applicant's interview or other evidence tendered after the 2017 Decision concerning disability, social stigma, and financial dependency contrary to *Boukhanfra*.

B. *Respondent's Position*

[12] H&C relief is an exceptional and extraordinary remedy that is not an alternative immigration stream, and there is no right to a particular outcome (*Li v Canada (Citizenship and Immigration)*, 2020 FC 754 at paras 25-26, citing *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*]; *Shah v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1153 at para 33, citing *Kanthasamy*). An officer's discretion to grant H&C relief should be applied sparingly (*Goraya v Canada (Citizenship and Immigration)*, 2018 FC 341 at para 15, citing *Kanthasamy*). H&C decisions involve an exercise of discretion by the Minister's delegate by necessity (*Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158 at para 22).

[13] The Applicant simply disagrees with the Officer's weighing of factors and the Applicant has not demonstrated that the Officer has disregarded any evidence. The Officer made reasonable findings on the evidence, given that the evidence is not robust about the Applicant's day-to-day life or societal discrimination. *Dhillon* is distinguishable from this case because the evidentiary record in that case was detailed and documented the applicant's life with his disability, evidence of societal discrimination against individuals in his situation, and evidence that no one would hire him. In contrast, the evidentiary record here does not provide evidence on the Applicant's physical abilities, how he moves around his house, whether he can leave his house, or how he would fly to Canada. Similarly, the Applicant did not provide direct or personal evidence of his experience with discrimination and stigma or evidence of his efforts to seek employment or continue his education. Instead, the Applicant simply compares standards of living for disabled persons in India and Canada. The Applicant's Record also focuses on financial documents to

show that the Applicant's brother sends him funds, 200 pages of telephone records, and family flight information, rather than evidence that would have supported his position better.

[14] The onus is on the Applicant to demonstrate that he is dependent on others, cannot become financially self-sufficient, and his medical condition is such that he either cannot obtain necessary medical treatment or cannot live on his own. This matter is comparable to *Tufail v Canada (Citizenship and Immigration)*, 2023 FC 401 [*Tufail*], rather than *Dhillon*. In *Tufail*, the Court dismissed the application for judicial review on evidence that was slightly less generalized than the Applicant's Record after finding that the applicant's arguments were premised on dissatisfaction with the weighing of these factors by the officer (at paras 10-12). Similar to the applicant in *Tufail*, the Applicant has not provided the level of detail necessary regarding his disability and his dependency. Instead, the Applicant's submissions are premised on dissatisfaction with the Officer's weighing of factors.

C. *Conclusion*

[15] The Decision is reasonable. The onus is on the Applicant to demonstrate the unreasonableness of the decision (*Vavilov* at para 100). The Applicant has failed to satisfy his onus.

[16] An officer is presumed to have reviewed all of the evidence and is not required to refer to every document submitted (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598, [1993] ACF No 598 (FCA); *Hassan v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 946, 147 NR 317 (FCA)). It may also be inferred that an officer

did not review or arbitrarily disregarded evidence if the officer ignores evidence pointing to an opposite conclusion and contradicting the officer's findings (*Kheradpazhooh v Canada (Citizenship and Immigration)*, 2018 FC 1097 at para 18).

[17] I agree with the Respondent that the evidentiary record in this matter is insufficient to show that the Officer made conclusions that ignored evidence or that ran counter to the evidence. The Officer's Global Case Management System [GCMS] notes acknowledged the Applicant's document submissions in response to the Procedural Fairness Letter, then listed the following evidence:

> a statutory declaration about his brother's circumstances, written by the sponsor, as well as several documents pertaining Harminder Singh Dhillion [*sic*] which including [*sic*] letter written by him, a copy of his driver's license, his marriage certificate, his child's birth certificate, pay stubs from his job, his NOA, and an article on surviving polio.

[18] The Officer summarized the basis of the H&C Application as "the applicant has polio and reduced the use of his legs; and that persons with disabilities in India suffer stigma and have significant difficulties in finding employment." The Officer acknowledged that they "reviewed the documents on file and the interview notes and reviewed the medical condition of the applicant" before determining that the Applicant's disability is not severe and that the level of social stigma that the Applicant will face is unlikely to be significant. In my view, this indicates that the Officer was aware of and acknowledged evidence as it relates to the relevant issue in the H&C application.

[19] After reviewing the evidentiary record that was before the Officer, I note that it is not robust. First, the Applicant's response to the Procedural Fairness Letter is not responsive to the Officer's concerns with the H&C Application. Instead, the Applicant provides documents with little context that perhaps is an attempt to establish financial dependency through receipts and closeness of the relationships through flight information and telephone records. The Applicant further provided an article discussing polio's impacts in Ireland rather than India.

[20] Second, the interview with an officer provides the most compelling evidence in support of the H&C Application but it is still not in contradiction with the Officer's determinations. The interview details that the Applicant lives alone in his parents' house and next to his paternal uncle's house, receives support from his paternal uncle's son for meals in exchange for money, and requires support to leave the house. Concerning his inability to work, the Applicant spoke about how he has not tried to find a job because he would have to commute 2-3 kilometres away from his village to a city to work. The Applicant would be unable to commute that distance since he cannot drive and earlier in the interview, he stated that he could not walk properly. Although the Applicant did not directly discuss societal discrimination in India, some of his responses do relate to discrimination he faces. For example, he compares his situation to his friend who was affected by polio and able to become independent once his friend's married brother sponsored him for permanent residency in Canada; he states that no one wants to get married to a disabled person there; and he says there is no support in India.

[21] While the evidentiary record is not as weak as the Respondent suggests, it still does lack specificity and detail about the Applicant's struggles and job prospects for him or people with

disabilities generally in India. Neither the Decision nor the GCMS notes state that the evidentiary record was “insufficient”, however, a review of both the Decision and the GCMS notes indicate that the Officer was not persuaded by the evidence that was submitted. Accordingly, the record does not suggest that the Officer ignored evidence or that the Officer issued reasons that run counter to the evidence. In light of the record, the Officer’s determinations were reasonable. Respectfully, the Applicant’s submissions essentially ask this Court to re-weigh evidence, which is not the function of judicial review (*Vavilov* at para 125).

[22] I disagree with the Applicant’s submission that the Decision ran counter to the jurisprudence because of *Dhillon*. The Officer was not required to grant H&C relief because of some similarities in disabilities and dependency with *Dhillon*. Instead, *Dhillon* and *Tufail* are helpful examples for determining whether an applicant has provided sufficient evidence to demonstrate dependency. In that sense, I agree that this situation is distinguishable from *Dhillon* and more similar to *Tufail*, given the lack of specificity about the Applicant’s inability to support himself.

[23] The Applicant, highlighting that the Officer uses the same wording as the 2017 Decision, raises the issue of whether the Decision was a perfunctory decision as further proof that the Officer failed to consider the specific facts of the case, contrary to the guidance in *Boukhanfra*. On its face, the Applicant is correct. However, I acknowledge the identical language may not be ideal, but that alone does not mean that it is improper nor does it mean that it demonstrates a lack of engagement with the evidence. The Decision, together with the record before the Officer, is the context that must be considered. These statements alone do not render the reasons as a whole

unreasonable as the Court's function on judicial review is not to perform a line-by-line treasure hunt for error (*Vavilov* at para 102).

[24] *Boukhanfra* provides guidance that boilerplate language may render a decision unreasonable if it gives cause to doubt that the decision-maker duly considered the specific facts of the case. I am not persuaded that the Officer issued an unreasonable or perfunctory response to the evidence. The Officer acknowledged the evidence that the Applicant submitted after the 2017 Decision, the remainder of the GCMS notes are not the same, and the Officer did not use any of the problematic language or conclusions of the GCMS notes in the 2017 Decision.

VI. Conclusion

[25] For the reasons above, the application for judicial review is dismissed.

[26] The parties do not propose a question for certification and I agree that none arises.

JUDGMENT in IMM-11951-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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