Federal Court  Cour fédérale

Date: 20190528

Docket: IMM-3843-18

Citation: 2019 FC 747

Ottawa, Ontario, May 28, 2019

PRESENT: Mr. Justice Barnes

BETWEEN:

VOLODYMYR TRACH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Volodymyr Trach, is a Ukrainian national presently living in Canada without immigration status. He entered Canada lawfully 5 years ago and subsequently acquired a work permit. On November 8, 2016 he filed an application for humanitarian and compassionate (H&C) relief. His immigration status appears to have expired in 2017 and in 2018 he failed to report for voluntary departure as directed.

[2] This application for judicial review concerns Mr. Trach's failed application for H&C relief. That decision was rendered by a senior immigration office (Officer) on July 24, 2018. The primary grounds for relief asserted by Mr. Trach concerned his Canadian establishment, the best interests of his 6-year-old son and the hardships they would face if they returned to the Ukraine, including the risk of Mr. Trach being drafted into the Ukrainian army. All of the above considerations were found by the Officer to be insufficient to warrant the granting of "exceptional" relief under ss 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[3] A number of the issues raised by Mr. Trach on this application overlap to some degree. What they all have in common is that they are based on the Officer's assessment of the evidence. Accordingly, they must be considered against the deferential standard of reasonableness.

[4] At the heart of this case is an argument that the Officer unreasonably disregarded Mr. Trach's affidavit about his Canadian establishment and, correspondingly, the hardships the family would face if he was required to return to the Ukraine. More particularly, he says that the Officer should have accepted at face value his evidence that he had been summoned to report for military duty and that his Canadian child would be denied access to school and healthcare unless the child took up Ukrainian citizenship thereby relinquishing his Canadian citizenship. In order to fully understand these points it is necessary to examine the Officer's treatment of his evidence having regard to the relevant legal authorities.

[5] The Officer acknowledged that Mr. Trach had "obtained a certain degree of Canadian establishment" by being employed between 2014 and 2016. The Officer was also satisfied that Mr. Trach was "well-rooted" in Toronto through connections to a local church and enrollment in a language course. However, the Officer was not satisfied that Mr. Trach was financially autonomous, had amassed savings or was providing financial support to his wife and daughter in the Ukraine. Although Mr. Trach did provide evidence of his early Canadian employment, little corroboration was provided concerning his financial circumstances after 2016. The extent of his evidence on these issues was set out in the following two paragraphs of Mr. Trach's affidavit:

> 13. I opened a company in Canada in 2014, a numbered company, and I began working in this. I have a degree from Ukraine in Economics and after I had resigned my job as a police officer there, I had opened a business in the trucking industry, doing mechanical work, as well as repairs of vehicles. I had a lot of experience in this and my company I opened in Canada offered services similar to what I had done in the Ukraine.
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> 14. I have filed my taxes with the Canada Revenue Agency.
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> 15. During my time in Canada, I have become completely self-supporting. I have never once received any government assistance from the Canadian government nor have I ever requested any. I do not intend to ever ask or accept handouts from anyone, including the Canadian tax payers.

[6] The evidence provided to the Officer concerning the best interests of Mr. Trach's Canadian child was also largely unverified. When Mr. Trach first applied for H&C relief, his wife and two children were living in the Ukraine. The youngest child was born in Canada on May 28, 2012 but had returned to the Ukraine with his mother and sister shortly thereafter.

[7] By the time Mr. Trach updated his submissions to the Officer in June 2018, his Canadian child had returned here and they were living together; however Mr. Trach's wife and daughter

remained in the Ukraine. Mr. Trach's affidavit confirmed that his son had returned to Canada on May 19, 2018 and was registered for school. The full extent of Mr. Trach's evidence concerning the best interests of his son is set out in the following three paragraphs from his affidavit:

> 17. In Ukraine, there is no dual citizenship, as I learned the hard way after my Canadian born child went to live there. Being Canadian born, my son is not Ukrainian and is not eligible for enrollment in the public school system in Ukraine. In addition to this, my son is not eligible for:
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> - Health care
> - Education: university, college, etc.
> - No government support, like summer camps
> - No extracurricular activities
> - Other government services that my daughter is eligible for
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> 18. My son reached an age where he needed to attend school. Unless my wife paid, this was not possible as my wife tried unsuccessfully to register him in the local public school. This was a big shock to us.
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> 19. My son returned to Canada on May 19th 2018. Here, he can access important things like education, healthcare, etc., which are his basic rights as a Canadian. My son was extremely delighted to be reunited with me in Canada. He has been functioning much better in Canada, and appears happy to have activities to occupy his time. I have since enrolled him in school and I have secured the services of a nanny to assist me with his day to day care, after school. Seeing my son in a position to grow and thrive brings me a great deal of joy. I think every parent wants to see their children treated equitably and in Ukraine, my daughter has the rights of citizenship and what that confers, while my Canadian son does not.

[8] Despite having provided a large volume of country condition evidence describing prevailing conditions in the Ukraine, Mr. Trach offered nothing to verify his contention that his Canadian child was not eligible for healthcare, public school, university education or other

unspecified public services. Although his affidavit vaguely alluded to a fee requirement for attending school in the Ukraine, no details were provided. Instead, the affidavit stated only that Mr. Trach's son had been refused enrollment in public elementary school in the Ukraine and, presumably for that reason, he was returned to Canada. No evidence was provided to the Officer that the family did not have the financial means to provide an education for their son in the Ukraine.

[9] The Officer was not satisfied with the sufficiency of the evidence produced by Mr. Trach concerning the best interests of his Canadian child. He concluded his Best Interests of the Child [BIOC] assessment in the following way:

> The applicant declares that the Ukraine does not allow dual citizenship and his son has no access to education, health care etc. The applicant declares that his son, Matvij is not Ukrainian and is not eligible for enrollment in the public school system, nor is he eligible for health care, education (University, College, etc...), government support i.e. summer camp, or extracurricular activities.
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> Current objective documentation confirms that the Ukraine does not allow dual citizenship. I also note that objective information corroborates that the applicant's son would be eligible for Ukrainian Citizenship if the parents were to apply. That said, I find that the applicant submits insufficient information to demonstrate that from 2012 until 2018 his son was denied basic services or that his wife was told that she needed to pay for access.
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> Recently, the applicant advised that his son returned to Canada on May 19, 2018. The applicant declares that his son is functioning better in Canada and is happy to have activities to occupy his time. The applicant declares that he has enrolled his son in school and has secured the services of a nanny to assist him with the care of the minor. In support of his application, the applicant provided a copy of insurance coverage for visitors to Canada. The applicant applied for a $50000 insurance policy for his son on May 23, 2018 in Toronto. The coverage took effect the same day and provided 90 days of coverage. In addition, the applicant submits a document from Service Ontario which is dated May 24, 2018 that indicates the minor will be covered by Ontario provincial insurance on

> August 19, 2018. Though I have no confirmation that the applicant's son entered Canada on May 19, 2018, I give him the benefit of the doubt. That said, I find that the applicant submits insufficient information to corroborate that his son is functioning better in Canada that he is participating in any activities. In addition, I find that the applicant submits insufficient information that demonstrates that he has enrolled his son in school and has secured the services of a nanny to assist him with the care of the minor.
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> I have given particular consideration to the best interests of the children. I acknowledge that the applicant would want the best education and opportunities for his children, however, different standards of living exist between countries and many countries are not as fortunate to have the same socio-economic supports as can be found in Canada. I have carefully examined the best interests of the applicant's children and having regard to their circumstances. I conclude that the applicant submits insufficient documentation to demonstrate that a refusal of this application would have a significant negative impact on the minor children affected by the decision of this application.
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> [Footnotes omitted.]

[10] Mr. Trach contends that the Officer made several errors in the assessment of the evidence. He says that the Officer must have overlooked his affidavit; and, even if the Officer did consider his affidavit, he argues that his evidence should have been accepted as truthful and sufficient.

[11] I do not agree that the Officer ignored Mr. Trach's affidavit. All of the material factual assertions made in the affidavit were dutifully recorded as Mr. Trach's declarations in the Officer's reasons. Quite obviously Mr. Trach's affidavit was considered albeit the evidence was given little weight because of the failure to provide corroboration for most of the key allegations of personal hardship.

[12] The argument that Mr. Trach's affidavit evidence should have been accepted at face value also has no merit.

[13] Mr. Trach made two key factual assertions that he failed to corroborate. Firstly, he stated that he had received a summons in the Ukraine to report for military service. This was an important element of Mr. Trach's claim to hardship and the Officer had good reason to expect that the summons or some other form of confirmation would be produced. The suggestion that insufficient time was available to obtain this information is belied by the failure to ask the Officer for a time extension.

[14] The second important hardship issue concerned alleged legal impediments facing Mr. Trach's son as a foreign national living in the Ukraine. According to Mr. Trach's affidavit, unless his son acquired Ukrainian citizenship and relinquished his Canadian citizenship, he would be ineligible to receive a public school education or to access healthcare services. Mr. Trach also declared that his son would be denied access to university and to other unspecified government programs and services. This evidence was given little weight because it, too, was uncorroborated.

[15] The Officer cannot be faulted for expecting corroboration for these important factual assertions. Indeed, it is inexplicable that, beyond the bare statement that his son had been denied access to public school and was ineligible to receive healthcare services, no other supporting evidence was provided.

[16] When an applicant for H&C relief makes an important and readily verifiable assertion of hardship, it is not unreasonable for the decision-maker to expect to see supporting evidence. That is particularly the case for an assertion that is unclear, vague or inherently doubtful. On its face, Mr. Trach's statement that foreign nationals are wholly ineligible to attend public school or to receive health services in the Ukraine seems unlikely if not implausible. The vague allusion in the affidavit to the payment of a fee suggests that it is more likely that access is available but is dependant on the payment of fees in some amount. The legal rights of foreign nationals living in the Ukraine to access public benefits or services and on what terms ought to be readily ascertainable from reliable sources and the Officer was entitled to discount Mr. Trach's evidence when it was not produced.

[17] I would add that, although the Officer accepted the point that the Ukraine does not recognize dual citizenship, other evidence in the Certified Tribunal Record [CTR] indicated that a child born to Ukrainian parents acquires Ukrainian citizenship at the moment of birth (CTR p 303). The important issue that was left unproven was whether Canada would continue to recognize the child's Canadian birthright. It was up to Mr. Trach to satisfy the Officer that his son would lose Canadian citizenship in these circumstances and he failed to do so.

[18] Mr. Trach's further argument that the Officer unreasonably discounted his evidence of receiving a summons for a military call-up suffers from the same defect. When a party has access to highly material and reliable corroborating evidence and fails to produce it, an adverse inference can be drawn by a decision-maker. This point has frequently been recognized in this Court's jurisprudence including *Hurtado v Canada (Public Safety and Emergency*

Preparedness), 2015 FC 768 at para 13, 257 ACWS 3d 419; *SAR v Canada (Citizenship and Immigration)*, 2016 FC 984 at para 16, 271 ACWS 3d 613; and *Ortiz Juarez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 288 at para 7, 146 ACWS 3d 705. Other authorities have upheld the approach taken here by the Officer to give little weight to uncorroborated evidence from a party with a personal interest in the outcome. This point was made by Justice Russel Zinn in *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at paras 26-27 and 34, 170 ACWS 3d 397:

> [26] If the trier of fact finds that the evidence is credible, then an assessment must be made as to the weight that is to be given to it. It is not only evidence that has passed the test of reliability that may be assessed for weight. It is open to the trier of fact, in considering the evidence, to move immediately to an assessment of weight or probative value without considering whether it is credible. Invariably this occurs when the trier of fact is of the view that the answer to the first question is irrelevant because the evidence is to be given little or no weight, even if it is found to be reliable evidence. For example, evidence of third parties who have no means of independently verifying the facts to which they testify is likely to be ascribed little weight, whether it is credible or not.
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> [27] Evidence tendered by a witness with a personal interest in the matter may also be examined for its weight before considering its credibility because typically this sort of evidence requires corroboration if it is to have probative value. If there is no corroboration, then it may be unnecessary to assess its credibility as its weight will not meet the legal burden of proving the fact on the balance of probabilities. When the trier of fact assesses the evidence in this manner he or she is not making a determination based on the credibility of the person providing the evidence; rather, the trier of fact is simply saying the evidence that has been tendered does not have sufficient probative value, either on its own or coupled with the other tendered evidence, to establish on the balance of probability, the fact for which it has been tendered. That, in my view, is the assessment the officer made in this case.
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> [34] It is also my view that there is nothing in the officer's decision under review which would indicate that any part of it was based on the Applicant's credibility. The officer neither believes

> nor disbelieves that the Applicant is lesbian – he is unconvinced. He states that there is insufficient objective evidence to establish that she is lesbian. In short, he found that there was some evidence – the statement of counsel – but that it was insufficient to prove, on the balance of probabilities, that Ms. Ferguson was lesbian. In my view, that determination does not bring into question the Applicant's credibility.

[19] There is a further reason to afford reduced weight to Mr. Trach's evidence about receiving a summons. In his February 5, 2016 H&C submission to the Officer, no mention was made of a summons. Despite noting the ongoing armed conflict in Eastern Ukraine and its associated hardships, Mr. Trach referred only to a "likelihood of being drafted and killed". Surely if a summons had been sent to Mr. Trach before he left the Ukraine in 2014, he would have mentioned it. Instead it was not until his counsel filed an updated submission on June 10, 2018 that Mr. Trach mentioned a summons. At that time, no indication was given to the Officer that more time was needed to obtain a copy.

[20] I also reject the argument that the Officer misstated the legal significance of evidence of generalized hardship or risk in the Ukraine. The statement from the Officer's decision that is impugned is the following:

> I am sensitive to the fact that the situation in the Ukraine is difficult. However, I am of the opinion that the living conditions and the country's instability affect the majority of the population and are not more personal to the applicant. Adverse country conditions in the country of origin are one of the factors that the deciding officer must consider and does not outweigh all other factors.

[21] The Officer did not say that evidence of adverse country conditions is irrelevant to an H&C analysis. The point being made is only that generalized adversity must be tied in some

way back to the Applicant. That is so because some conditions will have reduced or no affect on parts of a population and, conversely, may fall more heavily on others: see *Gonzalez v Canada (Citizenship and Immigration)*, 2015 FC 382 at para 55, 252 ACWS 3d 558 and *Uwase v Canada (Citizenship and Immigration)*, 2018 FC 515 at paras 41-43, 292 ACWS 3d 387.

[22] Mr. Trach argues that the Officer failed to adequately consider the evidence of general hardship if he and his son are forced to return to the Ukraine. As already noted, the Officer reasonably found that the evidence of personalized hardship facing Mr. Trach and his Canadian child was insufficient to meet the required burden of proof. The Officer also considered Mr. Trach's argument that the general prevailing conditions in the Ukraine were such that the family would suffer. This argument was rejected on the following basis:

> The applicant states that if he had to return to the Ukraine he would struggle to provide for his family.
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> As previously mentioned, I find that the applicant has not shown that he has any language barriers, or other significant obstacles, that would prevent him from being employed in his home country. The applicant was educated in the Ukraine and was previously registered as an entrepreneur. I find that the applicant has not demonstrated that he would have an unreasonable time becoming re-established in the Ukraine. I find that the applicant did not demonstrate that he would not be able to provide for his family.

[23] On the evidentiary record this, too, was a reasonable finding. The evidence indicated that before coming to Canada Mr. Trach had been gainfully employed and presumably adequately providing for his family. If it were otherwise some evidence of past economic hardship would undoubtedly have been produced. After all, the best indication of what the future likely holds is evidence about what has happened in the immediate past. Here, no persuasive evidence was produced in proof of any particular family hardship before Mr. Trach came to Canada or

thereafter. As the Officer noted, Mr. Trach has skills and a history of employment. The Officer also observed that the family had ties to Western Ukraine and thus had no reason to resettle in an area of conflict.

[24] Mr. Trach also argues that the Officer had a duty to explain why his affidavit evidence about his son's Canadian experience was insufficient to obtain relief. The bare assertion, however, that a child is functioning better in Canada than in a place of previous residence is usually insufficient to make a case for H&C relief. This point has often been recognized in the jurisprudence. In *Garraway v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 286, 279 ACWS 3d 618, Justice Cecily Strickland made this point in the following way at paras 38-39:

> [38] Moreover, in *Sanchez* at paragraph 18, the Court stated that the simple fact that living in Canada is more desirable for children is not sufficient, in and of itself, to grant an H&C application, quoting *Serda v Canada (Minister of Citizenship and Immigration)*, 2006 FC 356 (CanLII) as follows:
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> > 31 Finally, the Applicants have argued that conditions in Argentina are dismal and not good for raising children. They cited statistics from the documentation, which were also considered by the H& C Officer, to show that Canada is a more desirable place to live in general. But the fact that Canada is a more desirable place to live is not determinative on an H & C application (*Vasquez v. Canada (M.C.I.)*, 2005 FC 91 (CanLII); *Dreta v. Canada (M.C.I.)*, 2005 FC 1239 (CanLII)); if it were otherwise, the huge majority of people living illegally in Canada would have to be granted permanent resident status for Humanitarian and Compassionate reasons. This is certainly not what Parliament intended in adopting section 25 of the *Immigration and Refugee Protection Act*.
> > [Emphasis in original.]

> [39] The Officer accepted that the conditions in St. Vincent may not be perfect and that different standards of living exist between countries. The Officer acknowledged that many countries are not as fortunate in having the same social supports, including financial and medical, as can be found in Canada. However, that Parliament did not intend the purpose of s 25 of the IRPA to be to make up for the difference in standard of living between Canada and other countries.

[25] It must also be recognized that Mr. Trach's son had only been in Canada for a few weeks before the Officer rendered a decision. At that point, no persuasive evidence of significant personal advantage was likely available and none was provided. I would also add that Mr. Trach's evidence about his post-2016 Canadian establishment was lacking in detail and uncorroborated. In the absence of banking and up-to-date employment and income records, a less than compelling case was presented to the Officer. It was, on the record presented, reasonable for the Officer to find the evidence of establishment to be lacking.

[26] In conclusion, I can identify no errors in the Officer's treatment of the evidence. The case for relief was very weak and it was not unreasonable for the Officer to reject the application for the reasons given.

[27] Neither party proposed a certified question and no issue of general importance arises in this record.

JUDGMENT in IMM-3843-18

THIS COURT'S JUDGMENT is that this application is dismissed.

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3843-18
STYLE OF CAUSE:	VOLODYMYR TRACH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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