Federal Court  Cour fédérale

Date: 20191231

Docket: IMM-2882-19

Citation: 2019 FC 1662

Ottawa, Ontario, December 31, 2019

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

GILBERT MOORE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Mr. Gilbert Moore is seeking judicial review of a decision by an Immigration, Refugees and Citizenship Canada (IRCC) Officer to refuse his latest application for Permanent Residence from within Canada on Humanitarian and Compassionate (H&C) grounds.

[2] At issue in this application is whether it was reasonable for the Officer to find that Mr. Moore had misrepresented his identity as a citizen of Liberia, and whether it was reasonable to find that this negative factor outbalanced all the positive H&C factors, including the best interest of Mr. Moore's three Canadian-born children.

II. Facts and Procedural History

[3] Gilbert Moore is a 53-year-old Liberian citizen who has lived in Canada since he arrived as a refugee in June of 1997. He fled Liberia after he was kidnapped, held hostage, and released by the National Patriotic Front of Liberia (NPFL), a rebel group that caused the first Liberian Civil War. The group also killed his father and persecuted his brother, who was a member of a faction of the United Liberation Movement of Liberia (ULIMO-J) Party.

[4] The present case is the latest in a long string of attempts Mr. Moore has made to obtain legal status in Canada.

A. *1999: Refugee Status Granted*

[5] Mr. Moore was found to be a Convention Refugee in May 1999; since that time, he has lived in British Columbia, where he owns an electrical business and employs several individuals. He has also volunteered with the Salvation Army, founded an African soccer team, been a member of a church, and pursued several rounds of vocational studies and certificates.

[6] On June 9, 1999, Mr. Moore made an application for permanent residence, which was rejected on June 24, 1999.

[7] Mr. Moore married a Canadian citizen in 2002 and the couple had three Canadian-born children, presently aged 17, 13 and 11.

[8] In May 2009, Mr. Moore's wife submitted a spousal sponsorship application on his behalf; Mr. Moore also applied for permanent residence status, this time on H&C grounds. Both of these applications were refused in September 2009.

[9] Mr. Moore and his wife separated in 2016. Considering that his ex-wife suffers from chronic pain due to arthritis, Mr. Moore is the children's primary financial support and caregiver, though they see their mother on weekends.

B. *2009: RPD Vacates Applicant's Refugee Status*

[10] In December 2009, the Refugee Protection Division (RPD) vacated Mr. Moore's refugee status on the basis that, in the course of his refugee claim, he directly or indirectly misrepresented or withheld material facts relating to his identity. The Minister brought the Application to vacate Mr. Moore's status based on a package of documents intercepted by IRCC sent to the Applicant from Nigeria in June 1997. The package reportedly contained an un-laminated Liberian National identity card, a Liberian birth certificate, a University of Liberia identity card, and a letter instructing Mr. Moore to put his thumb print on the identity card and attach the laminate.

[11] A CBSA Integrity Officer reviewed the documents and sought confirmation from the Liberian Embassy in Ghana that the documents were authentic; the Embassy replied via e-mail that, according to the Ministry of Health in Monrovia, the birth certificate copies were fraudulent. Thus, the Minister's position was that the birth certificate Mr. Moore had used in 1997 to obtain his refugee status was not authentic and that he had not credibly established his identity. However, for unknown reasons, the Minister did not raise this evidence at the Applicant's 1999 refugee hearing.

[12] Mr. Moore maintained that he had no knowledge of the package sent to him in 1997, and believed it may have been part of a scheme by one of his short-term roommates to steal his identity. He also alleged that there was no direct, verifiable statement from the Liberian authorities that the documents were fake, and thus argued that the Minister based his evidence on hearsay.

[13] The RPD found on a balance of probabilities that Mr. Moore was sent the seized package of false identity documents with his knowledge. It also found that the Minister's conclusion that the documents and birth certificate initially submitted by Mr. Moore were fraudulent was reasonable. Though the Member did not reach a conclusion regarding Mr. Moore's passport, which was determined to be "probably authentic" by a document expert in 2006, he found the evidence before him was sufficient to vacate Mr. Moore's refugee protection.

[14] Mr. Moore applied for leave to judicially review the RPD's decision to this court but his Application was dismissed in April 2010.

C. *2010: Applicant's Removal Order Issued (But Not Executed)*

[15] In July 2010, the CBSA issued a deportation order for Mr. Moore. This triggered him to request a Pre-Removal Risk Assessment (PRRA), which was rejected in November 2010. The CBSA interviewed Mr. Moore at the time and, after having informed him that his PRRA was refused, asked him to renew his Liberian passport to enable him to travel back to Liberia. The Liberian Embassy issued Mr. Moore a new passport in December 2010.

[16] The CBSA informed Mr. Moore that he would be removed around December 21, 2010, so he purchased his removal ticket for December 14, 2010. However, he also submitted another application for the RPD to reopen his Vacation Decision, based on the new evidence that his Liberian passport was renewed and the CBSA was attempting to remove him on this passport.

[17] The fact that the Liberian Embassy had issued Mr. Moore a valid identity document when the basis for his removal was that his identity was in question came to the attention of the CBSA. As a result, a Manager of the CBSA's Non-Criminal Removals Unit issued a declaration that, due to the complexity of the file, an Enforcement Officer needed to review it before the removal order could be enforced, essentially delaying Mr. Moore's removal without specifying a date.

[18] As of the present date, no removal date has been set for Mr. Moore.

D. *2011: Leave to Judicially Review Removal Order and Vacation Granted; Applicant Submits Present H&C Application*

[19] Leave to review Mr. Moore's removal order and leave to review the RPD's decision to vacate were both granted.

[20] Mr. Moore submitted the present H&C application on September 29, 2011. He also submitted several rounds of updates to this application, along with new evidence regarding his Liberian identity, which included a letter from the Liberian Bureau of Immigration and Naturalization, as well as affidavits from Mr. Moore's cousins, all confirming his identity.

E. *2015: Federal Court Quashes Dismissal of the Application to Reopen the Applicant's Vacation of Refugee Status*

[21] In December 2015, this Court reviewed the RPD's September 2011 decision dismissing Mr. Moore's application to reopen the RPD decision to vacate his refugee status. Justice Michael Manson found that the RPD did not apply the correct test for determining whether a breach of natural justice had occurred. He also found the RPD failed to engage in a "serious review of the evidence" brought forth by Mr. Moore regarding his renewed Liberian passport and the Canadian government's acceptance of his identity for the purposes of deporting him (*Moore v Minister of Citizenship and Immigration*, IMM-6397-11 at paras 27-29) [Moore 2015].

[22] Because the RPD's decision in 2009 rested largely on Mr. Moore's failure to establish his identity, Justice Manson found that, if the new evidence now established his identity, it would

undercut that initial decision. Thus, the RPD's failure to consider that evidence in its decision about whether to reopen the hearing was a reviewable error (Moore 2015, at paras 25-27).

[23] Justice Manson granted the application and quashed the RPD's refusal to re-open the vacation of Mr. Moore's refugee status, sending it back for redetermination by a different panel.

F. *2017: Vacation Decision Reopened*

[24] In July 2017, the application to reopen the RPD's decision to vacate Mr. Moore's refugee status was granted. However, the hearing was put on hold in 2018 until the present H&C Application is resolved.

III. Impugned Decision

[25] The decision under review was based on documentary evidence submitted by Mr. Moore, as well as an interview the Officer conducted with him in March 2018.

[26] In her decision, the Officer considered Mr. Moore's establishment in Canada, the best interests of his three children (BIOC), and the risk to life and poor security, social and economic conditions in Liberia. She also considered the fact that Mr. Moore's removal is not imminent or likely.

[27] There is no need to review all the factors considered as the Officer found that, but for the identity issue and the little likelihood that he be deported imminently, they all favoured

Mr. Moore's Application. However, she found that the evidence of his identity was not sufficient and that this negative factor outbalanced all other factors.

[28] With respect to Mr. Moore's identity, the Officer analyzed the following documents:

- His father Lan Moore's Death Certificate (February 9, 2005)
- His mother Serah Moore's Death Certificate (February 9, 2005)
- Death Certificate Application for Lan Moore (February 8, 2005)
- Death Certificate Application for Serah Moore (February 8, 2005)
- Mr. Moore's re-issued Liberian Birth Certificate (September 2, 2010)
- Letter from the Embassy of the Republic of Liberia confirming Mr. Moore's identity (June 8, 2011)
- Letter from the Liberian Bureau of Immigration and Naturalization (October 18, 2012)
- Affidavit of Peter Moore (October 24, 2012)
- Affidavit of Angeline Moore (October 24, 2012)
- Letter from Liberia's Ministry of Health (January 23, 2018)

[29] The Officer gave very little weight to the evidence adduced and generally found that Mr. Moore had not provided sufficient evidence of his identity as a Liberian citizen.

A. *Mr. Moore's Birth Certificates*

[30] The Officer noted that the birth certificate presented by Mr. Moore in 1997 "was confirmed by the Liberian authorities to be fake". She also noted that that birth certificate was used by Mr. Moore to obtain his successive Liberian passports. Thus, she determined that

Mr. Moore's passports were improperly obtained and therefore had little probative value in supporting Mr. Moore's identity.

[31] Mr. Moore stated that his cousin had obtained his new birth certificate on his behalf by submitting a photocopy of his passport, an affidavit from the High Court and the certified copy of an affidavit from the Ministry of Justice to the Ministry of Health and Social Welfare. Because Mr. Moore's passports were on the balance of probabilities improperly obtained, the Officer found that the 2010 birth certificate also had little probative value.

[32] As a whole, the Officer found that most of the documents produced by Mr. Moore were issued on the basis of the passports, which were, on a balance of probabilities, improperly obtained. Consequently, the evidence was insufficient to prove Mr. Moore's identity as a Liberian citizen.

B. *Letters from the Embassy of the Republic of Liberia, the Liberian Bureau of Immigration and Naturalization, and Liberia's Ministry of Health*

[33] The Officer also found that all three letters submitted by Liberian officials held little weight or probative value in establishing the Applicant's identity as a national of Liberia, given that none of the letters clearly explain how Mr. Moore's identity documents (namely, his birth certificate and passport) were obtained. The Officer also found that the letter from the Liberian Bureau of Immigration and Naturalization did not specify how, why and to whom it was issued, therefore failing to establish Mr. Moore's identity or nationality with any certainty.

C. *Relationship with Liberian Family Members and Related Affidavits*

[34] In terms of Mr. Moore's relationship with his cousins, the Officer found that Mr. Moore submitted little documentary evidence, other than WhatsApp printouts, to demonstrate his relation with one of them. She also found that the other two cousins, Peter and Angeline Moore, did not provide details about their relationship with Mr. Moore or any important information about themselves, such as their dates of birth, addresses, or parents' names. The Officer also found that, during their May 2018 interview with Mr. Moore, he had difficulty providing clear information as to how he is related to these two cousins.

D. *Parents' Death Certificates*

[35] The Officer found that, according to documentation obtained from the Immigration and Refugee Board, Liberian death certificates must be obtained in person with an official record of death or a confirmed record of the disposition of the body. The Applicant did not present either of these records, and was inconsistent regarding his father's date and cause of death. As such, she gave the death certificates and applications little weight.

E. *Oral Testimony*

[36] The oral testimony given by Mr. Moore at his interview with the Officer is one of the central contentions of this case. Mr. Moore was represented by his counsel at the time, who took notes during the interview, as did the Officer. The Officer's findings are based on her own notes and recollections from this interview.

[37] The Officer found that Mr. Moore's statements about Liberia lacked details. For example, he was asked about the city and county where he grew up as well as his education in Liberia, and had difficulty providing details on both of these subjects. The Officer concluded that "the Applicant presented multiple contradictions and omissions with regards to important events and occurrences in his personal history". As such, she found that Mr. Moore lacked credibility and was an unreliable source for supporting evidence.

F. *Likelihood of Removal*

[38] The Officer also took into account the CBSA Officer's 2011 Declaration that the CBSA was not planning to remove Mr. Moore and the fact that they had not communicated any alternate countries for his removal. As such, the Officer found that there was little information to suggest, on a balance of probabilities, that the Applicant's removal was imminent or likely.

[39] The Officer did note that Mr. Moore's uncertain immigration status is causing him hardship and that the BIOC require that Mr. Moore remain physically present in his children's lives. However, upon balancing all of the above considerations, the Officer was not satisfied that the H&C considerations would justify granting the Applicant permanent residency given that his identity has not been sufficiently established.

IV. Issues and Standard of Review

[40] In their respective submissions and at the hearing, the parties have raised several issues, amongst which two are determinative and warrant the intervention of the Court:

a) *Did the Officer err in finding that the Applicant has not provided sufficient proof of his identity?*

b) *Did the Officer err in finding that the issue of the Applicant's identity and the unlikeliness of an imminent removal outweighs all other favourable factors, including the BIOC?*

[41] Given the Supreme Court's recent decisions regarding the standard of review as well as the previous jurisprudence, these issues are reviewable on a reasonableness standard (*Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 at para 44; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 7; *Bell Canada v Canada (Attorney General)*, 2019 SCC 66).

V. Analysis

A. *Did the Officer err in finding that the Applicant has not provided sufficient proof of his identity?*

[42] The Applicant argues that the Officer based her assessment of the Applicant's identity documents on an alleged determination by the Liberian government in 2001 that the Applicant's birth certificate was fraudulent. The Applicant is referring to the e-mail chain IRCC relied on in its 2009 decision to vacate the Applicant's refugee status, in which information about the legitimacy of the Applicant's birth certificate was communicated to the Liberian Embassy in Ghana, which was then communicated to Canadian officials in Ghana, who in turn communicated it to the officials in Canada. As the Applicant points out, there was in fact no direct communication between the Canadian authorities and the Liberian authorities. In *Moore* 2015, Justice Manson also found this to be the case, given that there was no evidence presented which confirmed that Liberian authorities had ever verified or authenticated the Applicant's

passports (*Moore* 2015 at para 7). Thus, the Applicant asserts that the Officer unreasonably relied on "double hearsay" statements provided as part of the Minister's 2009 Application in her assessment of the present H&C application.

[43] Further, the Applicant contends that the Officer committed an error because she did not have this evidence directly before her, nor did she consider the subsequent evidence discounting the findings made regarding the Applicant's identity documents, including the subsequent renewal of his passport and birth certificate.

[44] He also argues that there is a presumption that foreign-issued government documents are valid, and that the Officer disregarded this presumption.

[45] The Respondent answers that it has been conclusively determined that the original birth certificate Mr. Moore submitted in support of his refugee claim was fraudulent and that it was therefore open to the Officer to rely on facts adduced by the RPD (*Kanthasamy*, above at para 51).

[46] The Respondent further submits that the Officer was not bound by formal rules of evidence such as hearsay (*Guthrie v Canada (Citizenship and immigration)*), 2018 FC 852 at para 9) and thus the "double hearsay" argument put forth by the Applicant has no weight.

[47] Regarding the presumption that foreign-issued government documents are valid, the Respondent replies that a presumption can be displaced when there are good reasons to doubt its

application. In this case, the Officer had such good reasons: the passports were obtained with a fake birth certificate or without the submission of identity documents. The Respondent adds that the presumption does not mean that the reliability and probative value of foreign-issued documents are beyond question.

[48] In my view, the Officer and the Respondent have failed to take into account the decision of this Court in *Moore* 2015 allowing the application to reopen the Applicant's refugee claim as well as the pending hearing regarding the vacation of the Applicant's refugee status, which was allowed on July 31, 2017. Though they note that these decisions have occurred, their meaningful analysis seems to stop at the events of 2010, when the Application for Leave and Judicial Review of the RPD's Vacation Decision was dismissed.

[49] They do not take into account that the original RPD decision to vacate the Applicant's refugee status in 2009 or the evidence that decision was based on are now in question. Until the reopening of the Applicant's vacation hearing is settled, it seems to be a fair assertion that the 2009 RPD decision is not definitive nor is it determinative of the veracity of the Applicant's identity documents.

[50] Additionally, while the case *Guthrie v Canada (Citizenship and immigration)*, 2018 FC 852 makes clear that PRRA officers can admit hearsay evidence (para 12), Justice Favel also notes in that decision that hearsay evidence should generally be given little weight. While the Officer was certainly allowed to admit hearsay evidence, it does seem that she gave it more weight than it is due given the documentary evidence before her.

[51] I also find myself struggling with the circular nature of the Minister's reasoning regarding the Applicant's identity documents. There seems to be no way that the Applicant can sufficiently prove his identity, because Canadian officials (including the Officer in the present case) continue to discount and distrust his valid identity documents on the basis that they were improperly obtained using supposedly false documents. However, in 2010, the CBSA requested that the Applicant renew his passport in order to remove him, and Liberia issued him a valid passport. It seems inherently contradictory for the Minister to deport the Applicant to Liberia on the basis that he has not sufficiently proved he is Liberian when the government of that country acknowledged he is eligible to renew his passport.

The whole identity issue stems from a chain of emails confirming that the birth certificate Mr. Moore used in 1997 to seek refugee status in Canada was falsified. Though the email chain is not before this Court, the only thing the Liberian Ministry of Health in Monrovia seemed to confirm in those emails is that the specific birth certificate was fake; they do not confirm that the Applicant is not a citizen of Liberia or that he is not who he says he is. It is unclear how a chain of emails could contradict in any way the letter issued by the same Ministry in January 2018, or how it could weaken the probative value of the other documents the Applicant submitted, including valid passports issued to him by Liberian authorities. There is a logical link missing here which is quite troubling. In my view, the only way the 1997 email could have had the effect given to it by the Officer's analysis is if it was highly reliable and said that after thorough verification, the Liberian authorities could confirm that the Applicant is not a Liberian citizen and he is not who he says he is. That is simply not the case.

[52] The Officer's decision essentially assumes that the Liberian authorities issued at least two passports to Mr. Moore on the basis of a false birth certificate; that the three letters of confirmation from different departments of the Liberian government were based on false information provided to them; and that the Liberian authorities were unable to independently validate said information. This, in my view, cannot stand.

[53] It is hard to believe that a country would issue a citizen a valid passport without any identity evidence or valid proof of their citizenship of that country; nor does it seem plausible that Liberia would accept a fraudulent birth certificate to issue Mr. Moore several valid passports over the last 22 years. Thus, there does not seem to be ample evidence for the Officer to have reasonably ignored the presumption of validity of foreign-issued documents.

[54] I am therefore of the view that it was unreasonable for the Officer to find that the Applicant had not provided sufficient evidence of his identity.

B. *Did the Officer err in finding that the issue of the Applicant's identity and the unlikeliness of an imminent removal outweigh all other favourable factors, including the BIOC?*

[55] In *Sultana v Canada (Minister of Citizenship and Immigration)*, 2009 FC 533, Justice Yves de Montigny notes that an Officer's fixation on a failure to disclose or on an applicant's misrepresentation to the detriment of other H&C considerations is a reviewable error:

> [30] […] In the present case, the immigration officer did look at the various considerations advanced by the applicants. Nonetheless, at the end of the day, his notes read as if the failure to disclose was the overriding consideration, and that the sponsor had brought upon himself all his and his family's misfortunes. This, in turn, led the immigration officer to analyse the positive factors

> supporting the sponsorship application through the prism of the sponsor's conduct at the time of his own application to become a permanent resident, and to overlook the genuineness and stability of his relationship with his wife and children, the sincere remorse of the sponsor and the likely impact of the decision on any future prospect for this family to be reunited, as Mrs. Sultana will likely not be eligible for permanent resident status under any other category given her severely limited education and language skills and the non-existence of employment skills or experience.
>
> [31] In so doing, the immigration officer fettered his discretion under subsection 25(1) of the IRPA and effectively allowed the applicants' exclusion under paragraph 117(9)(d) to unduly influence his opinion as to whether the applicants' personal circumstances warranted exemption for H&C reasons. As a result, I am of the view that the immigration officer made a reviewable error, not so much because he came to questionable conclusions in his assessment of the evidence, but more fundamentally because he misunderstood the interplay between section 25 of the IRPA and section 117 of the Regulations.

[56] Though the circumstances in *Sultana* differ considerably from the present case—in *Sultana*, Mrs. Sultana's husband did not mention her or their son on his initial permanent residence application to Canada, which resulted in a denial of his H&C application for his family's permanent residence later on—the best interests of the children was a central consideration in that case as well. Justice de Montigny's analysis thus deals with the proper approach to balancing multiple H&C considerations including BIOC, as is the case here. *Sultana* therefore suggests that an Officer's decision to overemphasize a misrepresentation or other failure on the part of an Applicant to be fully honest and subsequently underemphasize the BIOC is a reviewable error.

[57] In the case before me, the Officer pointed to a lack of evidence about the children's mother or the custody agreement between Mr. Moore and his spouse. Yet the evidence before the

Officer—including the fact that the children live with their father during the week, that their mother is chronically ill, and that they have all submitted declarations about how central their father is to their daily lives—was sufficient enough for her to conclude that it was in their best interests for their father to be physically present in their lives. As such, that consideration was due considerable weight. Instead, the Officer allows the BIOC to be undercut by the suggestion that Mr. Moore would not be removed.

[58] Furthermore, it is a well-established principle that an H&C officer must give particular consideration to the decision to remove a child's primary caregiver (see *Momcilovic v Canada (MCI)*, 2005 FC 79; *Jakhu v Canada (MCI)*, 2006 FC 329; *Enriquez v Canada (Citizenship and Immigration)*, 2007 FC 1002). The Officer has counterbalanced this important consideration with her assumption, based on a letter from 2011, that the Applicant is not likely to be deported in a near future. In my view, this conclusion is unreasonable. Just as CBSA issued a letter indicating it had no intention to remove the Applicant, it could review its position and issue a deportation order at any time. Absent a favourable decision on the present H&C application, or a favourable outcome of the new vacation hearing, nothing would prevent them from doing so.

[59] In *Bawazir v Canada (MCI)*, 2019 FC 623, Justice Norris considered an H&C application filed by a citizen of Yemen, a country on which Canada has placed an administrative stay of removal. The Officer in that case decided that he need not consider the Applicant's potential hardship of being removed to Yemen given that the Applicant would not be removed for "the foreseeable future". Justice Norris found this analysis to be unreasonable in the context of an H&C application, the purpose of which it to provide relief for humanitarian reasons.

[60] I am of the view that this finding is applicable to the instant case and that the Officer has failed to fulfill her duty to consider the hardship the Applicant would face in not being able to apply for permanent residence from within Canada at the present time. I agree with the Applicant that this is particularly egregious in this case, given that he has been trying to obtain permanent residence for approximately twenty years.

[61] Overall, I am of the view that the BIOC analysis was unreasonably undermined by the fixation the Officer had on the birth certificate presented in 1997 and the 2011 CBSA letter regarding the likelihood of Mr. Moore's short-term removal.

VI. Conclusion

[62] Given that the Officer relied on circular reasoning regarding the Applicant's identity documents and that she did not give the positive factors reasonable weight, this Application for Judicial Review is granted and the matter is sent back for redetermination. The parties proposed no question of general importance for certification and I agree that none arises from the facts of this case.

JUDGMENT in IMM-2882-19

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is granted;
2. The decision of Immigration, Refugees and Citizenship Canada, dated April 25, 2019, is quashed and the matter is sent back for a new determination by a different Immigration Officer;
3. No question of general importance is certified.

"Jocelyne Gagné"
Associate Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

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