Federal Court  Cour fédérale

Date: 20200327

Docket: IMM-896-19

Citation: 2020 FC 442

Ottawa, Ontario, March 27, 2020

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

IKECHUKWU CECIL ONUKWUFOR

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns the decision made by an officer (the "Officer") of Immigration, Refugees, and Citizenship Canada ("IRCC") at the High Commission of Canada in Accra, Ghana. By letter dated November 26, 2018, the Officer found that the Applicant was not a dependant as defined under section 2 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*"). The Officer denied the Applicant's application for permanent

residence under humanitarian and compassionate ("H&C") grounds pursuant to section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] For the reasons that follow, this application for judicial review is granted.

II. **Facts**

A. *The Applicant*

[3] Ikechukwu Cecil Onukwufor (the "Applicant") is a 33-year-old citizen of Nigeria. His brother, Maxwell Onukwufor, is a Canadian citizen ("Maxwell"). For ease of reference and not due to any lack of respect, he will be referred to using his first name.

[4] Maxwell sponsored his mother's application for permanent residence, and the Applicant's application for permanent residence as a dependant of his mother.

[5] The Applicant claimed to have a mental disorder that rendered him dependent on his mother for emotional, financial, and psychological support. As evidence, the Applicant submitted letters from two doctors. The Applicant's doctor at the State Specialist Hospital stated that the Applicant has poor cognitive function and relies on his mother for emotional and psychological support. The Applicant's doctor at Alvan Ikoku Federal College stated that the Applicant has a psychological illness; that the Applicant is attached to his mother because of his father's death; and that a separation from his mother will cause a relapse in the Applicant's psychological state.

[6] In the H&C application, the Applicant submitted that his "poor mental development" was demonstrated by the fact that he took longer to complete school than his classmates and by his inability to pursue a post-secondary degree unlike his brothers. Namely, the Applicant submitted that his cognitive weaknesses were "in the areas of social interaction, work, leisure and academics", and that his "cognitive skills are minimally developed and his ability to express his ideas is poorly developed. He has limited ability to read and write and his mathematical concepts are limited to just addition and subtraction of small numbers".

B. *Procedural History*

[7] In February 2016, Maxwell applied to sponsor his mother's permanent residence in Canada and he listed the Applicant as a dependant of his mother. The Applicant was 30 years old when he was listed as a dependant. Maxwell was approved as a sponsor in February 2017.

[8] On May 5, 2017, Maxwell received an email stating that the Applicant did not qualify as a dependent because he was over 19 years of age at the time of sponsorship, and that he would therefore be removed from the application.

[9] I note that in October 2017, the maximum age for a dependent child was increased from 19 to 22 pursuant to section 1 of the *Regulations Amending the Immigration and Refugee Protection Regulations (Age of Dependent Children)*, SOR/2017-60.

[10] On this application for judicial review, Maxwell claims that he listed the Applicant as a dependant of his mother pursuant to section 2(b)(ii) of the *IRPR*: that the Applicant "is 22 years

of age or older and has depended substantially on the financial support of the parent since before attaining the age of 22 years and is unable to be financially self-supporting due to a physical or mental condition". However, despite the Applicant having been listed as a dependant with this provision in mind, the Applicant answered "No" to question 6(k) on his application that asked whether he had any serious disease or physical or mental disorder. Maxwell later explained that this was a mistake.

[11] In response to the email dated May 5, 2017, Maxwell submitted a doctor's letter stating that the Applicant was born with "poor developmental milestone [sic]" and that he needed his mother's support. However on May 8, 2017, the Officer reviewing the Applicant's file once again concluded that the Applicant did not qualify as a dependant.

[12] On May 10, 2017, the Officer noted Maxwell's new submissions that the Applicant was autistic and had a brain injury. However, the Officer concluded that the "Sponsor has not provided proof of claimed medical condition" and that "[the Applicant] did not declare any serious disease or physical or mental disorder," such that "the decision remains the same".

[13] The Officer noted further discrepancies in the applications of the Applicant and his mother. For instance, the Officer noted that the Applicant stated he was unemployed on his application, but his mother stated that her son was self-employed. Maxwell explained this discrepancy in a letter stating that the Applicant was given odd jobs for a family business and he earned about $200 per month. Maxwell explained that his mother characterized the Applicant's role as being "self-employed" because it is a source of pride in their culture.

[14] In March 2018, Maxwell reached out to the Minister of Immigration, Refugees and Citizenship with questions about the Applicant's permanent residence application. The Ministerial Enquiries Division (the "Division") responded to Maxwell stating that there was nothing further that could be added to the response provided in the email dated May 5, 2017. However, the Division advised that the Applicant could become a permanent resident under H&C considerations pursuant to section 25(1) of the *IRPA*.

[15] On November 16, 2018, Maxwell submitted the Applicant's application for permanent residence under H&C grounds. On November 26, 2018, the visa office received a "Representative Form Document" as part of the H&C application. The Applicant's written submissions for the H&C application were prepared by Euro Consultants Canada Inc. The H&C submissions noted that: the Applicant is dependent upon his mother for emotional, psychological, and financial support; the Applicant has no other support system in Nigeria because his two brothers cannot support him; Maxwell is able to support the Applicant with his mother in Canada; and if left alone in Nigeria, the Applicant will be vulnerable to crime and drugs.

[16] In November 2018, the Applicant's mother was granted permanent resident status and travelled to Canada.

[17] By way of email dated November 26, 2018, the Officer notified the Applicant's mother that the Applicant was not a dependant. The Officer denied the Applicant's H&C application as

the Officer was not satisfied that H&C considerations justified granting the Applicant any exemptions. This is the decision under review on this application for judicial review.

C. *The Underlying Decision*

[18] The decision stated that the Applicant did not qualify as a dependent child and referred to the email dated May 5, 2017, where the dependency decision was first made. The decision also stated that H&C considerations did not justify the Applicant being granted permanent residence.

(1) **The Dependency Decision**

[19] The Officer's reasons for concluding that the Applicant was not a dependant—which the Officer discussed on May 5, 8, 10, and 22 in 2017—are simple. The Officer makes the following two observations: Maxwell did not provide evidence in support of the claim that the Applicant was financially dependent on his mother due to a mental condition. Notably, although Maxwell had alleged that the Applicant was both autistic and had a brain injury, he failed to provide evidence of such conditions. The Officer concluded that the Applicant was not a dependant because the Applicant checked "No" to question 6(k) on his application that asked whether the Applicant had any serious disease or physical or mental disorder.

[20] The Officer also referred to the dependency decision dated November 26, 2018, after analyzing the evidence submitted by the Applicant. As the Officer's analysis is the same for both dependency and H&C in the November 26 reasons, the Officer's reasons are summarized in the following section.

(2) **The H&C Decision**

[21] In considering the H&C factors, the Officer recognized that the Applicant had "poor development skills" and was "dependent on his mother for his emotional and psychological needs". The following is an excerpt of the Officer's summary of the submissions regarding the Applicant's capacities:

> Though applicant is suffering from poor mental development, he has no medical condition that is expected to cause excessive demand on health or social services. He can manage himself to daily life, can eat by himself, go to washroom, perform days [sic] to day activity however he has weaknesses in the area of ability to differential between essential and nonessential details, problem-solving skills, ability to analyze and synthesize and visual motor coordination; he has weakness in the area of social interaction, work, leisure and academics.
>
> His cognitive skills are minimally developed and his ability to express his ideas is poorly developed. He has limited ability to read and his mathematical concepts are limited to just addition and subtraction of small number; he is capable of helping in simple household tasks and simple purchasing, he does not exercise his choice for his needs completely and depends on his mother for his clothes and accessories. He can assist others in their work but cannot initiate something on his own and requires close supervision.

[22] The Officer listed other supporting documentation including the Applicant's police clearance, doctors' letters, an affidavit from the Applicant's teacher, the Applicant's exam results, a letter from Chapel Group Medical Clinic about the Applicant's mother, and letters from the Applicant's brothers in Nigeria stating that they could not take care of him.

[23] The Officer assigned little weight to the letter from Chapel Group Medical Clinic because it was about the Applicant's mother and Maxwell, not about the Applicant's relationship with his mother. The Officer also noted a peripheral concern that the addresses of the Applicant's mother and her sons were changing from one application to the next for immigration purposes. The Officer assigned little weight to the outpatient card from Brain Plus Specialist Hospital because there were no hospital submissions attached. Moreover, the Officer assigned little weight to the doctors' letters from the Hospitals Management Board and Alvan Ikoku Federal College of Education because the letters did not state the length of the Applicant's treatment or the specific treatments. The Officer also noted that "the letters do not appear to be written by professional doctors". Furthermore, the Officer assigned limited weight to the submissions on the Applicant's poor educational performance as there were no older documents attesting to this issue.

[24] The Officer noted that on the Applicant's resubmitted Generic Application Form for dependency, the Applicant checked "yes" to question 6(k).

[25] The Applicant had alleged hardship in his H&C submissions. The Applicant had submitted that he would suffer from his mother's absence, that his mother would not be able to stay permanently in Canada as she would have to return to Nigeria to be with the Applicant, and that this would, in turn, detrimentally impact her grandchildren in Canada—Maxwell's children. The Applicant also alleged that he would be vulnerable to drugs and crime in Nigeria without his mother. However, the Officer gave limited weight to these submissions because the Officer

found there was “limited documentation” to assess the relationship between the Applicant’s mother, the Applicant, and the grandchildren in Canada.

[26] Ultimately, the Officer denied the Applicant’s H&C application as the Officer was not satisfied that the Applicant met the requirements of a dependant or that he was dependent upon his mother.

III. **Preliminary Issue: Style of Cause**

[27] The proper name of the Respondent is the “Minister of Citizenship and Immigration”, and not the “Minister of Immigration, Refugees and Citizenship”. The style of cause is hereby amended with immediate effect.

IV. **Issue and Standard of Review**

[28] The sole issue on this application for judicial review is whether the Officer’s decision is reasonable.

[29] Prior to the Supreme Court’s recent decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII) [*Vavilov*], the reasonableness standard applied to the review of an immigration officer’s decision on H&C applications under section 25 of the *IRPA*: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 (CanLII) at para 44 *[Kanthasamy]; Douti v Canada (Citizenship and Immigration)*, 2018 FC 1042 (CanLII) at para 4; *Chen v Canada (Citizenship and Immigration)*, 2019 FC 988 (CanLII) at para 24. There is no

need to depart from the standard of review followed in previous jurisprudence, as the application of the *Vavilov* framework results in the same standard of review: reasonableness.

[30] As noted by the majority in *Vavilov*, "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). Furthermore, "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**

[31] The Applicant submits that the Officer made no reasonable efforts "to reason with the sponsor" or "to research or explore the dynamic socio-cultural issues and unique medical issues of the Applicant". The Applicant submits that the Officer failed to properly consider the evidence by refusing to consider the evidence provided in support of the application, and alleges that the Officer's objections were hypothetical. The Applicant submits that the Officer improperly speculated on the evidence.

[32] Specifically, the Applicant challenges the Officer's assessment of the medical evidence from the Applicant's doctors. The Applicant argues that the Officer did not appropriately consider the medical evidence from the psychiatrist—a professor at Alvan Ikoku Federal College of Education—or the doctor from State Specialist Hospital. The evidence from both doctors were given little weight on the basis that they did not seem to be written by "professional

doctors" and because one of the letters came from a teaching institute. The Applicant alleges that both doctors are "professional" contrary to the Officer's assertions.

[33] The Respondent submits that the Applicant merely argues with the negative outcome and that the Officer's decision does not raise any reviewable errors. Regarding the consideration of medical evidence, the Respondent submits that the Officer's reasons confirmed that the Officer reasonably reviewed the material provided by the Applicant and found it unsatisfactory.

[34] I wish to note, as an aside, that the Respondent characterizes the Applicant's submissions as a "self-serving speculation of what will befall him in the future". It is apparent that the Respondent was not persuaded by the Applicant's arguments, but I find the aforementioned comment without merit. Particularly in light of the fact that the Applicant was self-represented until recently with the appointment of counsel and that the Applicant prepared his own submissions (with some assistance), characterizing the Applicant's submissions as "self-serving" is questionable. Of course the submissions are self-serving: the Applicant was making arguments on his own behalf. It is not appropriate to suggest that self-representation or making arguments on one's own behalf is self-serving, nor is it acceptable to undermine the emotional nature of this claim by suggesting that it is selfish when, at its core, it is about family reunification in Canada.

[35] In my view, the Officer failed to properly consider the evidence and improperly speculated on the Applicant's medical evidence. First, the Officer failed to explain his conclusion that Alvan Ikoku College could not house medical practitioners or provide treatment

opportunities simply because it is a teaching institution. In *Bhatia v Canada (Citizenship and Immigration)*, 2017 FC 1000 CanLII [*Bhatia*], where the Court was faced with the judicial review of an H&C decision, the Court found at para 38, "It is well-accepted that a decision-maker can rely on logic and common sense to make inferences from known facts. An immigration officer cannot engage in speculation and render conjectural conclusions. However, a reasoned inference is not speculation."

[36] As per *Bhatia*, an officer is allowed to rely on logic and common sense. However, I fail to see how the Officer's conclusion in the case at bar is based on logical inferences. In *Bhatia*, the Court found that the officer made a reasonable inference by concluding that the applicants' children would have no trouble readjusting to life in India because the children were exposed to cultural experiences through their religious volunteer work with the parents. However, no such reasonable inferences exist in the case at bar. It is common for psychiatry or medical teachers to also be clinicians/practitioners, much in the same way that a law professor may also be a practitioner. It was unreasonable for the Officer to conclude that Alvan Ikoku College could not house medical practitioners who also engaged in teaching opportunities.

[37] Second, the Officer made a bold but largely unsupported conclusion that the medical evidence did not seem to come from "professional doctors". The only support for the Officer's conclusion was that neither letter stipulated the Applicant's treatment plan or the length of the doctor-patient relationship. However, I fail to see how this conclusion is connected to the Applicant's claim. The Applicant's treatment was not relevant because the Applicant was merely alleging that he was dependent on his mother for psychological and financial support due

to a form of mental disability. To suggest that the doctors needed to supply treatment plans implied that merely having a disability was insufficient to claim dependency. The Applicant did not claim that his mother assisted in treating his disability, or that his disability even required treatment. He alleged only that it existed.

[38] Both doctors' letters stated that the Applicant had a mental disability and relied on his mother for support. Again, the Applicant was not alleging that his mother helped to treat his illness, or that he needed a particular treatment in Canada. The Applicant's submission was that he is a disabled person without the capacity for independence because of a developmental delay—a claim that is supported by both letters. Furthermore, the Officer failed to explain why a historical doctor-patient relationship is valuable. I accept that the existence of history would have bolstered the credibility of the letters. However, the Applicant's diagnosis remains the same regardless, and it was the Applicant's diagnosis that formed the basis of his H&C application.

[39] I accept that there are other problems with the medical letters. Indeed, they leave much to be desired. Most notably, neither letter makes any precise diagnosis as to the Applicant's mental disability. That information would have greatly informed the Applicant's application. However, that is not a criticism alleged by the Officer. Instead, the Officer speculated on the "professionalism" of the doctors despite a lack of clear explanation for why the doctors did not appear to be legitimate.

[40] In the case at bar, improper speculation alone is fatal to the reasonableness of the Officer's decision. Medical evidence is essential to both the Applicant's dependency and H&C claims. Both dependency and H&C claims rest almost entirely upon medical evidence that shows that the Applicant cannot function independently due to his disability. Although other evidence about the relationship between the Applicant and his mother would have been beneficial, even such evidence without medical evidence would likely be insufficient. As such, the Officer's error to assess the medical evidence based on improper speculation—resulting in illogical conclusions—renders the decision unreasonable.

VI. **Certified Question**

[41] Counsel for each party was asked if there were any questions requiring certification. They each stated that there were no questions for certification and I concur.

VII. **Conclusion**

[42] The Officer engaged in improper speculation. The Officer's conclusions with respect to the medical evidence did not flow logically from the evidence or submissions before them.

[43] For the foregoing reasons, the Officer's decision is set aside. This application for judicial review is granted.

JUDGMENT in IMM-896-19

THIS COURT'S JUDGMENT is that:

1. The decision is set aside and the matter referred back for redetermination by a different decision-maker.

2. There is no question to certify.

3. The style of cause is hereby amended to reflect the "Minister of Citizenship and Immigration" as the proper Respondent.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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