Federal Court  Cour fédérale

Date: 20210707

Docket: IMM-2873-20

Citation: 2021 FC 717

Ottawa, Ontario, July 7, 2021

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

DIOSA AZUL RITUAL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Diosa Azul Ritual, [Ms. Ritual] seeks judicial review of the decision of an immigration officer [the Officer] dated March 11, 2020, that refused her Pre-Removal Risk Assessment [PRRA] application [the Application].

[2] For the reasons that follow, the Application is dismissed. The Officer did not err in any way.

[3] A PRRA does not assess the risk to children who are not subject to removal. Moreover, Ms. Ritual did not provide any evidence of risks that she would face upon return to the Phillipines on her own or as a single mother of two children or of any such risk that her children would face. Ms. Ritual raised only possible hardships, which are more properly assessed in an application for a humanitarian and compassionate [H&C] exemption pursuant to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Officer was not required to convene an oral hearing to elicit further evidence regarding the children.

[4] The Applicant has conflated allegations of hardship and attempted to transform them into risks, but these are different concepts with different legal tests.

I. Background

[5] Ms. Ritual is a citizen of the Philippines from Polillo Island. She arrived in Canada in January 2012 as a temporary foreign worker. Ms. Ritual's work permit expired on February 26, 2015. Ms. Ritual and her two Canadian-born children live with, and are financially supported by, Ms. Ritual's sister.

[6] Ms. Ritual submitted her PRRA application in June 2019 and it was refused on March 11, 2020. Ms. Ritual has also submitted three unsuccessful applications for permanent residence on H&C grounds. This Application is only with respect to the PRRA decision.

II. The Decision Under Review

[7] The decision letter explained that the PRRA was rejected because "[i]t has been determined that [Ms. Ritual] would not be subject to risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to [her] country of nationality or habitual residence".

[8] The Officer's decision summarized the risks identified by Ms. Ritual as that she will have to live in poverty and others would care for her children if she works outside the Philippines. The Officer noted that although Ms. Ritual mentioned other factors about her children, the children are Canadian citizens who do not face removal from Canada and are not included in the PRRA decision. The Officer also noted that the best interests of the children are assessed in an H&C application, not a PRRA.

[9] In the section headed "Assessment of Risk", the Officer stated at the outset that the risk to be assessed is the risk of persecution, risk to life or risk of cruel and unusual treatment or punishment, as defined in the Act, and that this risk is forward-looking.

[10] The Officer reviewed country condition evidence, including an article indicating that the unemployment rate in the Philippines was lower than that in Canada. The Officer also referred to a human rights report that notes concerns with extra-judicial killings, discrimination of women in employment, age discrimination in employment, and the low minimum wage rates for both agricultural and non-agricultural workers.

[11] The Officer found that Ms. Ritual had not established that she faced personalized risk in her country, as risk is defined in the Act. The Officer noted that Ms. Ritual's concerns were associated with economic issues and general country conditions and assessed these in light of her personal circumstances. The Officer noted her education and work experience and concluded that she had not provided evidence to demonstrate that she "would be at an increased risk of harm on a basis that that [*sic*] is personal to her and more than that facing the rest of the population of the Philippines".

III. The Applicant's Submissions

[12] Ms. Ritual argues that the Officer erred by failing to consider her risk as a single mother and the risk to her Canadian-born children in returning to the Philippines. She further argues that the Officer breached the duty of procedural fairness by not convening an oral hearing to elicit further evidence about her children.

[13] Ms. Ritual submits that the Officer erred by not considering her complete or "global" risk profile as a single working mother with two Canadian-born children, one of whom has a learning disability, returning to a small poverty-stricken island. She submits that the Officer considered the relevant factors in isolation. She submits that *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] establishes that a global assessment should be conducted.

[14] Ms. Ritual submits that the Officer erred by failing to consider the interests of her children, including failing to inquire whether her children would relocate to the Philippines.

[15] Ms. Ritual first submits that the Officer should have presumed that her Canadian-born children would be returning to the Philippines with her (citing *Sultana v Canada (Minister of Citizenship and Immigration)*, 2009 FC 533, which concerned an H&C application).

[16] Ms. Ritual then submits that the Officer breached procedural fairness by not convening an oral hearing to inquire whether her children would return with her and to seek further evidence about her Canadian-born children's situation. She points to *Jones v Canada (Citizenship and Immigration)*, 2015 FC 419 [*Jones*]) to support her submission that the Officer was required to elicit information about the children's circumstances in order to assess the risks they would face and the global risk Ms. Ritual would face. Ms. Ritual submits that if returned to the Philippines, her children will be exposed to a risk of abuse of caregivers while she is forced to find work outside the country.

[17] In oral submissions, Ms. Ritual advanced the argument that the Officer erred by failing to consider the cumulative impact of poverty and lack of housing and the overall atmosphere of insecurity which, in her submission, amounts to persecution.

IV. The Respondent's Submissions

[18] The Respondent submits that the Officer considered all the submissions and evidence and reasonably concluded that there was insufficient evidence of any forward-looking risk to Ms. Ritual.

[19] The Respondent submits that the Officer acknowledged that Ms. Ritual is a single mother and considered the country condition evidence of discrimination faced by women in the workplace. The Respondent notes that Ms. Ritual only raised economic concerns.

[20] The Respondent also notes that Ms. Ritual does not dispute that she submitted insufficient evidence to support her PRRA application to establish that she faced a personalized risk of harm, torture, persecution or risk to life from any person or any state authority in the Philippines. The Respondent adds that the issues raised by Ms. Ritual, including the risk of harm due to insufficient hospitals and sanitary water and her son's asthma condition are not risks to be assessed in a PRRA, rather they would be considered in an H&C application.

[21] The Respondent submits that the Officer was not required to consider the risks to or best interests of Canadian-born children who are not subject to removal (*Canada (Minister of Citizenship and Immigration) v Varga*, 2006 FCA 394 [*Varga*]; *Okoloubu v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 326). The Respondent also notes that Ms. Ritual has had three opportunities to have the best interests of her children considered in the context of an H&C application, all of which were refused.

[22] With respect to Ms. Ritual's submission that the Officer should have either presumed or inquired whether the children would be returning with their mother, the Respondent disputes the relevance of *Jones* to the present circumstances, noting that *Jones* is an H&C decision based on particular facts and does not support Ms. Ritual's submission that the Officer should have inquired about the children. In addition, given that the children lived with, and were supported by

their aunt in Canada, there was no presumption that the children would leave Canada and no evidence before the Officer regarding their status at all.

V. The Standard of Review

[23] A PRRA officer's determination of risk is reviewed on the reasonableness standard because this is a question of mixed fact and law (*Kadder v Canada (Citizenship and Immigration)*, 2016 FC 454 at para 11).

[24] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16, 23 [*Vavilov*], the Supreme Court of Canada confirmed that reasonableness is the applicable standard of review for discretionary decisions and has provided extensive guidance to the courts in reviewing a decision for reasonableness.

[25] The Court conducting a judicial review begins by examining the reasons for the decision with respectful attention, seeking to understand the reasoning process followed by the decision-maker to arrive at a conclusion. 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 paras 85, 102, 105–110).

[26] In *Vavilov*, at para 100, the Supreme Court of Canada notes that decisions should not be set aside unless there are serious shortcomings that are sufficiently central or significant to render the decision unreasonable.

[27] Two types of fundamental flaws that will render a decision unreasonable are noted at para 101: “[t]he first is a failure of rationality internal to the reasoning process. The second arises when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it.”

[28] In applying the reasonableness standard, the Court must not assess the tribunal’s reasons against a standard of perfection, but must ask if the decision under review “bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99).

[29] Ms. Ritual suggests that the issue of whether the Officer erred by not convening an oral hearing is a question of procedural fairness to be reviewed on the correctness standard. Although Ms. Ritual cites *Vavilov* in support of her submission that issues of procedural fairness should be reviewed on the correctness standard, she has not canvassed the jurisprudence regarding whether the decision to convene — or not to convene — an oral hearing is a matter of procedural fairness. In the context of a PRRA and the application of paragraph 113(b) of the Act and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, the trend in the jurisprudence is that this is an issue of mixed fact and law to be determined on the reasonableness standard. (See for example, *Huang v Canada (Citizenship and Immigration*), 2018 FC 940 at para 16; *AB v Canada (Citizenship and Immigration)*, 2019 FC 165 at para 11). Regardless, in the present case, the standard of review makes no difference, as there is simply no duty on the Officer to convene an oral hearing in the circumstances.

VI. The Decision is Reasonable

[30] Ms. Ritual's reliance on *Kanthasamy* is misplaced, as the Supreme Court of Canada's guidance is focussed on the H&C exemption. Although PRRA officers should conduct a global assessment of an applicant's risk, taking into account all the risk factors and their intersection, Ms. Ritual did not allege that she faced any risk either on her own or as a single mother of two children. The Officer canvassed the evidence with respect to workplace discrimination on the basis of being a woman and on the basis of age, but did not consider any additional risk to Ms. Ritual as a single mother because no such risk was raised or demonstrated.

[31] Ms. Ritual did not even mention any risk of persecution she might face, or suggest how any possible risk would be increased by her status as a single mother. Rather, she noted hardships that she and her children would face if they returned to the Philippines, including poverty, deficiencies in the education and health care systems, lack of family support, and a loss of close connections with those in Canada. In a PRRA application, the onus is on the applicant to establish a risk of persecution and Ms. Ritual clearly did not do so.

[32] With respect to Ms. Ritual's argument that the hardships she raised should have been cumulatively assessed as this could amount to persecution, this argument was not made to the Officer. Moreover, the only personal hardships she raised were that while working abroad away from her children she would not know if her children were being adequately cared for and that she would worry about her son struggling with his developmental delay. Even if Ms. Ritual had

established that these concerns were likely to materialize, they do not suggest a personalized risk of persecution.

[33] Ms. Ritual's argument that the Officer erred by not considering the risks to her children is also without merit. No evidence of any risk to the children was provided.

[34] Moreover, the Federal Court of Appeal clearly established that PRRA officers are not required to consider, and should not consider, the interests of Canadian-born children in PRRA applications. The interests of Ms. Ritual's children, who are not subject to a removal order, are properly assessed in an H&C application, not a PRRA application.

[35] In *Varga*, the Federal Court of Appeal noted at para 12 that the H&C and PRRA decision-making processes "should be neither confused, nor duplicated". The Court explained that section 25 of the Act is the forum to consider the interests of children, and that these interests do not need to be considered in every other decision, noting at para 13, that "it was an error for the Applications Judge to read into the statutory provisions defining the scope of the PRRA officer's task a duty also to consider the interests of the adult respondents' Canadian-born children".

[36] Ms. Ritual pointed to *Varga* at para 17, where the Court stated:

> [17] In oral argument, counsel for the respondents argued that the PRRA officer failed to consider the possibility that, if their two Canadian-born children went to Hungary, the respondents would themselves be exposed to a greater risk of persecution. I agree that this is a matter within the PRRA officer's jurisdiction. However, since counsel did not make this submission to the officer, he cannot complain that the officer was at fault in not considering it.

[37] However, as in *Varga*, Ms. Ritual did not make any submissions to the Officer that she would be at any greater risk — or at any risk at all — if she returned to the Philippines with her children. If she had made such submissions and provided supporting evidence, the Officer would have been required to consider it, but she did not.

[38] Ms. Ritual has conflated the concepts of hardship, relevant on an H&C application, and risk, which is assessed on a PRRA, as well as the jurisprudence on the two issues. The risk assessed on a PRRA is defined in sections 96 and 97 of the Act, which the Officer assessed and reasonably found did not exist.

[39] The Officer had no duty to convene an oral hearing to elicit information about the situation of the children.

[40] Ms. Ritual's reliance on *Jones*, which concerned an H&C decision, to argue that the Officer should have elicited information about her children, is also misplaced. In *Jones*, the Court found, based on the particular facts, that the evidence demonstrated a serious possibility that the applicant's children, who had previously been determined to be at risk by the Children's Aid Society, would "suffer unduly" if their father were removed. The Court found that because the H&C officer had invited the applicant to provide updated evidence about the children, which the applicant did not provide, the Officer did not have sufficient evidence to fully assess the best interests of the children and that the Officer should have elicited additional information. *Jones* does not establish a principle that a decision-maker has an obligation to elicit additional information about a child's best interests in the context of an H&C application and certainly not

on a PRRA application. The law remains that the onus is on the applicant to establish their claim or allegations, whether in an H&C, PRRA or other application, with sufficient relevant evidence.

JUDGMENT in file IMM-2873-20

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.

2. There is no question for certification.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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