Federal Court  Cour fédérale

Date: 20220110

Docket: IMM-1095-21

Citation: 2022 FC 27

Ottawa, Ontario, January 10, 2022

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

LORRAINE JANET HEBBERD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Lorraine Janet Hebberd, is a British Overseas Territories citizen from Bermuda. She applies under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of the February 15, 2021 decision of a Senior Immigration Officer [Officer] refusing her application for permanent residence from within Canada on Humanitarian and Compassionate [H&C] grounds.

[2] In seeking H&C relief, Ms. Hebberd cited her establishment in Canada but relied primarily on the health circumstances of her adult daughter, a permanent resident of Canada.

[3] Ms. Hebberd's application for H&C relief described the circumstances surrounding the violent death of her husband in 1993 and the impact of his death on their then 8 year old daughter's mental health. Ms. Hebberd reported her daughter came to Canada in 2001, at 17 years of age, to attend high school. Her daughter completed her education in Canada, became a permanent resident in 2013 and is employed in Canada. Ms. Hebberd reported strong ties of interdependence between herself and her daughter linked to their shared trauma and described how her daughter's recent serious physical health issues have exacerbated her daughter's mental health challenges. She stated her daughter has no family support in Canada and requires her full time presence to assist her with both her physical and mental health issues; short-term visits, she submitted, are no longer viable. Ms. Hebberd also submitted she is a 74 year old retiree and her daughter does not meet the minimal income requirements to sponsor her for permanent residence. For these reasons, Ms. Hebberd would not be accepted for permanent residence if she applied from abroad and H&C relief was the only option available to her to obtain permanent residence in Canada.

II. Issues and Standard of Review

[4] Ms. Hebberd raises three issues. First, she submits the Officer failed to adequately address the core issue underlying the H&C application: family violence and its effects on her, her daughter and their bond. Second, she claims the Officer unreasonably concluded the availability of health care services for her daughter in Canada was sufficient to mitigate the impact on her

daughter's health if Ms. Hebberd were required to leave Canada. Third, Ms. Hebberd submits the Officer's failure to address and consider the submissions and evidence indicating she was unable to pursue permanent residence from outside Canada, renders the decision unreasonable.

[5] The parties agree that the Officer's refusal decision is to be reviewed on a reasonableness standard.

[6] A reasonable decision is one that is justified, transparent, intelligible and grounded in an internally coherent and rational chain of analysis (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 16 and 85 [*Vavilov*]). The principles of justification and transparency require an administrative decision maker's reasons to meaningfully account for the central issues and concerns raised by the parties. A decision maker's failure to meaningfully grapple with the key issues or central arguments raised may call into question whether the decision maker was actually alert and sensitive to the matter before it (*Vavilov* at paras 127-128).

[7] There may well be some merit to the first two issues raised, but I need not address them. The Officer's failure to address Ms. Hebberd's submission that it was not possible for her to apply for permanent resident status from abroad is determinative of the Application.

III. Analysis

[8] In this instance, the Officer failed to meaningfully grapple with Ms. Hebberd's submissions and evidence as they related to her inability to apply for permanent resident status

from outside Canada. Submissions in support of the H&C application specifically noted Ms. Hebberd's daughter did not meet the income requirements to sponsor her mother from abroad and stated the H&C application "is therefore [Ms. Hebberd's] only means to remain with [her daughter] in Canada." The submissions and evidence before the Officer also set out her daughter's 2018 income and included a 2018 Notice of Assessment. The evidence indicated Ms. Hebberd's daughter did not satisfy the income threshold for parental sponsorship in 2018.

[9] The Officer does not address these submissions or the supporting evidence. Instead, in assessing ties to Canada, the Officer refers to Ms. Hebberd's ability to return to Bermuda and apply for permanent residence from abroad. Hardship, in turn, is assessed under the label "Hardship in Applying from Abroad." The Officer not only ignores Ms. Hebberd's submissions regarding the unavailability of an alternative immigration stream, but relies on the availability of that alternative stream to justify, at least in part, the refusal decision.

[10] In the face of evidence indicating that a certain alternative immigration stream is not viable, an Officer's identification of and reliance on that alternative stream in assessing an H&C application may render their decision unreasonable (*Luciano v Canada (Citizenship and Immigration)*, 2019 FC 1557 at paras 45- 46; *Torres v Canada (Citizenship and Immigration)*, 2017 FC 715 at para 9). I am of the opinion that it does so in this instance. The failure to address Ms. Hebberd's submissions leaves doubt as to whether the Officer fully grasped the nature and context of the H&C application or recognized Ms. Hebberd's position that the H&C application was the only avenue available to her to obtain permanent residence in Canada.

[11] The Respondent submits the Officer was under no obligation to assess the likelihood of obtaining permanent resident status in a subsequent application, relying on *Garas v Canada (Citizenship and Immigration)*, 2010 FC 1247. I do not disagree. However, the issue in this instance is not one of assessing the likelihood of success through an alternative stream. It is the Officer's failure to consider submissions arguing that an alternative stream is simply not available. This was a key issue raised within the context of the H&C application and the failure to consider and weigh this factor as part of the Officer's global assessment undermines the reasonableness of the decision.

IV. Conclusion

[12] The Application is granted. The parties have not identified a question of general importance for certification and none arises.

JUDGMENT IN IMM-1095-21

THIS COURT'S JUDGMENT is that:

1. The Application is granted;

2. The matter is returned for redetermination by a different decision maker; and

3. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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