Federal Court Cour fédérale

Date: 20220203

Docket: IMM-1303-21

Citation: 2022 FC 134

Ottawa, Ontario, February 3, 2022

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

OLGA KANTOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of a Senior Immigration Officer of Immigration, Refugees, and Citizenship Canada [the "Officer"], dated February 10, 2021, refusing the Applicant's application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds [the "Decision"], pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the "*Act*"].

II. Background

[2] The Applicant, Olga Kantor, is an octogenarian woman and citizen of Russia. The Applicant has two children – one of which passed away at 58-years-old from multiple sclerosis in 2018 and the other who is a Canadian citizen.

[3] The Applicant arrived in Canada on January 26, 2020 with a multiple-entry visa that she was issued in Moscow on May 30, 2019 and is valid until 2028.

[4] On August 7, 2020, the Applicant filed an H&C Application [the "Application"], seeking an exemption from the requirements of the *Act* to facilitate the processing of her Application for permanent residence from within Canada. The Applicant sought H&C relief on the following grounds:

A. The Applicant's only remaining family resides in Canada. These relatives are willing and able to provide support for the Applicant;

B. The Applicant experienced significant hardship growing up in the Soviet Union during the Second World War and continues to suffer long-term effects;

C. The Applicant has suffered caregiver burnout and depression due to caring for her now deceased child; and

D. The Applicant will face irreparable and irrevocable harm should she be forced to return to Russia where she has no one to care for her.

[5] The Officer refused the Applicant's H&C Application by Decision dated February 10, 2021. The Applicant seeks an Order declaring invalid, quashing, or setting aside the Officer's Decision and returning the matter to a different immigration officer for reconsideration.

III. Decision Under Review

[6] The Officer focused on three issues in considering subsection 25(1) of the *Act*: Establishment in Canada; Risk and Adverse Country Conditions; and Global Assessment and Conclusion.

A. *Establishment in Canada*

[7] The Officer notes that the Applicant has been in Canada since January 2020. The Officer affords this "relatively brief duration of time spent in Canada" little weight, stating that "a significant degree of establishment takes several years to achieve."

[8] The Officer accepts that the Applicant's only remaining family resides in Canada and that they are professionally and financially established. The Officer affords these family ties some weight towards the Applicant's establishment. The Officer also accepts that the Applicant's family has worked hard to and can support her. This consideration is also given some weight.

[9] The Officer gives little weight to the consideration that the Applicant has no criminal record, noting "that it is expected that anyone immigrating to Canada is of good character and without a criminal record."

B. *Risk and Adverse Country Conditions*

[10] The Applicant claims to have experienced significant hardship growing up in the Soviet Union during the Second World War and continues to suffer long-term effects. The Applicant provided an article, which states that those who survived the war were more likely to suffer long-term adverse effects in their physical and mental health.

[11] The Officer accepted that there were long-term health effects, both mental and physical, for those who survived the Second World War, particularly in the former Soviet Union where food shortages and extreme violence were recurring phenomena. However, the Officer noted that the Applicant had not provided a medical diagnosis demonstrating that such consequences affected her specifically. The Officer also noted that the Applicant had a remarkable career as an economist and engineer in the Soviet Union. Little weight was given to this consideration.

[12] The Applicant also claims to suffer from caregiver burnout due to caring for her son, who at 58 years of age died from multiple sclerosis in 2018. The Officer noted that little evidence was adduced to demonstrate that the Applicant had caregiver burnout. Instead, articles discussing the common frequency of caregivers suffering burnout and depression were provided.

[13] The Officer accepted that the Applicant suffered caregiver burnout and was depressed by the time her son passed away. However, in the absence of a medical diagnosis, the Officer did not find that the Applicant is currently depressed.

[14] The Officer also noted that one of the articles provided by the Applicant stated that once a care receiver has passed away, caregivers transition out of their role and "are often able to return to normal levels of functioning within a year." Based on this information, the Officer found that, given the passing of her son in 2018, the Applicant has transitioned out of the role of caregiver. In the absence of a diagnosis, the Officer finds there is little evidence to demonstrate that the Applicant is currently suffering from caregiver burnout and gives this consideration only some weight.

[15] Finally, the Applicant claims that she will suffer irreparable and irrevocable harm should she be forced to return to Russia where she has no one to care for her. The Officer accepts that the Applicant's son passed after a long struggle with multiple sclerosis, and that her husband and siblings pre-deceased her. Therefore, the Applicant's only living family is in Canada. The Officer stated that they are sympathetic to these losses.

[16] The Applicant states that she has no one to bring her food or care for her if she were in Moscow amidst the COVID-19 pandemic. However, the Officer notes that the evidence states that the Applicant currently does housework, prepares dinner, and spends time outdoors in Canada while her daughter and son-in-law are at work.

[17] The Officer also notes that when the Applicant had previously experienced health issues in Russia, she was cared for by friends and relatives of her daughter, and a nurse was hired by her daughter. The Applicant was also able to access and receive care in a Moscow hospital before being discharged and returning to her home.

[18] Based on this evidence, the Officer found that the Applicant has had support in Moscow, in addition to access to health services, and it is not clear that the Applicant would be unable to care for herself or receive assistance should she return to Russia. Therefore, the Officer found that the Applicant could care for herself and does not face irreparable and irrevocable harm should she return to Russia and this consideration was given little weight.

[19] The Officer also noted that the information provided by the Applicant demonstrated that she is able to maintain a close connection to her daughter via several different means, including evidence of frequent travel by her daughter to Russia in recent years. The Applicant's multiple-entry visa also remains valid until 2028.

[20] As a result, the Officer found that the Applicant can mitigate the hardship of periods of separation from her daughter and son-in-law and this consideration was given some weight.

C. *Global Assessment and Conclusion*

[21] The Officer reiterated that subsection 25(1) of the *Act* allows the Minister of Immigration, Refugees, and Citizenship [the "Minister"] to grant permanent resident status to a person who is inadmissible or otherwise does not meet the requirements of the *Act*, provided that the Minister is of the opinion that it is justified by H&C considerations relating to the person. The onus is on the Applicant to bring forth these considerations.

[22] Based on the entirety of the Application, the Officer concluded the following:

i. The Applicant has little establishment in Canada, having arrived in January of 2020 and demonstrated little beyond family ties via her daughter and son-in-law.

ii. Some weight was given to the consideration that the Applicant's only family is in Canada and she wishes to stay with them.

iii. Less weight was given to the consideration concerning the Applicant's level of care in Russia, as the Officer did not find that the Applicant demonstrated that she requires care nor that she lacks practical support in Russia.

iv. The Officer accepted that the Applicant once suffered caregiver burnout, but did not find that sufficient evidence was provided to demonstrate that this is a consideration at the time of the Application.

v. The Officer accepted that the experiences of World War II would have been truly horrific and that many of those who experienced that conflict have suffered ongoing mental and physical effects. However, they did not find that the Applicant had demonstrated that she personally has been suffering resultant negative effects and the consideration was given little weight.

vi. The Officer found that there would be a level of challenge inherent in the Applicant being separated from her daughter in Canada. However, they found that the Applicant's possession of a multiple-entry visa to Canada and the Applicant's daughter's ability to travel to Russia, as well as the continued use of modern communication technology, might mitigate some of the hardships of returning to Russia.

[23] Based on their global assessment of all the factors presented by the Applicant, the Officer was not satisfied that the H&C considerations before them justified granting an exemption under subsection 25(1) of the *Act* and refused the Application.

IV. Issues

[24] The issue is whether the Officer's Decision was reasonable.

V. Standard of Review

[25] The standard of review is reasonableness [*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paragraph 25].

VI. Analysis

[26] The Applicant argues three key issues in challenging the Officer's Decision:

i. That the Officer equated the Applicant's establishment in Canada only with the length of time the Applicant has spent in Canada and not her social establishment with her only remaining family. Thus, the Officer's minimization of the Applicant's establishment in Canada failed to take into consideration the context of her social establishment in Canada through the connections to her family;

ii. That the Officer's global assessment failed to meaningfully engage with the fact that the Applicant deserves an exemption on H&C grounds because of her life

history, which is marked by many tragic events and not just practical problems but emotional hardships as well; and

iii. While the Officer does review the history and does list each of the issues raised by the Applicant, they fail to understand them and engage with them cumulatively and in their totality.

[27] Based on this Court's findings in *Lopez Bidart v. Canada (Citizenship and Immigration)*, 2020 FC 307 at paragraph 29, the Applicant claims that the Officer misses the main point of the Application – that the Applicant will suffer hardship being separated from her only remaining family and that this cannot be mitigated.

[28] Absent H&C relief, the Applicant would be required to apply for permanent residence in Canada from Russia.

[29] Subsection 25(1) of the *Act* provides the Minister the discretionary authority to exempt foreign nationals from the requirements of the *Act* if such an exemption is justified on the basis of H&C considerations. The Applicant bears the onus of establishing that H&C relief is warranted [*Milad v Canada (Citizenship and Immigration)*, 2019 FC 1409 at paragraphs 28 and 31].

[30] An officer must consider and weigh all relevant factors in an H&C application. Although an officer may be guided by a liberal and compassionate approach, subsection 25(1) was not

intended to be an alternative to the immigration scheme [*Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at paragraph 23].

[31] The application of the “unusual and undeserved or disproportionate hardship” standard is supported by a non-exhaustive list of factors, such as establishment in Canada, ties to Canada, the best interests of any children affected by their application, factors in their country of origin, health considerations, consequences of the separation of relatives, and any other relevant factors. Relevant considerations are to be weighed cumulatively as part of the determination of whether relief is justified in the circumstances and should not fetter the immigration officer’s discretion to consider all relevant factors.

[32] The Respondent directs the Court to *Shah v. Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1153 [*Shah*], where a similarly elderly applicant with strong family ties in Canada was refused his application for permanent residence from within Canada on H&C grounds pursuant to subsection 25(1) of the *Act*.

[33] In *Shah*, Justice Kane found that the officer’s decision to refuse the application was reasonable and conveyed consideration and weight to all the relevant H&C factors. Justice Kane noted that the officer acknowledged that Mr. Shah would experience some hardship when separated from his family but some hardship is inevitable and does not on its own warrant H&C relief [*Shah* at paragraphs 36-40, citing *Kanthasamy* at paragraph 23].

[34] While I am very sympathetic to the Applicant's situation and hardships that she has had to endure, I find that the Officer conducted a thorough review of the Applicant's establishment in Canada, her family ties, her hardship in Russia, including the health and historical factors she raised, and reasonably determined that on this evidence and overall, an H&C exemption to the usual immigration requirements was not warranted.

[35] The Officer gave consideration and weight to the Applicant's family ties and the family's ability to provide support to the Applicant in their determination of establishment. I do not find that the Officer only, or significantly, took the length of time the Applicant has spent in Canada into consideration. The Officer's Decision on establishment in Canada is reasonable.

[36] The Officer was alive to both the practical and emotional issues for the Applicant, and considered and provided weight to all of the relevant factors and considerations in the Application.

[37] After a thorough review of the Application and the circumstances as a whole put forward by the Applicant, the Officer provides a reasonable, clear, and intelligible decision. While I may not agree with that Decision, it is not the role of this Court to agree or disagree with the decision, but rather to determine whether the decision was reasonable.

[38] As I stated above, I am sympathetic to the Applicant's circumstances and the inevitable hardship that she may encounter by being separated from her family upon her return to Russia, but the hardship relied upon given the facts here does not warrant the H&C relief requested.

JUDGMENT in IMM-1303-21

THIS COURT'S JUDGMENT is that

1. The Application is dismissed.

2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1303-21
STYLE OF CAUSE:	OLGA KANTOR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 2, 2022
JUDGMENT AND REASONS:	MANSON J.
DATED:	FEBRUARY 3, 2022

APPEARANCES:

HART KAMINKER	FOR THE APPLICANT
MAHAN KERAMATI	FOR THE RESPONDENT

SOLICITORS OF RECORD:

KAMINKER AND ASSOCIATES TORONTO, ONTARIO	FOR THE APPLICANT
ATTORNEY GENERAL OF CANADA TORONTO, ONTARIO	FOR THE RESPONDENT