Federal Court  Cour fédérale

Date: 20220216

Docket: IMM-4839-20

Citation: 2022 FC 206

Ottawa, Ontario, February 16, 2022

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

MANUEL SIMEI PEREZ BECERRA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] Mr. Manuel Simei Perez Becerra seeks judicial review of a decision rendered by a Senior Immigration Officer [Officer] of Immigration, Refugees and Citizenship of Canada dated September 18, 2020, refusing his application for permanent residence on humanitarian and compassionate [H&C] grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Mr. Becerra is a citizen of Mexico. He entered Canada at Pearson Airport in Toronto, on November 11, 2007, with his parents and two siblings. At the time he entered Canada, the Applicant was 12 years old. Upon entering Canada, the family submitted a refugee claim.

[3] The Applicant's refugee claim, along with that of his parents and two siblings, was refused on September 4, 2008. Their application for permanent residence on H&C grounds was refused on April 9, 2010. Subsequently, a pre-removal risk assessment [PRRA] was initiated in July 2009, and refused on May 30, 2011. By that time, the Applicant was almost 16 years old.

[4] The Applicant, along with his family, remained in Canada. The Applicant's parents initially had work permits, however they expired in 2011. When the Applicant's parents failed to present themselves at a pre-removal interview in 2009, immigration warrants were issued for their arrest.

[5] In 2013, the Applicant dropped out of his final year in high school because he felt he had to assist his parents financially. Since that time, the Applicant has been employed as a carpenter.

[6] In 2014, when the Applicant was about to turn 19, the Canada Border Services Agency issued an immigration warrant for his arrest. Both the Applicant, and his family, remained in Canada.

[7] In addition to the two siblings who accompanied the Applicant and his parents when they came to Canada, the Applicant has two additional siblings. One being a younger sister, who was

born in Canada in 2008, and another being an elder brother who is now a permanent resident of Canada.

[8] The Applicant submitted a second H&C application in February 2019, which was refused on September 18, 2020. It is this second H&C decision that is now under review.

[9] The Applicant submits that the Decision is unreasonable on the basis that the Officer (a) erred in his assessment of the Applicant's establishment in Canada; and (b) erred in concluding that the Applicant would not experience hardship in Mexico.

[10] The Respondent submits that the Officer reasonably found that there was insufficient evidence to warrant a H&C exemption in the circumstances, and that the Applicant's submissions amount to an impermissible request to this Court to re-weigh the evidence.

II. Issue and Standard of Review

[11] It is common ground between the parties that the sole issue is whether the Officer's decision was reasonable. The parties submit, and I agree, that the applicable standard of review is reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] (see also *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at para 44).

III. Analysis

[12] Subsection 25(1) of the IRPA provides the Minister with the discretion to exempt foreign nationals from the ordinary requirements of that statute and to grant permanent resident status to an applicant in Canada if the Minister is of the opinion that such relief is justified by H&C considerations. The H&C discretion is a flexible and responsive exception that provides equitable relief, namely to mitigate the rigidity of the law in an appropriate case (*Rainholz v Canada (Citizenship and Immigration)*, 2021 FC 121 at paras 13-14). H&C considerations are facts, established by evidence, that would excite in a reasonable person in a civilized community the desire to relieve the misfortunes of another provided these misfortunes warrant the granting of special relief from the otherwise applicable provisions of IRPA (*Kanthasamy* at paras 13 and 21).

[13] An officer making H&C determinations must substantively consider and weigh all the relevant factors before them (*Rainholz* at para 17, relying on *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 and *Kanthasamy*). An applicant's establishment in Canada is among the commonly raised factors in applications for H&C relief.

[14] In the case at bar, the Applicant submitted evidence to support his level of establishment in Canada. The evidence included his career as a carpenter, membership in a trade union, volunteer activities, faith-based activities, social circle, and ties with family members in Canada. As noted above, the Applicant was 12 years old when he came to Canada.

[15] As to establishment, the Officer found that since becoming an adult, the Applicant chose to stay and work in Canada without authorization. Consequently, the Officer gave minimal

consideration to the Applicant's establishment in Canada from 2013 onwards. Moreover, the Officer gave "negative weight to the applicant's disregard for the immigration laws of Canada." The Officer noted that the Applicant had been in Canada for a period of more than 12 years.

[16] Contrary to the Applicant's submissions, I find that it was not unreasonable for the Officer to consider the Applicant's decision to work in Canada without authorization once he became an adult.

[17] I find, however, that the Officer erred by not substantively considering the factors of establishment during the period of time prior to the Applicant becoming an adult. As stated by my colleague Justice McHaffie in *Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158:

> [1] A child who is brought to Canada by a parent cannot be faulted for remaining in Canada without legal status as a child. If that child, grown to adulthood, applies for permanent residence, it is unreasonable for an immigration officer to hold it against them that the time they spent in Canada during their childhood resulted from a disregard of immigration law.

[18] The Officer appears to hold the period of time that the Applicant spent in Canada both as a minor and as an adult against him, without substantively considering the positive factors of establishment during the Applicant's youth. Such factors must be substantively considered against a humanitarian and compassionate standard (*Mitchell v Canada (Citizenship and Immigration)*, 2019 FC 190 at para 28). The Officer's failure to do so renders the Decision unreasonable (*Rainholz* at para 17).

[19] Having found the Officer's treatment of the Applicant's establishment while he was a minor to be unreasonable, I find it is unnecessary for me to address the remaining issues raised by the Applicants.

IV. Conclusion

[20] For the foregoing reasons, this judicial review is allowed. The Decision is set aside and the matter is remitted to a different officer for reconsideration. No questions for certification were argued, and I agree that none arise.

JUDGMENT in IMM-4839-20

THIS COURT'S JUDGMENT is that :

1. This judicial review is allowed;
2. The Decision is set aside and the matter is remitted to a different officer for reconsideration;
3. No questions for certification were argued, and I agree that none arise.

"Vanessa Rochester"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4839-20
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APPEARANCES:

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Me Kevin Doyle	FOR THE RESPONDENT

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