Federal Court  Cour fédérale

Date: 20220210

Docket: IMM-3285-21

Citation: 2022 FC 180

Ottawa, Ontario, February 10, 2022

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

LARRY SPRINGER

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Larry Springer is a 62-year-old American citizen who entered Canada as a visitor in 2019 and applied for permanent residence from within Canada based on humanitarian and compassionate [H & C] considerations. Before the Court, he seeks judicial review of the decision of a senior immigration officer to refuse his Application. The Applicant contends that the Officer put too much emphasis on his criminal past in the United States and on the fact that he remained

in Canada without status, to the detriment of the best interest of his Canadian-born two-year-old child.

II. Decision under review

[2] The Officer considered all the relevant factors emanating from the Applicant's file.

A. *Establishment*

[3] The Officer assessed the Applicant's establishment during his two years in Canada, including his activities, his occupation, his enrollment and participation in a professional training and development program, his religious activities, his plans to establish an NGO in Canada, and letters from friends.

[4] The Officer concludes that the Applicant provided little evidence or information on his establishment, that his establishment in Canada is not significant or exceptional and that he could pursue his current activities elsewhere, including in his country.

B. *Familial Ties in Canada and Best Interest of the Child*

[5] The Officer recognizes the Applicant's ties with his spouse and daughter and the child's best interest to have the care and support of both parents.

[6] However, the Officer notes the lack of evidence concerning his wife's health or the fact that she would not be able to take care of their daughter by herself if the family makes the

decision the she would stay in Canada with her mother whilst the father leaves for the United States.

[7] Alternatively, the Officer considers a reasonable option that the three family members would be able to move to the United States. The Officer notes that the daughter was only one year old at the time and would adapt easily to a new life with her parents and her extended family members in the United States (the Applicant has four children, his parents and siblings in the United States), which she would have the benefit of meeting. The Officer also notes that the evidence does not show that the child's mother needs access to health care in Canada that is not accessible in the United States.

[8] The Officer concludes that it is in the child's best interests to remain with both her parents, regardless of whether it is in Canada or the United States. In that sense, the Officer has given the Applicant's familial ties in Canada and best interests of the child some weight.

C. *Hardship*

[9] The Officer addresses the Applicant's submissions that, in his youth, he was a victim of racial profiling by the police, that Black people in the United States continue to face significant systemic racism, face a higher risk of contracting COVID-19, and are disproportionately victims of violence. The Officer cites two reports submitted by the Applicant that demonstrate that these inequalities and issues are important in the United States and have increased between 2020 and 2021.

[10] The Officer found that the Applicant provided little information as to the discrimination he would have faced since he was released from prison, and notes that the Applicant was able to find work following his release. He also notes that the Applicant has resided at his mother's and sister's homes before and that he might be able to do it again. The Officer expresses the opinion that the Applicant would be able to choose where to live in the United States (if he desires, he could choose so based on the local measures in reaction to COVID-19) and would be able to be vaccinated in the United States.

[11] The Officer finds that the purpose of section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 is not to find the best country of residence for applicants' standard of living but rather provide flexibility to circumvent the limits of Canadian immigration laws in extraordinary situations. The Officer concludes by giving little weight to the Applicant's hardship should he return to the United States.

D. *Criminality*

[12] The Officer considered the Applicant's submission that without the remedy sought he would have to apply from outside of Canada, which Application would probably be declined because of his criminal history.

[13] However, the Officer seems to consider that the Applicant has other options to become a Canadian resident from within or outside Canada. The Officer notes the little evidence provided to the fact that the Applicant attempted to apply for permanent residence via the family class, sponsored by his Canadian spouse.

[14] Relying on the FBI police certificate, the Officer notes little evidence to support the Applicant's submissions that he played a trivial role in the criminal activities leading to his conviction. The Officer also considers that the length of 30 years for the sentence reflects the serious nature of the offences committed. However, the Officer notes the Applicant's personal changes and growth, and his desire to start a new life in Canada.

[15] Overall, the Officer gives substantial negative weight to the fact that the Applicant was convicted of several offences in the United States, which would likely render him inadmissible to Canada.

E. *Other*

[16] The Officer draws negative weight from the Applicant's actions related to his immigration status in Canada.

[17] First, the Officer draws a serious negative weight from the fact that the Applicant did not apply for the proper visa at the border, considering his criminal history.

[18] Second, the Officer draws substantial negative weight from the fact that the Applicant did not attempt to extend his temporary resident visa and stayed after its expiry. The Officer rejects the Applicant's explanation that he overstayed because of his spouse's medical condition, as no information or evidence was submitted in that regard.

[19] Third, the Officer draws considerable negative weight from the one-year delay between the expiry of the Applicant's temporary resident visa and his H&C Application.

F. *Conclusion*

[20] The Officer explains the legal limitations that constrain the decision, summarizes their application to the Applicant's situation, including the weight granted to each factor and element, and notes the lack of information or evidence on some aspects. The Officer then concludes that this Application does not meet the test.

III. Issues and standard of review

[21] I agree with the parties that the only issue raised by the Application is whether the Officer erred in the analysis and weighing of the relevant H&C factors.

[22] I also agree with the parties that the standard of reasonableness applies to that analysis. The Court owes deference to the Officer specially vested by the legislature to make such decisions, and it should only intervene if there are sufficiently serious shortcomings in the decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 125).

IV. Analysis

[23] First, the Applicant argues that there is no evidence that he was not forthcoming about his criminal record when he entered Canada. In his view, he should have had the opportunity to

make submissions, especially considering the significant weight put on this factor by the Officer. Nor should the Officer have inferred that he had significant involvement in the criminal activities that led to his conviction and sentence; in his view, this is pure speculation.

[24] I respectfully disagree with the Applicant. He bore the onus to submit evidence in support of his H&C Application. In the absence of specific evidence that he did disclose his criminal past, it was open to the Officer to find that should the Applicant have disclosed sufficient information to the immigration authorities at the border, he would have been guided to apply for the correct permit to stay in Canada in spite of his criminal history. There is no evidence that the Applicant attempted to address his inadmissibility issues through regular processes besides the H&C Application. With respect to the Applicant's criminal history, the Officer simply relied on the documentation submitted by the Applicant, including the FBI record. The Applicant was convicted for the crimes he committed, he was sentenced to 30 years in prison, for which he served thirteen. Those were facts before the Officer, who had no reason to find that the Applicant was a mere insignificant participant in the criminal activities that led to his conviction. It was reasonably open to the Officer to rely on the conviction and sentence rendered by an American Court, as a result of an FBI investigation.

[25] Second, the Applicant argues that the Officer did not properly consider the best interests of his two-year-old daughter. The Applicant submits that the Officer erred in many ways:

> In failing to give the appropriate weight to his daughter's best interests, giving it only "some weight";
>
> In failing to address evidence provided as to the child's best interests, including her life as a Black person in the United States and the objective country conditions evidence;

> In only providing a cursory review of the child's best interests and only considered her basic needs;
>
> In only considering the potential hardship that the child would face if she were to live in the United States or in Canada with both of her parents, but failed to consider the hardship she would face if she were to live in one country or the other with only one of her parents;
>
> In assuming, without any evidence, that the Applicant would be able to sponsor his wife and daughter to live with him in the United States; and
>
> In failing to consider the child's and her mother's family ties with the francophone culture in Canada.

[26] Again, I disagree with the Applicant. In my view, the Officer did consider the best interests of the Applicant's daughter. The Officer appropriately considered the child's current situation and her parents' options. The Officer's reasons are detailed and they demonstrate that the Officer was alert, alive and sensitive to the best interests of the child.

[27] The Officer noted that no evidence was presented with respect to the wife's medical condition or supporting the submission that her ability to care for the child is negatively affected by her medical condition; it was therefore reasonable for the Officer to grant little weight to this submission. It was also reasonable for the Officer to consider that the Applicant, his wife, and their daughter could move to the United States (and potentially apply for a permanent residence from there) since little information was provided as to the wife's ties in Canada and/or French culture. In these circumstances, it was open for the Officer to find that when balanced with all the negative factors found in the Applicant's case, only some weight could be given to the best interests of the child. I do not believe that the term used by the Officer is an indication that the factor was not properly considered but rather that that factor is not always the determinative one.

[28] Finally, the Applicant submits that the Officer failed to apply the objective evidence to his circumstances. He is a 62-year-old who served an extensively lengthy sentence for a crime that, according to him, did not justify such a sentence. He is a Black person and Black persons in the United States are victims of discrimination and face an increase risk of contracting COVID-19. In fact, the evidence shows that the Applicant has suffered from racism, poverty and unemployment in the United States in the past.

[29] In my view, the Officer considered all the evidence, provided an overview of the Applicant's personal circumstances, highlighted some of the submitted evidence, addressed specific submissions and indicated why they were not considered sufficient to warrant the granting of permanent residence to the Applicant, based on H&C considerations. I agree with the Officer that this is an exceptional relief that is not meant to compare standards of living in two different countries in order to determine which one provides the best option to an applicant.

[30] Overall, I find that the Officer's conclusion clearly explains the Officer's role, the purpose of the decision, the constraints imposed by the law, as well as the consideration of the evidence and the lack of evidence that prevents the Officer from making a positive determination. I see no reasons to interfere with the Officer's decision.

V. Conclusion

[31] For the reasons set out above, I am rejecting this Application for judicial review. The parties did not propose any question for certification and none emanates from the facts of this case.

JUDGMENT in IMM-3285-21

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed;

2. No question of general importance is certified;

3. No costs are granted.

"Jocelyne Gagné"
Associate Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

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