Federal Court Cour fédérale

Date: 20220315

Docket: IMM-1693-20

Citation: 2022 FC 349

Ottawa, Ontario, March 15, 2022

PRESENT: Mr. Justice McHaffie

BETWEEN:

ROBERT ROZGONYI, JUDIT FESUS AND MARCELL ROZGONYI, KINGA PETRA ROZGONYI BY THEIR LITIGATION GUARDIAN ROBERT ROZGONYI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Rozgonyi-Fesus family seeks judicial review of the refusal of their application for permanent residence on humanitarian and compassionate (H&C) grounds. They argue the officer who considered their application made an inadequate assessment of the best interests of the two

children of the family, focusing almost exclusively on their potential re-integration into life in Hungary, rather than identifying their best interests and the impact removal would have on those interests. They also argue the officer undertook a hardship-centric analysis of their establishment in Canada, instead of the requisite compassionate assessment of relevant factors.

[2] Despite the able submissions of the family's counsel, I conclude the officer's decision was reasonable. The officer's analysis of the best interests of the children (BIOC) responded to the family's submissions on that issue in an appropriate framework, and made reasonable determinations with respect to the relevant issues. The officer's analysis of the family's establishment was also responsive to the family's submissions and situation. While the officer considered both the positive aspects of their establishment in Canada and the hardship they would face should they return to Hungary, each of which the family highlighted in their H&C application, I cannot conclude the officer adopted an unreasonably hardship-centric analysis.

[3] The application for judicial review is therefore dismissed.

II. Issues and Standard of Review

[4] The Rozgonyi-Fesus family raises a single issue on this application, namely whether the immigration officer's decision rejecting their application for permanent residence on H&C grounds was unreasonable. Within this issue, they raise two sub-issues, namely (1) the reasonableness of the officer's BIOC analysis; and (2) the reasonableness of the officer's establishment analysis.

[5] There is no dispute that the officer's decision is reviewable on the reasonableness standard of review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. A reasonable decision is one that is internally coherent, justified in light of the legal and factual constraints that bear on it, and displays the reasonableness "hallmarks" of justification, transparency and reasonableness: *Vavilov* at paras 85, 90, 99–102, 105–106.

III. Analysis

A. *The family's application for H&C relief*

[6] The Rozgonyi-Fesus family arrived in Canada in 2013 as visitors. Mr. Rozgonyi was a construction contractor in Hungary. Difficulties with clients' failure to pay him for work, and in obtaining assistance from the Hungarian legal system to enforce agreements left him feeling stressed and helpless, leading to his hospitalization. He left for Canada and was able to get jobs in construction. His family followed soon after.

[7] Mr. Rozgonyi and Ms. Fesus applied for work permits in 2015 but these applications were refused. They have nonetheless been able to obtain employment, and have been able to not only support their own family but also to provide some financial assistance to Ms. Fesus' family in Hungary. Their two children, born in 2009 and 2011, have been thriving in Canada, making friendships, doing well in school, learning French, engaging in extracurricular activities, and speak English fluently.

[8] The family's visitor status expired in September 2017. Seeking to remain in Canada, they filed an H&C application under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] in February 2018. This application, which was supported by submissions from an immigration consultant, stressed their establishment in and ties to Canada, the best interests of the two young children, and the hardship and disadvantages they would face if they had to return to Hungary.

B. *The refusal decision*

[9] On February 24, 2020, a Senior Immigration Officer refused the family's H&C application. In their reasons for this decision, the officer referred to the family's background and current situation, their employment, their relationships in Canada, and the situation they would face if returned to Hungary.

[10] In considering the BIOC, the officer noted the children had benefitted from attending school, but found that at their age "children are more resilient and adaptable to changing situations." The officer was satisfied the children's best interests "would be met if they continued to benefit from the personal care and support of their parents," and that returning to Hungary would not have a significant negative impact on those interests. The officer also noted the presence of grandparents and aunts in Hungary, and said there was insufficient evidence adduced that they would be unwilling or unable to assist the children in re-establishing themselves in Hungary.

[11] Overall, the officer was not satisfied the family had established that an exemption from the *IRPA* was warranted on H&C grounds and refused the application.

C. *The refusal decision was reasonable*

[12] The family challenges two aspects of the officer's decision: (1) the BIOC analysis; and (2) the establishment analysis. For the following reasons, I conclude the officer's decision on each of these issues was reasonable.

(1) BIOC

[13] Subsection 25(1) of the *IRPA* requires that an H&C analysis "tak[e] into account the best interests of a child directly affected." As the family notes, the Supreme Court of Canada has underscored that an H&C decision will be unreasonable if the BIOC is not sufficiently considered, and that the children's interests "must be 'well identified and defined' and examined 'with a great deal of attention' in light of all the evidence": *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 39.

[14] The family contends the officer's BIOC analysis did not meet this standard. They argue the officer did not identify the interests of the children or consider how they would be adversely affected by removal. They submit the officer's decision resembles that in *Bargig*, where Justice Locke found a decision that did not articulate the children's best interests or assess the benefits of non-removal to be unreasonable: *Bargig v Canada (Citizenship and Immigration)*, 2015 FC 392 at para 36.

[15] I cannot agree. The officer concluded that the primary best interest of the children lay in remaining with their parents. This, alone, may be trite. But this Court and the Federal Court of Appeal have recognized that children's best interests will in most cases lie in remaining in Canada, and that an H&C decision need not expressly state this interest to be considered reasonable: *Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475 at paras 6–7; *Louisy v Canada (Citizenship and Immigration)*, 2017 FC 254 at para 11; *Zlotosz v Canada (Citizenship and Immigration)*, 2017 FC 724 at para 22. The officer then went on to assess the extent to which that interest would be affected by the removal, concluding they were not satisfied that returning to Hungary would have a significant negative impact on their best interests. Again, this is a reasonable aspect of the BIOC analysis. As the Court of Appeal noted in *Hawthorne*, the benefits to remaining in Canada and the hardship of removal are two sides of the same coin, the coin being the best interests of the child: *Hawthorne* at para 4.

[16] In this regard, I cannot agree with the family's contention that the officer found that the children's best interests were to be with their parents in Hungary and not in Canada. Rather, the officer found that the children's best interests would not be significantly negatively affected if they return to Hungary, such that those best interests "would be met" in Hungary. I take this to be a conclusion that the children's best interests would be to remain in Canada with their parents and that a return to Hungary with their parents would only negatively impact those interests in a non-significant way.

[17] The officer's decision must also be considered in light of the submissions made by the family on the issue of the BIOC: *Vavilov* at paras 127–128. The family's BIOC submissions

were brief, noting the children's involvement in school; the educational, cultural, and social opportunities they have in Canada because of their parents' ability to support them; their language skills; and their view that Canada is their home. Other than the high-level reference to schooling and opportunities, the family's BIOC submissions did not present particular submissions about the benefits of non-removal to the children, what advantages in Canada would be unavailable to them in Hungary, or what difficulties or hardship they would face in Hungary. In the context of these submissions, the officer cannot be criticized for not undertaking a more detailed assessment of the benefits of non-removal or the impacts of removal on the children's best interests.

[18] The family also referred to a letter from a counselor at WEST Neighbourhood House, a social service agency. The letter notes that the daughter was more comfortable in English than Hungarian, that integration into the Hungarian school system would be difficult as both children would have to start over in grade one and be privately educated, and that a return to Hungary would mean "major feelings of failure including emotional and mental trauma due to the stigmatization of having to leave Canada and returning to Hungary." The officer did not refer to this letter, which the family argues was an unreasonable failure to engage with important and relevant evidence. If an officer reviewing an H&C application fails to consider central aspects of the applicant's situation, this may render the decision unreasonable: *Juan v Canada (Citizenship and Immigration)*, 2020 FC 988 at paras 22–24, citing *Vavilov* at para 127.

[19] I note as an initial issue that there was some question as to whether the second page of the letter, which includes the above passages, was before the officer. Only the first page of the letter

appears in the certified tribunal record. The second page was included in the applicants' record, and I am prepared to accept, on the basis of the supporting affidavit that states that the document was part of the family's original H&C submissions, that it was before the officer.

[20] The difficulty with the family's reference in this Court to the counselor's letter is that there is little indication this evidence of asserted educational and emotional impact of return was a material part of their H&C application. The family's submission letter only makes passing reference to the WEST letter as one of many documents, including reference letters, copies of report cards, financial statements, photos, and event tickets. Despite addressing the BIOC directly in their submission letter, they presented no statement or argument that remaining in Canada was in the children's best interests because of the need to restart grade one or because of the emotional and mental impact on them. Nor was there any evidence of the counselor's professional ability to speak to either the Hungarian school system or mental health issues. Even in the separate section of the submission letter dealing with education, there is no reference to the concerns about restarting primary school or facing stigmatization. In these circumstances, and considering the principle that an administrative decision maker is not expected to refer to every document or argument, I cannot conclude that the officer failed to meaningfully account for important evidence or a central issue or concern raised by the parties: *Vavilov* at paras 127–128; *Cepeda-Guttierez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paras 16–17.

[21] The same can be said of the family's argument that the officer did not refer to the son's unique situation of being an accomplished competitive gymnast. While there was evidence that

showed his successes, the family's submission was simply that he "has been a very dedicated and successful [gymnast] for over 2 years" and that "[h]is dream is to represent Canada in his future competitions and win [a] gold medal at the Olympic Games." Although these are laudable goals, and show dedication and effort on the son's part, I cannot conclude they were put forward as a central aspect of the family's H&C application that required separate assessment by the H&C officer, particularly as the statements were framed in the context of the family's understanding that "having a hobby is [a] very important part of life."

[22] Lastly, the family argues that the officer's reliance on the availability of grandparents and aunts in Hungary shows their failure to account for the realities of the children, given that both of their grandparents are dead, Mr. Rozgonyi is estranged from his mother and sister, Ms. Fesus' mother is in poor health, and only one of Ms. Fesus' sisters lives in Hungary. Again, I cannot conclude this shows an unreasonableness materially affecting the BIOC analysis. I begin by noting that Mr. Rozgonyi's evidence did not go so far as to refer to estrangement, indicating only that his help for his sister after her marriage breakdown "ruined" their relationship. The officer referred to this, but noted there was insufficient evidence that Mr. Rozgonyi's mother or sister would be unwilling or unable to assist in re-establishment. I am satisfied this is a reasonable assessment of the limited evidence presented on this issue. In any case, the question of extended family assistance in re-establishment was not a central part of the BIOC, given the officer's primary conclusion that the children's re-adjustment to life in Hungary would be done with the support of their parents. I therefore cannot conclude that the officer's reference to the aunts and grandparents renders either the BIOC analysis or the decision as a whole unreasonable.

[23] While the officer's BIOC analysis was not an extended or lengthy one, it must be read in the context of the submissions and evidence put forward on the BIOC by the family. I am satisfied in the circumstances that the officer's BIOC analysis was sufficient to show the responsiveness, justification, transparency, and intelligibility required of a reasonable decision.

(2) Establishment

[24] The family argues the officer viewed issues of establishment only through the lens of hardship, referring to their establishment factors only by the degree to which the family's removal might cause hardship, and relying on their establishment in Canada as a basis to conclude that any hardship on return to Hungary would be diminished. They argue the officer's decision parallels that in *Marshall*, where Justice Brown found a decision unreasonable because the officer "assessed every factor through the lens of hardship": *Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72 at paras 34–37.

[25] I cannot agree. Again, the officer's decision must be considered in light of the case the family made to the officer in support of their H&C application. The family's H&C submissions reasonably underlined both their establishment in Canada and the hardship they would face upon return to Hungary. On certain issues, notably employment and financial prospects, their submissions on establishment and hardship on return were opposite sides of the same coin. Mr. Rozgonyi is successful and self-employed in Canada; he contends he would face poor employment and business prospects in Hungary. The family's other submissions on establishment were focused on their relationships with others in the community, their strong family, the children's academic and extracurricular achievements, and their love of Canada.

[26] The officer acknowledged the family's friendships and integration in Canada, but also considered what the impact of a return to Hungary would have on those friendships. They considered the parents' employment, but noted that this employment had been without legal authorization, and that the evidence did not satisfy them they could not be employed in Hungary. Reading the decision as a whole, it appears the officer was jointly addressing the questions of establishment and hardship, each of which were a significant part of the family's submissions.

[27] In my view, it is not unreasonable for an officer assessing an H&C application to consider not only the positive aspects of a family's establishment in Canada, but the extent to which that establishment would be impacted by removal, and the degree to which those impacts would or could be mitigated in the family's particular circumstances. Indeed, as Justice Phelan observed in *Whitely*, this appears to be "the very balancing of relevant factors called for by the legislation": *Whitely v Canada (Citizenship and Immigration)*, 2015 FC 476 at para 13.

[28] Nor can I agree that the officer took the family's positive establishment factors and "flipped" them to use them as a reason to reject their application, an approach this Court has found unreasonable: *Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 at paras 21, 23; *Aguirre Renteria v Canada (Citizenship and Immigration)*, 2019 FC 134 at para 8; *Lopez Gallo v Canada (Citizenship and Immigration)*, 2019 FC 857 at paras 15–19. Referring to the ability to maintain Canadian friendships as mitigating the impacts of removal does not amount to improperly treating an applicant's Canadian establishment as a reason in favour of their removal. I also do not consider the officer's finding that there was insufficient evidence that Mr. Rozgonyi and Ms. Fesus could not obtain employment in Hungary "given their skills and work experience

acquired [in] Hungary and in Canada" to be an inappropriate flipping of their Canadian work establishment. Rather, it is a direct and reasonable response, based on the couple's current circumstances, to the family's submission that they would face economic hardship on return to Hungary.

[29] Finally, the family criticizes the officer's reference to their work without legal authorization and their comment that "this does not weigh in their favour." They point to *Fidel Baeza*, in which Justice O'Reilly concluded that "[i]t would not be fair to use evidence of steady employment against [the applicants] simply because work permits did not cover the entire period of their time in Canada": *Fidel Baeza v Canada (Citizenship and Immigration)*, 2010 FC 362 at para 16.

[30] In my view, there is a balancing to be undertaken in these considerations. On the one hand, subsection 25(1) effectively presupposes a failure to comply with one or more provisions of the *IRPA* and is designed to provide relief from that non-compliance: *Mitchell v Canada (Citizenship and Immigration)*, 2019 FC 190 at para 23. On the other hand, this Court has recognized that evidence of establishment, including employment, may be considered in light of the circumstances giving rise to it, including illegality: *Aguilar Sarmiento v Canada (Citizenship and Immigration)*, 2017 FC 481 at paras 6, 15; *Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 at paras 46, 48; *Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158 at paras 26–27. In my view, the officer's decision in this case reasonably undertook that balancing, finding the applicants' employment, friendships, and efforts "commendable," while still noting that work in Canada without legal authorization "does not weigh in their favour."

[31] Like their BIOC analysis, the officer's analysis of the family's establishment, and the impacts on them should they return to Hungary, responded to the family's submissions and reasonably considered the family's particular circumstances, reaching an overall conclusion that their situation did not warrant H&C relief. Recognizing that it is not this Court's role to undertake a reassessment or reweighing of discretionary factors where the officer's assessment is not unreasonable, I conclude there is no basis for the Court to intervene in the refusal of the family's H&C application.

IV. Conclusion

[32] The application for judicial review is therefore dismissed. Neither party proposed a question for certification and I agree that none arises in the matter.

JUDGMENT IN IMM-1693-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1693-20
STYLE OF CAUSE:	ROBERT ROZGONYI ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 15, 2021
JUDGMENT AND REASONS:	MCHAFFIE J.
DATED:	MARCH 15, 2022

APPEARANCES:

Ronald Poutlon	FOR THE APPLICANTS
Brad Gotkin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Ronald Poulton Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT