Federal Court  Cour fédérale

Date: 20220324

Docket: IMM-432-21

Citation: 2022 FC 409

Ottawa, Ontario, March 24, 2022

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

ANDRESHA SONA ATHALIAH DAVIS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Andresha Davis, is a citizen of St. Vincent and the Grenadines (St. Vincent). She came to Canada on a visitor's visa December 21, 2015, to spend the holidays with her sisters and their families. She stayed after the expiry of her visa to help with childcare while her sister went back to school.

[2] The Applicant applied for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds on July 7, 2019, more than two years after the expiry of her

visitor's visa. Her application for H&C relief was denied on January 4, 2021, and she seeks judicial review of that decision.

[3] The Applicant's claim for H&C relief was mainly based on the impact her departure from Canada would have on her Canadian born nieces, as well as the difficulties she would face being separated from her sisters and their families. She also pointed to her degree of establishment in Canada, and that she would face hardship if she had to return to St. Vincent because of the employment situation there and the inability of her aging parents to provide her with assistance.

[4] In her H&C submissions, the Applicant explained that she lived in her eldest sister's house and provided child care support for her two nieces while her sister went back to school, and later when her sister obtained employment. She described her close relationship with her nieces and how devastated both she and they would be if she was forced to return to St. Vincent. This was bolstered by letters from her sisters and her brother-in-law. Her sister also noted that she would be unable to afford alternate childcare if the Applicant was forced to leave Canada.

[5] The Officer refused the application, finding that the Applicant had failed to establish that there were sufficient H&C considerations to warrant an exemption. The Officer gave some positive weight to the Applicant's establishment in Canada, noting that she has been a live-in childcare provider for her sister's children, she is involved in her church and has maintained a clean record during her stay in Canada. However, the Officer also noted the Applicant had deliberately overstayed her visa and this showed a lack of regard for Canadian laws, which the Officer assigned negative weight.

[6] The Officer accepted that the Applicant had strong ties with her family in Canada, acknowledging the family's willingness to provide support for her. However, the Officer did not find the degree of dependence needed to uphold the Applicant's claim to be a *de facto* family member. The Officer found that denying the H&C claim would not amount to a permanent separation because the Applicant had previously travelled often between St. Vincent and Canada. In addition, the Applicant would be returning to a country she was familiar with and would live with her parents who are still in St. Vincent.

[7] On the best interests of the Applicant's nieces, the Officer accepted the close bond between them and that the children would miss her if the Applicant had to return to St. Vincent. The Officer noted that the children would remain with their parents and would have their ongoing love, care and support, as well as that of their extended family in Canada. Based on this, the Officer was not satisfied that the best interests of the children factors were sufficient to warrant H&C relief.

[8] Finally, the Officer rejected the claim that the Applicant would face substantial hardship if she had to return to St. Vincent. Her parents live there and the Applicant had spent most of her life and had been educated in that country. The Officer gave minimal weight to the hardship factor.

[9] The Officer then concluded:

> In conclusion, I have weighted the elements presented by the [Applicant] both individually and globally. I give some positive weight to the best interests of child factor. However, taking all the circumstances into consideration, I am not satisfied that the

> humanitarian and compassionate considerations are sufficient to justify granting this application.

[10] The only issue in this case is whether the Officer's decision is reasonable. This is the standard of review that applies, in accordance with *Canada (Minister of Citizenship and Immigration v Vavilov*, 2019 SCC 65 [*Vavilov*].

[11] Under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2 [*Canada Post*]). The burden is on the applicant to satisfy the Court "that any shortcomings or flaws relied on… are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33).

[12] The Applicant argues that the decision is unreasonable because the Officer's analysis of the best interests of the child factor and her degree of establishment in Canada is lacking in transparency and intelligibility. In essence, the Applicant argues that although the Officer mentioned the evidence that is pertinent to both the BIOC and establishment factors, there is not a sufficient explanation of how these were weighed and the lack of a sufficient analysis on these key points renders the decision unreasonable.

[13] I am not persuaded. The Applicant's arguments ask the Court to re-weigh the evidence, and this is not the role of a reviewing court (*Vavilov* at para 125).

[14] The Applicant's case rests on two assertions: (a) that the BIOC analysis of the Officer is lacking, mainly because of a failure to engage with the evidence about the nature of the Applicant's relationship with her youngest niece and the financial impact of losing the child care she was providing; and (b) that the establishment analysis is deficient because it inappropriately filtered the analysis of the establishment factors through a hardship lens. I will deal with these in turn.

[15] On the BIOC analysis, the Applicant acknowledges that the Officer mentioned the relevant evidence about the nature of her relationship with her nieces and the role she played in their lives, in particular the daily life of her youngest niece. She argues that the Officer's analysis falls short because it fails to grapple with the true nature of the relationship, the impact of separation and the financial impact of the loss of child care on the lives of the nieces. In particular, the Applicant challenges the following statement:

> I note that should [the Applicant] return to St. Vincent, the children will remain in the care of their parents. There is insufficient evidence before me that the parents won't emotionally support their children in adjusting to [her] absence. I also note that the children will be surrounded by their extended family and the broader community.

[16] The Applicant contends that this statement is based on unfounded speculation, because there is no evidence that either the parents or anyone else in the family or community can provide the kind of childcare that she has been providing. She submits that without considering this aspect, the Officer's decision fails to respond to a key basis for her claim and is thus unreasonable. In addition, the Applicant submits that the Officer's failure to analyze the financial

consequences of her removal on the children and their parents is a fatal flaw, because it shows the Officer failed to consider the essential role she plays in their lives.

[17] I am not persuaded. The Officer took into account the ample evidence that the children lived with their parents, had close relationships with their extended family and participated in the wider community. The onus was on the Applicant to establish her case, and to the extent the unavailability or unaffordability of child care was an essential aspect of her claim, it was her responsibility to demonstrate that through admissible evidence. That was not done. In addition, the children are now of school age, and so their childcare needs are different than when they were younger.

[18] The Officer's decision on this point reflects the evidence in the record, and the chain of reasoning is both clear and logical. The decision also reflects the BIOC considerations the Officer was required by law to apply. In all respects, this decision bears the hallmarks of reasonableness. It is not a question of whether the Applicant, or the Court, agrees with the result.

[19] Turning to the establishment question, the Applicant submits that the Officer diminished the factors in her favour by filtering them through a hardship lens, citing *Henson v Canada (Citizenship and Immigration)*, 2018 FC 1218 [*Henson*] at para 38; and *Gan v Canada (Citizenship and Immigration)*, 2014 FC 824 [*Gan*] at para 9. She points to speculative findings by the Officer about how she can maintain a relationship with her family in Canada through technological means and that her extended family and aged parents will be able to support her in St. Vincent. The Applicant contends that it is impossible to know how the Officer weighed these considerations in assessing her establishment because of the lack of any explanation in the

decision. As with the BIOC factors, she argues that the Officer merely lists the elements before jumping to a conclusion, and this makes the decision unreasonable.

[20] I do not agree. The Officer's reasons refer to the factors and evidence the Applicant relied upon, and gave positive weight to her establishment in Canada. The Officer specifically mentions her clean record, that she had been self-supporting and had made many connections in the community. The Officer also weighed the Applicant's lengthy and deliberate overstay in Canada without any effort to regularize her status. The Officer's conclusions about the family's willingness to support the Applicant are based on evidence she provided. The finding that she would be able to maintain a relationship with her family members in Canada is based both on the Applicant's history of ongoing communication with her sisters in Canada before she came here to stay, her frequent travel between St. Vincent and Canada and the availability of modern technological means of communication that are widely used. None of this is unfounded speculation; rather, it is well grounded in the evidence in the record.

[21] On this issue, the Officer's reasoning is clear and I do not find that it bears the same problems as the Court found in the cased cited by the Applicant (including *Henson*, *Gan*, *Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72, and *Osun v Canada (Citizenship and Immigration)*, 2020 FC 295). In those cases, the Officer evaluated hardship under the label of establishment, thereby improperly filtering the establishment factors through the lens of hardship. In this case, the Officer examined the Applicant's degree of establishment in Canada, weighing both positive and negative factors. The Officer also dealt with the Applicant's claim she would face hardship if she had to return to St. Vincent, but I am not persuaded that the Officer inappropriately intermingled the two analyses.

[22] For all of these reasons, I find the Officer's decision to be reasonable, in accordance with the *Vavilov* framework. Although the Applicant will undoubtedly miss her nieces and sisters if she is required to leave Canada, this is a natural consequence of her remaining here without regularizing her status. The Officer examined the evidence in accordance with the legal framework, and the decision bears the hallmarks of reasonableness.

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

[24] There is no question of general importance for certification.

JUDGMENT in IMM-432-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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