Federal Court  Cour fédérale

Date: 20220324

Docket: IMM-312-21

Citation: 2022 FC 410

Ottawa, Ontario, March 24, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

SHAILENDRAPAL SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Shailendrapal Singh, seeks judicial review of the decision of a senior immigration officer (the "Officer") of Immigration, Refugees and Citizenship Canada, dated January 5, 2021, refusing his application for permanent residence within Canada on humanitarian and compassionate ("H&C") grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Applicant submits that the Officer's decision is unreasonable. In particular, the Applicant argues that the Officer erred in their analysis of the hardship he would face upon return to Singapore and that the Officer conducted a flawed assessment of the evidence.

[3] For the reasons that follow, I find that the Officer's decision is unreasonable. This application for judicial review is allowed.

II. Facts

A. *The Applicant*

[4] The Applicant is a 43-year-old citizen of Singapore. He was born with cerebral palsy, a life-long neurological condition that affects control of movements in the body. The Applicant has significant physical limitations and requires a walker for mobility.

[5] The Applicant's immediate family have all immigrated to Canada from Singapore. The Applicant's brother is a Canadian citizen who sponsored the Applicant's mother to come to Canada in 2015. The Applicant accompanied his mother as a visitor and received a multiple-entry temporary resident visa in April 2017.

[6] The Applicant lives with his family and receives support in his day-to-day life from his mother, his brother and other immediate family members in Canada. The Applicant's father is deceased. The Applicant states that he has no support system in Singapore.

[7] On September 4, 2019, the Applicant submitted an application for permanent residence on H&C grounds.

B. *Decision Under Review*

[8] In a decision dated January 5, 2021, the Officer refused the Applicant's H&C application, determining that there were insufficient H&C considerations to justify granting the application.

[9] The Officer gave modest weight to the Applicant's establishment, noting that he has several family members in Canada and that he had spent about nine years in Canada since his first visit in February 2001. However, the Officer found that the Applicant has spent long periods of time outside of Canada, has never worked or studied in Canada, and has demonstrated little integration in the community.

[10] The Officer also gave some weight to the adverse country conditions in Singapore, accepting that the country condition evidence demonstrates that persons with disabilities face discrimination and the likelihood of social stigma in Singapore. However, the Officer did not find that the Applicant demonstrated how he "has been personally subjected to discrimination while in Singapore." The Officer found the evidence shows that Singapore is taking steps to provide redress for people with disabilities who experience discrimination and concluded that the availability of redress reduces the hardship the Applicant may encounter in Singapore.

[11] Finally, the Officer acknowledged the documentation that the Applicant lives with cerebral palsy and that he requires support from his family, yet found that the evidence was

unclear about what support the Applicant requires and why he could not rely on the support of his paternal family in Singapore. The Officer gave some weight to the hardship that would result if the Applicant were separated from his family in Canada.

III. Issue and Standard of Review

[12] The sole issue in this application for judicial review is whether the Officer's decision is reasonable.

[13] Both parties agree that the Officer's decision is to be reviewed on the reasonableness standard. I agree that the appropriate standard of review for H&C decisions is reasonableness (*Rannatshe v Canada (Citizenship and Immigration)*, 2021 FC 1377 at para 4; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 ("*Kanthasamy*") at paras 8, 44-45; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paras 16-17).

[14] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[15] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

IV. Analysis

[16] Under subsection 25(1) of the *IRPA*, the Minister may grant permanent residency to a foreign national who does not meet the requirements of the *IRPA* if the circumstances are justified under H&C considerations, including the BIOC directly affected.

A. *Hardship and country conditions in Singapore*

[17] In the reasons for the decision, the Officer accepted the evidence that people with disabilities face discrimination and social stigma in Singapore, yet determined that the Applicant had not shown how he personally has been discriminated against in Singapore:

> […] the applicant has not personalized any of these negative treatment of persons with disabilities in Singapore. In other words, the applicant has not demonstrated how he has been personally […] subjected to discrimination while in Singapore. While discrimination against persons with disabilities in Singapore is likely to exist, it would not appear that this is the applicant's experience. It may be that the applicant has experienced some discrimination in Singapore. If so, he has not provided any examples of it nor has he stated that he sought any redress. I am

> not persuaded there is sufficient hardship that arises from it to elicit a positive decision on this application.

[18] The Applicant states that he provided objective evidence of the discrimination that people with disabilities face in Singapore, including abuse, inequality, social stigma, neglect, and mistreatment in the workplace. His application described how these adverse conditions would have a direct impact on his ability to live a normal life in Singapore as a person with cerebral palsy, and that he would be vulnerable to abuse and neglect without the support of his immediate family. The Applicant submits that the Officer's reasoning is unjustified, as the Officer failed to meaningfully engage with the Applicant's specific circumstances.

[19] Furthermore, the Applicant argues that the Officer erred in finding: "[…] the applicant has not personalized any of these negative treatment of persons with disabilities in Singapore." The Applicant maintains that he was not required to show that he has been *personally* affected by negative country conditions, beyond the fact that he is an individual who lives with a disability and would face the circumstances in Singapore, which were outlined in the evidence. To support this position, the Applicant relies on this Court's decision in *Miyir v Canada (Citizenship and Immigration)*, 2018 FC 73 ("*Miyir*") at paragraph 21:

> [21] One error that this Court has identified in this area is the erroneous consideration of "personalized" risk in H&C applications. For refugee purposes, the claimant must show that he or she faces a "personalized" risk of persecution not borne by members of the general population. However, the "personalized risk" required in a refugee claim analysis has no place in an H&C analysis, as explained by Justice Gleason: "[i]t is both incorrect and unreasonable to require, as part of [the H&C] analysis, that an applicant establish that the circumstances he or she will face are not generally faced by others in their country of origin" [*Diabate v*

> *Canada (Citizenship and Immigration)*, 2013 FC 129 ("*Diabate"*) at para 36], a principle that this Court continues to follow (see *Martinez v Canada (Citizenship and Immigration)*[sic], 2017 FC 69 at para 12).

[20] This was affirmed by my colleague Justice McHaffie in *Caleb v Canada (Citizenship and Immigration)*, 2020 FC 1018 ("*Caleb*") at paragraph 11:

> [11] In *Kanthasamy*, the Supreme Court of Canada underscored that an applicant for H&C relief need not show that they have been personally affected or targeted by adverse country conditions: *Kanthasamy* at paras 52–56; *Isesele v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 222 at para 16. Similarly, unlike in an assessment under section 97, country condition evidence showing a risk faced by the entire population in the country of origin may still be relevant on an H&C application: *Diabate v Canada (Citizenship and Immigration)*, 2013 FC 129 at paras 32–33; *Miyir* at paras 21, 29–30.

[21] The Respondent argues that the onus was on the Applicant to provide sufficient supporting evidence of the alleged hardship to warrant the highly discretionary remedy of an H&C exemption, and that it was reasonable for the Officer to find that there was insufficient information about the Applicant's personal experiences in Singapore to warrant an exemption (*Nicayenzi v Canada (Citizenship and Immigration)*, 2014 FC 595 at paras 15-16, citing *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 45).

[22] The Respondent submits that, apart from the fact that he has cerebral palsy, the Applicant provided few, if any, specific examples of what daily life was like for him in Singapore without being in the company of his brother or his mother. The Respondent asserts that the Applicant must be able to tie his personal circumstances to the country conditions and show that they

would have a direct negative impact on him (*Singh v Canada (Citizenship and Immigration)*, 2014 FC 10 at paras 24-25; *Khalifa v Canada (Citizenship and Immigration)*, 2014 FC 47 at para 48-50, discussing *Pierre v Canada (Citizenship and Immigration)*, 2010 FC 825).

[23] I disagree. I note that the case law cited by the Respondent predates *Kanthasamy*, which modified the approach to assessing hardship in H&C applications. In *Kanthasamy*, the Supreme Court establishes that inferences can be drawn from discrimination experienced by others who share an applicant's identity, and that subsection 25(1) of the *IRPA* does not require an applicant to provide evidence that they will be personally targeted (at paras 53-56).

[24] The Applicant's submissions outlined how his particular circumstances and life-long disability would affect his everyday life and lead to significant hardship in Singapore should he return there without family support. Contrary to the Respondent's argument, I find that the Applicant's submissions do in fact tie his personal circumstances to those who face discrimination based on disability in Singapore. In accordance with *Kanthasamy* and the jurisprudence from this Court post-*Kanthasamy* (see: *Miyir* at paras 17-21; *Caleb* at para 11; *Quiros v Canada (Citizenship and Immigration)*, 2021 FC 1412 at paras 30-31), I find that the Officer erred by requiring the Applicant to demonstrate how he was personally affected by the discrimination faced by persons with disabilities in Singapore.

[25] Furthermore**,** the Applicant submits that the Officer failed to assess the adequacy of state protection mechanisms for people living with disabilities in Singapore. In noting the efforts of the Singapore government to improve the situation for people with disabilities, the Officer's

reasons in the decision state: “I find that the availability of redress reduces the hardship the applicant may encounter as a person with a disability in Singapore.” The Applicant maintains that the Officer’s decision fails to assess whether the initiatives of the Singaporean government have actually improved the human rights conditions for people with disabilities.

[26] I agree with the Applicant. The mere enactment of legislation or government initiatives in Singapore does not demonstrate that people living with disabilities are afforded adequate protection or that conditions have improved. This point was affirmed by this Court in *Ramesh v Canada (Citizenship and Immigration)*, 2019 FC 778 at paragraph 20*:*

> [20] The Officer’s reliance solely on the efforts of the government to effect change is a reviewable error. An officer must look beyond the efforts of or changes implemented by a government to determine the impact those efforts or changes have had on actual societal conditions. An analysis that does not do so is flawed (*Ocampo v Canada (Citizenship and Immigration)*, 2015 FC 1290 at para 9):
>
> > [9] The Court finds that it was unreasonable for the Officer not to have discussed in his reasons this contradictory evidence and not to have included an assessment of the operational adequacies of the government’s efforts to improve the situation of Afro-Colombians in Columbia. Unlike cases concerning state protection, the Officer must assess the probability of hardship occurring in reality, rather than just efforts on the part of the state to address such hardship.

[27] Overall, I find that the Officer committed reviewable errors that render their hardship analysis unreasonable.

B. *Flawed approach and assessment of the evidence*

[28] In *Kanthasamy,* the Supreme Court describes H&C considerations as being "those facts, established by the evidence, which would excite in the reasonable [person] in a civilized community a desire to relieve the misfortune of another" (at para 13, citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338 ("*Chirwa*") at p 350). The Applicant submits that the Officer's analysis only focuses on hardship, rather than examining the H&C factors as a whole, as required by the approach outlined in *Chirwa* and upheld in *Kanthasamy* (*Kanthasamy* at para 21; *Marshall v Canada (Citizenship and Immigration),* 2017 FC 72 at para 33; *Lobjanidze v Canada (Immigration, Refugees and Citizenship),* 2017 FC 1098 at paras 12-15).

[29] The Applicant further submits that the Officer came to an illogical conclusion that there was no evidence of the assistance the Applicant requires from his family, and erred by speculating that the Applicant could receive support from his extended family in Singapore. The Officer's reasons for the decision states:

> […] The applicant states that he needs family support as he is lonely and has no one to care for him. I note that while most of the applicant's maternal relatives have immigrated to Canada, the applicant's paternal relatives continue to live in Singapore. The issue at hand is what kind of support the applicant actually needs or why his paternal relatives can't help him. There is no description as to what support any of the applicant's family provides for the applicant nor does the [2019] doctor's letter outline what supervision and support the applicant needs.

[30] The Applicant notes that the Officer's decision refers to the evidence that the Applicant can perform "minimal tasks" on his own, and recognizes "that the applicant has cerebral palsy and that it is a serious medical condition," yet concludes that it is unclear what assistance the Applicant requires from his family. The Applicant argues that this conclusion is not supported by a rational chain of analysis, particularly given the medical evidence dating back several years, which describes the extent of the Applicant's limitations. The doctor's letter from 2019 confirms that these limitations continue to exist, and that the Applicant requires "support and supervision" from his family.

[31] The Applicant further submits that the Officer failed to evaluate his request for relief through the perspective of family reunification and the essential support he needs from his family in Canada to cope with his disability – a level of support that he does not have in Singapore. Relying on *Salde v Canada (Citizenship and Immigration),* 2019 FC 386, the Applicant emphasizes that H&C officers are required to consider all *compassionate* factors, including family reunification (at paras 23-24).

[32] The Respondent submits that reasonable decision makers applying the approach endorsed in *Kanthasamy,* which requires a subjective analysis of H&C factors, could arrive at different conclusions despite considering the same evidence and submissions (*Zlotosz v Canada (Citizenship and Immigration)* 2017 FC 724 at para 18).

[33] The Respondent contends that the 2019 doctor's letter contains little information about the Applicant's current state of health and what assistance he requires, including whether he

requires the specific assistance of his mother and brother in Canada. The Respondent submits that, since the Applicant's application was based on his lack of familial support in Singapore, it was not unreasonable for the Officer to deliberate over what kind of support the Applicant actually needs, or why he could not receive that support from relatives in Singapore. The Respondent asserts that the questions articulated by the Officer about the Applicant's paternal relatives are logical and not speculative, as they stem from a lack of evidence about the Applicant's life in Singapore.

[34] In my view, it is clear from the evidence put before the Officer that the Applicant lives with cerebral palsy, a condition that affects his daily activities and his ability to support himself. It is also clear from the H&C application that the Applicant is highly dependent on his mother and brother in Canada and that he does not have a support system in Singapore.

[35] In his H&C application, the Applicant states: "I have nobody back in Singapore and I am highly dependent on my mother, brother and immediate family members for my emotional needs," and "There is no support system in Singapore to help my situation, but there is boundless family support in Canada". In her statement of support, the Applicant's mother also writes: "I want to continue my stay in Canada as a permanent resident and be closer to family and friends, but I am unable to do so since I cannot leave my disabled son behind in Singapore to fend for himself […] where he does not have anyone to take care of him." Finally, the Applicant's brother's statement of support notes: "[The Applicant] needs to be with his family here in Canada as he is unable to fend for himself and live on his own without support from loved ones."

[36] Given this evidence, I do not find that the Officer adequately considered the specific support role that the Applicant's mother and brother play in the Applicant's life. In my view, the long-term support of immediate family cannot be substituted by the mere hypothetical that the Applicant's paternal family in Singapore may be willing and capable of providing him with the care he needs. To presume that relatives in Singapore could support the Applicant, when there is no evidence that they ever have, lacks rationale and justification.

[37] Overall, I do not find that the Officer conducted a holistic analysis of the Applicant's H&C factors, as required by the Supreme Court in *Kanthasamy* (at para 25), nor did the Officer adequately consider the compassionate elements of the Applicant's situation, including his dependency on his family in Canada on account of his life-long disability and the specific hardship he would face in Singapore as a person living with a disability without family support. This decision cannot stand.

V. Conclusion

[38] The Officer's reasons for the decision failed to adequately account for the hardship the Applicant would face in Singapore as someone living with a serious disability, and the hardship associated with a separation from his family, who support him on a daily basis. I therefore find the Officer's decision to be unreasonable. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-312-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed. The decision under review is set aside and the matter is referred back for redetermination by a different officer.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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