Federal Court Cour fédérale

Date: 20220406

Docket: IMM-1934-20

Citation: 2022 FC 489

Ottawa, Ontario, April 6, 2022

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

BRANDON EUGENE (DYNASTY NEVADA) SHEPHARD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is an African American transgender woman and citizen of the United States [US]. She applied for permanent residence from within Canada on Humanitarian and Compassionate [H&C] grounds.

[2] She seeks judicial review of the March 2, 2020 decision of a Senior Immigration Officer [Officer] refusing her application. She argues the Officer's decision is unreasonable, the conclusions are not reflective of the evidence and the reasoning underpinning the decision is inadequate. The Respondent submits that after considering the evidence and circumstances, including the availability of medical and family support in the US, the Officer reasonably refused the application.

[3] For the reasons that follow, the Application is granted.

II. Background

[4] The Applicant last entered Canada on December 16, 2016, and submitted an application seeking H&C relief in February 2018. The Applicant reported she experienced discrimination and verbal and physical abuse at a number of workplaces in various US cities. She reported she moved a number of times within the US in an effort to escape the abuse. The Applicant described instances of bullying and sexual assault, being subjected to slurs from coworkers and customers, receiving a death threat and having to rely on police to protect her from physical harm.

[5] The Applicant provided evidence indicating she is being actively treated for mental health conditions linked to her experiences in the US and stating that requiring her to return to the US would negatively affect her mental health.

III. Decision under Review

[6] In rejecting the H&C application, the Officer considered the three grounds advanced by the Applicant: establishment, the Applicant's mental health and adverse country conditions in the US for people of the Applicant's race, sexual orientation and gender identity.

[7] The Officer found the Applicant had only resided in Canada for three years and much of her time in Canada was a result of her overstaying her visitor status. The Officer noted the Applicant is unemployed, receives disability benefits and provided little evidence to establish she has tried to obtain authorization to work in Canada. The Officer acknowledged the Applicant has a Canadian fiancé and gave this some weight but noted the Applicant did not explain why her fiancé would be unable to sponsor her. The Officer also noted the Applicant's parents in the US are supportive and she has a close relationship with them. The Officer acknowledged the Applicant has volunteered with different organizations in Canada. Overall, the Officer found the Applicant does not have much establishment in Canada.

[8] In considering the Applicant's mental health, the Officer noted she receives treatment and acknowledged the Applicant's claim that her mental health issues were caused by the abuse, discrimination and harassment she experienced in the US as well as abuse experienced in Canada. The Officer accepted the Applicant might find it upsetting to return to the US but found she failed to establish she would be unable to access mental health care in her home country. The Officer again noted the support of the Applicant's family and fiancé and the absence of any indication they would not provide her with emotional support and assistance.

[9] Lastly, the Officer considered the Applicant's adverse country conditions evidence. This evidence consisted of the Applicant's personal experiences and research reports and articles about violence and discrimination faced by transgender people in the US. The Officer acknowledged the Applicant may be negatively affected by adverse conditions should she return to the US and gave this some weight but concluded this was only one factor for consideration.

IV. Issues and Standard of Review

[10] The Applicant raises a single issue: whether the Officer's decision was reasonable.

[11] It is submitted and I agree the Officer's decision is to be reviewed on the reasonableness standard. A reasonable decision is one that is justified, transparent and intelligible and allows a reviewing court to follow logically consistent reasoning and identify a line of analysis leading from the evidence to the result (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 86 and 102).

V. Analysis

[12] The Applicant argues the Officer fettered their discretion by failing to recognize H&C relief may be warranted based on a single factor or consideration. She further argues the Officer erred in their treatment of the adverse country conditions evidence and her mental health evidence.

[13] In submitting the Officer fettered their discretion, the Applicant relies on the Officer's statement that the adverse country conditions factor deserved weight but this was "only one of the factors for consideration on this H&C application." I am unpersuaded by the Applicant's argument. The sentence relied upon cannot be read in isolation.

[14] The Applicant identified three separate grounds in seeking H&C relief. The Officer considered each of the identified grounds and then engaged in a consideration of all of the circumstances. The decision, when read as a whole, does not suggest the Officer was of the mistaken view that H&C relief was unavailable if only one of the H&C factors was deserving of weight. Instead, the decision reflects that the Officer, after considering the individual H&C factors and having then assessed those factors globally in light of all circumstances, was not persuaded that relief was justified.

[15] I am similarly not convinced the Officer's consideration of the country conditions evidence was unreasonable. However, I am of the view that the Officer's treatment of the Applicant's mental health evidence does render the decision unreasonable.

[16] In addressing the Applicant's mental health, the Officer mischaracterizes and appears to misapprehend the evidence relating to the impact of a return to the US on the Applicant's mental health. In doing so, the Officer has failed to consider the effect on the Applicant should she return.

[17] The medical evidence, with which the Officer did not take issue, included a letter from the Director of Psychiatry at St. Michael's Hospital. The letter states the Applicant meets the criteria for Major Depressive Disorder, details the medications she has been prescribed, notes there has been moderate improvement and states she has been adherent to her treatment. The letter then concludes that "[i]t is my clinical impression that if she goes back to her country, we may jeopardize some of the progresses[sp] she had in terms of her mental wellbeing and I am fully support[*sic*] of her application."

[18] In the face of this evidence, the Officer describes the consequence of a return to the US as potentially "upsetting." The Officer then notes the evidence fails to establish health services would not be available or the Applicant's family would not provide emotional support and assistance.

[19] Describing a return as potentially "upsetting" significantly understates the impression of the clinical expert and undermines the logic and line of analysis underpinning the Officer's conclusion. This error is exacerbated by the Officer's focus on the availability of treatment and support in the US to the exclusion of a consideration of the effect of a return to the US on the Applicant. This is contrary to the teaching of the Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration),* 2015 SCC 61 at para 48, that a removal's negative effect on an H&C applicant's mental health is a relevant consideration regardless of the availability of treatment in the applicant's home country. The Officer's treatment of this factor undermines the reasonableness of the decision.

VI. Conclusion

[20] For the above-noted reasons, I am of the opinion that the Court's intervention is warranted. The Application is granted.

[21] The parties have not identified a question for certification and none arises.

JUDGMENT IN IMM-1934-20

THIS COURT'S JUDGMENT is that:

1. The Application is granted.

2. The matter is returned for redetermination by a different decision maker.

3. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1934-20
STYLE OF CAUSE:	BRANDON EUGENE (DYNASTY NEVADA) SHEPHARD v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	MARCH 30, 2022
JUDGMENT AND REASONS:	GLEESON J.
DATED:	APRIL 6, 2022

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