Federal Court  Cour fédérale

Date: 20220419

Docket: IMM-2895-20

Citation: 2022 FC 549

Toronto, Ontario, April 19, 2022

PRESENT: Mr. Justice Diner

BETWEEN:

KAMLA ARJUN RIJHWANI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision (the "Decision") of a senior immigration officer (the "Officer") denying her application for permanent residence on humanitarian and compassionate [H&C] grounds, pursuant to s 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

I. Background

[2] The Applicant is an 83-year-old citizen of India. In 2008, she obtained permanent residency in the United States through her son Arun, an American citizen. Her other son, Rajan, is a Canadian citizen. The Applicant lives with Rajan and depends on him to provide for all of her expenses, including food, medical coverage, living accommodations and transportation.

[3] The Applicant made an H&C application on or around June 1, 2018 for Canadian permanent residency, citing her establishment in Canada, and the hardship of having to leave Canada, particularly in light of the fact her son Arun who sponsored her for her U.S. permanent residency, no longer wants anything to do with his mother.

[4] On June 5, 2018, the Officer refused the application. In the Decision, the Officer acknowledged the Applicant's wish to remain in Canada, her original arrangement with her two sons to divide her time between them in Canada and the U.S. respectively, and, more recently, Arun's refusal to support her American permanent residence.

[5] The Officer considered the evidence of the support provided for the Applicant by her son Rajan, and noted that adequate arrangements for her care have been provided in Canada. The Officer also noted the evidence of her social integration in Canada, including letters of support and character endorsements from several acquaintances with whom she plays bridge in midtown Toronto clubs.

[6] The Officer concluded the Decision as follows, before refusing the Application:

> While I find the existence of family relationships for the applicant in Canada, I also find them to exist in the USA where she holds lawful status. I can understand the applicant's desire to remain in Canada, but I am not satisfied that separation from her son in Canada would sever the bonds that have been established. The applicant has entered Canada from the USA to visit him on numerous occasions. As a result, I do not find the physical separation of the applicant from her son in Canada would result in hardship warranting an exceptional remedy offered by an application of this nature.

II. Analysis

[7] The Parties agree that on judicial review of an H&C decision, the standard of review is reasonableness. This is consistent with the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*], which set out a revised framework that does not provide any reason to depart from the reasonableness standard followed previously in review of H&C decisions (*Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*]; *Subar v. Canada (Citizenship and Immigration)*, 2022 FC 340 at para 10).

[8] The Applicant submits that the Officer erred in two ways. First, she submits that the Officer erred in their appreciation of the facts, by failing to consider her complete dependence on her son Rajan in Canada, and the evidence regarding the breakdown in her relationship with her American son. Second, the Applicant submits that the Officer failed to consider and properly weigh the compassionate factors present, focusing instead on the hardship of returning or lack thereof, and failing to engage with the other evidence provided, such as that of establishment,

which the Officer simply “listed” but did not analyze or explain its impact or weight in the Decision.

[9] The Respondent counters both arguments, asserting that the Court must consider the application as a whole, rather than going on a treasure hunt for errors (*Vavilov* at para 102), including the two issues the Applicant raises. The Respondent agrees that the reasons were short, but notes that so too were the legal submissions and the supporting evidence provided. The Respondent contends that given the scant evidence provided, the Officer reasonably found that the case presented did not justify the exercise of the exceptional discretion to grant permanent residence on H&C grounds from within Canada.

[10] I agree with the Applicant that the two significant errors made by the Officer in under a page of reasons cannot support the Respondent’s position that a reasonable decision was reached. This is not to say that reasons need to be lengthy. On the contrary, there are many advantages to concision. However, brevity cannot excuse inadequacy. The Officer must still address – even if only briefly – the factors raised, and explain why they do not warrant a s 25 exemption. Failing to do so will render the reasons inadequate and, consequently, unreasonable.

[11] Here, the Officer made a significant misapprehension of fact when he determined that the Applicant had family relationships in the U.S., where she holds status, without reconciling that statement with his earlier acknowledgement that she and her American son Arun had lost contact, or the resulting precariousness of her circumstances and prospects in the U.S. Left

unexplained, the Officer's reasoning is internally inconsistent and the Court cannot follow a rational chain of analysis leading to the outcome.

[12] On the one hand, the Officer seemed to acknowledge and accept the relationship breakdown, by observing that: "[t]o the applicant's dismay, Arun has refused to have anything more to do with the applicant". On the other, the Officer failed, two paragraphs later, to address this fact at all before concluding family relationships "to exist in the USA where she holds lawful status".

[13] The latter statement forms a central plank of the refusal, but nowhere in the decision does the Officer reconcile this remark with the previous acknowledgement that Arun wants nothing to do with the Applicant. Neither does the Officer address or appear to consider how the 82 year-old widowed Applicant would cope on her own in the U.S., let alone on the other side of the continent (Arun, who she used to live with two months a year, lives in Washington State, whereas Rajan, the Canadian son lives in midtown Toronto).

[14] I therefore agree with the Applicant that, on the record before the Court – thin as it may be – there was an apparent and significant misapprehension of fact by the Officer, rendering the decision unreasonable.

[15] Regarding the second issue raised by the Applicant, the Officer acknowledges the evidence regarding the Applicant's establishment in Canada by observing that the "applicant has also shown evidence of social integration during the time she has spent in Canada. She has

provided letters of character endorsement from communal acquaintances with whom she plays bridge."

[16] Nowhere does the Officer assess the impact of these various letters from different community members and clubs, or articulate the weight that was attributed to the establishment factor. On judicial review, it is not sufficient for the Court to find a decision maker's conclusion to be justifiable, in this case by surmising what the Officer might have been thinking or what they might have meant to say. Instead, the Decision must be justified, transparent and intelligible.

[17] It is particularly important that when there are few factors raised – in this case only hardship and establishment – that the Officer addresses the rationale clearly for each. The Court must be able to discern a reasoned explanation for the Decision (*Alexion Pharmaceuticals Inc. v. Canada (Attorney General)*, 2021 FCA 157 at paras 6-11), such that it may connect the dots, rather than guess what the Officer might have been thinking (*Vavilov* at para 97 citing Justice Rennie in *Komolafe v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 431 at para 11).

[18] I disagree with the Respondent's characterization of this as a treasure hunt for errors. These are not minor imperfections in broad canvass. Rather, the imperfections paint an incomplete image of how the central facts and factors provided were weighed, amounting to an unquestionably flawed Decision. I am unable to discern on what basis the Officer concluded the Applicant had family relationships in the U.S., or how the establishment was analysed.

Respondent's counsel, despite her compelling advocacy skills, has not persuaded me that the Decision's imperfections can withstand review.

III. Conclusion

[19] It is clear that the Officer erred in his weighing of the key factor of family support in the US, and how the other factor of establishment was weighed. As held by the majority in *Kanthasamy*, "[w]hat *does* warrant relief will clearly vary depending on the facts and context of the case, but officers making humanitarian and compassionate determinations must substantively consider and weigh *all* the relevant facts and factors before them" (at para 25). The Decision under review did not do so, and will accordingly be returned for redetermination.

JUDGMENT in file IMM-2895-20

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is granted.

2. The decision is set aside and the matter is sent to a new Officer for redetermination.

3. No questions for certification were proposed and I agree that none arise.

4. No costs will issue.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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