

Federal Court



Cour fédérale

Date: 20220503

Docket: IMM-1825-21

Citation: 2022 FC 636

St. John's, Newfoundland and Labrador, May 3, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

ROVELYN DE JESUS SUGUITAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Ms. Rovelyn De Jesus Suguitan (the “Applicant”) seeks judicial review of the decision made by a Senior Immigration Officer (the “Officer”), denying her application, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”), for permanent residence on humanitarian and compassionate (“H and C”) grounds.

[2] The Applicant, a citizen of the Philippines, entered Canada in 2009, holding a valid work permit. She lives with her minor Canadian born daughter. Her husband lives in the Philippines with their 21-year-old son.

[3] The Applicant based her H and C application upon the best interests of her Canadian born child, her establishment in Canada, and country conditions in the Philippines.

[4] The Officer's decision is reviewable on the standard of reasonableness, pursuant to the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.).

[5] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on that decision"; see *Vavilov, supra* at paragraph 99.

[6] Upon consideration of the Certified Tribunal Record and the affidavit of the Applicant, sworn on March 24, 2021, and the oral and written submissions of the parties, I am satisfied that the decision does not meet the standard.

[7] The Applicant submitted evidence about her establishment in Canada, including evidence about her work history, community ties and friendships in Canada.

[8] I agree with the submissions of the Applicant that the Officer failed to examine the evidence about the Applicant's establishment in Canada and erred in the manner described by the Court in *Singh v. Canada (Citizenship and Immigration)*, 2019 FC 1633 at paragraph 23, using her establishment as a "sword".

[9] I refer as well to the decision in *Sebbe v. Canada (Minister of Citizenship & Immigration)*, 2012 FC 813 at paragraph 21:

...However, what is required is an analysis and assessment of the degree of establishment of these applicants and how it weighs in favour of granting an exemption. The Officer must not merely discount what they have done by crediting the Canadian immigration and refugee system for having given them the time to do these things without giving credit for the initiatives they undertook. The Officer must also examine whether the disruption of that establishment weighs in favour of granting the exemption.

[10] In my opinion, in this case the Officer also failed to "examine" the Applicant's establishment.

[11] It is not necessary for me to address the other arguments raised by the Applicant.

[12] In the result, the application for judicial review will be allowed, the decision of the Officer will be set aside and the matter remitted to another officer for redetermination. No question is proposed for certification.

JUDGMENT in IMM-1825-21

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Officer is set aside and the matter remitted to another officer for redetermination.

No question is proposed for certification.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1825-21

STYLE OF CAUSE: ROVELYN DE JESUS SUGUITAN v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE
BETWEEN TORONTO, ONTARIO AND ST. JOHN'S,
NEWFOUNDLAND AND LABRADOR

DATE OF HEARING: APRIL 13, 2022

REASONS AND JUDGMENT: HENEGHAN J.

DATED: MAY 3, 2022

APPEARANCES:

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