Federal Court  Cour fédérale

Date: 20220512

Docket: IMM-2169-21

Citation: 2022 FC 697

Ottawa, Ontario, May 12, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

TU QUYEN TRUONG

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Tu Quyen Truong, a 30-year-old citizen of Vietnam, seeks judicial review of a senior immigration officer's [Officer] decision, dated March 19, 2021 [Decision], denying her application for permanent residence on humanitarian and compassionate [H&C] grounds – Ms. Truong was seeking an exemption from the requirement of applying for permanent residence from outside of Canada. The Officer found that there were insufficient H&C grounds to warrant

such an exemption under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] Ms. Truong submits that the Officer failed to address contradictory evidence and to engage with her arguments, used her establishment in Canada against her, and provided insufficient justification for her/his conclusion. For the reasons that follow, I agree with Ms. Truong's assertions and grant her application for judicial review.

II. Background

[3] Ms. Truong was born in Kuala Lumpur, Malaysia, to Vietnamese parents who were refugees following the migration and humanitarian crisis that arose in the years that followed the end of the Vietnam War; however, she does not have Malaysian citizenship. Although Ms. Truong has two half-sisters on her father's side, she has no relationship with them since they always lived with their mothers. When she was still a child, her parents returned to Vietnam as the circumstances that led to them seeking refugee protection in Malaysia had subsided. In Vietnam, her parents owned small businesses in the retail sector, including two gas stations. Ms. Truong's father suffered an accident in 2004 that rendered him a paraplegic. He scrimped and saved for his daughter to get an education abroad, hoping, as most parents do, to offer his daughter a better future.

[4] Ms. Truong arrived in Canada in August 2008 at the age of 16 to attend high school in Toronto. During this time, she stayed with her aunt in Mississauga; she has three aunts and several cousins who reside in Canada. Ms. Truong completed her secondary education in 2011,

pursued her studies in Canada and graduated from Sheridan College in Mississauga in 2014 with a diploma in Tourism and Travel. After her first year in college, she moved out of her aunt's house to live on her own. In July 2014, she obtained a three-year post-graduate work permit and worked as an aesthetician in a nail salon and as a front-desk clerk in a hotel. She also obtained certificates of specialization in aesthetic care.

[5] Following the expiry of her work permit in July 2017, Ms. Truong received a study permit and obtained, in April 2018, a certificate in English as a Second Language. When her study permit was to expire again, Ms. Truong met with a consultant, whom she believes made an entry for her into the Express Entry system and applied for a Labour Market Impact Assessment for her employer. After a while, the same consultant advised Ms. Truong to apply for another study permit. Although she did not have the intention or the desire to continue with her studies, Ms. Truong followed the consultant's advice and obtained a new study permit in June 2018. The study permit expired in August 2019; however, she did not attend school during that period and has been in Canada without status ever since. In July 2020, Ms. Truong looked to regularize her status in Canada and applied for permanent residence on H&C grounds, raising such factors as her establishment in Canada, hardships she would face if she were required to return to Vietnam and adverse country conditions.

III. The decision under review

[6] After considering Ms. Truong's education and employment history in Canada, her volunteer work in her community, the social connections she developed while in Canada, and her financial health and independence, the Officer found that Ms. Truong had demonstrated a typical

level of establishment. Regarding the hardship Ms. Truong would face if she were to return to Vietnam, the Officer found that she had presented insufficient evidence to demonstrate that she could not financially support herself in Vietnam or that she would face risks to her safety.

IV. Legislative regime

[7] Subsection 25(1) of the Act allows the Minister of Citizenship and Immigration to grant discretionary relief from the requirements of the Act to a foreign national on H&C grounds:

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
25(1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate	25(1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte

considerations relating to the foreign national, taking into account the best interests of a child directly affected.	tenu de l'intérêt supérieur de l'enfant directement touché.

V. Issue and standard of review

[8] The sole issue raised in this application for judicial review is whether the Officer's refusal to grant permanent residence on H&C grounds was reasonable. In particular, Ms. Truong raises the following questions:

a. Did the Officer unreasonably assess the applicant's establishment factors?

b. Did the Officer unreasonably ignore evidence, fail to engage with arguments, and make conclusions that were contradicted by the evidence?

[9] In addition, the parties agree that the applicable standard of review for the merits of an H&C decision is the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44 [*Kanthasamy*]). 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", and the Court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at paras 85, 100).

VI. Analysis

[10] As stated by Mr. Justice Boswell in *Ndlovu v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 878 [*Ndlovu*], "[t]he degree of an applicant's establishment in Canada is, of course, only one of the various factors that must be considered and weighed to arrive at an assessment of the hardship arising in an H&C application. The assessment of the evidence is also, of course, an integral part of an officer's expertise and discretion, and the Court ought to be hesitant to interfere with an officer's discretionary decision" (*Ndlovu* at para 14).

A. *Did the Officer unreasonably assess the applicant's establishment?*

[11] Ms. Truong first argues that the Officer required an atypical or exceptional level of establishment in order to warrant relief and that he or she erred in focusing on how the degree of her establishment in Canada compares to that of a person in similar circumstances (citing *Sebbe v Canada (Citizenship and Immigration)*, 2012 FC 813 [*Sebbe*]; *Ndlovu*; and *Sivalingam v Canada (Citizenship and Immigration)*, 2017 FC 1185).

[12] I have not been persuaded that such is the case. In the Decision, the Officer stated the following:

> It is noted that the applicant was issued work and study permits allowing her the ability to do both in Canada. Against this backdrop, it would not be considered unusual for some degree of establishment to take place during this time. I commend the applicant's positive steps in establishing herself in Canada. The applicant has integrated into the community over an extended period of time by undertaking studies, finding employment, forming social networks and performing volunteerism. However, it is noted that these are not uncharacteristic activities undertaken by newcomers to a country. Rather, the applicant has demonstrated a typical level of establishment for a person in similar circumstances.

[Emphasis added.]

[13] In my view, the Officer did not apply a higher threshold in the assessment of Ms. Truong's establishment by the use of the word "typical". The Officer's comments – that Ms. Truong's establishment factors are not uncharacteristic activities undertaken by newcomers to a country and that she demonstrated a typical level of establishment – are descriptive and accord with the approach set out in *Kanthasamy*, which has been applied in other Federal Court decisions (*Jaramillo Zaragoza v Canada (Citizenship and Immigration)*, 2020 FC 879 at para 22; *Boukhanfra v Canada (Citizenship and Immigration)*, 2019 FC 4 at para 15; *Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158 at para 20). I see nothing unreasonable with how the Officer articulated her/his determination of the level of establishment.

[14] Where I agree with Ms. Truong, however, is with her argument that the Officer failed to properly assess whether disruption of her establishment in Canada to return to Vietnam to apply for permanent residence weighed in favour of granting the exemption under subsection 25(1) of the Act. The Officer set out Ms. Truong's accomplishments in Canada, including the fact that she completed her studies, her engagement in volunteer work, and her industrious nature and efforts to be self-sufficient and economically productive. As stated, I have no difficulty with the Officer using descriptive terms, such as Ms. Truong's level of establishment not being "unusual" or "uncharacteristic activities undertaken by newcomers", or stating that the evidence demonstrates "a typical level of establishment". Rather, the problem with the Decision is that after making those determinations, the Officer simply stated that she/he did not find that Ms. Truong's circumstances necessitated exceptional relief. The Officer never turned to consider the degree of hardship that would be occasioned if Ms. Truong was to return to Vietnam, nor did he or she

consider whether the level of disruption to such establishment favours the relief sought. The Officer's reasoning leaves one to believe that once a certain level of establishment is achieved, that is the end of the analysis; that cannot be right.

[15] The Minister argues that the Officer did address the level of disruption that may result from Ms. Truong having to abandon what she has built in Canada and return to Vietnam to apply for permanent residence when she/he stated the following: "While I understand the applicant's desire to remain in Canada, I find that her intended purpose for travel to Canada has been satisfied." Putting aside whether an applicant's original purpose for coming to Canada (to study, in this case) is at all relevant to considerations of hardship in the context of H&C applications, I do not read in the words of the Officer the necessary level of engagement with the consequences of any disruption of Ms. Truong's establishment in the event that she would have to leave Canada. The Minister cites this Court's decisions in *Dan Shallow v Canada (Citizenship and Immigration)*, 2012 FC 749 at para 9, and *Ikeji v Canada (Citizenship and Immigration)*, 2016 FC 1422 at paras 61-64, for the proposition that more than simple residence, ongoing employment, and community integration is required for the factor of establishment to weigh in favour of an applicant. That may be so, but it is not the point; the issue here is not the level of establishment found by the Officer, but rather the Officer's failure to consider the impact upon Ms. Truong of having to disrupt that establishment.

[16] I appreciate that often, the analysis tends to focus on the level of establishment as a series of measurable factors, sometimes in comparison with the establishment of others, and that the weight of those factors may favour or disfavour the granting of the sought-after relief. However,

it is not about reaching a magical threshold of establishment so as to put an applicant "over the top" but rather about whether the disruption of that establishment weighs in favour of granting the exemption (*Sebbe* at para 21). There is not necessarily a causal relationship between the two; greater establishment does not always lead to greater disruption and hardship if that establishment is disrupted. I appreciate that some level of disruption is a natural by-product of removal from Canada; however, it is the degree of disruption, not necessarily the level of establishment, that instructs hardship and that needs to be assessed. It is the impact of having to leave her establishment behind that was not addressed by the Officer, and for this reason, I find the Decision to be unreasonable.

[17] Given my finding, I need not consider the remaining issue raised by Ms. Truong.

VII. Conclusion

[18] I grant the application for judicial review and remit the matter back to a new officer for redetermination.

JUDGMENT in IMM-2169-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed.

2. The decision dated March 19, 2021, is set aside and the matter is returned for redetermination by a different officer.

3. There is no question for certification.

"Peter G. Pamel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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