Federal Court Cour fédérale

Date: 20220707

Docket: IMM-7399-21

Citation: 2022 FC 1006

Vancouver, British Columbia, July 7, 2022

PRESENT: Madam Justice Pallotta

BETWEEN:

BAHMAN GHADIMI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Bahman Ghadimi, is a German citizen who applied for a visa to visit his sister in Canada, and also to visit his mother's grave. Since he is subject to a deportation order that issued in 2013, Mr. Ghadimi requires authorization to return to Canada (ARC): subsection 52(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]; subsection 226(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. This is an application for judicial review of an immigration officer's (Officer) refusal to grant the ARC.

The Officer found that there were not sufficiently compelling reasons to approve the ARC, when weighed against the circumstances that necessitated the issuance of a removal order.

[2] Mr. Ghadimi alleges that the Officer's decision is unreasonable. He argues his reasons for returning to Canada did not need to be particularly compelling because the circumstances that led to the deportation order were minor in nature. Canada Border Services Agency (CBSA) issued the deportation order because Mr. Ghadimi had attempted to enter Canada the day before a one-year long exclusion order had expired.

[3] For the reasons below, Mr. Ghadimi has not established that the Officer's decision is unreasonable. Accordingly, this application for judicial review is dismissed.

II. **Issue and Standard of Review**

[4] The sole issue on this application for judicial review is whether the Officer's decision is unreasonable.

[5] Whether the Officer's decision is reasonable is determined according to the guidance set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The reasonableness standard of review is a deferential but robust form of review: *Vavilov* at paras 12-13, 75 and 85. The reviewing court does not ask what decision it would have made, attempt to ascertain the range of possible conclusions, conduct a new analysis, or seek to determine the correct solution to the problem: *Vavilov* at para 83. Instead, the reviewing court must focus on

the decision actually made, and consider whether the decision as a whole is transparent, intelligible, and justified: *Vavilov* at paras 15 and 83.

III. **Analysis**

[6] Mr. Ghadimi states that the Officer's decision is unreasonable because it is contrary to Federal Court jurisprudence. Relying on *Zarazua Gutierrez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 32 at paragraphs 23-28 [*Zarazua Gutierrez*], he argues that an officer assessing an ARC application is required to consider the severity of the inadmissibility—which in his case was a miscalculation of the date he was eligible to return to Canada. He states that the Officer's reasons do not reflect a reasonable analysis of the minor nature of his violation of the *IRPA*.

[7] Mr. Ghadimi argues that where the circumstances that led to the necessity of an ARC application are minor, the reasons for returning to Canada need not be particularly compelling. In this regard, Mr. Ghadimi relies on *Ulmani v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1373 at paragraph 69 [*Ulmani*], where tourism was the reason for return. Mr. Ghadimi's reason for wanting to return to Canada is to visit family, which is more compelling than tourism, and visiting family can constitute sufficiently compelling reasons: *Manoo v Canada (Minister of Citizenship and Immigration)*, 2015 FC 396 [*Manoo*] and *Monroy v Canada (Minister of Citizenship and Immigration)*, 2019 FC 811 [*Monroy*]. Mr. Ghadimi alleges that the Officer's notes do not even mention the purpose of his visit, and instead read as though the Officer conducted an assessment of humanitarian and compassionate (H&C) factors, which is not sufficient.

[8] The respondent argues that an ARC is not meant to be a routine way to overcome a permanent bar on returning to Canada: *Parra Andujo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 731 at paras 1, 26. The respondent submits the Officer was entitled to consider Mr. Ghadimi's negative immigration history as well as his attempt to minimize his previous non-compliance with the *IRPA*—the Officer was not confined to a consideration of the circumstances that led to the deportation order in 2013 alone. The respondent contends that the Federal Court decisions Mr. Ghadimi relies on are distinguishable on their facts.

[9] In my view, Mr. Ghadimi has not established that the Officer's decision is unreasonable.

[10] As the respondent correctly points out, an officer has wide discretion when deciding an ARC application: *Dheskali v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1191 at para 14 [*Dheskali*]; *Monroy* at para 24. There is no single approach or mandatory list of factors that must be considered: *Dheskali* at para 14; *Quintero Pacheco v Canada (Minister of Citizenship and Immigration)*, 2010 FC 347 at para 47 [*Quintero Pacheco*]. Furthermore, it is for an applicant to establish that their personal circumstances, considered as a whole, justify granting an ARC.

[11] I disagree with Mr. Ghadimi that the Officer's decision is contrary to this Court's jurisprudence. *Zarazua Gutierrez* does not establish a general rule or principle that requires an officer to assess the seriousness or severity of the offence, and *Ulmani* does not lay down a general proposition that the reasons for returning to Canada need not be particularly compelling where the circumstances that led to the ARC are minor. Both *Zarazua Gutierrez* and *Ulmani* were decided based on specific factual circumstances—indeed the Court in *Ulmani* emphasized

this at paragraph 73—and those factual circumstances are distinguishable from the facts of this case. Similarly, *Monroy* and *Manoo* are distinguishable.

[12] I appreciate that Mr. Ghadimi does not agree with how the Officer weighed the various factors; however, I am not persuaded that the Officer committed a reviewable error in doing so. It is not within this Court's role on judicial review to reweigh the evidence: *Vavilov* at para 125; see also *Dheskali* at para 15.

[13] The Officer was entitled to consider Mr. Ghadimi's entire immigration history and the Officer also noted, reasonably in my view, that Mr. Ghadimi attempted to minimize his negative immigration history by indicating in his ARC application that he was "on leave" during the period when he was found to have been working without authorization in Canada. The GCMS notes indicate that the Officer considered H&C factors but concluded that they "did not overcome grounds for inadmissibility". Mr. Ghadimi points to the respondent's submission that an ARC application is not a "mini humanitarian and compassionate application" (*Dheskali* at para 14, citing *Quintero Pacheco* at para 51). However, I agree with the respondent that it was not an error for the Officer to consider H&C factors, particularly since Mr. Ghadimi raised H&C grounds in support of his ARC application.

IV. **Conclusion**

[14] Mr. Ghadimi has not established that the Officer committed a reviewable error in refusing the ARC application. This application is dismissed.

[15] Neither party posed a question of general importance for certification. In my view, there is no question to certify.

JUDGMENT in IMM-7399-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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