Federal Court  Cour fédérale

Date: 20220725

Docket: IMM-7983-21

Citation: 2022 FC 1095

Ottawa, Ontario, July 25, 2022

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

NOUR ALI NABOULSI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Nour Ali Naboulsi, is a citizen of Lebanon. She is currently 27 years old.

[2] In 2003, when she was 8 years old, she became a permanent resident of Canada, along with her parents and brother. The latter suffers from autism and is completely dependent on their parents.

[3] In 2008, the Applicant's father obtained Canadian citizenship, and then left Canada with his family to settle in the United Arab Emirates [UAE] in order to pursue his professional career and business opportunities. The Applicant has not returned to Canada since leaving in 2008.

[4] On July 28, 2020, the Applicant, her mother and brother applied for travel documents to return to Canada at the Canadian Embassy in Abu Dhabi.

[5] On February 25, 2021, a visa officer issued travel documents to the Applicant's mother and brother, but denied the Applicant's application. The visa officer determined that, during the relevant five-year period prior to her application for a travel document (i.e., from July 28, 2015, to July 28, 2020), the Applicant did not meet her residency obligation set out in section 28 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. Section 28 typically requires physical presence in Canada for 730 days in each five-year period.

[6] The Applicant appealed the visa officer's decision to the Immigration Appeal Division [IAD].

[7] Following a hearing, the IAD dismissed the Applicant's appeal by decision dated September 14, 2021 [Decision]. The IAD agreed with the visa officer that the Applicant failed to meet the residency requirements set out in section 28 of the *IRPA*. It also found that the Applicant's personal circumstances did not raise sufficient humanitarian and compassionate [H&C] grounds to overcome the breach of her residency obligation.

[8] The IAD made the following main findings:

a) The Applicant did not present clear and convincing evidence regarding the alleged illegality of the officer's decision and therefore the legality of said decision was not in question;

b) The Applicant's H&C considerations, including her brother's medical condition, are insufficient to justify her non-compliance with the residency obligation;

c) The Applicant's reasons regarding her absence from Canada are more in line with personal decisions based on family and economic considerations than with exceptional or urgent circumstances beyond her control;

d) The Applicant had accumulated zero days of physical presence in Canada during the relevant period which amounts to "a total breach of the residency obligation";

e) It was the Applicant's personal choice not to return to Canada at the earliest opportunity;

f) The Applicant had no establishment in Canada and her initial establishment was too weak to compensate for her complete lack of integration in Canada between 2015 and 2020;

g) The Applicant had no family ties in Canada and could not be sponsored;

h) The Applicant did not demonstrate how the appeal's dismissal would be detrimental to her or her family members if she were to lose her permanent resident status in Canada;

i) No child would be directly affected by the decision; and

j) There are no unique or special circumstances warranting special relief.

[9] The Applicant seeks judicial review of the IAD's Decision. While she does not challenge the IAD's finding that she failed to meet the residency requirements, she takes issue with its H&C determination.

[10] As explained below, the Applicant has failed to establish that the Decision as it relates to H&C considerations is unreasonable.

II. Standard of Review

[11] The applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], at para 23; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, at para 58). 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." (*Vavilov* at para 85). A reviewing court "must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that 'there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived.'" (at para 102).

III. Analysis

[12] The Applicant submits that the IAD committed three reviewable errors in its H&C analysis that warrant this Court's intervention.

[13] First, the Applicant maintains that the IAD erred in its assessment of the extent of her non-compliance to the residency requirement. The gist of her argument is that the IAD failed to credit the Applicant with the time she spent outside Canada with her father as "accompanying" time within the meaning of subparagraph 28(2)(a)(ii) of the *IRPA*. According to the Applicant, the only information missing before the IAD was the calculation of the number of days of non-compliance "which is not evidence but rather an exercise to be performed by the tribunal in its analysis of the evidence."

[14] Counsel for the Applicant sought to establish at the hearing before me that the Applicant should have been credited 556 days of residence in Canada. He pointed to evidence on the record before the IAD that the Applicant's date of birth is February 8, 1995, that the Applicant's father is a Canadian citizen, and that for purposes of calculating the extent of non-compliance, the Applicant was a child during the relevant five-year period until she reached the age of 22 on February 8, 2017.

[15] However, as conceded by the Applicant's counsel, no exact number of days of deemed residency was ever provided to the IAD. Rather, as explained by the IAD, counsel vaguely argued in reply that the Applicant accompanied her father to the UAE between 2015 and 2017.

[16] The Applicant claims that the exercise required in determining the number of days of her residency shortfall was simple. While that may be, the onus was on the Applicant to present clear and convincing evidence in support of her allegations before the IAD. She was granted ample opportunity to lead evidence that would militate in her favour. The IAD cannot be criticized for failing to consider evidence that was not submitted to it.

[17] It is well accepted that in making H&C decisions, the IAD has extensive discretion to consider and weigh factors as required by the specific circumstances of the case. The IAD concluded that the Applicant accumulated zero days of physical presence in Canada. There is nothing unreasonable in this finding. It is not only factually correct, but also a relevant factor in considering whether special relief should be granted.

[18] Second, the Applicant submits that the IAD completely ignored or discounted a letter from a specialized physician explaining that as the Applicant's brother enters young adulthood, his "developmental progress is dependent on continued contact and care with his immediate family members," including the Applicant. I disagree.

[19] The IAD is presumed to have considered all of the evidence before it and is not required to refer to each and every piece of that evidence. The IAD's reasons demonstrate the needs and best interests of the Applicant's brother were taken into account. The Applicant argued before the IAD that the loss of her status would create uncertainty regarding the support she could provide her brother in Canada if the family were to move. However, the IAD gave little weight to this argument, noting that the Applicant lived outside the family unit for several years during

her education, leaving her brother's needs to the rest of the family. It also noted that the Applicant's mother did not work and stayed home to care for her son on a full-time basis. In the circumstances, the IAD concluded that the Applicant "does not provide critical assistance to her brother in the UAE" and saw no reason why it would be any different in Canada.

[20] The Applicant submits that the IAD lacked empathy and demanded a higher threshold of having to provide "critical assistance" to her brother in order to warrant special relief. I do not read this in the language used by the IAD. The statement merely illustrates the fact that the Applicant's brother does not depend on her in order for his special needs to be met.

[21] Lastly, the Applicant submits that the IAD imposed a higher burden of establishing "circumstances beyond the Applicant's control" to warrant special relief. Once again, I disagree.

[22] The IAD concluded that the Applicant's reasons regarding her absence from Canada were more in line with personal decisions based on family and economic considerations than with "exceptional or urgent circumstances beyond her control." This does not represent a higher burden of proof and is in line with the jurisprudence of this Court (*Ouedraogo v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 310, at para 30; *Behl v Canada (Citizenship and Immigration)*, 2018 FC 1255, at paras 12 & 25).

[23] As explained by the IAD, the Applicant lost her permanent resident status due to circumstances within her control, which include her failure to meet her residency requirements. It was reasonable for the IAD to factor into its analysis of the Applicant's intentions regarding

her residency obligation and her connection to Canada the length of time she studied and travelled abroad once she became an adult.

[24] The Applicant essentially disagrees with the IAD's weighing and assessment of the evidence. The Applicant does not mention what unique or special circumstances the IAD overlooked and, having reviewed the Decision as a whole, I am not satisfied that the IAD's analysis of the H&C factors is unreasonable. Therefore, the application for judicial review is dismissed.

JUDGMENT IN IMM-7983-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Roger R. Lafrenière"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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