Federal Court  Cour fédérale

Date: 20220728

Docket: IMM-3738-21

Citation: 2022 FC 1136

Ottawa, Ontario, July 28, 2022

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

JIHAD HAMOUSH
RITA MOMOJIAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Jihad Hamoush and Rita Momojian [collectively the Applicants] are husband and wife. They are citizens of Lebanon. They seek judicial review of the refusal by a senior immigration officer [Officer] of their request to apply for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds.

[2] The Applicants' daughter, Sarine, is a Canadian citizen. She twice attempted to sponsor her parents in 2018 and 2019, but was unable to secure an invitation to apply. Mr. Hamoush and Ms. Momojian came to visit Sarine on July 5, 2020, and have remained in Canada ever since. They submitted the H&C request shortly after their arrival.

[3] The Officer's reasons were necessarily limited by the submissions made by the Applicants in support of their H&C application. The evidence of their relationship with their grandchildren was sparse. Aside from their advancing age, the Applicants provided little in the way of evidence to establish a link between generalized country conditions in Lebanon and their personal circumstances.

[4] The Officer's decision was reasonable, and the application for judicial must therefore be dismissed.

II. Background

[5] Mr. Hamoush and Ms. Momojian are aged 55 and 59 respectively. They have three adult children. Two of their children and two of Mr. Hamoush's siblings live in Lebanon. Their daughter Sarine lives in Milton, Ontario with her husband and three Canadian-born children. At the time of the H&C application, the children were aged 6, 3, and 3 months.

[6] The Applicants' H&C request cited their establishment in Canada, the best interests of the children [BIOC], and adverse country conditions in Lebanon. They said they were caring for

all three grandchildren, and providing them with a cultural link to Lebanon. They also claimed to fear returning to Lebanon due to difficult country conditions following the explosion at the Port of Beirut in 2020 and the impact of the coronavirus pandemic. Both events have caused severe disruption to the economy, the cost of living, and access to health care.

[7] The Officer accepted that the Applicants have strong family ties to Canada, and some degree of financial and social establishment. With respect to the BIOC, the Officer acknowledged that the grandchildren will likely miss the Applicants if they return to Lebanon. However, the Officer noted they have previously lived apart, and there was no evidence that the grandchildren were dependent on the Applicants for their daily needs.

[8] The Officer recognized that living conditions in Lebanon are “not ideal”, and the port explosion and pandemic have had an adverse impact on health facilities in Lebanon. However, the Officer found that the evidence did not establish a sufficient link between general country conditions and the Applicants’ personal circumstances.

III. Issue

[9] The sole issue raised by this application for judicial review is whether the Officer’s decision was reasonable.

IV. Analysis

[10] The Officer's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10). The Court will intervene only where "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 para 100).

[11] The criteria of "justification, intelligibility and transparency" are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[12] In *Khan v Canada (Citizenship and Immigration)*, 2020 FC 202 [*Khan*], Justice Sylvie Roussel reiterated that an H&C exemption is an exceptional and discretionary remedy, and the onus of establishing that it is warranted lies with an applicant. If applicants fail to adduce sufficient relevant information in support of the H&C application, they do so at their own peril (*Khan* at para 7).

[13] The Applicants say that the Officer improperly assessed the best interests of the three Canadian-born grandchildren. The Applicants rely on *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at paragraph 41 for the proposition that the BIOC must be treated as a significant factor in the analysis. "Children will rarely, if ever, be deserving

of any hardship" (*Kanthasamy* at para 41), and accordingly immigration officers must demonstrate that they were "alert, alive and sensitive" to the child's best interests (*Hawthorne v Canada (Minister of Citizenship and Immigration),* 2002 FCA 475 at para 10).

[14] The evidence of the Applicants' relationship with their grandchildren was sparse, and largely confined to the affidavit of Mr. Hanoush:

> 7. My wife and myself feel so blessed to have those three grandchildren. Upon arriving the first day we took it upon ourselves to take care of them.
>
> 8. The reason why we are taking care of them now is because my daughter's husband, Steven is constantly working to provide for his family and my daughter assisting him with office work.
>
> 9. Sarine has informed us to speak and teach the children our cultural ways. She wants them to grow up the way she did.
>
> 10. My wife Rita was able to visit Sarine and her kids three times so far and I am happy to have finally seen Canada and my child and grandchildren in it.

[15] A letter of support written by Sarine and co-signed by her husband did not describe any interdependence between the Applicants and their grandchildren. Instead, she said that "[h]aving a unified family is extremely important for me and my family. I don't have words to describe how much I love them and how much I want to be able to spend quality time with them".

[16] The Officer's reasons were necessarily limited by the submissions presented by the Applicants in support of their H&C application. The Officer acknowledged the perspective of the

grandchildren, to the extent it was offered, and accepted that they had formed a bond with the Applicants and will miss their presence. However, the Officer reasonably found the Applicants had lived far from their grandchildren for most of their lives.

[17] While the BIOC are an important factor to be weighed and balanced, they are not determinative of an H&C application (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 24). As Justice Sébastian Grammond held in *Tran v Canada (Citizenship and Immigration)*, 2018 FC 210, the hardship inherent in the fact that grandparents and grandchildren reside in two different countries is not in itself sufficient to warrant H&C relief (at para 11).

[18] The Officer acknowledged the effects of the port explosion and the pandemic on access to health care in Lebanon. However, aside from their advancing age, the Applicants provided little in the way of evidence to establish a link between the generalized country conditions and their personal circumstances.

[19] The Applicants rely on Justice Mary Gleason's decision in *Diabate v Canada (Citizenship and Immigration)*, 2013 FC 129 [*Diabate*], in which she held that an applicant need not establish that the circumstances he or she will face are not generally faced by others; rather, the frame of analysis for H&C consideration must be that of the individual. This involves a consideration of whether the hardship of leaving Canada and returning to the country of origin would be undue, undeserved or disproportionate (*Diabate* at para 36).

[20] The Applicants asserted that it would be very dangerous for them to return to Lebanon due to their age and the crumbling healthcare infrastructure. The Officer reasonably found that the mere possibility the Applicants may require medical attention in the future did not warrant an exemption from the operation of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The Applicants are in their 50s and do not claim to suffer from any particular medical conditions.

[21] The assessment of hardship is forward-looking. It must be based upon personal characteristics and evidence regarding the treatment of similarly-situated individuals (*Sinnathamby v Canada (Citizenship and Immigration)*, 2021 FC 1387 at para 32). The Applicants were not required to demonstrate individualized hardship with respect to their access to health care in Lebanon. But there was no evidence before the Officer that similarly-situated individuals (*i.e.*, those in their mid- to late-50s) are unable to obtain adequate health care in Lebanon.

[22] Consistent with *Diabete*, the Applicants were required to demonstrate that returning to Lebanon would result in undue, undeserved or disproportionate hardship. Their evidence fell short of this standard.

V. Conclusion

[23] The application for judicial review is dismissed. None of the parties proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Simon Fothergill"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Sandra Dzever	FOR THE APPLICANTS
Rachel Hepburn-Craig	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Law Office of Ronen Kurzfeld Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT