Federal Court  Cour fédérale

Date: 20220824

Docket: IMM-160-21

Citation: 2022 FC 1226

Toronto, Ontario, August 24, 2022

PRESENT: Madam Justice Go

BETWEEN:

VANESSA CHIDINM UMEH

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Vanessa Chidinm Umeh [Applicant] applied for permanent residence on humanitarian and compassionate grounds [H&C application] under s. 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] in April 2019. She seeks judicial review of the refusal of her H&C application dated June 1, 2021 [Decision] by a Senior Officer [Officer] of Immigration, Refugees and Citizenship Canada.

[2] The Applicant is a citizen of Nigeria. The Applicant's father made arrangements for her to come to Canada to further her education. She arrived in Canada in 2009, at age 17, on a student visa. After completing her high school education, the Applicant enrolled in Carleton University's communication program. The Applicant has remained in Canada since 2009 by ways of study and work permits. Her most recent study permit expired in March 2019.

[3] In October 2012, the Applicant's enrollment with Carleton University was deregistered because her father had stopped paying for her tuition. Thereafter, the Applicant's father made only partial payment of her tuition and she was only allowed to come to school part time.

[4] In December 2012, the Applicant's father informed her that he had arranged her marriage with the son a wealthy man in Nigeria and that she had to return to Nigeria in June 2013 to be married. As a result of the Applicant's refusal, her father stopped supporting her financially and the Applicant has not heard from or spoken with him, or the rest of her family in Nigeria since.

[5] Through working part-time as an operation consultant for a cosmetic retail store since 2015, the Applicant has continued her education at Carlton University on a part time basis. The Applicant still owes Carlton University some tuition fees.

[6] From December 2013 to April 2016, the Applicant was followed by Dr. Lisa Lalonde at the Carleton University Health and Counselling Clinic. In February 2019, Dr. Lalonde diagnosed the Applicant with major depressive episode and general anxiety disorder due to major stressors in her life, including issues with her family in Nigeria and stress around school and finances.

[7] In her H&C application, the Applicant relied on her establishment in Canada including support from her friends who have provided her with financial and emotional support, as well as hardship in Nigeria due to estrangement from her family, her medical condition and adverse country conditions.

[8] In the Decision, the Officer gave the Applicant's establishment some weight. The Officer found the Applicant has not submitted sufficient evidence to demonstrate that should she return to Nigeria she would be unable to access medical care, continue her education or find a job. The Officer concluded, in conjunction with establishment and other factors, there was not enough ground to warrant an exemption.

[9] I find the Officer misapprehended evidence and made unreasonable findings with respect to the relationships between the Applicant and her friends who are her support network. As such, I grant the application.

II. Standard of Review

[10] The Applicant argues that the issues are: (1) whether the Officer erred in principle and improperly fettered their discretion; (2) whether the Officer took a restrictive view of the Applicant's underlying diagnosis of major depressive episode and general anxiety disorder; and (3) whether the Officer misapprehended relevant evidence and rendered an unreasonable decision.

[11] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[12] 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). The onus is on the Applicant to demonstrate that the decision is unreasonable (*Vavilov* at para 100). To set aside a decision on this basis, "the reviewing 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 para 100).

III. Analysis

[13] I am not persuaded the Officer erred in their assessment of the evidence concerning the Applicant's mental health, nor do I find the Officer ignored relevant general country conditions evidence. I agree with the Respondent that the Officer's findings that the Applicant has provided insufficient evidence demonstrating she would be unable to access medical care or continue her education in Nigeria was reasonable in light of the evidence she placed about her personal circumstances in the application. I also agree with the Respondent that the Applicant's arguments on these issues, to a great extent, amount to asking the Court to reweigh the evidence.

[14] However, I find the Officer did conduct an unreasonable assessment of the evidence with regard to the relationships between the Applicant and her friends, who have become her *de facto* family members after her estrangement from her family in Nigeria.

[15] The Supreme Court of Canada confirmed in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] that the exercise of a H&C discretion is about offering "equitable relief in circumstances that 'would excite in a reasonable [person] in a civilized community a desire to relieve the misfortune of another" (*Kanthasamy* at para 21). *Kanthasamy* serves as a guidepost to assist officers with their H&C determination by reminding officers the legislative purpose behind s.25(1) of *IRPA*, and the relevant factors to consider in an H&C assessment.

[16] The thrust of the Applicant's H&C application was that her return to Nigeria would cause her disproportionate hardship because of her personal circumstances. The Applicant argues that the estrangement from her family led to a lack of financial and emotional support and caused her to suffer depression and anxiety. The Applicant argues that as a result, her friends in Canada whom she has known over the past ten years became family to her and are her main source of psychological and emotional support. The Applicant refers to a letter written by her friend, which states that it would be very difficult for them to continue to support her the way they have been doing if she is removed from Canada to Nigeria.

[17] In the Decision, the Officer addressed this factor in the following manner:

> I do not doubt that Ms. Umeh has established close relationships during the time she has been in Canada. I accept that departing Canada and leaving friends behind would pose emotional challenges for the applicant and her friends. However, I find that that separation would have been anticipated by the applicant and her friends as they ought to have been aware that the applicant was here on a temporary basis which could result in her inevitable departure. Further, I find that there is little evidence to support that aside from the applicant's friends helping her at times financially, that the applicant depends on her friends for financial assistance on a regular basis.

> Importantly, I find that close and supportive relationships do not have to end if the applicant is required to leave Canada. In this day and age with the availability of inexpensive communication technologies such as skype, Facebook and hundreds of other social media technologies family and friends all over the world are able to stay connected.

[18] The Applicant takes issue with the Officer's reasons, arguing that the Officer erred in principle and misapprehended the evidence when it came to that conclusion.

[19] The Applicant asserts that it was unreasonable for the Officer to suggest that the Applicant and her friends acted unreasonably by becoming emotionally interdependent, as they ought to have known that the Applicant may end up leaving Canada. While I do not interpret the Officer's statement as suggesting that she and her friends had acted unreasonably, I do find the Officer's reasoning faulty. By this logic, officers need not consider friendship or personal ties that H&C applicants may have formed in Canada, as they should all be anticipated to be temporary in nature.

[20] Further, I find the Officer's reason runs contrary to the teaching in *Kanthasamy*. In effect, the Officer's conclusion was that given these friendships are all anticipated to end some day, any hardship that arises from the separation should simply be accepted. Such a utilitarian approach of measuring friendship and their impact on an applicant represents the very opposite of what "a civilized community with a desire to relieve the misfortune of another" would believe and behave.

[21] I also find the Officer's analysis misapprehended the nature of the relationships between the Applicants and her friends, who in their support letters, spoke about the mutual support they and the Applicant gave to each other. The letters also confirmed that the friends have helped the Applicant cover her rent, and paid for a trip abroad to celebrate her birthday, all in a way of demonstrating the close bonds they have developed with the Applicant, whom they described affectionately as their "sister" and their "family." By suggesting that the Applicant can simply form new friendships upon her return to Nigeria, the Officer either ignored or misconstrued the deep bonds that had been developed between the Applicants and her friends, who have stood in the place of the Applicant's family over the past decade.

[22] The Applicant further argues that, contrary to the Officer's finding, students who come to Canada to study are able to apply for permanent residence in Canada under the Canadian experience class and their departure from Canada is therefore not inevitable.

[23] I agree. I would also add that given the whole purpose of the H&C application is to exempt the Applicant from the requirement of having to apply for permanent resident status from outside of Canada, the Applicant's departure is thus not inevitable should her H&C application be granted. By finding that her departure is inevitable, the Officer thus engaged in circular reasoning when the Officer relied on this factor to refuse the H&C application.

[24] In their written submissions, the Respondent provides no response to the Applicant's arguments regarding the Officer's unreasonable assessment of her relationships with her friends.

[25] At the hearing, the Respondent made two new arguments. First, the Respondent submitted that the Officer did not ignore the Applicant's ties with her friends and did give this factor some weight. Second, the hardship that warrants the granting of an H&C does not arise from the removal itself, as there is no expectation that the Applicant would remain in Canada indefinitely.

[26] I do not find the Respondent's arguments persuasive. The Officer needed to conduct a global assessment of all the factors, including establishment. Even though the Officer did give establishment some positive consideration, the Officer's errors in assessing this factor would still have an impact on the global assessment of the H&C application. Further, the Officer's error lies in their failure to recognize that the hardship of separation with the Applicant's friends does not arise from the removal *per se*, but from the loss of her only familial support network, should she return to Nigeria.

[27] For this reason alone, I grant the application.

IV. Conclusion

[28] The application for judicial review is granted.

[29] There is no question for certification.

JUDGMENT in IMM-160-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-160-21
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