Federal Court  Cour fédérale

Date: 20220907

Docket: IMM-4115-20

Citation: 2022 FC 1265

Ottawa, Ontario, September 7, 2022

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

GLADYS YNZON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Gladys Ynzon is a citizen of the Philippines. She seeks judicial review of a decision by a senior immigration officer [Officer] to refuse her request to apply for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds.

[2] Ms. Ynzon's mistreatment at the hands of her employers in Canada and elsewhere formed an integral part of her request for relief on H&C grounds. It was therefore an error for the Officer not to consider this important aspect of her history in assessing whether her circumstances merited H&C relief. Furthermore, the Officer's assessment of the hardships Ms. Ynzon and her relatives would suffer if she is forced to leave Canada included unwarranted speculation.

[3] The application for judicial review is therefore allowed.

II. Background

[4] Ms. Ynzon is 46 years old. She arrived in Canada in July 2014 on a visitor visa that remained valid until March 2015.

[5] Despite not having a work permit, Ms. Ynzon found employment as a caregiver in Vancouver. Some time later she moved to Toronto, where she joined an agency and worked as a live-in caregiver for elderly clients. She attempted to gain a work permit through another agency, but was unsuccessful. She has remained in this country without status working as a caregiver ever since.

[6] In 2016, Ms. Ynzon began working as a live-in caregiver for a family that treated her poorly. She says she experienced various forms of abuse, including the withholding of wages, withholding of vacation pay, working overtime without pay, and receiving only six days off over

a period of 14 months. When she objected to her working conditions, Ms. Ynzon was threatened with deportation. On one occasion, her employers confiscated her passport to prevent her from leaving.

[7] The family told Ms. Ynzon that they had applied for her to obtain status through the Live-In Caregivers Program, but this turned out not to be true. She says that the family suggested she obtain fraudulent papers from the Philippines in order to continue working.

[8] Ms. Ynzon fled the household in September 2017, losing both her home and her sole source of income. She submitted a claim against her employers under the Ontario *Employment Standards Act*, 2000, SO 2000, c 41 [ESA]. This eventually resulted in a settlement and compensation.

[9] In November 2017, Ms. Ynzon found work as a live-in caregiver for her employer's mother. She continues to be employed in this capacity. Her current employer provided a highly complimentary reference for Ms. Ynzon.

[10] Ms. Ynzon submitted her H&C request on September 14, 2018. She noted that she had spent more than six years in Canada, and had become integrated into the community through her participation in the Filipino Alliance Church and as a volunteer with the Caregivers Action Centre. She also obtained a diploma as a Personal Support Worker.

[11] Ms. Ynzon's immediate family resides in the Philippines. She sends remittances to ensure adequate treatment and medications for her aging mother, who suffers from diabetes and a number of other ailments. She also provides financial assistance to enable her niece's young daughter to attend school. In her submissions to the Officer, she noted that her niece abandoned the daughter in 2013, and they currently have no money.

[12] The Officer acknowledged that Ms. Ynzon had a strong record of employment and that she had developed a social network and upgraded her employment skills. However, the Officer assigned considerable negative weight to the fact that she had lived and worked in Canada without status.

[13] The Officer also considered country conditions in the Philippines, and accepted that Ms. Ynzon may encounter difficulty securing employment due to her age and gender. However, the Officer found that Ms. Ynzon would likely be able to find a job due to her friendly disposition, and her previous employment in Hong Kong, the United Arab Emirates and Canada.

[14] The Officer also expressed the view that Ms. Ynzon's siblings and niece would be able to assist with her re-integration into the Philippines, and alleviate any hardship that might be endured by her niece's daughter. The Officer considered Ms. Ynzon's mistreatment at the hands of her employers only in the context of her request for a Temporary Residence Permit [TRP], noting that this was sought to enable her to pursue the ESA claim that had since been resolved.

[15] The Officer rejected Ms. Ynzon's H&C request on August 19, 2020.

III. Issue

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

IV. Analysis

[17] 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).

[18] 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).

[19] Ms. Ynzon challenges the Officer's decision on a number of grounds. Two of these are particularly compelling. The application for judicial review must be allowed because: (a) the Officer considered Ms. Ynzon's mistreatment at the hands of her employers only in context of her request for a TRP; and (b) the Officer's assessment of the hardships Ms. Ynzon and her relatives would suffer in the Philippines included unwarranted speculation.

(1) Mistreatment

[20] Subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] confers upon the Minister of Citizenship and Immigration a discretion to grant extraordinary equitable relief in circumstances that "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 13, 23, 93-94).

[21] In her submissions to the Officer, and also in her accompanying affidavit, Ms. Ynzon recounted the serious mistreatment she had suffered at the hands of her employers, culminating in the successful claim for compensation under the ESA. Her submissions to the Officer included the following under the heading Background:

> Ms. Ynzon worked in the United Arab Emirates and Hong Kong where her employers abused her. She came to Canada in 2014 as a caregiver. Unfortunately her employer here in Canada […] abused her as well (and with the help of the [Caregivers Action Centre, she] is pursuing her legal options with regards to this). Despite this she has managed to support her mother who has diabetes and her niece's daughter who was abandoned soon after birth.

[22] Under the heading The Interests of Justice/Canada, Ms. Ynzon's representative included the following quotation from Justice Michel Shore's decision in *Bailey v Canada (Citizenship and Immigration)*, 2017 FC 816 at paragraph 1:

> The immigration officer noted that she was sympathetic to the mistreatment that the Applicant reported at the hands of her employer but she did not recognize, acknowledge or understand the degree of

> exploitation which the Applicant suffered by her employer which is of significant concern in such cases, recognizing that Canadian authorities put into operation the Program for Live-In Caregivers. Canada should not receive the reputation due to individuals, even if few, who could or would be exploited and abused, without consequences. Thus, such individuals, as the Applicant, should not be penalized under the auspices of a Canadian government program.

[23] The submission also included a quotation from a representative of the Caregivers Action Centre: "In spite of having being mistreated and misled by employers, Ms. Ynzon has established herself here in Canada as a skilled care worker, a support, a friend and a community member. She is currently working with Parkdale Community Legal Services (PCLS) to seek protection from the Province's Ministry of Labour. As such it is in the interests of Justice and Canada to allow Ms. Ynzon to stay in Canada while pursuing her options for justice for the treatment she received from her previous employer […]".

[24] The Officer restricted any consideration of Ms. Ynzon's mistreatment to her request for a TRP:

> The applicant suffered mistreatment at the hands of her employer and filed an Employment Standards Claim in September 2018. From the information before me, I accept that the applicant had experienced mistreatment at the hands of [her previous employer], and the circumstances were unfortunate. As part of this H&C application also received in September 2018, the applicant is requesting a TRP to remain in Canada to allow her to attend any appointments leading up to her claim being completed, to properly instruct her counsel and to appear for the hearing when the claim is finally heard.
>
> I note that recent additional information with respect to the applicant's Employment Standards Claim has been received. From the most recent information, I note that the applicant's claim was settled in August 2019.

> Given the fact that the applicant's Employment Standards Claim has now concluded, I am of the opinion that it is not justified in the circumstances to issue a TRP.

[25] The Respondent says that the Officer reasonably understood Ms. Ynzon's submissions as raising her history of mistreatment only in relation to her ongoing ESA claim and the need to remain in Canada to seek justice. The Respondent relies on *Vavilov* at paragraph 127 for the proposition that "[t]he principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties".

[26] I agree with the Respondent that Ms. Ynzon's submissions drew a link between her past mistreatment and her desire to remain in Canada to pursue her ESA claim. However, the mistreatment also figured prominently in the Background section of her submissions and her accompanying affidavit. In the latter, she deposed as follows:

> In Canada, my employer […] abused me, would not give me time off, in 14 months I only had 6 days off. He would harass me, but I could not complain for risk of losing my job and my status. I had to lift the client constantly which hurt my back, it still hurts today. He withheld my salary and on my last day said that if something happened to me no one could trace me.
>
> I am working with the Caregiver Action Centre and plan to file a complaint once this application is filed.
>
> I trust that you'll have a compassionate view towards my application and allow me to support my mother and [niece's daughter] by staying here in Canada where I am treated with respect and dignity.

[27] Ms. Ynzon's mistreatment at the hands of her employers in Canada and elsewhere formed an integral part of her request for relief on H&C grounds. It was therefore an error for the Officer not to consider this important aspect of her history in assessing whether her circumstances would excite in a reasonable person, in a civilized community, a desire to relieve misfortune.

(2) Speculation

[28] The Officer accepted that women in the Philippines face discrimination "in hiring and on the job". The Officer nevertheless observed that women "continue to occupy positions at all levels of the workforce". The Officer found "little objective and corroborative evidence" indicating that Ms. Ynzon was likely to face poverty upon returning to the Philippines.

[29] The Officer speculated that Ms. Ynzon's siblings would be able to help support her mother financially, despite the absence of any evidence to this effect. Similarly, the Officer speculated Ms. Ynzon's siblings would be able to provide her with emotional and financial support while she re-established herself in the Philippines, again without evidence. The only evidence before the Officer was that Ms. Ynzon was the sole provider of financial support to meet her mother's medical needs and ensure the education of her niece's daughter.

[30] It is the Officer's prerogative to determine the weight to be given to different factors in an H&C application. However, an officer must not draw conclusions that are not grounded in a reasonable evaluation of the evidence. Applying Justice Luc Martineau's analysis in *Ocampo v*

Canada (Citizenship and Immigration), 2015 FC 1290, in light of the documentary evidence on record, the Officer's determinations that Ms. Ynzon's would be able to find employment, and that her siblings and other relatives in the Philippines would be able to provide support, appear to be speculative statements rather than reasoned inferences (at para 10, citing *Ukleina v Canada (Citizenship and Immigration)*, 2009 FC 1292 at paras 8 and 14).

[31] By the same token, the Officer's determination that there would be no "significant negative impact" on the daughter of Ms. Ynzon's niece was premised on the speculative assertion that Ms. Ynzon would soon find employment in the Philippines and, in the meantime, her siblings and relatives would be able to provide adequate support.

[32] The Respondent argues that the onus was on Ms. Ynzon to demonstrate her siblings and other relatives were unable or unwilling to help (citing *Zlotosz v Canada (Citizenship and Immigration)*, 2017 FC 724 at para 30). However, here the Officer's speculative conclusions conflicted with the uncontradicted evidence of Ms. Yznon that she alone could provide financial assistance to her mother and her niece's daughter by virtue of her employment in Canada.

V. Conclusion

[33] The application for judicial review is granted, and the matter is remitted to a different immigration officer for redetermination.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted, and the matter is remitted to a different immigration officer for redetermination.

"Simon Fothergill"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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