Federal Court  Cour fédérale

Date: 20220913

Docket: IMM-3364-21

Citation: 2022 FC 1284

Ottawa, Ontario, September 13, 2022

PRESENT: Mr. Justice McHaffie

BETWEEN:

TETIANA VLASENKO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Tetiana Vlasenko is in Canada on a visitor's visa, living with her daughter and son-in-law, and caring for her two granddaughters. Wishing to make the arrangement permanent rather than eventually having to return to Ukraine, she applied in July 2020 for permanent residence on humanitarian and compassionate (H&C) grounds under section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. A senior immigration officer assessed the various

factors put forward in support of Ms. Vlasenko's H&C application, including the impact of the COVID-19 pandemic, her ties to Canada, the best interests of the grandchildren, the conditions in Ukraine at the time of the decision, and the consequences of family separation. Considering these factors and the role of H&C relief, the officer concluded in April 2021 that Ms. Vlasenko's overall circumstances did not justify relief on H&C grounds and rejected the application.

[2] Ms. Vlasenko now seeks judicial review of the rejection of her application, challenging the officer's assessment of her establishment in Canada and the lack of analysis of her personal background circumstances in the officer's reasons for decision. To succeed on this application, Ms. Vlasenko must show that the officer's decision was unreasonable in the context of the evidence and submissions before the officer at the time of their decision.

[3] Applying this standard, I conclude Ms. Vlasenko has not met her onus to show the decision is unreasonable. Despite Ms. Vlasenko's arguments to the contrary, the officer's treatment of the absence of community support letters in the establishment analysis was not unreasonable and did not treat her establishment as a negative factor. Nor did the officer unreasonably fail to address a central argument presented by Ms. Vlasenko. While her personal background was set out in some detail in her application, it was not identified as a factor for consideration in the submission letter presented in support of her application. In these circumstances, while it may have been preferable for the officer to refer to this personal background, I cannot conclude that the failure to do so rendered their decision unreasonable.

[4] The application for judicial review is therefore dismissed.

II. Issues and Standard of Review

[5] Ms. Vlasenko raises the following two issues on this application:

A. Did the officer err in their consideration of her establishment by putting weight on the fact that no letters from neighbours, new friends, or volunteer organizations were provided?

B. Did the officer err by failing to take into consideration her personal circumstances?

[6] Each of these issues goes to the officer's decision on the merits of Ms. Vlasenko's H&C application. The parties agree, as do I, that they must be reviewed on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25.

[7] The reasonableness standard is a deferential standard. It does not permit the Court to reassess and reweigh the evidence, re-examine the merits and render its own decision: *Vavilov* at paras 15, 125. Rather, the Court should only set aside a decision where it contains such "sufficiently serious shortcomings" that it no longer shows the justification, transparency, and intelligibility required of a reasonable decision: *Vavilov* at paras 15, 86, 95–100. This assessment is made in the context of the administrative proceeding that led to the decision and in light of the legal and factual constraints that bear on the decision, including the submissions of the parties: *Vavilov* at paras 105–107, 127–128. The burden is on an applicant on judicial review to demonstrate that the decision is unreasonable: *Vavilov* at para 100.

III. Analysis

A. *The officer's assessment of establishment was reasonable*

[8] In describing the evidence filed in support of Ms. Vlasenko's H&C application, the officer noted that letters of support were filed from her daughter and son-in-law, together with a letter from a dance studio stating that she usually supervised one of her granddaughters at her dance class. The officer then made the following observation:

> Aside from the letters from her family members, I note no other personal letters have been received in support of the applicant. For example, letters from the applicant's neighbours or any new friends she has made in Canada have not been provided. While I recognize a majority of the applicant's residence occurred during the COVID-19 pandemic, I note no reference letters have been received from volunteer or community organizations displaying the applicant's integration and active participation in Canadian society. According to her IMM 5669, I note the applicant does not list having any membership of association with any organizations in Canada. Based on the limited information and evidence before me, I find the applicant has demonstrated a nominal level of establishment in Canada for an individual residing in the country for a year and-a-half. I do not find the level of establishment exhibited by the applicant to be significant or exceptional. As a result, I have given the applicant's establishment in Canada negligible weight.
>
> [Emphasis added.]

[9] Ms. Vlasenko argues it was unreasonable for the officer to give her establishment in Canada "negligible weight" due to the absence of support letters from new friends, neighbours, or community organizations. She argues that because of the COVID-19 pandemic and the related public health measures, she was unable to make new friends or actively volunteer or participate

in community organizations, and that in this context it was unreasonable to discount her establishment.

[10] I cannot agree. An officer reviewing an H&C application is tasked with assessing whether the applicant's circumstances "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, 21, citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338; [1970] IABD No 1 (QL/Lexis) at p 350. The degree of an applicant's establishment—and the concomitant impact of disrupting that establishment if the application is refused—is a commonly considered factor relevant on such an application for H&C relief: *Kanthasamy* at para 27; *Rainholz v Canada (Citizenship and Immigration)*, 2021 FC 121 at para 16.

[11] In the present case, the officer assessed whether Ms. Vlasenko's establishment in Canada was a positive factor for consideration in her particular case and concluded that the evidence showed a nominal level of establishment. The officer appreciated that this may have been due in part to the pandemic. However, the question before the officer remained whether Ms. Vlasenko's current circumstances were such as to excite in a reasonable person a desire to relieve their misfortunes. The officer's analysis reflected the reality of Ms. Vlasenko's situation as it stood at the time. In my view, the officer was not obliged to give positive weight to the establishment factor simply because Ms. Vlasenko arrived shortly before the onset of the pandemic.

[12] Ms. Vlasenko effectively conceded this during oral argument, submitting that establishment ought to have been a neutral factor, but that the officer effectively made it a *negative* factor by referring to the absence of support letters and ascribing "negligible weight" to her establishment. Again, I cannot agree. The officer did not hold Ms. Vlasenko's limited establishment during the pandemic against her or give it negative weight. They simply recognized that in the circumstances, establishment was not a material positive factor. In my view, this was a reasonable conclusion open to the officer on the evidence.

B. *The lack of analysis of background circumstances does not render the decision unreasonable*

[13] It is clear from the material presented that Ms. Vlasenko had a difficult and impoverished childhood in Kazakhstan, then part of the Soviet Union. She overcame many challenges, moving to Ukraine as a teenager to pursue an education and employment. Despite difficult conditions, she succeeded. After her partner abandoned her when their daughter was young, Ms. Vlasenko dedicated herself to giving her daughter the childhood and the opportunities she had not had. Through perseverance and hard work, including a change in profession, Ms. Vlasenko cared for her daughter in a supportive and loving home. She provided her daughter with an education and opportunities to pursue athletics and other extracurricular activities. In the mid 2010s, Ms. Vlasenko encouraged her daughter and son-in-law to leave Ukraine for a better future, while she remained and continued to work as a Chief Accountant for Ukrainian businesses. The separation was very difficult, and after she lost her job in late 2019, Ms. Vlasenko came to Canada to join her daughter and her daughter's family.

[14] Ms. Vlasenko's submission letter in support of her H&C application set out her background history, including these and other circumstances, in no small detail. So did her own supporting letter, which gave a chronological account of her life. This background, however, is not discussed in the officer's reasons, other than through reference to her education and job history.

[15] Ms. Vlasenko argues that it was unreasonable for the officer not to take into account her personal circumstances in making their decision on her H&C application. She argues that her and her daughter's personal history were relevant factors for consideration, citing Justice Abella's observation that "officers making humanitarian and compassionate decisions must substantively consider and weigh *all* the relevant facts and factors before them" [emphasis in original]: *Kanthasamy* at para 25. She asserts that by not considering these factors, the officer failed to meaningfully account for a central issue, rendering their decision unreasonable: *Vavilov* at paras 127–128.

[16] There is merit to Ms. Vlasenko's arguments on this issue. Certainly, the assessment of an H&C application invokes, as a general matter, a consideration of the totality of relevant circumstances raised by an applicant. However, having reviewed the officer's decision in context, I conclude that the lack of discussion of Ms. Vlasenko's personal background circumstances is attributable to the manner in which the relevant H&C factors were presented in her application, rather than a failure by the officer to consider relevant issues raised by Ms. Vlasenko.

[17] The reasonableness of a decision on an H&C application, like any administrative decision, must be reviewed and assessed in light of the history and context of the proceedings in which they were rendered, including the submissions of the parties: *Vavilov* at paras 94–96, 127–128. In the present case, Ms. Vlasenko's H&C application was supported by a detailed 21-page submission letter prepared by her immigration consultant. As indicated above, that letter began by setting out Ms. Vlasenko's "Timeline," including a discussion of her childhood; her education and work; the birth of her daughter; her mother's death; her daughter's development and ultimate emigration; the birth of her granddaughters; her visits to Canada; her loss of employment in 2019; her subsequent mental health challenges; and her arrival in Canada in November 2019.

[18] After this narrative, however, the submission letter set out a new heading: "Factors to Consider in a Humanitarian and Compassionate Assessment." Under this heading, the letter set out a series of factors the officer was asked to consider in evaluating the H&C application. These included (i) the consequences of the COVID-19 pandemic on the family's separation; (ii) Ms. Vlasenko's bond with her granddaughters; (iii) her mental health challenges; (iv) her daughter's anxiety about her mother's health and possible return to Ukraine; (v) Ms. Vlasenko's ties to Canada; (vi) the best interests of the children; (vii) factors in Ukraine including adverse country conditions; and (viii) the consequences of the separation. Each of these factors was addressed in detail under separate headings. In a closing section entitled "Submission," the submission letter noted that "the following factors play a crucial role in assessing her H&C application," with the following list:

- COVID-19 consequences;
- ties to Canada;
- the best interests of Canadian child and Canadian grandchildren;

- factors in Ukraine including adverse country conditions and COVID-19's impact on economy;
- severe stress of Canadian daughter;
- consequences of the separation of relatives.

[19] The officer addressed these factors and submissions in their decision. In doing so, they appropriately focused their analysis on the primary issues identified by Ms. Vlasenko as being "factors playing a crucial role" in the application. Given that Ms. Vlasenko herself identified these as the crucial factors, Ms. Vlasenko's argument before this Court that her background of poverty and hardship was a "central component" of her application that had to be addressed by the officer is less persuasive.

[20] The Supreme Court of Canada has underscored that an administrative decision maker's reasons should "meaningfully account for the central issues and concerns raised by the parties" but need not "respond to every argument or line of possible analysis": *Vavilov* at paras 127–128. It certainly would have been appropriate, and indeed preferable, for the officer to have shown through their reasons that they understood the personal context from which Ms. Vlasenko's application was being made. However, given how Ms. Vlasenko presented her application, I cannot conclude the absence of discussion of this background indicates that the officer was not "alert and sensitive to the matter before [them]" or showed an unreasonable "failure to meaningfully grapple with key issues or central arguments raised by the parties": *Vavilov* at para 128. Rather, the officer addressed the factors that Ms. Vlasenko herself identified as being the crucial ones.

[21] This is not to fault either Ms. Vlasenko or her immigration consultant for the manner in which the H&C application was presented. The H&C application focused, appropriately, on relevant issues said to justify the request for H&C relief. Those factors arguably pertained, much more directly, to Ms. Vlasenko's current circumstances and her request to apply for permanent residence from within Canada than her personal narrative regarding other aspects of her early and later life in Kazakhstan and Ukraine. This presentation provides important context for reading the officer's reasons for decision, and helps explain why the officer focused on the elements that they did in their reasons, without discussion of the other personal circumstances.

[22] My conclusions on this issue are not changed by the fact that the submission letter in support of Ms. Vlasenko's H&C application closed with the request that the application be assessed "for the Humanitarian and Compassionate considerations of Tetiana Vlasenko in its totality." An H&C application must always be considered based on an applicant's circumstances as a whole: *Kanthasamy* at para 45. The reference in the submission letter to the consideration of the application "in its totality" does not affect this. Nor does it make every element of the submission letter a "key issue" that must be addressed in reasons for the decision to be reasonable and satisfy the requirements of transparency, justification, and intelligibility. It is appropriate for an H&C application to identify clearly the central factors said to support the granting of H&C relief. Where it does so, however, it is not unreasonable for an officer to address those issues in rendering their decision on the application.

IV. Conclusion

[23] The application for judicial review is therefore dismissed. Neither party proposed a question for certification and I agree that none arises in the matter.

JUDGMENT IN IMM-3364-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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