Federal Court Cour fédérale

**Date: 20220826**

**Docket: IMM-5188-20**

**Citation: 2022 FC 1229**

**Toronto, Ontario, August 26, 2022**

**PRESENT: Justice Andrew D. Little**

**BETWEEN:**

**RICHARD JOO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**<u>JUDGMENT AND REASONS</u>**

[1] In this application for judicial review, Richard Joo asks the Court to set aside a decision dated October 8, 2020, made by a senior immigration officer under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA"*).

[2] The officer's decision denied Mr Joo's application for permanent residence on humanitarian and compassionate ("H&C") grounds. The applicant's position is that the decision

was unreasonable under the principles in *Canada (Citizenship and Immigration) v Vavilov*, [2019] 4 SCR 653, 2019 SCC 65.

[3] For the reasons below, the application is dismissed.

## I. Facts and Events Leading to this Application

[4] The applicant is a citizen of Hungary and is of Hungarian ethnicity. However, he was born in Romania and lived there before coming to Canada.

[5] The applicant arrived in Canada in August 2014. Upon entry, he obtained a work permit valid until August 2017. His application for an extension of the work permit was refused but he obtained three visitor records that extended his lawful stay in Canada. He also submitted an application for permanent residence under the Express Entry program, which was refused twice, due to the expiry of his medical record and his failure to provide a labour market impact assessment.

[6] In February 2019, he applied for permanent residence with an exemption on H&C grounds. At that time, he was 26 years old.

[7] Some additional factual details will help to understand the applicant's position on this application for judicial review.

[8] While in Canada, the applicant has stayed with his mother and stepfather. His family in Canada also includes his brother, stepbrother, grandmother, uncle and cousin.

[9] The applicant's only blood relative in Romania is his father, whom he has not seen or communicated with for many years. The applicant's affidavit for the H&C application described his "very difficult relationship and life" with his father, who was abusive and violent towards him, his mother and brother.

[10] The abuse led his mother to leave his father when she thought her life was in danger. His mother convinced his father that she needed to visit her own mother in Canada. Although she eventually had to return to Romania, she divorced his father. Later, she remarried. Her new husband sponsored her to come to Canada. She and the applicant's brother arrived in 2012. His mother and brother are permanent residents of Canada.

[11] The applicant also escaped from his father, as soon as he could, when he was 17. His father was hospitalized after a motorcycle accident, enabling the applicant to run away. The applicant has not seen or had contact with his father in more than a decade.

## II. <u>The H&C Decision under Review</u>

[12] The officer's reasons considered the H&C application under three headings: history; establishment; and country conditions.

[13] With respect to establishment in Canada, the officer considered the applicant’s three-year employment history as a chef at the restaurant owned by a family member. The officer assigned it some weight. The officer found little evidence of any past or ongoing volunteering or community involvement in Canada.

[14] Next, the officer found insufficient evidence that the applicant could not obtain employment outside of Canada. The applicant was employed as a cook for three years in Romania before his experience in Canada, and there was nothing that convinced the officer that the applicant could not meet his daily expenditures in Romania upon return.

[15] The officer noted the applicant’s previous application for permanent residence, but stated that he could not have expected to be guaranteed permanent residence when he entered Canada on a temporary status.

[16] The officer acknowledged that the applicant had forged friendships in Canada. The officer stated that he read the letters of support filed by the applicant, but found little evidence of a degree of interdependency and reliance to the point of a negative impact on the applicant or on his friends if he left. He would be able to maintain friendships from a distance.

[17] The officer assessed the applicant’s family ties, including his mother and brother who are permanent residents of Canada. The officer noted their letters of support and those of other family members including his stepfather. The officer noted that his family was willing to support him and wish for him to remain, but noted that “separation is to be expected when one[’s] family

members choose to become residence in another country.” The officer acknowledged that the applicant has strong family ties to Canada and would likely miss his family, but found that relationships are not bound by geographical locations. While the hardship of being physically separated from those in Canada would cause the applicant some difficulties, the officer found insufficient information that the applicant could not maintain those relationships by alternative means. His family in Canada could also visit him overseas.

[18] With respect to country conditions, the officer recognized the applicant’s position that ethnic Hungarians are faced with many problems in Romania, including discrimination in the use of the Hungarian language. The officer considered a human rights report, laws in Romania addressing the use of the Hungarian language, as well as the representation of ethnic Hungarians in Romanian politics. The officer recognized that the applicant’s native language is Romanian, that he was employed in Romania as a cook for three years prior to his entry in Canada, and had obtained a diploma from a college in Romania to become a chef. The officer found insufficient objective evidence that the applicant had faced past discrimination as a result of his Hungarian ethnicity or hardship in education or employment due to language discrimination. Overall, the officer gave little weight to the applicant’s statements about hardship based on his Hungarian ethnicity.

[19] The officer considered the applicant’s evidence that his father was abusive towards the family and that he had grown up with a difficult relationship with his father. The officer recognized the applicant’s statement that as children, he and his brother were physically assaulted by his father and that although they contacted the police, nothing was done. However,

the officer found insufficient objective evidence about that abuse or the injuries sustained by the applicant.

[20] The officer noted that the applicant had run away from his father at age 17, had not seen him since that time and was 28 years old at the time of the decision. The officer found insufficient evidence that the applicant had been in contact with his father or that his father had a vested interest in harming him. The officer found that Romania has a functioning security apparatus and that if necessary, the applicant could go to the authorities. Accordingly, the officer assigned little weight to the applicant's risk statements pertaining to his father in demonstrating a forward-looking hardship.

[21] The officer's reasons concluded with a statement that the officer had made a global assessment of all the factors raised by the applicant and found that collectively, the factors were not sufficient to warrant an exemption on H&C grounds.

## III. Standard of Review

[22] The standard of review of the officer's H&C decision is reasonableness: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909, at para 44; *Subramaniam v Canada (Citizenship and Immigration)*, 2020 FCA 202, at paras 17-18. The reasonableness standard was described in *Vavilov*. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15. The starting point is the reasons of the decision maker, which must be read holistically and contextually with the record that was before the decision

maker: *Vavilov*, at paras 84, 91-96, 97, and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at paras 28-33.

[23] A reasonable decision is one that is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 99, 101, 105-106 and 194.

## IV. Analysis

[24] In this Court, the applicant submitted that the officer conducted an unreasonable H&C assessment under IRPA subsection 25(1) because the officer:

a) failed to adopt an empathetic approach to the H&C application and failed to consider it globally as required by *Kanthasamy*;

b) erred in law in the assessment of establishment, by assessing what the applicant could do in Romania rather than his establishment in Canada (citing *Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 and *Sebbe v Canada (Citizenship and Immigration)*, 2012 FC 813); and

c) erred in law when assessing the hardship he would experience in Romania, by conducting a risk assessment.

[25] I will address the applicant's submissions in turn.

A. ***Did the Officer Fail to Apply the Legal Principles Established in Kanthasamy?***

[26] The applicant argued that the officer fundamentally misunderstood his H&C application and did not follow the requirements established by the Supreme Court in *Kanthasamy*. He submitted that the officer failed to adopt an empathetic approach to his application, and conducted a segmented rather than a global assessment of the H&C factors raised.

[27] Citing *Paul v Canada*, 2013 FC 1081 and *Vavilov*, at paragraphs 99-100, the applicant submitted that the officer missed the central point of his H&C application. He argued that the decision exhibited a profound misunderstanding of the heart of his grounds for H&C relief. The applicant seeks to start a new life in Canada with his family, away from the places where he had traumatic experiences growing up. All members of the applicant's family (apart from his abusive father) are in Canada. His uncle and grandmother moved here 20 years ago and his mother and brother about 10 years ago, to flee from the father's abuse. No one remains in Romania. The applicant needs to be away from Romania and in Canada with his family.

[28] The applicant also noted that one goal of the IRPA is family reunification. The applicant submitted that the officer conducted a segmented assessment of the H&C factors and failed in substance to conduct a global assessment that considered the equitable purpose of the H&C provision, contrary to *Kanthasamy* (at paras 21, 31-33 and 45).

[29] The respondent's position was that the applicant was asking the Court to reweigh the evidence that was lawfully assessed by the officer. According to the respondent, the officer understood the crux of the application and provided reasons in line with the relevant evidence in

the record. The respondent also supported the officer's view that the evidence was insufficient in certain areas.

[30] I agree substantially with the respondent's position. From my review of the record and the officer's reasons, I do not believe the officer failed to apply empathy, or exhibited a "profound misunderstanding of the evidence in reaching the decision under review" as Justice Campbell concluded had occurred in *Paul* (at para 9).

[31] The applicant's H&C submissions raised his "family links" in a separate section and stated that they were the "main reason" for his request to be allowed to stay in Canada. The officer's reasons did not address that issue in a separate or distinct section, but adequately addressed the applicant's overall position in substance. In a paragraph under the heading of "Establishment", the officer expressly addressed the applicant's family ties in Canada, with reference to the supporting statements, his family's agreement to support him financially and their wish that he stay in Canada. Later, when considering country conditions, the officer assessed the applicant's evidence about his relationship with his father and his evidence of physical abuse.

[32] The applicant argued that the officer did not appreciate that the family came to Canada to escape the father's abuse. Relatedly, the applicant criticized the officer's observation that that family separation is to be expected when family members "choose" to become residents of another country. He argued that the evidence and the H&C submissions expressly stated the

contrary – in the words of his H&C submissions, that "[t]he family separation was due to the fact that the Mother had to move to Canada to escape the abuse by the applicant's father."

[33] Given the evidence in the record, I am not persuaded that the officer did not appreciate the applicant's and his mother's circumstances. The officer referred briefly to the applicant's evidence about the abuse from his father. The officer recognized the applicant's submission that his father was abusive and that, as children, he and his brother were physically assaulted by their father. The officer found "insufficient objective evidence" about the applicant's past experiences with his father and the injuries he suffered. The applicant did not challenge this finding on the basis of the H&C record (he focused on his and his family's reunification in Canada, as already discussed, not the existence or extent of the abuse and associated trauma).

[34] The applicant's mother did not provide any information in the H&C application about her departure from Romania and move to Canada, nor any details about the abuse and trauma of her former life in Romania. The applicant's evidence was that his mother initially fled to Canada to escape her father after telling him she had to visit the applicant's grandmother. But it was also that his mother returned to Romania, "eventually" divorced his father and was sponsored by her new husband to come to Canada.

[35] The applicant has therefore not demonstrated a reviewable error in the officer's consideration of the applicant's position and the evidence in the record.

[36] Lastly, the applicant argued that the officer considered each factor in the decision separately, contrary to the guidance against such a segmented approach in *Kanthasamy*. The officer's reasons expressly referred to making a "global assessment of all the factors raised by the applicant" and stated that "collectively", those factors were insufficient to warrant an exemption on H&C grounds. The applicant's submissions did not persuade me that the officer did not do what the reasons expressly stated.

B. ***Did the Officer Make a Reviewable Error in Assessing Establishment in Canada?***

[37] The applicant submitted that the officer erred in law in the assessment of establishment by considering what the applicant could do in Romania rather than his establishment in Canada, contrary to the Court's decisions in *Lauture and Sebbe*. The applicant relied on the following paragraph in Justice Diner's reasons in *Alghanem v Canada (Citizenship and Immigration)*, 2021 FC 113:

> [39] Turning positive establishment factors on their head, and using them against an applicant as a sword rather than a shield, has been held to be unreasonable (*Singh v Canada (Citizenship and Immigration)*, 2019 FC 1633 at para 23). Put otherwise, to hold one's resourcefulness against them has been repeatedly admonished by this Court, since that ultimately means that the more successful, enterprising, and civic minded an applicant is in Canada, the less likely a s 25 application will succeed (*Singh v Canada (Citizenship and Immigration)*, 2019 FC 1142 at para 37).

[38] The Court has frequently considered the application of these principles. An applicant's specific circumstances and the reasoning used by the officer are both important to the Court's review. See recently: *Del Chiaro Pereira v Canada (Citizenship and Immigration)*, 2022 FC 799, at paras 43-46; *Alves v Canada (Citizenship and Immigration)*, 2022 FC 672, at para 21;

*Rozgonyi v Canada (Citizenship and Immigration)*, 2022 FC 349, at para 28; *Liu v Canada (Citizenship and Immigration)*, 2022 FC 223, at paras 39-41; *Peshlikoski v Canada (Citizenship and Immigration)*, 2022 FC 154, at paras 28-36; *Buitrago Rey v Canada (Citizenship and Immigration)*, 2021 FC 852, at para 103; *Rong v Canada (Citizenship and Immigration)*, 2021 FC 690, at para 33.

[39] In this case, the officer assigned "some positive weight" overall to establishment in Canada. The officer specifically considered the applicant's three years of employment in Canada and assigned it "some weight". The officer found little evidence of any past or ongoing volunteering or community involvement in Canada. The officer found insufficient evidence that the applicant could not obtain employment outside of Canada. The officer also considered the applicant's friendships with residents of Canada (including their letters of support) and the applicant's ties to family in Canada.

[40] In my view, the reasoning in Lauture is not directly applicable to this case. In Lauture, the officer found that the applicant's engagement in society was "remarkable" and that the applicant's relations with the community were significant, but also found that such community involvement may also occur in Haiti. Rennie J. stated that "[u]nder the analysis adopted, the more successful, enterprising and civic minded an applicant is while in Canada, the less likely it is that an application under section 25 will succeed": *Lauture*, at para 26. By contrast, in the present case, the officer made no finding that the applicant's establishment in Canada was remarkable and did not use his ability to adapt against him in assessing establishment: *Buitrago Rey*, at para 103. In addition, unlike *Lauture*, the officer in this case did consider the applicant's

establishment in Canada and specifically the (absence of) evidence of community involvement or volunteer work: see *Lauture*, at para 23; *Peshlikoski*, at para 31. The officer's analysis overall did not dismiss establishment as an H&C factor on the basis of the applicant's ability to re-establish overseas: see *Buitrago Rey*, at para 103; *Rong*, at para 33. In short, the Court's quoted comments in *Lauture* carry much less weight on the present facts.

[41] It is true that under the heading "Establishment", the officer's reasons seem to have considered possible hardship the applicant may experience after leaving Canada. The officer assessed the applicant's prior three years of Romanian work experience and his additional time working in Canada in a comparable position, with respect to his ability to obtain employment outside Canada. The officer found that he would be able to meet his "daily expenditures".

[42] While it may be preferable to keep the analyses of establishment in Canada and hardship separate, the Court has held that it is not inherently unreasonable for *Vavilov* purposes to address them in the same part of the decision: *Del Chiaro Pereira*, at para 48; *Brambilla v Canada (Citizenship and Immigration)*, 2018 FC 1137, at para 12. The Court has also held that it is permissible for an officer to consider that some skills acquired in Canada could reduce the hardship of a return to a country of origin, so long as establishment is itself properly considered and is not filtered through the lens of hardship: *Del Chiaro Pereira*, at paras 44-46, quoting *Zhou v Canada (Citizenship and Immigration)*, 2019 FC 163, at para 17; *Davis v Canada (Citizenship and Immigration)*, 2022 FC 238, at para 40; *Gutierrez v Canada (Citizenship and Immigration)*, 2021 FC 1111, at para 31; *Pretashi v Canada (Citizenship and Immigration)*, 2021 FC 817, at para 57. Thus, consistent with the cases already cited, the Court has held that H&C reasoning

should not intermingle the two factors of establishment and hardship in a manner either that gives positive weight to establishment but then "uses the positive establishment attributes (resiliency, drive and determination), to attenuate future hardship", or that renders the establishment factor meaningless by amalgamating the two analyses into one: *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1633, at paras 26-27; *Marshall v. Canada (Citizenship and Immigration)*, 2017 FC 72, at para 35.

[43] The question is whether the officer's assessment of establishment in Canada in this case contained a sufficiently central or fundamental reasoning error to render the H&C decision unreasonable: *Vavilov*, at paras 99-100. In my view, it did not. The officer clearly found that the applicant's employment in Canada carried some weight in the establishment assessment, and also considered other relevant establishment factors including volunteering and community involvement, the strength of friendships in Canada and family ties in Canada. The officer's overall conclusion gave establishment in Canada some positive weight. In these circumstances, the officer's comments about the applicant's employment prospects outside Canada, even if ill-placed in the reasons, did not turn evidence of his resourcefulness, resiliency, drive or determination in Canada against him. Nor can I conclude that the officer's assessment filtered establishment through a lens of hardship or rendered establishment into a meaningless factor in the H&C analysis.

[44] The applicant has therefore not demonstrated that the officer made a reviewable error in the assessment of establishment as alleged.

### C. *Did the Officer Make a Reviewable Error in Assessing Hardship and Adverse Country Conditions?*

[45] The applicant submitted that the officer erred in law by failing to apply the correct legal standard to hardship as required by *Kanthasamy*. According to the applicant, the officer assessed the discrimination the applicant will face in Romania under the legal standard applicable to section 96 and subsection 97(1) of the IRPA, rather than considering the hardships that would affect the applicant as required by IRPA subsections 25(1) and 25(1.3). The applicant argued that evidence of personal targeting is not necessary. The respondent submitted that the issue is sufficiency of evidence to support the factors that the applicant listed for assessment.

[46] I agree with the applicant that *Kanthasamy* does not require evidence of personal targeting and that hardship may be supported with evidence of discrimination experienced by others who share identity or appropriate characteristics with the applicant: *Kanthasamy*, at paras 55-56.

[47] However, the officer did not make the substantive legal error alleged by the applicant. The officer's substantive analysis of country conditions concerned possible hardship to the applicant on a return to Romania arising from discrimination owing to his Hungarian ethnicity and language. The officer acknowledged the human rights report and considered it in conjunction with additional evidence relating to possible hardship to the applicant, such as the laws in Romania addressing the use of the Hungarian language, the representation of ethnic Hungarians in Romanian politics and the applicant's prior education and employment experience. The officer

concluded by assigning little weight to the applicant's statements pertaining to hardship based on his ethnicity.

[48] The officer also assessed the likelihood that the applicant could be harmed by his father if he returned to Romania. No reviewable error arose from the officer's use of the phrase "the applicant's risk statement" in the conclusion on that issue.

## V. Conclusion

[49] The application is therefore dismissed. Neither party proposed a question to certify for appeal.

**JUDGMENT in IMM-5188-20**

**THIS COURT'S JUDGMENT is that**:

1. The application is dismissed.

1. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act.*

"Andrew D. Little"

Judge

## SOLICITORS OF RECORD

## FEDERAL COURT

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| **DOCKET:** | IMM-5188-20 |
| **STYLE OF CAUSE:** | RICHARD JOO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | FEBRUARY 22, 2022 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | A.D. LITTLE J. |
| **DATED:** | AUGUST 26, 2022 |

**APPEARANCES:**

| | |
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| Meva Motwani | FOR THE RESPONDENT |

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