Federal Court  Cour fédérale

Date: 20221020

Docket: IMM-5513-21

Citation: 2022 FC 1431

Ottawa, Ontario, October 20, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

DON PARFAIT ISHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

I. Overview

[1] The applicant, Mr. Don Parfait Ishi, a 29-year-old citizen of Burundi and Rwanda, seeks judicial review of a senior immigration officer's [Officer] decision, dated June 29, 2021 [Decision], denying his application for permanent residence on humanitarian and compassionate [H&C] grounds. Mr. Ishi was seeking an exemption from the requirement of applying for permanent residence from outside of Canada after his refugee claim was rejected by the Refugee

Protection Division [RPD] on August 6, 2017. The Officer found that there were insufficient H&C grounds to warrant such an exemption under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] Mr. Ishi submits that the Officer unreasonably assessed the availability of medical treatment in Burundi and Rwanda and ignored the effect that his removal from Canada would have on his mental health. For the reasons that follow, I agree with Mr. Ishi's assertions and grant his application for judicial review.

II. Background

[3] Mr. Ishi was born in Bujumbura, Burundi. Although he is a citizen of both Burundi and Rwanda, Mr. Ishi has never lived in Rwanda, having only acquired Rwandan citizenship through his mother, who had acquired it from her parents. In September 2014, Mr. Ishi and his family started receiving threats from pro-government militias in Burundi, after which Mr. Ishi was abducted and detained for three days in prison, where he was abused and assaulted. Mr. Ishi's mental health deteriorated significantly after this incident.

[4] On April 30, 2015, Mr. Ishi arrived in Canada with two of his siblings. That same year, he was diagnosed with schizophrenia, major depression, and anxiety disorder with elements of panic disorder. In March 2016, his mother and two other siblings joined the rest of the family in Canada, and on May 13, 2016, the whole family filed their claims for refugee protection.

[5] On October 24, 2017, the RPD found that Mr. Ishi's mother faced danger in Rwanda and allowed her claim for refugee protection. The applications for permanent residence of her minor children were granted as they were all included in the mother's application for permanent residence as dependent children. However, Mr. Ishi was 22 years old at the time of the refugee claim and was not financially dependent on his parents as he was receiving social assistance from the Ontario Disability Support Program and lived in subsidized housing. Following the rejection of his refugee claim, Mr. Ishi filed an H&C application, which was also rejected; it is this decision which is the subject matter of the present application for judicial review.

III. Issues and Standard of Review

[6] The sole issue raised in this application for judicial review is whether the Officer's refusal to grant permanent residence on H&C grounds was reasonable. In addition, the parties agree that the applicable standard of review for the merits of an H&C decision is the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44 [*Kanthasamy*]). 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", and the 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 paras 85, 100).

IV. Analysis

[7] Mr. Ishi asserts that the Officer, when assessing the availability of treatment in Burundi and Rwanda, failed to consider relevant evidence that spoke to the unavailability of his current medication in both countries. I note that the Officer took into account that a deferral of removals to Burundi, implemented in December 2015, was still in effect at the time of the Decision. Focusing his or her analysis on a possible removal to Rwanda, the Officer made the following findings:

> [TRANSLATION]
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> As evidence, the applicant submitted a letter and an update (dated April 12, 2018, and May 7, 2018, respectively) written by Dr. Maurice Siu, psychiatrist. The medical note that was presented to me indicates that the applicant was referred to Dr. Siu, whom he is seeing regularly for treatment, in December 2015. In his letter, the psychiatrist describes the applicant's health as follows: "Mr. Ishi has primary diagnosis of Schizophrenia and a secondary diagnosis of Major Depression, and Anxiety NOS (Not Otherwise Specified) with features of panic disorder" [in English in original]. The medical note also states that the combination of the medical treatment (prescribed by Dr. Siu), the family support available to the applicant in Canada, the role played by his case manager (Ms. Kelly Goodwin) as well as the activities in which he (namely, the applicant) participates at Progress Place has contributed to stabilizing his health condition. Dr. Siu then goes on to state that if the applicant were removed, he would probably not have access to the medications that he is currently prescribed—which would trigger a relapse.
>
> I accept that the applicant was diagnosed (in Canada) with schizophrenia, major depression, and anxiety disorder with features of panic disorder and that he has been receiving treatment since 2015. Although I have given some consideration to the fact that the applicant is receiving adequate treatment in Canada, I note that no probative evidence was presented to me to confirm that this treatment can only be continued in Canada. Furthermore, no evidence was submitted to me confirming that, aside from Clonazepam, the applicant would be unable to access the other medications that were prescribed to him.

[Emphasis added.]

[8] I note that in addition to the elements identified by the Officer, Dr. Siu's letter of April 12, 2018, detailed Mr. Ishi's various medications, namely Sustenna 150 mg via intramuscular injection every four weeks, Effexor 150 mg once daily, Clonazepam 0.5 mg once daily, Congentin 2 mg once daily and Trazodone 50 mg at bedtime. The letter also listed a number of hyperlinks from the World Health Organization website, which provided the most recent essential available medication lists for Burundi and Rwanda. On the basis of a review of this information, it was Dr. Siu's and Ms. Goodwin's understanding – both having filed letters in support of Mr. Ishi's H&C application – that Mr. Ishi would not have access to his current psychiatric medications, aside from Clonazepam, in either of these countries. They noted that Clonazepam is a very small part of Mr. Ishi's pharmaceutical treatment and that a lack of access to his other prescribed psychiatric medications would imminently cause a relapse of his psychiatric condition.

[9] Moreover, Mr. Ishi provided a letter dated May 4, 2018, and signed by Ms. Lauren C. Ng, assistant professor and clinical psychologist at the Boston University School of Medicine. On the issue of the availability of Mr. Ishi's medications in Rwanda, the letter stated the following:

> However, mental health services provided by psychiatrists and most antipsychotic medications are only available at the tertiary level (i.e., Ndera Neuro-Psychiatric Hospital, the hospital main branch, Psychotherapeutic Centre Icyizere, and CARAES Butare), and mental health units housed in University teaching hospitals Kigali and Butare located in the Southern Province of Rwanda. Mental health care accessibility is partially hindered by a limited number of psychiatrists for the whole country, that is 3 in each of the three referral settings. Other limitations are based on resources

> allocated to mental health care and the fact that all medications are imported from western countries.
>
> The preceding limitations make it difficult to find all types of medications, even at the referral level. An emphasis is put on using psychotropic drugs that are on the list of essential medications. When a patient is prescribed a medication that is not on the list, neither the Rwandan community based health insurance nor the public servant's or private insurance schemes will pay for it. This may worsen mental health outcomes for patients returning to Rwanda, whose treatment was initiated in highly resourced countries with psychotropic medications not available locally.
>
> This may be relevant for this particular patient, since some of the prescribed medications, (i.e. sustenna 150 mg (intramuscular injection/4weeks), Effexor 150 mg, clonazepam 0.5 mg, and congentin) are not yet available in Rwanda.
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> [Emphasis added.]

[10] In my view, the Officer's finding that Mr. Ishi had provided no probative evidence to confirm that he could not continue his treatment outside of Canada, and no evidence at all that aside from Clonazepam, he would not have access to his medications, was made without regard to the evidence on file that directly contradicted such a conclusion. Indeed, there is no indication in the Decision that the Officer reviewed the hyperlinks listed in the April 12, 2018, letter so as to conduct his or her own assessment of the availability of Mr. Ishi's medications based on the information provided. Likewise, the Decision is silent as regards the May 4, 2018, letter. It seems to me that the Officer had an obligation to address that evidence, which contradicted his or her conclusions that Mr. Ishi would be able to access his necessary treatment and medication in Rwanda (*Guzman v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 401 at paras 23-24). It would certainly have been open to the Officer not to accept the evidence pointing to the lack of necessary treatment and medication, or to raise questions of sufficiency with respect to the issue of whether Mr. Ishi had established that he would not reasonably be able to

obtain the required treatment and his medication in the event that he was returned to Rwanda; however, the Officer indicated that the evidence and the letters of Dr. Siu, Ms. Goodwin and Dr. Ng lacked probative value That makes little sense to me. Clearly, the evidence regarding available treatments and the lack of necessary medication was extremely probative; it may have failed in relation to its sufficiency or for other reasons, but I cannot see how it can be discounted for lack of probative value.

[11] Mr. Ishi also asserts that the Officer focused solely on the availability of treatment in Rwanda and ignored the effect that his removal from Canada would have on his mental health. In his H&C submissions, Mr. Ishi alleged that he has never lived in Rwanda, that all the members of his family are in Canada, that their support is crucial to his well-being and that his mental health will deteriorate if he is removed to Rwanda. On that matter, the Officer made the following findings:

> [TRANSLATION]
>
> On the basis of the objective documentation that was consulted, it is clear that Rwanda is a leader in health coverage in Africa. I also gave some consideration to the fact that the applicant would face a certain amount of hardship if he were removed to Rwanda because he would have no family ties in that country. However, I note that neither the applicant nor his counsel provided probative evidence showing that the applicant would be unable to either access medical care if he were removed or receive necessary medical assistance as required.

[12] At paragraph 48 of *Kanthasamy*, Justice Abella found that the very fact that Mr. Kanthasamy's mental health would likely worsen if he were to be removed to Sri Lanka was a relevant consideration that had to be identified and weighed regardless of whether there was treatment available in Sri Lanka to help treat his condition. Justice Abella also warned against

the use of an unduly narrow approach to the assessment of the circumstances raised in an H&C application (*Kanthasamy* at para 45).

[13] In the present case, there is no indication that the Officer considered Mr. Ishi's circumstances as a whole to come to a fair assessment of the impact of the removal itself on his mental health. The Officer unreasonably narrowed his or her assessment of Mr. Ishi's mental health issues to the availability of treatment in Rwanda, a country where Mr. Ishi has never lived, has no family support, and whose medical system he has never navigated. The Officer had an obligation to assess how Mr. Ishi's particular circumstances would affect his ability to seek out and obtain appropriate treatment in the event of his removal, and decide if his mental health condition would likely deteriorate or not as a result (*Guerrero Garcia v Canada (Citizenship and Immigration)*, 2021 FC 1052 at para 26). This omission by the Officer was all the more unreasonable considering Mr. Ishi's unstable condition and the nature of his diagnosis. Indeed, if Mr. Ishi's symptoms of schizophrenia, depression, anxiety and panic disorder – which he has suffered from for years – were to resurface upon his return to Rwanda, it is hard to imagine how this would not directly and significantly decrease his ability to further secure appropriate treatment.

[14] Similar to the situation in *Jaramillo Zaragoza v Canada (Citizenship and Immigration)*, 2020 FC 879, the Officer's assessment of hardship was confined to a focus on the availability of mental health services in Rwanda, and even putting aside for the moment the reviewable error in that assessment, such a narrow focus exemplifies a lack of attention to the compassionate factors present in this case and ultimately fails to assess whether Mr. Ishi's circumstances would "excite

in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (*Kanthasamy* at para 21, citing *Chirwa v Canada (Minister of Citizenship and Immigration)*, [1970] IABD No 1 (QL) at para 27). Therefore, I am satisfied that the Decision is unreasonable as there are sufficiently serious shortcomings in the Decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Consequently, this application for judicial review will be allowed.

V. Conclusion

[15] I grant the application for judicial review, and the matter is returned to a different immigration officer for reconsideration.

ORDER in IMM-5513-21

THIS COURT ORDERS that:

1. The application for judicial review is granted, the decision dated June 29, 2021 of the senior immigration officer is set aside, and the matter is returned to a different immigration officer for reconsideration.

2. There is no question for certification.

"Peter G. Pamel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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