

Federal Court



Cour fédérale

Date: 20221122

Docket: IMM-4722-21

Citation: 2022 FC 1557

Ottawa, Ontario, November 22, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MOHAMED HUSAIN AHMED SASI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Sasi asks the Court to set aside the June 25, 2021 decision of a Senior Immigration Officer refusing his request to apply for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds.

[2] The requested relief will be granted. The Officer failed to apply the proper test in the H&C analysis and, among other deficiencies, failed to consider that the consequence of refusing

the application is that Mr. Sasi would have to put his life or person at risk to return to Libya for several months or years to apply for permanent resident status in Canada. The decision under review is not reasonable.

Background

[3] Mr. Sasi is a 35-year old citizen of Libya. On August 5, 2014, he says that he was attacked by a militia he identifies as being from the Zantan tribe on his way home from his sister's house. He was beaten, kidnapped, and tortured because he was part of another tribe known as the Kakla Tribe. After being held for a week, he was able to escape. He did not go to the police, as he feared they had connections to the militia.

[4] Mr. Sasi and his family then fled to his grandfather's house at Al-Qarah Bolli District because they were afraid that he would be found by the militia. A few days after they left, the persecutors allegedly broke into their house and destroyed the family's belongings.

[5] At the end of 2014, Mr. Sasi started to express his personal opinion and opposition on social media to the Zantan and Misrata Militias, who by then had taken control of Tripoli. He then started receiving threats for sharing his opinion publically.

[6] In July 2015, he says that the Misrata Militia showed up at his house asking for him. When they could not find him, they kidnapped his brother who was detained and tortured for about a month until he escaped. Mr. Sasi later learned that his brother had fled the country and had made a refugee claim in Germany.

[7] The Applicant left Libya in November 2016 and entered the United States. He claimed asylum there, but voluntarily abandoned the claim and entered Canada in July 2019. On July 6, 2019, he was deemed ineligible to claim refugee protection in Canada under the Safe Third Country Agreement. He then submitted an H&C application in April 2020.

[8] The H&C application focused on his establishment in Canada and the adverse country conditions in Libya. As there is no issue on the establishment analysis, it will not be reviewed.

[9] With respect to the adverse country conditions in Libya, the Officer considered the civil war, the fact that the Sasi house was destroyed, and the fact that his family lives in precarious conditions. However, the Officer also noted that reasonably expected corroborating evidence was missing to establish a link between the country's general conditions and the Applicant's personal circumstances. Among other findings, the Officer noted that the Applicant's testimony was not enough on its own to demonstrate that his allegations were well founded because they were uncorroborated by probative evidence. The Applicant therefore failed to establish that an exemption was warranted.

Issue

[10] The sole issue is whether the Officer's decision was reasonable within the meaning given to that term by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

Analysis

[11] The H&C exemption provided for in subsection 25(1) of the *Immigration and Refugee Protection Act*, SC, 2001, c 27, is an exceptional discretionary remedy.

[12] In *Kanthisamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthisamy*], the Supreme Court of Canada explains the meaning of H&C considerations and the approach to take in assessing such applications. The court wrote several times that the purpose of subsection 25(1) is to offer equitable relief when the situation would excite in a reasonable person in a civilized community a desire to relieve the misfortunes of others. The court further wrote at para 25 that “what *does* warrant relief will clearly vary depending on the facts and context of the case, but officers making humanitarian and compassionate determinations must substantively consider and weigh *all* the relevant facts and factors before them” [emphasis in original].

[13] In the decision under review, the Officer improperly focuses on the particular circumstances of Mr. Sasi, as follows:

Of course, in an application based on humanitarian and compassionate considerations, it is not necessary to demonstrate that the circumstances awaiting the applicant in Libya differ from those which the entire Libyan population is exposed to. However, it is expected that applicants are to “show a link between the evidence of hardship and their individual situations. It is not enough just to point to hardship without establishing that link.” In addition, I reiterate that the onus is on the applicant to demonstrate, on the basis of probative evidence, how the conditions in this country would have a direct negative impact on him. However, in this case, I find that the evidence filed is inconclusive and insufficient for me to make this link. [emphasis added]

On this point, Justice Shore establishes in *Lalane*:

[38] The allegation of risks made in an H&C application must relate to a particular risk that is personal to the applicant. The applicant has the burden of establishing a link between that evidence and his personal situation. Otherwise, every H&C application made by a national of a country with problems would have to be assessed positively, regardless of the individual's personal situation, and this is not the aim and objective of an H&C application. That conclusion would be an error in the exercise of the discretion provided for in section 25 of the IRPA which is delegated to, *inter alia*, the PRRA officer by the Minister ...

[14] In this passage the Officer references and relies on the following decisions: *Kanthisamy v Canada (Citizenship and Immigration)*, 2014 FCA 113, at paragraph 48; *Paramanayagam v Canada (Citizenship and Immigration)*, 2015 FC 1417; and *Lalane v Canada (Citizenship and Immigration)*, 2009 FC 6. The first was overruled by the Supreme Court of Canada, the second issued only a few days after *Kanthisamy*, and the last issued years before *Kanthisamy*.

[15] While I accept that one must consider an applicant's personal circumstances to see if the country's general conditions impact that applicant, this does not mean that the relief is not available unless an applicant can "show a link between the evidence of hardship and their individual situations" as this Officer held.

[16] The Supreme Court of Canada in *Kanthisamy* at paras 54 and 56 makes it clear that proof of personal risk is not a requirement to finding under subsection 25(1) of the Act that an exemption on humanitarian and compassionate grounds is warranted:

Here, however, the Officer required Jeyakannan Kanthisamy to present direct evidence that he would face such a risk of discrimination if deported. This not only undermines the

humanitarian purpose of s. 25(1), it reflects an anemic view of discrimination that this Court largely eschewed decades ago: *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, at pp. 173-74; *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3; *Quebec (Attorney General) v. A*, [2013] 1 S.C.R. 61, at paras. 318-19 and 321-38.

...

As these passages suggest, applicants need only show that they would likely be affected by adverse conditions such as discrimination. Evidence of discrimination experienced by others who share the applicant's identity is therefore clearly relevant under s. 25(1), whether or not the applicant has evidence of being personally targeted, and reasonable inferences can be drawn from those experiences. Rennie J. persuasively explained the reasons for permitting reasonable inferences in such circumstances in *Aboubacar v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 714:

While claims for humanitarian and compassionate relief under section 25 must be supported by evidence, there are circumstances where the conditions in the country of origin are such that they support a reasoned inference as to the challenges a particular applicant would face on return This is not speculation, rather it is a reasoned inference, of a non-speculative nature, as to the hardship an individual would face, and thus provides an evidentiary foundation for a meaningful, individualized analysis [para. 12 (CanLII)] [emphasis added].

[17] Contrast two situations. The first is an applicant whose family is aligned with those causing the disruption in the country. Such an applicant cannot rely on the general country conditions to obtain H&C relief because the particular circumstances of that applicant do not excite in a reasonable person in a civilized community a desire to relieve their misfortunes. That applicant does not require an exemption from the requirement of an out of Canada application.

While the applicant may wish to remain in Canada while making the application, there is no obvious misfortune befalling that applicant in having to do so from outside Canada.

[18] The second, as is the case here, is an applicant who has no particular personal circumstance that distinguishes him from the others in the country who are subject to the same specific adverse conditions. That applicant need not establish “evidence of hardship” that is particular to “their individual circumstances” if that hardship can be implied from the general country conditions. Such an applicant can rely on the generalized evidence of adverse country conditions to obtain H&C relief.

[19] There is nothing in the case before the Court setting Mr. Sasi apart from others in Libya. His situation, if returned to Libya, can be inferred from that of the others there.

[20] The Officer found that “the situation [in Libya] is far from ideal.” The documentary evidence points to far worse conditions. The following are two examples:

- “[A] person returning to Libya is likely, solely because of their presence in the country, to face a real risk of being subject to a threat to their life or person.” [The UK Home Office Report on Libya, September 2020]
- “Significant human rights issues included arbitrary and unlawful killings, including of politicians and members of civil society, by armed groups including some aligned with the GNA and the LNA, criminal gangs, and ISIS-Libya; forced disappearances; torture perpetrated by armed groups on all sides; arbitrary arrest and detention; harsh and life-threatening conditions in prison and detention facilities, some of which were

outside government control; political prisoners held by nonstate actors; unlawful interference with privacy, often by nonstate actors ...” [The US Department of State Report on Libya for 2019]

[21] In my view an officer when making H&C decisions on applications for permanent residency ought also to consider the impact that requiring an applicant to return to his home country to make the residency application means for that applicant. In most, if not all cases, this means that the applicant will be there for years, not days, before the application can be processed and determined by the Canadian officials. In this case, the consequences to Mr. Sasi in having to return to Libya for years, given current country conditions, cannot be ignored.

[22] In this case, the Officer had to ask whether a reasonable person in a civilized society would have a desire to relieve Mr. Sasi from being put at risk of death or injury (for a significant period of time) in returning to Libya to make an application for permanent residency in the usual manner.

Conclusion

[23] For these reasons, the application is allowed. No question was proposed for certification.

JUDGMENT in IMM-4722-21

THIS COURT'S JUDGMENT is that this application is allowed, the application for an exemption from the requirement to apply from outside Canada for permanent residency on humanitarian and compassionate grounds is remitted to a different officer, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4722-21

STYLE OF CAUSE: MOHAMED HUSAIN AHMED SASI v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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