Federal Court  Cour fédérale

Date: 20221219

Docket: IMM-6981-21

Citation: 2022 FC 1762

Ottawa, Ontario, December 19, 2022

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

Attila Gabor KOOS, Eva KOOSNE RIMAN, Petra Jusztina KOOS, Anna KOOS, and Tamas JURKOVICS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family. They are Hungarian citizens of Roma ethnicity. They sought refugee protection after arriving in Canada in 2011 because of the persecution of Roma in Hungary. Their claims were refused after seven years.

[2] The Applicants sought judicial review of that refusal but the Federal Court dismissed their application for leave. Following an unsuccessful motion for a stay of their removal from Canada, the Applicants returned to Hungary in February 2019.

[3] While their leave application was pending and they were still in Canada, the Applicants submitted an application for permanent residence on the basis of humanitarian and compassionate [H&C] grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. Their H&C application was refused [Decision] after they left Canada. The Applicants thus seek judicial review of the Decision. See Annex "A" below for applicable legislative provisions.

[4] The sole issue for determination is the reasonableness of the Decision, with regard to the treatment of establishment, best interests of the child [BIOC], and hardship, by the Senior Immigration Officer [Officer]. I find that none of the situations rebutting the presumptive reasonableness standard of review is present here: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 17, 25.

[5] A decision may be unreasonable, that is lacking the requisite justification, transparency and intelligibility, if the decision maker misapprehended the evidence before it or did not meaningfully account for or grapple with central or key issues and arguments raised by the parties: *Vavilov*, at paras 86, 99, 126-127. The party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Vavilov*, at para 100.

[6] For the reasons below, I am persuaded that the Applicants have met their onus. I find that the determinative issue is the unreasonableness of the BIOC analysis, which is the only issue I address. I thus grant this judicial review application.

II. Analysis

[7] Contrary to the Respondent's submissions, an extensive consideration of the BIOC factor, in itself, does not mean that the analysis was reasonable. I find that the decision in *Yang v Canada (Citizenship and Immigration)*, 2018 FC 296 [*Yang*] on which the Respondent relies is distinguishable. Unlike in *Yang*, in the H&C decision under review before me, the Officer repeatedly recognizes the widespread discrimination that Roma face in Hungary.

[8] Further, the minor applicant in *Yang* lived in China for the first seven years of his life. Here, the minor Applicant, Petra Koos, came to Canada at two years of age. In my view, there is no justification or intelligibility in equating the adaptability of a two-year old in Canada to that of a child who is 10 years of age returning to Hungary, a country in which the Officer repeatedly acknowledged there was widespread discrimination against those of Roma ethnicity, including children.

[9] The Officer points to Petra's daily exposure to Hungarian language, customs and culture before she left Hungary at age two, and to the assistance of family she likely would have upon returning to Hungary and reintegrating into society. This is tantamount in my view to discounting unreasonably the life she lived in Canada for eight years, essentially the only life she had known, free from discrimination against Roma.

[10] In addition, the Officer's reasons appear to be limited improperly to whether Petra's basic needs are met with housing and healthcare. This is not a proper BIOC analysis: *Sebbe v Canada (Citizenship and Immigration)*, 2012 FC 813 at para 16; *Manriquez v Canada (Citizenship and Immigration)*, 2022 FC 298 at para 22.

[11] Rather than explaining how, in Petra's circumstances, removal to Hungary was in her best interests, the Officer speculates, based on the education of other family members about one decade ago, that she will be able to overcome the obstacles that being Roma in Hungary will present. In other words, I find the Officer also looked at Petra's education situation in Hungary through a basic needs lens.

III. Conclusion

[12] For the above reasons, I therefore grant the Applicants' judicial review application. The Decision is set aside, with the matter to be redetermined by a different officer.

[13] Neither the Applicants nor the Respondent proposed a serious question of general importance for certification and I find that none arises in the circumstances.

JUDGMENT in IMM-6981-21

THIS COURT'S JUDGMENT is that:

1. The Applicants' judicial review application is granted.
2. The October 20, 2020 rejection of the Applicants' application for permanent residence on humanitarian and compassionate grounds is set aside, with the matter to be redetermined by a different officer.
3. There is no question for certification.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

***Immigration and Refugee Protection Act* (S.C. 2001, c. 27) Name of Act**
***Loi sur l'immigration et la protection des réfugiés* (L.C. 2001, ch. 27)**

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	**25 (1)** Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

FEDERAL COURT

SOLICITORS OF RECORD

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