Federal Court Cour fédérale

Date: 20230120

Docket: IMM-622-22

Citation: 2023 FC 84

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 20, 2023

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

ANISE CLOCY DÉRONET

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Déronet, the applicant, has been granted leave to apply for judicial review under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act]. This application is in relation to a senior immigration officer's decision not to allow her to apply for permanent residence from within Canada instead of from abroad as required under the Act. An exception to

the rule has been requested on humanitarian and compassionate grounds. For the reasons that follow, the application for judicial review must be dismissed.

[2] The respondent notes that his designation as “Minister of Immigration, Refugees and Citizenship Canada” is incorrect. He is correct. The designation should be “Minister of Citizenship and Immigration”, and this will therefore be substituted for the designation proposed by the applicant.

I. Facts

[3] The facts of this case are simple. Ms. Déronet is a citizen of Haiti born on December 22, 1974. Her husband and two children, born in 2005 and 2007, live in Haiti, as do the applicant’s father and a sister.

[4] Ms. Déronet arrived in Canada in December 2017 and was employed as a housekeeper. She was helping look after her sister’s three children in Montréal. The applicant’s work permit expired on August 25, 2019, and was not renewed. She also obtained a [TRANSLATION] “visitor record” in November 2020, which was valid only until February 9, 2021. Therefore, as noted by the administrative decision maker, the applicant has been unable to work in Canada since late August 2019 and has been without status since February 2021.

II. Decision under review

[5] During the period when the applicant was able to be a visitor in Canada, she made a request to be recognized as a permanent resident in Canada on humanitarian and compassionate grounds. The request was made under section 25 of the Act, on November 12, 2019. It was denied on January 13, 2022.

[6] The common thread throughout that decision is a lack of evidence on the factors raised to justify sufficient humanitarian and compassionate considerations for an exemption from the obligation under the Act to apply for permanent residence from outside Canada.

[7] The factors raised were as follows:

- degree of establishment in Canada;
- best interests of the children; and
- risk and adverse conditions in Haiti.

[8] The administrative decision maker, in assessing establishment in Canada, found little evidence that the applicant had become established: [TRANSLATION] “It is reasonable to believe that the applicant seems not to have achieved a very high degree of establishment in Canada during her four years in Canada” (Decision at 4/6). In fact, only two letters from friends were produced, and they said very little. The senior immigration officer noted that the applicant had two children and a husband in Haiti, as well as a sister and her father, whereas she was living in Canada with her sister: all in all, [TRANSLATION] “the applicant has much stronger family ties in her country of origin than in Canada” (Decision at 4/6).

[9] Regarding establishment, there is also a rather cursory assessment of the applicant's financial situation. It was noted that her wages for more or less three years were [TRANSLATION] "around" $19,486 per year. This, on its face, was intended to be a rather rough average. More generally, the administrative decision maker stated that he was not satisfied with the applicant's financial situation, since the evidence did not show that the applicant was financially self-sufficient. The administrative decision maker stated that [TRANSLATION] "it is unclear how the applicant is able to support herself in Canada" (Decision at 4/6). The decision maker further stated that the applicant's sister had claimed to have supported the applicant financially but had provided little information other than a letter of support and proof of employment and earnings. Ultimately, these comments lead to the conclusion that [TRANSLATION] "[t]he applicant has therefore failed to show how she handles her finances in Canada and whether she has financial assets, property in her name, etc. Consequently, I cannot give this factor a great deal of weight" (Decision at 4/6).

[10] The decision also found the applicant's claims regarding the best interests of her children to be lacking. The administrative decision maker acknowledged the existence of two children in Haiti, but no evidence was provided on them.

[11] He stated that the photographs in the file had no evidential value because there was no indication of the context or the year, or any description that might provide some context. The applicant submits that, in the absence of names on the photographs, the senior immigration officer should have compared the photographs with those in the children's passports. As I stated at the hearing, I fail to see the relevance of the criticism because the photos show that the

children exist but say nothing about the children's best interests. Regardless, there is no dispute that the applicant is the mother of two children in Haiti.

[12] The applicant alleges that she was sending money to Haiti. However, the decision notes that no evidence to that effect was presented, and there was no evidence showing how it was in the children's best interests that the applicant stay in Canada. The senior immigration officer concluded that [TRANSLATION] "there is no evidence showing how it is in the children's best interests for their mother to stay in Canada, separated from them" (Decision at 5/6).

[13] Lastly, the applicant cited the conditions in Haiti. There is no doubt that conditions in Haiti are very difficult. The problem is that [TRANSLATION] "the applicant failed to provide any evidence on the general conditions in Haiti or on conditions affecting her personally" (Decision at 6/6). Nevertheless, the senior officer gave [TRANSLATION] "some weight" to adverse conditions. The administrative decision maker concluded as follows on conditions in Haiti:

> [TRANSLATION]
>
> I realize that the applicant would have to readjust if she were to return to Haiti. However, it is reasonable to believe that her having spent most of her life in Haiti, still having close family members such as two children and her husband, which I think is quite significant, and knowing the language and culture would make it easier for the applicant to deal with the hardships she might have to face if she were to return to her home country.

[14] Overall, the decision concluded that the applicant had largely failed to meet her burden of proof as a result of insufficient evidence. None of the three factors was established at the required level as none was given significant weight.

III. Arguments and analysis

[15] The standard of review is reasonableness. The burden is therefore on the applicant to show that the decision is unreasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 at para 100 [*Vavilov*]). The hallmarks of reasonableness are justification, transparency and intelligibility, and whether the decision is justified in relation to the relevant factual and legal constraints (*Vavilov* at para 99). Therefore, any "alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision" (*Vavilov*, at para 100). The shortcoming must be serious and "sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100).

[16] In addition, the reviewing court follows the principle of judicial restraint and adopts an attitude of respect towards the administrative decision to be reviewed (*Vavilov* at paras 13, 14). To the extent that the decision is internally coherent and rational, being justified in relation to legal and factual constraints, the reviewing court owes it deference (*Vavilov* at para 85). A "line-by-line treasure hunt for error" (as reported in *Vavilov* at para 102) is not how one should go about demonstrating the unreasonableness of an administrative decision to be reviewed.

[17] The applicant merely noted what she described as a reviewable error. With respect, none of the alleged omissions or contradictions suggests that the decision was unreasonable.

[18] First, the applicant attacks a passage in the decision under review in which the senior immigration officer comments on the claim that the applicant's sister, with whom the applicant

lived and worked as a nanny while holding a work permit in Canada, stated that she was supporting the applicant financially. This passage is found in the section dealing with the applicant's establishment.

[19] The senior officer noted the sister's proof of employment and earnings, but also noted a lack of detailed information. Surprisingly, in my view, the applicant claims that this assertion is contradicted by the evidence in the file, since the document to which the senior officer refers states the commitment to lodge, feed, clothe or assist in anything her sister undertakes. She also claims to have purchased medical insurance.

[20] It is difficult to understand where the contradiction alleged by the applicant lies. But even more significantly, the alleged shortcoming does not change the issue at hand: what is the applicant's establishment in Canada if her sister has been supporting her, providing her with lodging and employment since she arrived in Canada? The fact that she is providing financial support is hardly grist for the establishment mill. As the senior immigration officer stated, the evidence does not show that the applicant is financially self-sufficient. The assertion suggests otherwise. This is the question when we look for proof of establishment in Canada: what are the roots that establish this establishment? It is difficult to understand how being dependent on someone else helps in this demonstration.

[21] Still with respect to the applicant's establishment, she attacks a sentence found in the decision where the decision maker notes that there is little documentary evidence of establishment. However, the applicant states that there are two letters from friends in the file. We

are told that the decision maker should have referred to it by name. These are allegedly [TRANSLATION] “important documents”.

[22] Again, with respect, I fail to see how these documents are important in demonstrating establishment. One letter is from a long-time friend expressing respect for the applicant from the community, [TRANSLATION] “particularly in the area of education”. Clearly, this cannot be in Canada because there is no evidence that the applicant taught in Canada. The second letter, from a person known to the applicant in Haiti, indicates that the applicant did in fact work as a teacher in Haiti. This second letter states that the applicant [TRANSLATION] “can make a major contribution to training the next generation”.

[23] Neither letter is helpful to the applicant in her attempt to demonstrate her establishment in Canada. No one questions the applicant’s qualities. But that is beside the point, since it is her establishment in Canada that is at issue, and these letters are intended to provide proof. I fail to see how the existence of these letters would contradict the administrative decision maker’s assertion that the file contains very few documents regarding establishment.

[24] The applicant then attacks the assertion that she [TRANSLATION] “appears to have worked from the moment she arrived in Canada, for more or less three years at around $19,486 a year”. It is claimed that the $19,486 was for 2019, whereas a notice of assessment of $27,300 was allegedly issued for 2018. The senior immigration officer’s description is not particularly well written. The awkward wording indicates that these are approximations, a kind of average.

[25] Here, what is presented as a [TRANSLATION] “significant error” is presented as an error in assessing the evidence. If there is an error, which has not been established, it is of no significance when the issue involves looking for humanitarian and compassionate considerations. We must not lose sight of the fact that the issue with which the administrative decision maker was dealing was the humanitarian and compassionate considerations that would have justified waiving a statutory obligation. The amounts earned during the initial years in Canada are of minimal importance in this context, especially as they have nothing to do with the humanitarian and compassionate considerations that must prevail. It should be remembered that the applicant does not appear to have any income, since her work permit was not renewed. The applicant would have had to establish that the clumsy wording, which sought to indicate an average level of income, constituted a shortcoming or flaw “sufficiently central or significant to render this [decision] unreasonable” (*Vavilov* at para 100). The applicant has failed to meet her burden.

[26] Lastly, the applicant claims that the administrative decision maker’s assertion that there is no evidence in the file regarding the applicant’s children aside from their birth certificates is unfounded. It should be noted that the administrative decision maker also pointed out that the photographs submitted could not be used as evidence because the people in them were not identified, the context and years of the photographs were not known, and there were no explanations as to their subject matter. In other words, these photographs establish nothing about the children’s best interests. That seems obvious. The applicant argued that there were other documents relating to the children. However, the administrative decision maker did not deny the existence of the photos; rather, he stated that they could not be used as evidence of the children’s best interests. That seems fair.

IV. Conclusion

[27] As can be seen, the applicant has failed to meet her burden of demonstrating serious shortcomings in the decision under review that would render the decision unreasonable. Insufficient evidence presented to the administrative decision maker is the basis of the decision rendered. The line-by-line treasure hunt for error proved fruitless. The reviewing court was able to follow the reasoning of the senior immigration officer without finding a fatal flaw. The conclusion reached by the decision maker was reasonable. Therefore, the application for judicial review can only be dismissed.

[28] The parties have been consulted and do not see any serious question of general importance that should be submitted. The Court agrees.

JUDGMENT in IMM-622-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question is certified under section 74 of the Act.

3. The style of cause is amended to replace the respondent's title with "Minister of Citizenship and Immigration".

"Yvan Roy"
Judge

Certified true translation
Vincent Mar

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-622-22
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