

Federal Court



Cour fédérale

Date: 20230206

Docket: IMM-905-21

Citation: 2023 FC 177

Ottawa, Ontario, February 6, 2023

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

LADAN ZARINEJAD

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Ladan Zarinejad [Applicant] seeks judicial review of a Senior Immigration Officer's [Officer] December 3, 2020 decision [Decision] refusing the Applicant's application for permanent residence on humanitarian and compassionate [H&C] grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The Applicant's H&C

application was based on unusual, undeserved, or disproportionate hardship and establishment in Canada.

[2] The application for judicial review is allowed.

II. Background

[3] On May 15, 2019, the Applicant, a citizen of Iran, came to Canada as a visitor. Prior to her arrival, from 2002 to 2012, the Applicant worked as a bone density technician in Tehran. The Applicant left her job in 2012 and moved with her mother into her maternal aunt's home, her only other family member in Iran. The Applicant currently remains unemployed.

[4] The Applicant's mother, now a permanent resident of Canada, initially came to Canada to help care for her son and the Applicant's brother, Ali. Ali is a Canadian citizen with severe mental and physical health issues. The Applicant has lived with them since her arrival in Canada. The Applicant has another brother, also a Canadian citizen, who resides in Singapore.

[5] The Applicant came to Canada because she was unhappy in Iran and her mother's health was declining. Her mother was diagnosed with several serious health issues, including osteoporosis, depression, and dementia. She has difficulty with her mobility and hearing.

[6] The Applicant assists her mother and Ali with basic daily care, including their personal care, frequent medical appointments, and household chores.

III. The Decision

[7] The Officer refused the Applicant's H&C application, finding little reason why the Applicant could not re-establish herself to a similar economic degree she enjoyed prior to departing Iran and insufficient evidence to demonstrate a negative impact on the Applicant's family in Canada should the Applicant leave Canada.

[8] In first assessing the Applicant's establishment, the Officer found that the Applicant's time in Canada, being one year and two months, was a short period to create establishment. The Officer acknowledged that the Applicant's family benefitted from her presence in Canada and that she was motivated to find employment in Canada. The Officer gave these factors a small amount of positive weight, but found that the Applicant had not demonstrated an ability to sustain herself financially while assisting her family. Overall, the Officer found that the Applicant had a small amount of establishment.

[9] Turning to hardship, the Officer placed little weight on three factors raised in the Applicant's application: family in Canada, gender, and economy. First, the Officer noted that the Applicant provided several affidavits and medical documents that pre-date the Applicant's H&C application, having been submitted in support of her mother's H&C application in 2017. The Officer placed little weight on these documents, as they did not pertain to the Applicant's situation and Ali's medical information did not provide an accurate account of his current health. The Officer stated that they would only consider recent documents.

[10] The Officer acknowledged that the Applicant provided her mother's and Ali's medical documentation from 2019 that explained that the Applicant's daily assistance was necessary for their safety and emotional support. However, the Officer found insufficient information to establish that the Applicant was the sole person who could provide this support. While the Applicant's return to Iran would naturally cause some distress, there was insufficient evidence to establish that her mother's and Ali's well-being would be significantly impacted. The Officer noted that the Applicant could alleviate the hardship of separation by maintaining online communication and occasional visits.

[11] Second, the Officer placed little weight on the hardship the Applicant would face in Iran due to her status as a single woman without any male relatives. Although the Officer accepted that the Applicant would likely face lower forms of discrimination and may be limited in her community-based activities, the Officer noted that the Applicant completed post-secondary education, obtained employment, and held an active social life in Iran. The Officer found little reason why similar opportunities would not be available upon her return.

[12] Lastly, the Officer placed little weight on the Applicant's economic hardship. While the Applicant left her employment in 2012 for various reasons, including the employment conditions and strict dress code, there was little information about the challenges the Applicant faced in seeking employment during the eight years she remained unemployed in Iran before coming to Canada. Further, there was little evidence of the Applicant's personal finances. Due to the lack of evidence, the Officer was unable to determine if the Applicant would be able to support herself

upon return to Iran. Further, the Officer found little to indicate the Applicant's aunt would not extend her support.

IV. Issues and Standard of Review

[13] In my view, the sole issue is whether the Decision is reasonable. The sub-issues are:

1. Did the Officer erred in their hardship analysis by ignoring evidence and making speculative findings?
2. Did the Officer's analysis lack compassion?
3. Did the Officer err in their establishment analysis?

[14] The applicable standard of review when reviewing the merits of an administrative decision is reasonableness. This matter does not engage the exceptions set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Therefore, the presumption of reasonableness is not rebutted (*Vavilov* at paras 16-17).

[15] A reasonableness review requires the Court to examine outcome of the Decision and its underlying rational to assess “whether the decision, as a whole, bears the hallmarks of reasonableness—intelligibility, transparency, and justification—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at paras 87, 99). However, a reviewing court must refrain from reweighing and reassessing the evidence considered by the decision-maker (*Vavilov* at para 125). If the reasons of the decision maker allow a reviewing Court to understand why the decision was made and determine whether the

decision falls within the range of acceptable outcomes, the decision will be reasonable (*Vavilov* at paras 85-86).

V. Analysis

A. *Did the Officer err in their hardship analysis by ignoring evidence and making speculative findings?*

(1) Applicant's Position

[16] The Officer erred in their hardship analysis with regard to gender and economy. The Officer failed to address the Applicant's evidence that she was unable to obtain employment since 2012 despite her best efforts, resulting in her dependence on her aunt for housing and financial support. The Applicant attested to the fact that her aunt was becoming increasingly intolerant and unlikely to continue assisting her upon return to Iran. The Applicant also advanced country condition evidence of systemic discrimination of women in the workplace, political unrest, economic turmoil, and inflation in Iran. The Officer made no reference to this evidence, instead concluding that the Applicant could obtain employment in Iran and rely on the continued support of her aunt.

[17] The Officer similarly ignored the Applicant's evidence that she faced severe societal stigma, discrimination, and harassment in Iran due to her status as a single woman.

(2) Respondent's Position

[18] The Officer clearly acknowledged the Applicant's unemployment since leaving her job in 2012, her possible legitimate reasons for doing so, and her housing circumstances with her aunt. However, the Officer noted the little information about the Applicant's job search in Iran. The Applicant's evidence is limited to broad statements in her declaration that she struggled to find a job. Further, while the Officer did not cite specific extracts of the country condition evidence, decision-makers are presumed to have considered the totality of the evidence, and the extracts were not so significant that the Court can infer the Officer made their finding without regard to the evidence. In any event, any error by the Officer in assessing the Applicant's ability to find employment in Iran was not determinative to the matter, given the Officer's conclusion that the Applicant provided insufficient evidence about her financial resources.

[19] Further, the Officer considered and accepted the Applicant's assertion that she previously faced gender-based discrimination as well as the country condition evidence concerning discrimination and violence in Iran. The Officer found that this would cause some hardship and weighed this factor in the Applicant's favour.

(3) Conclusion

[20] It is trite law that an officer is presumed to have considered all of the evidence before them and need not address every piece of evidence (*Jama v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1459 at para 17 [*Jama*]). However, the Officer's "burden of explanation increases with the relevance of the evidence in question to the disputed facts" (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 at para 17; [1998] FCJ No 1425). Put another way, an officer must address material contradictory

evidence (*Jama* at para 17; *Ocampo v Canada (Citizenship and Immigration)*, 2015 FC 1290 at para 5). Applying these principles to the present matter, I find that the Officer insufficiently engaged with the Applicant's evidence of hardship.

[21] The Officer took issue with the fact that the Applicant had not demonstrated why she was unable to obtain employment or the continued support of her aunt. Regardless of the reasons, the Applicant's undisputed evidence was that she was unable to find employment since 2012, during which time she struggled financially to the point where she needed to depend on her aunt for housing and financial support. The Applicant also provided uncontested evidence that her aunt became increasingly unsupportive of assisting her prior to her departure from Iran. While the Applicant advanced limited evidence of her financial situation beyond her own statements, the Officer was still required to consider the Applicant's evidence of past financial struggle and her aunt's lack of support. In my view, the Officer's assessment that they "saw little reason why the [A]pplicant could not re-establish herself to a similar economic degree she enjoyed prior to departing her country of permanent residency" is unintelligible, and therefore unreasonable.

[22] The Officer also acknowledged that gender-based discrimination exists in Iran and that the Applicant would likely face lower forms of discrimination. Yet, the Officer gave this factor little weight on the basis that the Applicant completed post-secondary education, previously obtained employment, and had an "active social life". The Officer found little reason why the Applicant would not face similar opportunities upon return to Iran. The Officer's treatment of this factor further illustrates their disregard for the Applicant's uncontroverted evidence. Specifically, it is unintelligible for the Officer to find that the Applicant could obtain

employment when she was unable to do just that for eight years prior to her arrival in Canada. Rather, the Officer was required to ask whether the Applicant has demonstrated unusual, undeserved, or disproportionate hardship upon return to Iran (*Kanhasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 at para 26). In limiting their assessment of the evidence, the Officer lessened the weight afforded to the Applicant's hardship.

B. *Did the Officer's analysis lack compassion?*

(1) Applicant's Position

[23] The Officer's findings lacks compassion (*Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72 at paras 30-33). Namely, the Officer unreasonably dismissed the Applicant's evidence that her mother and Ali were dependent on her. Instead, the Officer found that the Applicant's removal would only cause "some distress", and that there was little to indicate the Applicant was the sole person who could provide the necessary support.

(2) Respondent's Position

[24] The Applicant's arguments amount to a disagreement with the weight assigned to this factor. The Officer considered the family's health status and the role the Applicant played in caring for them. The Officer acknowledged the positive impact of her presence in Canada and that her return to Iran would cause some distress. However, the Officer reasonably noted that the Applicant did not explain why she must be their primary caregiver and why someone else could not fulfil their needs while the Applicant awaited processing of her permanent residence application from Iran.

(3) Conclusion

[25] I agree with the Respondent that the Applicant's submissions on this point amount to a disagreement with the weight assigned to this factor. The Officer considered the mother's and Ali's medical conditions as well as the Applicant's associated care. The Officer acknowledged that the Applicant's removal from Canada would cause her and her family some distress, but ultimately found that their well-being would not be significantly impacted due to the insufficient evidence that the Applicant was the sole person capable of providing the necessary support. As the Court noted in *Takhar v Canada (Citizenship and Immigration)*, 2022 FC 678, this consideration was open to the Officer:

[22] ...There is no doubt that the hardship of family members may under certain circumstances play a role in the assessment of hardship (*Reducto v Canada (Citizenship and Immigration)*, 2020 FC 511; *Hosrom v Canada (Citizenship and Immigration)*, 2022 FC 365 [*Hosrom*]). However, as was made clear by Mr. Justice Little in *Hosrom*, it is the H&C circumstances of the applicant that are at the centre of the application, and although circumstances of hardship to a family member – in that case the sponsor – may be relevant to the Minister's assessment of hardship for H&C purposes, it is only to the extent where such circumstances of hardship may affect the applicant (*Hosrom* at para 63). Here, I am not convinced that the Officer failed to consider the hardship that Mr. Takhar's parents may face if he was to return to India – in fact, the Officer specifically addressed the issue. What is however missing from the evidence is how that hardship would affect Mr. Takhar, and in the absence of evidence to the contrary, it was not unreasonable for the Officer to note that the presence of other family members and friends in Canada who could contribute in providing emotional and physical care to his parents would be sufficient to render Mr. Takhar's hardship in returning to India but a normal consequence of removal (*Zhou v Canada (Citizenship and Immigration)*, 2019 FC 163 at para 19).

[26] While the Applicant may not agree with the weight the Officer afforded to this factor, it is not for this Court to reweigh the evidence.

C. *Did the Officer err in their establishment analysis?*

(1) Applicant's Position

[27] The Officer's assessment of the Applicant's establishment was flawed. Namely, the Officer unduly focused on the Applicant's short length of time in Canada and failed to consider the Applicant's strong family ties to her mother and Ali, which ought to have overcome the former consideration.

(2) Respondent's Position

[28] Contrary to the Applicant's assertion, the Officer acknowledged the positive impact of the Applicant's reunification with her family in Canada and afforded it a small amount of positive weight. While the Applicant feels that her family ties in Canada ought to have overcome her short time in Canada, this is not a reviewable error. Rather, it is yet another request to reweigh the evidence.

(3) Conclusion

[29] The Officer was entitled to consider the Applicant's relatively short stay and lack of establishment in Canada beyond her family. Contrary to the Applicant's submissions, the Officer considered the Applicant's family ties in Canada and their dependence on her, and placed a small

amount of positive weight on this factor. Whether the Applicant's family ties ought to have overcome her short time in Canada was for the Officer to conclude. I agree with the Respondent that the Applicant's submissions on this point are again a request for this Court to reweigh the evidence, which is not the proper role of the Court on judicial review.

VI. Conclusion

[30] The application for judicial review is allowed. The Officer's assessment of the Applicant's hardship upon return to Iran was unreasonable.

[31] The parties do not propose a question for certification and I agree that none arises.

JUDGMENT in IMM-905-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is remitted to a different officer for redetermination.
2. There is no question of general importance for certification.

"Paul Favel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-905-21

STYLE OF CAUSE: LADAN ZARINEJAD v THE MINISTER OF
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