Federal Court  Cour fédérale

Date: 20230213

Docket: IMM-1197-21

Citation: 2023 FC 211

Ottawa, Ontario, February 13, 2023

PRESENT: Mr. Justice McHaffie

BETWEEN:

ANTONIO MANUEL QUIEROS MADUREIRA
BRIGADA ROSA DOS SANTOS JORGE DAS NEVES E. MADUREIR A
BERNARDO ESTEVES MADUREIRA
BARBARA ESTEVES MADUREIRA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Madureiras have lived in Canada since 2013. In 2019, they filed their third application for permanent residence on humanitarian and compassionate (H&C) grounds, citing

their establishment in Canada; the best interests of the family's two children, one of whom is a minor; as well as the adverse conditions in Portugal and the hardship they would face if required to return there. The officer reviewing the application found that there were positive factors in favour of the application, but that overall the factors did not justify relief under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The Madureiras seek judicial review of that refusal.

[2] The refusal of an H&C application can only be set aside by the Court if the applicants meet their onus to demonstrate that the decision is unreasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25, 99–101; *Okohue v Canada (Citizenship and Immigration)*, 2020 FC 100 at para 25. The Court has a limited role in assessing the reasonableness of a decision. It cannot reweigh the evidence and substitute its own assessment of the H&C application for that of the officer. Nor can it consider new evidence and arguments not presented to the officer. For the reasons below, I conclude that the arguments presented by the Madureiras effectively ask this Court to reweigh the evidence or consider new evidence and arguments. I am not satisfied the Madureiras have shown the refusal of their H&C application was unreasonable and the application must therefore be dismissed.

II. Analysis

[3] The Madureiras make three primary arguments challenging the reasonableness of the officer's decision.

[4] First, they argue the officer unreasonably assessed their establishment in Canada. Citing this Court's recent decision in *Truong*, the Madureiras argue that in assessing establishment, the officer did not properly consider the hardship that disruption of their lives in Canada would bring: *Truong v Canada (Citizenship and Immigration)*, 2022 FC 697 at para 16. I disagree. The officer directly addressed the Madureiras' submissions with respect to establishment, including their work, friendships, and involvement in the community. The officer concluded there were positive aspects to that establishment, but also noted the parents' disregard for immigration laws by remaining in Canada without status since 2015 and working without authorization despite two prior H&C refusals. While not using the word "disruption," the officer reasonably assessed the impact that having to return to Portugal would have on their friendships, as well as the impact on Mr. Madureira's employment as a carpenter.

[5] I also cannot accept the Madureiras' argument that the officer's reasons on establishment lack justification. The officer considered the submissions made and the factors relevant to the family's establishment, and explained their conclusions reasonably. They assessed the establishment of the two children separately, recognizing they had spent a greater portion of their lives in Canada and that they could not be held responsible for having remained in Canada without status as children. The officer accepted that the adult son's establishment in Canada was stronger as a factor than that of his parents and gave some weight to it in the overall assessment. This was all reasonable in the circumstances and shows no lack of justification.

[6] Nor did the officer improperly rely on the Madureiras' lack of status to the exclusion of other factors, an approach that can render an H&C decision unreasonable: *Lopez Bidart v*

Canada (Citizenship and Immigration), 2020 FC 307 at paras 31–32. Rather, the officer appropriately considered the lack of status as one relevant factor among many: *Liu v Canada (Citizenship and Immigration)*, 2022 FC 223 at para 28.

[7] The officer's assessment of the evidence regarding the Madureiras' friendships in Canada was also reasonable. There is no indication the officer failed to consider the friends' letters of support. The officer accepted the family had formed many friendships and gave this positive consideration, but concluded the relationships they had formed could not be characterized by a degree of interdependency such that it would be detrimental to the family or their friends for them to return to Portugal. Contrary to the Madureiras' submissions, the decision is not like that in *Vuu*, where Justice Go found the officer's reasons did not adequately explain their conclusions about the nature of the applicant's relationships: *Vuu v Canada (Citizenship and Immigration)*, 2022 FC 128 at paras 19–21. It is clear that the Madureiras have made numerous friendships and are well respected by their friends and community. However, the assessment of the evidence regarding the impact of removal on those relationships is part of the officer's task in reviewing an H&C application. While the Madureiras disagree with the officer's assessment, this Court's role is not to simply reassess evidence and come to its own conclusions: *Vavilov* at para 125.

[8] As their second primary argument, the Madureiras challenge the reasonableness of the officer's assessment of the best interests of their daughter, who was five years old when she was brought to Canada, and was 13 at the time of the review. The officer recognized that the daughter has spent the majority of her life in Canada, and considered the evidence regarding her friendships, involvement in school, and participation in religious and cultural activities. They

found that this was a “compelling aspect” of the family’s application, but ultimately concluded that the best interests factor, considered alone or in conjunction with other factors, was not enough to warrant an exemption.

[9] The Madureiras argue the officer failed to give adequate consideration to the daughter’s best interests. They stress that she has lived in Canada for most of her life and has no memory of or connections in Portugal. They underscore the importance of the best interests of the child in an H&C application, citing *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 and *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61. There can be no doubt that the best interests of the child must be treated as a significant factor in the H&C analysis and must be examined with a great deal of attention: *Kanthasamy* at paras 39, 41. However, the officer’s reasons indicate they recognized the importance of the daughter’s best interests in the analysis. The fact that the officer concluded that the factor was not enough in this case to warrant an exemption under subsection 25(1) of the *IRPA* does not mean they did not give adequate weight to the issue, as the child’s best interests do not necessarily dictate a positive H&C application: *Kisana* at para 24.

[10] I also cannot accept the Madureiras’ submission that the officer improperly viewed the daughter’s best interests from the perspective of an adult, rather than that of a 13-year-old child. The Madureiras were unable to point to any particular aspect of the decision that showed an improper perspective, simply reiterating that the officer should have considered that the daughter had been in Canada the majority of her life and that the officer should have looked at the matter from her perspective. Having reviewed the officer’s discussion of the daughter’s best interests, I

am unable to conclude that it shows an improper perspective. Rather, the Madureiras' arguments effectively amount to a disagreement with the officer's conclusion that the daughter's best interests did not justify a positive outcome, and a request that this Court reach the opposite conclusion. This is not the role of the Court on judicial review and gives this Court no basis to intervene: *Vavilov* at paras 75, 83, 116, 125; *Shreedhar v Canada (Attorney General)*, 2023 FCA 14 at para 7.

[11] In oral submissions, the Madureiras raised an argument that the officer's best interests analysis should have included the interests of their son, who was 19 years old at the time of the third H&C application, and 20 years old at the time of the decision. They argue he should have been considered as a child in the best interests analysis since he came to Canada as a child and was a child at the time of the two prior H&C applications. I cannot agree. Even accepting the possibility of considering a non-minor in the best interests analysis, on which there is various jurisprudence, the Madureiras did not raise this argument in their H&C application: see, *e.g.*, *Chaudhary v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 128 at para 32 and cases cited therein; *Nahrendorf v Canada (Citizenship and Immigration)*, 2022 FC 190 at para 10; *Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 at paras 57–60; *Shabdeen v Canada (Citizenship and Immigration)*, 2020 FC 492 at para 17. Rather, their submissions on the best interests of the child referred only to their minor daughter. The officer's decision cannot be considered unreasonable for failing to address arguments that were not raised: *Vavilov* at paras 127–128; *Campbell-Service v Canada (Citizenship and Immigration)*, 2022 FC 1050 at paras 22–23; *Su v Canada (Citizenship and Immigration)*, 2022 FC 366 at paras 31–33.

[12] The Madureiras' third primary argument is that the officer unreasonably assessed the adverse conditions in Portugal, as well as the risk and hardship they would face if they had to return. They emphasize in particular Mr. Madureira's successful business as a carpenter, the disruption to that business he would face with relocation, and the difficulties the family would face in finding employment in Portugal, particularly with limited education.

[13] Again, however, the officer considered the Madureiras' submissions about the risk of unemployment in Portugal. They considered the evidence of comparative rates of unemployment in Canada and Portugal, both in general and for youth, noting that the rates were slightly higher overall in Portugal, but lower for youth unemployment. Given the Madureiras' prior history of employment in Portugal, the officer was ultimately not satisfied there was sufficient evidence that the family would be unable to find work in Portugal. This conclusion was adequately explained and supported by the evidence.

[14] The Madureiras now argue the officer should have considered differences in wages for carpenters in Canada and Portugal, the relative unemployment rates for carpenters in particular, and the disruption that would be caused by Mr. Madureira having to dissolve his Canadian company and obtain Portuguese certifications. However, these submissions raise new arguments, and in some cases new evidence, that were not before the officer.

[15] The role of the Court on judicial review is to assess the reasonableness of an administrative decision based on the evidence and submissions presented to the decision maker: *Vavilov* at paras 125–128; *Association of Universities and Colleges of Canada v Canadian*

Copyright Licensing Agency (Access Copyright), 2012 FCA 22 at paras 14–18. As a result, the general rule is that on judicial review, this Court cannot consider new evidence or new arguments that were not before the administrative decision maker: *Access Copyright* at paras 15, 19–20. In their H&C application, the Madureiras made no submission about the disruption that would arise from dissolving Mr. Madureira's business or having to re-certify, nor about the differences in wages or employment rates for carpenters. The evidence about wage differences for carpenters in Canada and Portugal was put forward for the first time in this Court in an affidavit from Mr. Madureira and is not admissible: *Access Copyright* at para 19. In any event, and as noted above, the officer's reasons can hardly be considered unreasonable because they did not consider arguments or evidence that were not put before them: *Campbell-Service* at paras 22–23; *Su* at paras 31–33.

[16] Lastly, the Madureiras argue it was unreasonable for the officer to refer to their parents and siblings in Portugal and the possibility that they could assist in resettling in Portugal. They note that their family members do not live in the city where they used to live, and argue the officer speculated about the closeness of their bond with their extended family after being in Canada for over 7 years. I disagree. The officer did no more than note there was no evidence the Madureiras' family "would be unable to assist them in some way," which was true. In any event, the location of family in other cities (some of which are fairly close to their former home) does not prevent them from assisting in some way, and there was no evidence the Madureiras were estranged from their Portuguese parents and siblings. If the Madureiras' relationship with their extended family was such that they would be of no assistance at all, they could have presented this information to the officer, as their burden to establish their relevant H&C factors requires:

see *Evans v Canada (Citizenship and Immigration)*, 2021 FC 733 at para 63; *Milad v Canada (Citizenship and Immigration)*, 2019 FC 1409 at para 31.

III. Conclusion

[17] The officer's decision on the Madureiras' H&C application considered the principal submissions and evidence put forward in the application, reviewed the relevant factors in accordance with the approach applicable to such applications, and explained their reasons with reference to the evidence in a manner that was justified, transparent, and intelligible. I am not satisfied the Madureiras have met their onus to show the decision was unreasonable.

[18] The application for judicial review will therefore be dismissed.

[19] Neither party proposed a question for certification. I agree that no question meeting the requirements for certification arises in the matter.

JUDGMENT IN IMM-1197-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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