Federal Court  Cour fédérale

Date: 20230426

Docket: IMM-4525-21

Citation: 2023 FC 604

Ottawa, April 26, 2025

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

QI NIAN TAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Qi Nian Tan [Applicant] seeks judicial review of an immigration officer's [Officer] June 11, 2021 decision refusing her application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds [Decision]. The Officer found insufficient H&C considerations to justify an exemption under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The application for judicial review is dismissed.

II. Background

[3] The Applicant is a 58-year-old citizen of China. She entered Canada in March 1991 at the age of 27. The Applicant currently resides with her two daughters.

[4] While in Canada, the Applicant was in a short-term relationship and thereafter in a common-law relationship for approximately 15 years. Each of these relationships produced one daughter, aged 29 and 20, both of whom are Canadian citizens. The Applicant's daughters are not included in her application. Her common-law spouse promised to sponsor her as a permanent resident but for various reasons the sponsorship never materialized. The Applicant's brother and family, who have provided letters of support for the Applicant, are also Canadian citizens.

[5] The Applicant has had a long immigration history from within Canada. Briefly, the Applicant is a failed refugee claimant, her study permit expired in 1992, her most recent work permit expired in 1995, her application for a Pre-Removal Risk Assessment [PRRA] was refused in 2007, and, notably, she made three applications for permanent residence based on H&C considerations, all of which were refused. The Applicant is currently subject to a removal order.

[6] This application for judicial review arises from the refusal of the Applicant's third permanent residence application.

III. The Decision

[7] In refusing the Applicant's application, the Officer assessed the Applicant's establishment in Canada, family reunification, mental health considerations, and adverse country conditions.

[8] Regarding establishment, the Officer accepted that the Applicant has demonstrated a level of integration into Canadian society, but found that the Applicant's establishment was less than that of an individual in similar circumstances. Specifically, the Applicant is largely financially dependent on others, only recently began volunteering in her community, and demonstrated little fluency in one of Canada's official languages. The Applicant's prolonged stay in Canada was also in contravention of Canadian immigration laws. The Officer noted that there was insufficient evidence indicating that the Applicant's circumstances prevented her from leaving Canada or that the circumstances of her extended residence were beyond her control. As such, the Officer assigned this factor little weight.

[9] Regarding family reunification, the Officer acknowledged that the Applicant has a close relationship with her two daughters, her brother, and his family. The Officer noted that the Applicant's eldest daughter is the primary financial provider for the family, and there was nothing to suggest that this would cease should the Applicant leave Canada. Further, the Applicant's brother may be able to financially assist the daughters if necessary. The Officer also recognized that the Applicant and her family might experience emotional challenges should the Applicant leave Canada. However, the Officer noted that relationships are not bound by geographical locations, and the family members would be able to maintain contact or visit the Applicant in China should she return. The Officer also noted that it is common for the daughters,

at their respective ages, to reside apart from the Applicant. There was little evidence to indicate that the daughters would be unable to care for themselves and each other. Ultimately, the Officer gave this factor little weight.

[10] Regarding risk and adverse country conditions, the Officer examined the Immigration and Refugee Board's paper entitled *China: Reforms of the Household Registration System (Hukou) (1998-2004),* published in February 2005, together with the Applicant's Chinese birth certificate and an expired National Identity Card. The Officer also noted that the Applicant obtained a police certificate from Chinese authorities in 1993, and successfully applied for a passport in 2018. Taken together, the Officer found that the Applicant may be able to obtain a hukou upon her return. The Officer gave this consideration little weight.

[11] Regarding the Applicant's mental health considerations, the Officer acknowledged the various documents submitted by the Applicant related to vulnerable elders in rural China. The Officer found little evidence to indicate that the Applicant would reside in a rural area of China should she return, having been born and raised in Guangzhou, a city in China. The Officer also reiterated their prior conclusion that the family members' bonds would not be severed upon her return. Lastly, the Officer noted the little evidence to demonstrate that the Applicant would be unable to access mental health services in China should she require it. For these reasons, the Officer gave this consideration little weight.

[12] The Officer's final consideration concerned the Applicant's employment opportunities in China. The Officer noted that the Applicant may face some challenges in finding employment;

however, that different standards of living exist among countries, and Parliament did not intend for section 25 of *IRPA* to make up for this difference. Rather, the purpose of section 25 is to "give the Minister the flexibility to deal with extraordinary situations which are unforeseen by the IRPA where [H&C] grounds compel the Minister to act." The Officer gave this consideration some weight.

[13] The Officer concluded that there was insufficient objective evidence that the Applicant would be unable to re-integrate herself in China taking into account that she was born, raised and educated in China and that her primary language is Chinese. There was also little evidence indicating that the Applicant's family members in Canada would not continue to offer their care and support should she return. The Officer gave this factor little weight.

IV. Issues and Standard of Review

[14] The sole issue in this case is whether the Decision was reasonable. The relevant sub-issues are:

1. Did the Officer ignore relevant evidence?
2. Did the Officer apply the correct legal framework when assessing H&C grounds?

[15] I agree with the parties that the standard of review for the merits of the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). None of the exceptions outlined in *Vavilov* arise in this matter (at paras 16-17). Due to their exceptional and highly discretionary nature, H&C decisions warrant significant defence (*Alghanem v Canada (Citizenship and Immigration)*, 2021 FC 1137 at para 20 [*Alghanem*]).

[16] Reasonableness review requires the Court to consider both the underlying rationale and the outcome of the decision to assess whether the decision, as a whole, bears the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 15, 99). A reasonable decision must be "justified in relation to the relevant factual and legal constraints that bear on the decision", including applying the correct legal framework (*Vavilov* at 99; *Alghanem* at para 21). A reviewing court must refrain from reweighing and reassessing the evidence considered by the decision-maker (*Vavilov* at para 125). Where 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). Conversely, a decision will be unreasonable where there are shortcomings in the decision that are sufficiently central or significant (*Vavilov* at para 100). The party challenging the decision bears the burden of showing that the decision is unreasonable (*Vavilov* at para 100).

V. Analysis

[17] An H&C exemption under subsection 25(1) of *IRPA* and its guiding jurisprudence has recently been canvassed by this Court in *Lewis-Asonye v Canada (Citizenship and Immigration)*, 2022 FC 1349 at paras 37-48 [*Lewis-Asonye*]. Namely, subsection 25(1) "provides that permanent resident status or an exemption from applicable criteria or obligation of the Act may be granted if justified by H&C considerations" (at para 38). This means that "there will sometimes be [H&C] reasons for admitting people who, under the general rule, are inadmissible" (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 12 [*Kanthasamy*]). H&C considerations are facts, as established by evidence, that "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (*Kanthasamy* at

para 21, citing *Chirwa v Canada (Minister of Manpower and Immigration)* (1970), 4 IAC 338 (Imm App Bd) at 350). Subsection 25(1) serves to provide equitable relief in such circumstances (*Kanthasamy* at paras 21-22, 30-33, 45).

[18] Jurisprudence preceding, including, and following *Kanthasamy* provides the following guidance on subsection 25(1) of *IRPA* (*Lewis-Asonye* at para 47):

- An H&C exemption is a discretionary and exceptional relief;
- Reviewing courts must not substitute their discretion for that of the Officer;
- While undue, undeserved and disproportionate hardship is not the standard, hardship remains a relevant consideration;
- Some hardship is the normal consequence of removal and that hardship, on its own, does not support granting the exemption;
- Applicants must demonstrate with sufficient evidence that the misfortunes or hardships they will face are relatively greater than those typically faced by others seeking permanent residence in Canada;
- All other relevant H&C factors – not just hardship – must be considered and weighed; and
- The best interest of the child is an important consideration but is not determinative of an H&C application.

[19] The Applicant bears the onus of establishing that an H&C exemption is warranted and an officer has no duty to highlight weaknesses in an application (*Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 45).

[20] With these considerations in mind, I will now turn to my analysis of the parties' submissions.

A. *Did the Officer ignore relevant evidence?*

(1) Applicant's Position

[21] The Applicant provides an extensive list of errors with the Decision. I will consider them in my conclusion on this issue.

(2) Respondent's Position

[22] The Applicant's arguments seek to dispute the Officer's weighing of evidence, which is beyond the role of this Court.

(3) Conclusion

[23] The Officer did not ignore relevant evidence or speculate in rendering the Decision.

[24] I disagree that the Decision is unreasonable for the Officer's purported failure to consider the ex-spouse's letter in concluding that her overstay in Canada was beyond her control. Decision-makers are presumed to have considered all of the evidence before them, and need not make specific reference to every piece of evidence on the record. With that said, "the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous

finding of fact ‘without regard to the evidence’” (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 at para 17, [1998] FCJ No 1425).

[25] I acknowledge that the Officer did not explicitly reference the ex-spouse’s letter or the Applicant’s common-law relationship in assessing whether her overstay in Canada was beyond her control. However, respectfully, the ex-spouse’s letter is not so critical that the failure to explicitly mention it gives rise to a fatal flaw in the Officer’s overarching logic (*Vavilov* at para 102). The Applicant’s evidence notes that the common-law relationship, in which the ex-spouse is alleged to have promised sponsorship, lasted until 2013. The letter of the Applicant’s ex-spouse only speaks to the length of the relationship, the existence of their daughter, and the relationship between the Applicant’s older daughter and the Applicant. Notably, it does not speak to his alleged sponsorship promise.

[26] I also note that, in assessing the Applicant’s establishment in Canada earlier in the Decision, the Officer acknowledged that the Applicant “was financially supported by her former partner until 2013.” This suggests that the Officer was alive to the Applicant’s relationship with her ex-spouse. For these reasons, I am unable to conclude that the Officer erred in this regard.

[27] I am also of the view that the Officer did not engage in any speculation. First, the Officer did not state that others “would” financially support the Applicant’s children should she leave Canada. Rather, I agree with the Respondent that the Officer states that “there is little evidence on file to indicate the Jenny would cease her financial support of Tanny”, and that the Applicant’s brother “may be able to provide assistance to Jenny and Tanny should they require

it." I see nothing unreasonable in the Officer's conclusion, particularly given the evidence that the eldest daughter is financially responsible for the family and that that the Applicant's brother has financial supported the Applicant and her children.

[28] Similarly, the Officer did not conclude that mental health services are available to the Applicant in China. Rather, the Officer noted the lack of evidence advanced by the Applicant in support of her application. The Applicant submitted country condition evidence concerning the mental health impacts on older Chinese adults who live alone. The Officer, in considering this evidence, acknowledged that the Applicant may face some emotional challenges in residing apart from her children (*Kanthasamy* at para 48). However, the Officer found little evidence to indicate that the Applicant previously suffered from mental health issues, or that she would be unable to access mental health services in China should she require it.

[29] As a final consideration, the Officer also did not speculate on the imagined support of the Applicant's family members in China. The Officer noted the support of the Applicant's family in Canada:

> I note that the [A]pplicant's immediate family members residing in Canada have extended their financial support to her previously and currently. While l acknowledge that her family members in Canada may not be able to support her for a prolonged period, I find that there is little information or evidence indicating that they are estranged from her or that they would not even offer their care and support even on a short-term basis upon her return. For these reasons, I give this consideration little weight.
>
> [Emphasis added.]

[30] Lastly, the Applicant asserts that the Officer, in assessing adverse country conditions, erred in failing to consider common knowledge of the fundamental changes in China over the past 30 years. However, the Applicant fails to explain, both before the Officer as well as before this Court, the nature of such common knowledge or specific notorious changes in China. It is unclear whether this argument is an attempt to advance changes regarding financial, medical, economic, security, or other considerations. Absent this explanation, I am unable find any fatal flaw or serious shortcoming in the Officer's conclusion.

[31] I also do not find anything to suggest that the Officer trivialized the Applicant's re-adjustment. As previously noted, the Officer acknowledged that the Applicant may encounter some emotional and employment challenges should she return to China. In light of these considerations, I do not find that the Officer erred in concluding that there was "insufficient objective evidence…to establish that, were the [A]pplicant to return to China, she would not be able to re-integrate or re-establish herself into her community in a similar manner".

B. *Did the Officer apply the correct legal framework when assessing H&C grounds?*

(1) Applicant's Position

[32] The Officer erred in applying the correct test under subsection 25(1) of *IRPA* in mitigating or negating the Applicant's establishment with her prolonged stay in Canada. The Officer cites no authority that leads this conclusion.

[33] Similarly, the Officer erred in baselessly concluding that the H&C considerations are negated by the Applicant's financial reliance on others. The Officer cites no authority in support of this conclusion. Additionally, there is no evidence that the Applicant ever received social assistance.

[34] The Officer further erred in law by speculating about Parliament's intentions as to the purpose of subsection 25(1) of *IRPA* without reference to *Hansard* or other sources. The test in subsection 25(1) of *IRPA* is that of justification, not extraordinary situations.

[35] Lastly, the Officer had no regard to the objective of family reunification as set out in *IRPA* in assigning little weight to the forced separation of the Applicant and her daughters.

(2) Respondent's Position

[36] The Officer did not err in balancing the Applicant's establishment in Canada with her contravention of immigration laws, particularly her prolonged overstay in Canada. It is well accepted that all facts must be weighed cumulatively.

[37] The Officer also did not err in noting the Applicant's financial dependence on others. The context of this observation is important. The Officer considered the Applicant's financial independence along with other indicia militating against counsel's assertion that the Applicant was "highly established". Moreover, the Officer need not cite evidence in support of every factual statement. Lastly, the Applicant's lack of reliance on government assistance merely

attacks the probity of the observation. These considerations do not amount to an unintelligible Decision.

[38] It is trite law that H&C exemptions are only for exceptional or extraordinary cases (*Shah v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1153 at para 33). The onus is on the Applicant to reveal the Officer's errors. The Applicant failed to do so.

[39] Lastly, the Officer made no reviewable error in their consideration of family reunification. The Officer spent one entire page analyzing the effects of separation. This argument equates to a disagreement with the weight of the evidence, which is not the role of the Court.

(3) Conclusion

[40] The Officer did not err in their application of the legal framework.

[41] It is well established that H&C relief is an exceptional remedy. The Supreme Court of Canada has explained that "[t]he legislative history of the H&C provision makes clear that the provision was not intended as a separate category for admission to Canada, but rather as a safety valve for exceptional cases" (*Kanthasamy* at para 90, emphasis added).

[42] I am not convinced that the Officer imposed a legal threshold through the use of the word "extraordinary." The use of a word is not proof, in itself, that the Officer applied a legal test. Rather, one must read the Decision as a whole in determining whether the correct legal test was

applied (*Lopez Segura v Canada (Citizenship and Immigration)*, 2009 FC 894 at para 29). Reading the Decision as a whole, and as summarized above, the Officer afforded some positive weight to the fact that the Applicant may face some challenges in finding employment upon her return to China. However, the Officer proceeded to note that different standards of living exist between countries, and that the purpose of subsection 25(1) of *IRPA* was to provide for exceptional situations, not to make up for the difference in standard of living. With this passage in mind, I disagree with the Applicant's assertion that the Officer erred in speculating as to Parliament's intentions or applied the wrong legal test.

[43] In a similar vein, it is well established that H&C applications do not serve as an alternative immigration stream (*Kanthasamy* at para 23). However, "where an H&C exemption is justified and is granted, it could be regarded as an alternative to other avenues or ways of immigrating to Canada because it exempts an applicant from other requirements of the Act or overcomes some ineligibility" (*Lewis-Asonye* at para 48, emphasis added). This is not the case here. As such, the Officer did not misinterpret subsection 25(1) of *IRPA*.

[44] Further, as previously noted, officers are required to give weight to all relevant H&C considerations in a given case (*Kanthasamy* at para 33). One such factor is an Applicant's establishment in Canada, which includes an applicant's compliance with immigration laws and any efforts made to regularize immigration status in Canada (*Davis v Canada*, 2022 FC 409 at para 20). The Officer cited various reasons that led to their conclusion that the Applicant did not attempt to regularize her immigration status in Canada after her failed refugee claim or leave Canada at the end of her authorized stay. The Officer noted that the Applicant, who arrived in

Canada in 1991, did not submit her first permanent residence application until 2007, after her PRRA was refused, and again in 2017, after receiving a letter from the Canada Border Services Agency regarding possible deportation. Given these considerations, I agree with the Respondent that the Officer did not err in their assessing the Applicant's attempts to regularize her status against her broader establishment.

[45] The Applicant also takes issue with the Officer's consideration of the Applicant's financial dependence on others, asserting that the Officer erred in applying the correct test and that the Officer did not cite any authority to lead to such a conclusion. I disagree with the Applicant on both points. Pursuant to Immigration, Refugees and Citizenship Canada's operational instructional and guidelines, which are non-binding, an Applicant's degree of establishment may be assessed by analyzing whether the Applicant has a history of stable employment and whether there is a pattern of sound financial management. The consideration of financial dependence by visa officers has also been acknowledged by this Court on judicial review (*Tosunovska v Canada (Citizenship and Immigration)*, 2017 FC 1072 at para 27; *Lopez v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1172 at para 32).

[46] As for the Applicant's second point, the Officer cited various sources of evidence in support of the conclusion that the Applicant has been financially dependent on others. For instance, the Officer noted that the Applicant was financially supported by her former partner until 2013. Following their separation, the Applicant worked part time to financially support her children. However, there was an absence of objective evidence, such as pay stubs or Notices of Assessment, to corroborate the Applicant's employment history. The Officer also noted that the

Applicant's eldest daughter is the primary financial provider for the family, as evidenced by various letters and Notices of Assessment, and that there is little evidence that the Applicant's family members would be unwilling to continue their support upon her return. The Applicant's lack of social assistance is irrelevant to the present matter. For these reasons, the Officer's conclusion is intelligible.

[47] Lastly, I disagree that the Officer had no regard to paragraph 3(1)(d) of *IRPA*, which provides that one objective of *IRPA* is "to see that families are reunited in Canada". The Officer did consider the impacts of separation on the Applicant and her children. Indeed, the Officer dedicated an entire page to their consideration of family reunification.

[48] The Officer considered the letters of support from the Applicant's family that speak to their close relationships, as well as the photos submitted to corroborate such relationships. The Officer went on to acknowledge that the Applicant and her daughters may experience some emotional challenges should she leave Canada. However, in noting that the Applicant can maintain contact with her adult daughters through mail, telephone, and the internet, as well as the little objective evidence to indicate that they would be unable to care for themselves and each other, the Officer found that the relationships were insufficient to warrant an exemption on H&C grounds. The Officer concluded that, "having carefully assessed all the evidence presented by the [Applicant], and being mindful that family reunification is an important, yet not determinative factor to H&C applications, the factor should be given little weight."

[49] Similarly to *Au v Canada (Citizenship and Immigration)*, 2022 FC 494 at para 26 [*Au*], I recognize the intimacy between the Applicant and her daughters. However, the Applicant has not shown that the Officer had no regard to the objective of family reunification or overlooked any evidence in arriving at this conclusion (*Au* at paras 23-26). I agree with the Respondent that the Applicant's argument equates to a disagreement with the weight the Officer accorded to the evidence. It is not the role of this Court to reweigh evidence (*Vavilov* at para 125).

VI. Conclusion

[50] For the above reasons, the application for judicial review is dismissed. The Decision, as a whole, bears the hallmarks of reasonableness and is justified in relation to the facts and law.

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

JUDGMENT in IMM-4525-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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