Federal Court Cour fédérale

Date: 20230503

Docket: IMM-4599-22

Citation: 2023 FC 646

Ottawa, Ontario, May 3, 2023

PRESENT: Madam Justice Walker

BETWEEN:

JUANPABLO ANDRES SEGOVIA SANHUEZA

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Sanhueza, seeks the Court’s review of a May 16, 2022 decision (May Decision) by an Inland Immigration Officer of the Canada Border Services Agency (CBSA) refusing to defer his removal from Canada. The decision confirms an earlier refusal to defer (April Decision) authored by the same officer on April 26, 2022. It is common ground that the April and May decisions must be read together.

[2] The determinative issue in this application is whether the officer overlooked one of the Applicant's two alternative grounds for deferring removal. The Respondent argues that the second ground was not sufficiently raised in the deferral requests but I disagree. Although the reference to the second ground was brief, it was nonetheless apparent. The officer's omission of any analysis of that ground for deferral results in a decision that does not respond to the framework established by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*). Accordingly, I will allow the application.

I. Overview

[3] The Applicant is a citizen of Chile who has lived in Canada since May 2010. He is currently 21 years old, having left Chile as a young boy with his grandmother.

[4] On August 10, 2021, the Applicant was ordered deported from Canada on the basis that he is inadmissible due to serious criminality.

[5] The Applicant's Pre-removal risk assessment (PRRA) application was refused on March 7, 2022. The Applicant applied for leave and judicial review of this decision but discontinued the application in April 2022.

[6] Also in April 2022, the Applicant submitted an application for permanent residence on humanitarian and compassionate ("H&C") grounds which remains pending.

[7] In mid-April 2022, the Applicant received a direction to report for removal from Canada on May 2, 2022. He submitted a request to defer his removal on two grounds: (1) to permit him to remain in Canada pending a decision on his H&C application; or (2) to give him the opportunity to make the necessary arrangements to return to Chile. This first deferral request was refused on April 26, 2022 but the Applicant's removal was then mistakenly cancelled.

[8] The Applicant's removal was rescheduled and he received a second direction to report for removal on June 1, 2022. On May 13, 2022, the Applicant submitted a second request for deferral of removal based on the same two alternative grounds.

[9] The same officer refused the second request for deferral in the May Decision.

[10] On May 26, 2022, Justice Norris granted the Applicant's motion to stay his removal pending the final determination of his application for leave and judicial review of the May Decision.

[11] More recently, the Applicant's second PRRA application was refused on September 26, 2022.

[12] In the May Decision, the officer reviewed the Applicant's immigration history and summarized his criminal convictions in Canada that led to an inadmissibility report and, eventually, an enforceable removal order. The officer then noted the issues raised by the Applicant (hardship, Covid-19, risk/reopening/judicial review of his PRRA, pending H&C

application) and transcribed the opening paragraphs of the Applicant's May 13, 2022 request for deferral. The critical sentence for purposes of this application is contained in the first paragraph of the submissions:

> … Considering the fact that [the Applicant's H&C application] is still pending and the fact that [the Applicant's] whole family is in Canada, and he has no family in Chile, we submit that a temporary deferral of his removal is reasonable in this case to allow him an opportunity to wait for the decision on his H&C application and while looking for a place to live in Chile with the help of his family here in Canada.

[13] The officer addressed the Applicant's submissions regarding the need for deferral pending a decision on his H&C application and his submissions regarding hardship by referring to the April Decision. The officer stated that they had considered all of counsel's submissions, even if not all were subject to comment in the May Decision, and concluded that they had not been presented with evidence that would change their April Decision to refuse deferral.

[14] The April Decision addresses in some detail each of the same reasons for the Applicant's request for deferral. The officer concluded that the Applicant would be able to rely on his family's help in resettling in Chile, including that of his mother who continues to live in the country, and that his education and plans for the future indicate a drive to succeed and resiliency. The officer concluded that the potential hardship the Applicant may face in returning to Chile after such a long absence does not negate his criminal inadmissibility or the hardship any returnee would suffer on removal. The officer also considered the Applicant's Covid-19, PRRA and H&C application arguments but found that none of those arguments warranted the exercise of their discretion to defer the Applicant's removal.

II. Analysis

1. *Preliminary Issue: Mootness*

[15] In its Further Memorandum, the Respondent submits that this application for judicial review should be dismissed as moot because the Applicant has effectively received the relief he sought in the deferral request. The Respondent notes that the Applicant does not challenge the officer's findings regarding his pending H&C application. Rather, his principal argument is that the officer ignored his alternative request to make arrangements for his arrival in Chile. The Respondent argues that the Applicant has now had a year since the Court ordered his stay of removal and has had ample time to find a place to live in Chile. As a result, there is no live dispute between the parties.

[16] In response, the Applicant submits that the application is not moot because there remains a live issue between the parties. His counsel argues that the Applicant remains at risk should he be required to return to Chile because he has not yet secured a safe place to live.

[17] I find that the matter is not moot. In arriving at this conclusion, I have not considered the Applicant's mootness arguments that focus on facts and arguments that either were not before the officer or that speak to long-term, H&C considerations. However, the Applicant's deferral requests included two alternative grounds, the second of which was his need to make arrangements for a place to live upon arrival in Chile. The fact that a year has now passed since Justice Norris stayed the Applicant's May 2022 removal is not determinative of the fact that the Applicant may need time to arrange accommodation for his arrival. He does not know when that arrival will occur and cannot be expected to have made initial living arrangements in a vacuum.

[18] The passing of a removal date is not determinative in finding an application for judicial review of a deferral decision moot: "it is the passing of events in respect to which the applicant was seeking a deferral of his removal" that renders an application moot (*Baron v Canada (Public Safety and Emergency Preparedness)*, 2009 FCA 81 at para 37). The question of mootness depends on the proper characterization of the controversy that exists between the parties (*Baron* at para 29). Here, the controversy between the parties surrounds the question of whether the officer erred in ignoring the Applicant's request for deferral of his removal date so that he could find a place to live upon return. In my view, this question remains in play. The cases cited by the Respondent differ from the facts before me as the Court in each of those cases found that the event for which deferral was requested had occurred or the time period of a requested deferral had expired (*Sosic v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 13 at paras 23-24; *Adesemowo v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 249 at para 43; *Joseph v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 562 at para 26).

2. *Analysis of the Applicant's submissions re reasonableness of the decision*

[19] The Applicant argues that the officer's omission of any consideration of his second ground in support of deferral in either of the two decisions and the unsupported factual inferences that underpin the officer's hardship analysis result in a decision that must be set aside. Both arguments are subject to review for reasonableness (*Vavilov* at paras 10, 23; *Galusic v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 223 at para 15).

[20] The officer ignored the second reason for the request for removal: a temporary deferral to allow the Applicant to look for a place to live in Chile with the help of his family here in Canada. This error alone justifies the Applicant's application for judicial review because it undermines the reasonableness of the May Decision. I agree with the Respondent that this second reason was identified only once in each of counsel's requests for deferral and must be read in a manner consistent with the limited discretion of a deferral officer. Nevertheless, it was properly identified as one of two grounds for the request. In my view, the request for time to arrange a return to Chile was critical to the Applicant and is apparent from the evidence of his personal and familial circumstances. He left Chile as a child and has not lived in the country for the majority of his life. He had had, at the time of the May Decision, no contact with his mother for 16 years, while his father and close family live in Canada. The second ground for deferral focusses directly on a short-term issue that was within the scope of the officer's discretion.

[21] I will briefly address the Applicant's arguments regarding the officer's hardship analysis. First, a number of the arguments are properly characterized as H&C arguments and are not within the scope of an officer's assessment of a deferral request. The Applicant's Canadian establishment, his rehabilitation, reintegration challenges and long-term prospects in Canada and Chile are not short-term considerations. In contrast, the Applicant's submissions setting out the difficulties he will encounter upon arrival in Chile with no assistance and little knowledge of the country support his request for time to make adequate living arrangements. The officer's references to generalized "family support" and the grandmother's remaining ties to Chile do not address the immediate challenges the Applicant will encounter stepping off the plane. Second, the officer's reliance on the Applicant's ability to request his mother's assistance is not supported

by the evidence. There has been no contact with his mother for 16 years. Third and finally, the officer's conclusion that the Applicant's family would be willing to assist him financially in Chile is contradicted by his father's statement that he is struggling to meet basic housing expenses in Canada for the family and "would not be able to support [the Applicant] financially overseas because it takes all of my income to support our family in Canada".

III. Conclusion

[22] For all of the foregoing reasons, this application is allowed.

[23] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-4599-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. If the Applicant is scheduled for removal from Canada, he will be given a minimum of 21 days' notice of the date of removal and will be provided the opportunity to update his request for deferral of removal before any new deferral decision is rendered by a different CBSA inland enforcement officer.

3. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4599-22
STYLE OF CAUSE:	JUANPABLO ANDRES SEGOVIA SANHUEZA v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	HEARD BY VIDEOCONFERENCE
DATE OF HEARING:	APRIL 27, 2023
JUDGMENT AND REASONS:	WALKER J.
DATED:	MAY 3, 2023

APPEARANCES:

Arlene Rimer	FOR THE APPLICANT
Zofia Rogowska	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Rimer Law Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT