Federal Court  Cour fédérale

Date: 20230512

Docket: IMM-6196-21

Citation: 2023 FC 675

Ottawa, Ontario, May 12, 2023

PRESENT: Associate Chief Justice Gagné

BETWEEN:

AYSHA BEGUM SUNARA
SUMENA HUSSAIN
RAHIM HUSSAIN RAHI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicants — a mother, and her daughter and son — are Bangladeshi citizens. In 2014, they filed a refugee claim in Canada which also included the children's father (the mother's now ex-husband). However, he was subsequently declared ineligible and returned to Bangladesh.

[2] The Applicants' refugee claim proceeded but was unsuccessful before both the Refugee Protection Division [RPD] and Refugee Appeal Division [RAD]. The Applicants subsequently filed a first application for permanent residence based on Humanitarian and Compassionate [H&C] grounds, and also sought a Pre-Removal Risk Assessment [PRRA]. Both were unsuccessful. They filed Applications for leave and judicial review of both the RAD decision and PRRA, but those too were denied, either for failure to perfect the file and/or because of alleged incompetence on the part of their former lawyers.

[3] In May 2021, by which time the daughter was 21 and the son 17, the Applicants submitted a second H&C application.

[4] On September 1, 2021, a Senior Immigration Officer denied the second H&C application; it is this decision that is now before the Court.

II. Issues and Standard of Review

[5] The sole issue raised by this Application for judicial review is whether the Officer erred in his assessment of the H&C factors.

[6] However, the Applicants raise several sub-issues, two of which are, in my view, determinative of their Application:

A. *Did the Officer consider the impact of family violence as a compassionate factor?*

B. *Did the Officer err in his assessment of the medical evidence?*

[7] It is uncontested that the standard of reasonableness applies to the Court's review of these issues (*Canada (Minister of Citizenship and Immigration) v Vavilov* 2019 SCC 65 at para 25).

III. Analysis

A. *Did the Officer sufficiently consider the impact of family violence as a compassionate factor?*

[8] The Applicants argue that the Officer erred in law by assessing every factor individually through the lens of hardship and failing to weigh key compassionate factors, contrary to the teaching provided by the Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61. Specifically, they submit that the impact of family violence was a compassionate factor that must have been weighed (*Febrillet Lorenzo v Canada (Citizenship and Immigration)* 2019 FC 925, at para 18), and which the Officer failed to consider. The Applicants note that the Officer only mentioned family violence once in passing in his reasons, despite the Applicants submitting their H&C application under the Family Violence Category and referencing an Immigration, Refugees and Citizenship Canada operational bulletin on cases involving abuse.

[9] I agree with the Applicants. In my view, the Officer relied too heavily on the RPD and RAD's findings, without considering the Applicants' evidence that at the time their refugee claim was made, they were under the harmful influence of the then-husband. The Officer failed to consider the significant changes in their situation between their refugee application (based on the risk related to the then-husband's belonging to the opposition Bangladesh Nationalist Party) and their H&C application (based on the family violence suffered at the hands of the ex-husband

and his re-marriage into a family influential within the governing Awami League). The Officer also overlooked the evidence of the Applicants' relatives in Bangladesh being attacked by Awami League members and the existence of an arrest warrant against them personally.

[10] The Applicants had submitted that the family violence materially affected their previous hearing and applications, yet the Officer did not address these submissions and instead relied on the outcomes of those same proceedings as outweighing the Applicants' submissions regarding new risks they faced.

[11] Additionally, the Officer's reasons are not responsive to the evidence of changed risk to the Applicants. The Applicants submitted that due to the ex-husband's new family's political connections they are now subject to an arrest warrant in Bangladesh. The Officer notes this only in passing, and instead relies on the finding of the previous PRRA decision to conclude that insufficient evidence had been provided. Yet, as the Applicants note, the key evidence on this issue (the arrest warrant and a police report) post-dated the PRRA application, and hence could not have been raised at that stage. In this context, the Officer's finding — based on the PRRA decision — that the Applicants "have provided insufficient evidence to demonstrate that local or higher state complaint mechanisms are not available to them in Bangladesh or that they would incur undue hardship in accessing them" is not intelligible, justified nor transparent, and does not take into account the evidence before the Officer.

B. *Did the Officer err in his assessment of the medical evidence?*

[12] The manner in which the Officer systematically discounts the Applicants' medical evidence is also troubling. I agree with the Applicants that the Officer inappropriately required corroborating evidence to substantiate each medical report, rather than focusing on the corroborative evidence that the reports themselves provide (see *A.B. v Canada (Citizenship and Immigration)*, 2020 FC 498 at para 89).

[13] I also agree that the Officer's rationale for giving little weight to the letter of Dr. Ziaur Rahman is unreasonable; the fact that the letter was solicited by the Principal Applicant's brother does not *per se* invalidate the contents of the letter (see *Kaburia v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 516 at para 25). In my view and considering its content, it should not even have an impact on its reliability.

[14] In addition, the Officer erroneously concludes that Dr. Rahman's credentials are not provided, when they in fact are (on the letterhead and in the letter).

[15] Because he gave little to no weight to the medical evidence filed by the Applicants, the Officer failed to fully consider the impact of the Principal Applicant's and her son's medical conditions when assessing the hardship they would face were they to return to Bangladesh.

IV. Conclusion

[16] In my view, the evidence of past family violence and the medical evidence should have been considered by the Officer in order to assess whether all the facts established by the evidence would excite, in a reasonable person, in a civilized community, a desire to relieve the misfortune of another person (*Lobjanidze v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1098, at paras 11 – 13, itself referencing *Kanthasamy*). Since these important H&C factors have not been properly considered, the decision cannot stand and will be set aside.

[17] The parties have proposed no question of general importance for certification and no such question arises from the facts of this case.

[18] Finally, the original style of cause names the Respondent as the "Minister of Immigration and Citizenship Canada". It is amended to the correct legal name: the Minister of Citizenship and Immigration (*IRPA*, s.4(1), and *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s.5(2)).

JUDGMENT in IMM-6196-21

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is granted;
2. The Senior Immigration Officer's decision dated September 1st, 2021 is set aside and the file is remitted to Immigration, Refugees and Citizenship Canada for a new determination by a different officer;
3. No question of general importance is certified;
4. The style of cause is amended to replace "Minister of Immigration and Citizenship Canada" with "The Minister of Citizenship and Immigration".

"Jocelyne Gagné"
Associate Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6196-21
STYLE OF CAUSE:	AYSHA BEGUM SUNARA, SUMENA HUSSAIN and RAHIM HUSSAIN RAHI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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JUDGMENT AND REASONS:	GAGNÉ A.C.J.
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APPEARANCES:

Jasleen Johal	FOR THE APPLICANT
Michael Butterfield	FOR THE RESPONDENT

SOLICITORS OF RECORD:

South Asian Legal Clinic of Ontario Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT