Federal Court Cour fédérale

Date: 20230818

Docket: IMM-1966-21

Citation: 2023 FC 1122

Ottawa, Ontario, August 18, 2023

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

RAMY MOHAMMAD AHMAD ABU DELEA
MALAK ALI MOHAMAD ALFRIHAT

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Preliminary Matter

[1] The Principal Applicant's wife's name is misspelled in the style of cause. Accordingly, the style of cause shall be amended with immediate effect from "Malak Ali Mohammad Alfrihat" to "Malak Ali Mohamad Alfrihat".

II. **Overview and Background Facts**

[2] The Applicants are the Principal Applicant, Ramy Mohammad Ahmad Abu Delea [PA] and his wife, Malak Ali Mohamad Alfrihat, who are each 28-year-old citizens of Jordan. They have a daughter who was born in Canada on January 3 2018.

[3] The Applicants entered Canada on October 3, 2016 with valid visitor visas. They subsequently sought refugee protection on April 21, 2017. Their claim for refugee protection was based on suffering religious persecution as, while in Jordan, the PA converted from the Sunni Muslim faith to Christianity.

[4] The RPD denied the claim on July 10, 2017 based on credibility concerns with respect to the PA's knowledge of the Christian faith. An appeal of this decision was dismissed by the RAD on January 24, 2018.

[5] A Work Permit (WP) was issued to the PA on August 26, 2017. After several extensions were obtained, the WP expired on March 12, 2021.

[6] The Applicants then submitted consecutive applications based on humanitarian and compassionate (H&C) grounds and a Pre-removal Risk Assessment (PRRA) application. The applications were refused.

[7] A second H&C application was submitted on August 13, 2019, based on the best interests of the Applicants' daughter, their establishment in Canada, and the hardship they would face in Jordan because of the PA's religious conversion.

[8] The second H&C application was refused on January 19, 2021.

[9] The Applicants now seek judicial review of the second H&C Decision (the Decision).

[10] For the reasons that follow, this application will be dismissed.

III. **Decision under Review**

[11] The Senior Immigration Officer [SIO] who made the Decision acknowledged that granting an exemption to the requirements of the *Immigration and Refugee Protection Act,* SC 2001, c 27 [*IRPA*] based on humanitarian and compassionate grounds is an exceptional response to the Applicants' personal circumstances.

[12] The SIO noted the Applicants bore the onus of proving that granting them permanent residence status or an exemption from any applicable criteria or obligations of the IRPA were justified in light of their personal circumstances as advanced in the second H&C application.

A. *Apostasy*

[13] The SIO accepted that apostates living in Jordan might face bureaucratic and societal discriminatory treatment. This would occur through the annulment of marriages, custody issues and disinheritance.

[14] The SIO gave favourable weight to those factors. However, the SIO found, based on the record before them that the PA would "most likely face these issues based on his personal profile" and they did not find that "the potential hardships faced merit any more than a moderate amount of weight and consideration."

B. *Hardship in Jordan*

[15] With respect to prospective hardships in Jordan, the SIO noted the PA's religious conversion from Islam to Christianity meant he would be considered an apostate in Jordan. That would lead not only to discrimination against him but also to difficulties in finding employment for himself and schooling for his daughter.

[16] The SIO noted that the PA's claim before the RPD was made on similar material allegations but it was rejected based on credibility in that the PA "had little to no knowledge of the Christian faith, was not a Christian convert and was not involved with the Christian faith."

[17] The SIO then noted the PA had not provided any additional explanations or clarifications to challenge the RPD's findings, which although not binding on the SIO, were accepted after considering the experienced analysis undertaken by the RPD.

[18] The SIO concluded the PA did not convert to Christianity while he was residing in Jordan and, as a result, he would not have experienced hardship in Jordan.

[19] The SIO did accept that the PA converted to Christianity in Canada. The SIO indicated that they accepted the certificate noting it had not been submitted with the H&C or PRRA applications. The SIO "conducted an assessment of the applicant's alleged hardships he and his family may face as an apostate in Jordan."

[20] The SIO found the PA had not submitted sufficient evidence "to corroborate his concerns regarding employment or schooling discriminations as a result of his status as an apostate."

C. *Lack of Employment*

[21] As a result of the lack of evidence concerning possible employment difficulties, the SIO concluded the Applicants would not face any significant employment barriers if they returned to Jordan.

[22] In addition, the PA was found to have submitted only vague statements, with no corroborating evidence, regarding the allegation that there was a lack of sufficient healthcare in Jordan for his wife and daughter.

[23] The SIO gave some positive weight to the fact that, as apostates living in Jordan, the PA could face some bureaucratic and societal discriminatory treatment through annulment of marriage, custody issues and disinheritance.

D. *Schooling, Healthcare and re-establishing in Jordan*

[24] The PA submitted "the schools in Jordan are not secure like here in Canada and any one can go and ask about my daughter…and take her and harm her."

[25] In reviewing the PA's submission, the SIO found that according to the 2019 U.S. Department of State Report on human rights in Jordan, "education in the country is compulsory from ages six through 16 and free until age 18. As the applicant is a citizen of Jordan, his daughter is also a Jordanian national and, as such, should have access to all socials services provided by the country to their citizens."

[26] The SIO found the PA had not adduced sufficient evidence that his status as an apostate would prevent the PA and his wife from enrolling their daughter in school or other social center. Nor had the PA adduced additional evidence or objective documentation to support his allegations that his child would not be safe or accepted at school.

[27] The SIO noted the PA had made vague statements of concern that there was a lack of sufficient healthcare in Jordan for his daughter and wife. However, the statements lacked sufficient detail regarding the extent and nature of the alleged issues and no corroborating evidence had been submitted to support the PA's fears.

[28] The SIO concluded that the PA had not met his burden of proof with respect to healthcare concerns and the vague statements did not hold any weight.

[29] As to re-establishing in Jordan, the SIO found the PA had a significant amount of employment experience from his time in Canada that would be transferrable to a number of positions in Jordan and he also had a mother, four sisters and two brothers residing in the country.

[30] In addition, the SIO noted the PA had not adduced significant persuasive evidence that would merit granting any more than a moderate amount of weight to the re-establishment factor.

[31] The SIO also found the PA's status as an apostate in Jordan "may result in some minor bureaucratic and societal inconveniences". As such, the SIO granted re-establishment some favorable weight.

E. *Establishment in Canada*

[32] The PA submitted numerous letters of support by persons in Canada known to the PA and his family, including friends, colleagues and community members. Many of the letters provided substantial details of the extent and nature of their relationship with the applicants and, as such, the SIO found they were persuasive in documenting the development of meaningful relationships since the PA and his spouse arrived in Canada.

[33] The SIO also received evidence that the PA's wife had been attending English ESL courses since September 2019 and she provided letters of support from her teachers and other classmates that spoke to the relationships she had established there.

[34] The PA provided a Certificate of Completion for a literacy and computer skills course he completed in July 2019. The PA's daughter attended daycare and he submitted that she had established friends there.

[35] The SIO concluded that the testimonies and submissions underlined both efforts at integration as well as the interdependent nature of at least some of the personal ties that had formed. As a result, the SIO gave the evidence some favourable weight.

[36] However, the SIO found the economic and employment establishment in Canada by the PA did not attract much weight based on the evidence submitted which included working at a supermarket since May 2019 and also working as an Uber or food delivery driver. The PA's wife was unemployed from October 2016, when they entered Canada, to October 2019.

[37] No bank statements or evidence of other financial ties to Canada were submitted to the SIO.

[38] The SIO acknowledged that it appears the applicant held regular employment since May of 2019 and his wife was employed since October 2019. They found that indicated they were making efforts toward establishing themselves and integrating into Canadian society.

[39] In consideration of the totality of the evidence provided, the SIO found it to be quite limited in establishing this aspect of their case. It therefore attracted very little favourable consideration from the SIO.

F. *Best Interest of the Child (BIOC)*

[40] The PA's daughter, Miral, is a Canadian citizen, born January 3, 2018. The PA submits Miral would have better access to healthcare and education if she stays in Canada.

[41] At the time of the Decision, Miral was 3 years old and did not attend school in Canada.

[42] The SIO acknowledged healthcare and education might be more readily available and may be of better quality in Canada than those found in Jordan but no sufficient evidence had been submitted to indicate those resources would not be available to Miral in Jordan.

[43] The SIO observed that as the PA is a citizen of Jordan, his daughter has rights to Jordanian citizenship. Jordan also allows dual citizenship so Miral would not be required to renounce her Canadian nationality if she was returned to Jordan.

[44] The SIO noted that no evidence had been submitted to indicate that Miral would be unable to enroll in school in Jordan, or that the education system in Jordan is significantly worse than the education system in Canada.

[45] The SIO found that as Canada is the only country Miral knows, her best interest would be served by remaining in Canada.

G. *Conclusions by the SIO*

[46] The SIO found that the general hardships that come with re-establishing in another country, as well as the bureaucratic and societal discrimination that the PA may face as an apostate merits some favorable consideration although, as outlined above, this weight is of a moderate amount.

[47] The family and community ties the family established in Canada was given some favourable weight, although in light of the lack of other significant economic or employment ties, that weight was of a modest amount.

[48] Notwithstanding their finding that the child's best interest was to remain in Canada, the SIO found it was not enough to justify an exemption as there was insufficient evidence demonstrating a negative impact on the child.

[49] The SIO concluded that the applicants would still have access to adequate healthcare, education and employment opportunities in Jordan, and they have strong family ties in the country. In the view of the SIO, the collective consideration of those factors was neither extensive nor significant, and did not provide a sufficient basis to grant relief.

[50] As the SIO was not persuaded that the personal circumstances of the Applicants merited the exceptional response of a subsection 25(1) exemption, the H&C application was refused.

IV. **Issues and Standard of Review**

[51] The Applicant raises three issues: (1) whether the SIO's findings are reasonable; (2) whether the SIO erred in fact or law; (3) whether the procedure followed by the SIO was fair.

[52] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. While this presumption is rebuttable, no exception to the presumption, other than procedural fairness as set out above, is present here.

[53] A court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker. It does not attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem: *Vavilov* at para 83.

[54] The decision maker may assess and evaluate the evidence before it. Absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *Vavilov* at para 125.

[55] When reviewing the procedural fairness of a decision, the Court determines whether the procedure used by the decision maker was fair, having regard to all of the circumstances including the nature of the substantive rights involved and the consequences for the individual affected. While technically no standard of review applies, the Court's review exercise is akin to correctness: *Hussey v Bell Mobility Inc*, 2022 FCA 95, at para 24; *Gordillo v Canada (Attorney General)*, 2022 FCA 23, at para 63. Ultimately, the question is whether the Applicant knew the case to be met and had a full and fair chance to respond: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, at para 56.

V. **Analysis**

A. *Apostasy*

[56] The Applicants submit the SIO misconstrued the evidence with respect to the US DOS, 2019 Report on International Freedom: Jordan (The Report).

[57] In particular, the Applicants state that "Sharia court judges may annul the marriages of converts and transfer child custody to a Muslim nonparent family member or declare the children "wards of the state" and convey an individual's property rights to the Muslim family members".

[58] The Respondent stresses that the "Sharia court judges may annul the marriages of converts" but it is silent about pre-existing marriages where both the man and woman were Muslims at the time they were married. There is no certainty that they would have their marriage annulled if they return to Jordan.

[59] The evidence does not state that child custody will automatically be transferred to a Muslim nonparent family member nor that it will declare the children “wards of the state”.

[60] The SIO’s review of the evidence submitted by the Applicants found that “while apostasy cases in Jordan are handled by Sharia courts, all Sharia court verdicts are automatically appealed at the Sharia appeals court and the higher court has never upheld a ruling that stipulates the killing of apostates and furthermore that apostasy is rarely punished.” (my emphasis)

[61] The SIO stated that they “found very few cases in my research of applicants facing any legal recourse as a direct result of their apostasy, and it appears from the evidence reviewed that the most common complaints and accusations arise from the apostate’s immediate family. I do not find that the applicant fits this personal profile as it is clear his wife has no intention of accusing him, nor has he indicated that his family residing in Jordan holds any ill-will towards him.”

[62] The Applicants never made an argument before the SIO to the effect that their marriage would be annulled. It appears that this issue was raised for the first time in their affidavit before this Court and as such, it will not be entertained.

[63] The SIO’s research found there were very few cases of applicants facing any legal recourse as a direct result of their apostasy. The most common complaints and accusations were found to be from the apostate’s immediate family. The SIO found the PA’s wife had no intention of accusing him nor was there evidence that his family in Jordan held any ill-will toward him.

[64] The SIO concluded that "the applicant has not adduced sufficient evidence to corroborate his concerns regarding employment or schooling discriminations as a result of his status as an apostate, nor have I found any evidence of such while conducting my research. The burden of proof rests with the applicant and, lacking any further evidence, I find these allegations to hold little weight in my assessment of this factor."

[65] The SIO noted that although apostates in Jordan "may face some bureaucratic and societal discriminatory treatment through the annulment of marriages, custody issues and disinheritance and as such I grant it some favorable weight in my assessment of this exemption request. However, I am not of the opinion, based on the evidence at hand, that the applicant, on a balance of probabilities, would most likely face these issues based on his personal profile and furthermore I do not find that the potential hardships faced merit any more that a moderate amount of weight and consideration."

[66] As submitted by the Respondent, the evidence with respect to the treatment of Christians in Sharia courts does note the possibility of annulment and the transfer of child custody in certain cases. This possibility was acknowledged and given some weight in the hardship analysis. However, the report does not indicate the frequency or the basis on which this occurs, and it is most definitely not "automatic" as argued by the Applicants.

[67] I find the SIO's conclusions, as set out above, to be reasonable, and I find there was no violation of the Applicants' procedural fairness rights.

B. *Lack of Employment and insufficient Healthcare*

[68] After considering the fact that both the PA and his wife were well-educated, had extensive work experience in Jordan and Canada and had lived in Jordan until they were 23 years old, the SIO reasonably concluded they would not face any significant employment barriers if they returned to Jordan.

[69] I find the SIO reasonably considered and weighed each of the factors raised by the Applicants. The SIO reasonably concluded that the PA would likely be able to find employment and continue to practice his newfound faith in Jordan. In the context of all of these circumstances, the SIO concluded that the allegations of hardship did not warrant H&C relief. In seeking to have this Court interfere with the SIO's determination, the Applicants are in effect requesting a reweighing of the evidence which is not the role of the Court on judicial review.

C. *Hardship in Jordan*

[70] The SIO considered whether the PA and his wife would have difficulty finding employment in Jordan. The SIO observed that prior to travelling to Canada, the PA owned his own business and attended high school and university in Jordan. The PA's wife, Malak, also obtained a university education and had previous work and volunteer experience while residing in Jordan.

[71] The SIO concluded that "the applicant has not submitted any objective country condition documents in regards to the economic conditions in Jordan in respect to his personal circumstances, nor have I found any evidence of such while conducting my own research."

D. *Schooling, Healthcare and re-establishment in Jordan*

[72] The PA and his wife were both found to be well-educated, with extensive work experience in Jordan and in Canada. In addition, both of them had lived in Jordan until they were 23-years old.

[73] The SIO concluded that "given the information before me, and lacking any further evidence, I am of the opinion that they will not face any significant employment barriers if they return to Jordan."

VI. **Conclusion**

[74] The SIO reasonably and fairly considered and weighed each of the factors raised by the Applicants.

[75] The SIO concluded the PA would likely be able to find employment and continue to practice his newfound faith in Jordan. In the context of all of these circumstances, the SIO concluded that the allegations of hardship did not warrant H&C relief. In seeking to have this Court interfere with the SIO's determination, the Applicants are, in effect, requesting a reweighing of the evidence which is not the role of this Court on judicial review.

[76] The SIO reasonably concluded that the PA would likely be able to find employment and continue to practice his newfound faith in Jordan. In the context of all of these circumstances, the SIO concluded that the allegations of hardship did not warrant H&C relief. In seeking to have this Court interfere with the SIO's determination, the Applicants are in effect requesting a reweighing of the evidence. That is not the role of the Court on judicial review. I find the SIO's conclusions, as set out above, to be reasonable, and I find there was no violation of the Applicants' procedural fairness rights.

[77] Overall, the Applicants submitted evidence that had not been before the SIO for consideration. By and large, the evidence they did submit was found insufficient. In several instances, there was no evidence to support their various submissions.

[78] I find the SIO's conclusions, including that the Applicants did not meet their evidentiary burden, were justified, transparent and intelligible.

[79] This application for judicial review is dismissed.

[80] Neither party proposed a question for certification nor do I find one exists on these facts.

JUDGMENT in IMM-1966-21

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. There is no question to certify on these facts.

3. No costs.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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