Federal Court Cour fédérale

Date: 20231219

Docket: IMM-9957-22

Citation: 2023 FC 1722

Ottawa, Ontario, December 19, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

BABATUNDE HAKKEEM IDRIS

Applicant

and

THE MINISTER OF CITIZENSHIP OF IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Babatunde Hakeem Idris, seeks judicial review of a decision of a Senior Immigration Officer (the "Officer") of Immigration, Refugees and Citizenship Canada, dated October 4, 2022, denying his application for permanent residence on humanitarian and compassionate ("H&C") grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Officer was not satisfied that the Applicant's establishment in Canada and hardship upon removal to Nigeria, as well as the best interests of the children ("BIOC"), warranted an H&C exemption.

[3] The Applicant submits that the Officer's decision is unreasonable for failing to address the central issue of the hardship the Applicant's removal would have on his community.

[4] For the reasons that follow, I find that the Officer's decision is reasonable. I therefore dismiss this application for judicial review.

II. **Facts**

A. *The Applicant*

[5] The Applicant is a 49-year-old citizen of Nigeria. His wife is also a citizen of Nigeria. Two of his daughters are citizens of the United States of America, and one is a citizen of Canada.

[6] On November 22, 2018, the Applicant and his family entered Canada and made a claim for refugee protection. In a decision dated January 6, 2021, the Refugee Protection Division ("RPD") rejected their claims. In a decision dated November 12, 2021, the Refugee Appeal Division upheld the RPD's decision.

[7] The Applicant is a minister at the Truth Tabernacle/Truth for All Nations Church (the "Church") and has been a member since arriving in Canada in 2018.

B. *Decision under Review*

[8] In a decision dated October 4, 2022, the Officer found that the Applicant's circumstances did not warrant H&C relief pursuant to section 25(1) of the *IRPA*.

[9] The Officer assigned only some weight to the Applicant's establishment, finding that the Applicant could likely maintain contact with friends and others in Canada and that separation from them was insufficient to justify granting an H&C exemption. The Officer acknowledged evidence of the Applicant's involvement in the Church, but nonetheless concluded that overall the Applicant's establishment is at a level that would be expected of a person in their circumstances.

[10] With respect to the BIOC, the Officer considered the Applicant's three daughters and acknowledged that family re-unification to be a significant factor, whether in Nigeria or Canada. The Officer nevertheless assigned only some weight to the BIOC. The Officer acknowledged evidence of the children's friends and educational ties in Canada, but found that only some emotional discomfort would arise from leaving Canada, as the children could maintain contact with friends and have the support of their parents behind them. The Officer further found that the children could re-settle in Nigeria and that there was insufficient evidence to establish the children would be at risk in Nigeria.

[11] On adverse country conditions, the Officer considered the Applicant's allegations that the family would be subject to various forms of hardship upon removal to Nigeria. The Officer gave minimal weight to this factor, finding that the Applicant and his family had claims refused by the

RPD and RAD, that there was insufficient evidence to establish the parents would be unable to find employment in Nigeria given their educational and work history, and that there was insufficient evidence demonstrating that the Applicant is estranged from his family in Nigeria. Overall, the Officer concluded that there was insufficient evidence that the Applicant and his family would not be able to re-integrate or re-establish themselves into a Nigerian community.

[12] For these reasons, the Officer was not satisfied that the Applicant's circumstances warranted an H&C exemption under section 25(1) of the *IRPA*.

III. **Issue and Standard of Review**

[13] This application for judicial review raises the sole issue of whether the Officer's decision is reasonable.

[14] The standard of review on the merits of the decision is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) ("*Vavilov*"). I agree.

[15] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant

administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[16] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100). While a decision-maker is not required to respond to every line of argument or mention every piece of evidence, a decision's reasonableness may be called into question where the decision exhibits a "failure to meaningfully grapple with key issues or central arguments" (*Vavilov* at para 28).

IV. **Analysis**

[17] The Applicant does not challenge the reasonableness of the Officer's decision with regard to the BIOC and adverse country conditions analyses. The Applicant submits only that the Officer's decision is unreasonable for failing to meaningfully grapple with the key issue of how his departure would cause hardship to his community in Canada. I disagree. The Applicant fails to raise a reviewable error in the Officer's decision.

[18] The Applicant submits that the Officer did not grapple with the hardship the Church community would face upon the Applicant's removal. The Applicant submits that the Church's

interests are “Canadian” interests under section 205 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (“*IRPR*”), and that the Officer failed to consider this consideration as required by section 3(3)(a) of the *IRPA*.

[19] The Respondent submits that the Officer’s decision is reasonable. The Respondent maintains that the Officer considered the effect of the Applicant’s removal on the Church community and that the Applicant did not include any evidence about how the Church would be affected by his departure.

[20] I agree with the Respondent. The Officer considered the Applicant’s submission about the effect of his removal upon the Church, concluding that “[w]hile I commend the principal applicant for his contributions to the youth in his community, I do not find that the evidence on file indicates that his absence could not be supplanted by others in his community or that the interdependency between him and the youth he mentors is such that humanitarian relief would be warranted.” I therefore find that Officer meaningfully grappled with this issue.

[21] Furthermore, the Applicant’s reliance on section 205 of the *IRPR* and section 3(3)(a) of the *IRPA* is misguided. Section 205 of the *IRPR* is a provision about work permits and is irrelevant to this matter. The Respondent also rightfully notes that this issue was not before the Officer and this Court declines to exercise its discretion to hear it on judicial review (*Alberta (Information and Privacy Commissioner) v Alberta Teachers’ Association*, 2011 SCC 61 at paras 23-26). Section 3(3)(a) is an interpretive provision and the Applicant has not led evidence nor argument to demonstrate that the Officer interpreted subsection 25(1) of the *IRPA* in a manner that ignored the national interest of Canada. Moreover, the Applicant has not provided any

authority for the proposition that the "whole Church congregation" has—or could have—an interest in this matter that was breached in contravention of section 3(3)(a) of the *IRPA*. The onus is on the Applicant to show the Officer's decision is unreasonable (*Vavilov* at para 100). The Applicant has not met this onus in this application.

V. **Conclusion**

[22] This application for judicial review is dismissed. The Applicant has not raised a reviewable error in the Officer's decision. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-9957-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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