Federal Court  Cour fédérale

Date: 20231215

Docket: IMM-3247-22

Citation: 2023 FC 1694

Ottawa, Ontario, December 15, 2023

PRESENT: Madam Justice Walker

BETWEEN:

CHARLES IDOWU EMMANUEL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Charles Emmanuel, was born in Nigeria as Charles Idowu Oshodi and grew up in the United Kingdom. He was married in the UK and had two children who are now adults. The Applicant moved to the United States in 2002 but was deported following a conviction and imprisonment for conspiracy to commit bank fraud.

[2] In January 2007, the Applicant travelled to Canada. He was refused entry as a non-genuine visitor on the basis of criminal inadmissibility. The Applicant was allowed to leave Canada and return to the UK but, in March 2007, he again came to Canada, on this occasion using the name Charles Idowu Emmanuel. He did not disclose his past criminality as was required upon entry and was admitted as a visitor.

[3] Shortly after his return to Canada, the Applicant met his current wife with whom he has three minor children. He also has a stepdaughter who was born in 2003.

[4] On March 29, 2010, the Applicant was reported for his criminal conviction in the US and a deportation order was issued on September 21, 2010. He made a refugee claim in April 2010 which the Refugee Protection Division rejected on the basis of Article 1F of the *United Nations Convention Relating to the Status of Refugees* (incorporated into Canadian law via section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*)).

[5] In December 2011 and March 2012, the Applicant was charged with criminal offences committed in Ontario. He was convicted on November 28, 2013 of identity fraud, fraud under $5,000 and personation with intent.

[6] The Applicant’s Pre-removal risk assessment (PRRA) was dismissed in July 2013.

[7] The Applicant did not appear for his scheduled removal from Canada on February 3, 2014 and a warrant was issued for his arrest. The Applicant moved to British Columbia to avoid detection and he and his wife married shortly thereafter.

[8] In the ensuing years, the Applicant filed successive applications for spousal sponsorship and permanent residence in Canada on humanitarian and compassionate (H&C) grounds, all of which were refused.

[9] On December 31, 2020, the Applicant was arrested by Canada Border Services Agency (CBSA) and his removal scheduled for January 31, 2021. The Applicant filed a motion for a stay of the removal which the Court dismissed on January 29, 2021.

[10] The Applicant left Canada on January 31, 2021.

[11] Prior to his December 2020 arrest, the Applicant had submitted an application for a temporary residence permit (TRP) pursuant to subsection 24(1) of the *IRPA*. The application was denied on January 28, 2021 and the Applicant challenged the denial in this Court. The parties settled the application for judicial review, the impugned decision was set aside and the Applicant's file was returned for redetermination by another officer.

[12] On April 1, 2022, the Case processing officer (the Officer) assigned to the redetermination issued their decision, again refusing the Applicant's request for a TRP. It is this decision (the Decision) that is before me in this application for judicial review.

[13] In the Decision, the Officer describes the Applicant's criminal and immigration histories in the US and Canada and notes that the Applicant requested a TRP because he wishes to live with his family in Canada while applying for rehabilitation and suspension of his criminal record. The Officer acknowledged the Applicant's marital status and children, his letters of support, the children's school and activities reports, medical evidence and two psychological reports submitted in support of the TRP application. The Officer also referred to the declarations of the Applicant and his wife and the supplementary submissions received on February 17, 2022.

[14] The Officer was not satisfied, based on their review of all the information submitted, that there are sufficient and compelling needs that warrant the issuance of a TRP. In their concluding paragraph, the Officer emphasized the Applicant's criminal inadmissibility and lack of regard for Canadian immigration laws in remaining in the country without status for almost 14 years.

[15] In this application, the Applicant argues that the Decision is not reasonable because the Officer failed to substantively address and evaluate his evidence of positive establishment and, most critically, the best interests of his children (BIOC) and spouse. The Applicant also argues that the Officer did not consider whether he represents a risk to the security of the Canadian public. In the Applicant's opinion, his Canadian children are being punished for the now dated actions of their father.

II. Analysis

[16] The sole issue raised in this application is whether the Officer reasonably refused the Applicant's request for a TRP. It follows that I will review the Decision for reasonableness

against the analytical 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*) (see, *Shabdeen v Canada (Citizenship and Immigration)*, 2020 FC 492 at para 12 (*Shabdeen*)). As emphasized by Applicant's counsel, where the Court reviews an administrative decision for reasonableness, its role is to examine the reasons given by the decision maker and determine whether the decision "is based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). A reasonable decision is one that is justified, transparent and intelligible (*Vavilov* at para 99).

[17] A TRP may be issued under subsection 24(1) of the *IRPA* to a person who is inadmissible if an officer is of the opinion that it is "justified in the circumstances". Pursuant to subsection 24(3), an officer is required to act in accordance with any instructions made by the Minister.

[18] A TRP is directed to short-term, pressing concerns that necessitate the issuance of an exceptional measure to allow an individual temporary residence in Canada despite inadmissibility or other failure to comply with Canadian immigration laws. The purpose of a TRP is to soften the sometimes harsh consequences of a strict application of the *IRPA* (*Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275 at para 22, cited recently in *Shabdeen* at para 14, *Shala v Canada (Citizenship and Immigration)*, 2021 FC 326 at para 21, *El Rahy v Canada (Citizenship and Immigration)*, 2020 FC 372 at para 57). This Court has held that a TRP decision is highly discretionary and that an applicant challenging such a decision bears a

heavy burden (*Bamra v Canada (Citizenship and Immigration)*, 2020 FC 482 at para 27; *Nagra v Canada (Citizenship and Immigration)*, 2023 FC 1098 at para 19).

[19] It is important to distinguish section 24 from section 25 of the *IRPA* given the importance of the Applicant's BIOC arguments to this application. Section 25 permits the Minister to grant permanent resident status or an exemption from the application of another obligation of the *IRPA* if justified by H&C considerations, taking into account the best interests of the child directly affected. There are facts and circumstances relevant to both a section 24 and section 25 application but section 24 does not entail a full-scale H&C analysis (*Wu v Canada (Citizenship and Immigration)*, 2016 FC 621 at para 32; *Shabdeen* at para 15).

[20] The Applicant first submits that the Officer failed to substantively engage with the evidence surrounding his children's best interests (*Zhang v Canada (Citizenship and Immigration)*, 2020 FC 53 at para 12). He argues that his presence in Canada is essential for the well-being of his children and that it is extremely difficult for their mother to care for the children alone. The Applicant notes that the family attempted to relocate to the UK in 2021 for a four-month period but that his wife could not find work and the children were unhappy with the education alternatives open to them.

[21] The Officer considered the Applicant's evidence and submissions with regards to the best interests of his children and acknowledged the BIOC assessment carried out as part of the Applicant's previous H&C application. The Officer reviewed the additional submissions filed in support of the TRP request and considered the best interests of the children as one important

factor in their analysis. The Officer acknowledged the family's attempted relocation to the UK but found that it was of short duration such that the employment and education issues encountered by the family members were not unusual.

[22] The Applicant refers to two psychological reports prepared by Dr. H. Davis, one in March 2021 and a second in November 2021. Dr. Davis assessed the Applicant's wife and children. He found that the Applicant's wife had a significant level of major depression that impacts her ability to function in the absence of the Applicant, particularly given the reasonable possibility of unemployment and poverty should she be unable to work. Dr. Davis also found significant levels of decompensation in the children.

[23] The Officer reviewed the psychological reports, including Dr. Davis's opinion that the children would not be psychologically healthy living in the UK. The Officer noted Dr. Davis' statements to the effect that either exiting Canada or continuing in Canada with a single parent will impose unnecessary mental health risks on the children and that the mental health of the children will further decline in the absence of family reunification. The Officer considered these statements together with the children's evidence that they would prefer to adapt to living apart from the Applicant rather than be separated from their friends and school environments in Canada. The Applicant suggests the Officer erred in attempting to undermine a professional medical report but I disagree. The Officer assessed the findings and conclusions set out in the reports in light of the evidence before them and the parameters of a TRP application.

[24] I agree with the Applicant that the Officer made no specific reference to Dr. Davis' diagnosis of his wife's significant and major depression and that this omission is an error. However, after careful consideration, I conclude that it is not a central and significant error such that it renders the Decision unreasonable (*Vavilov* at para 100). The Officer was aware of the psychological reports and their content. The Officer referred to the substance of the reports in the Decision and considered the reports against the evidence provided by the Applicant's wife. She indicated that the Applicant is an integral part of the household and that without him the family would collapse. She also stated that his leaving Canada would be the end of their marriage as she cannot uproot the children and herself to live in the UK. In July 2020, the Applicant's wife declared that her husband feels guilty and remorseful about his conduct in Canada and would not break the trust of the immigration authorities but she made the declaration while he was subject to an active arrest warrant of which she was aware.

[25] I find no reviewable error in the BIOC assessment in the Decision. The Applicant has not pointed to an error or omission on the part of the Officer to consider short-term, exigent concerns. He suggests that the Officer should have undertaken a full BIOC assessment and should not consign the children to the care of a single parent. While the Officer's BIOC analysis is short and could have been more fulsome, the analysis is consistent with the evidence and with the parameters of a reasonable TRP/BIOC review.

[26] In addition, the Officer's assessment of the wife's precarious situation in Canada as a single parent is neither brief nor cursory. The Officer reviewed the evidence, including the submissions and declarations made by each of the Applicant and his wife, the evidence provided

by the children, and the details on the family's life in Canada and during their attempted move to the UK. It is clear in the Decision that this evidence was assessed as an important element of the TRP application.

[27] The Applicant's second submission focusses on his criminal convictions and the question of whether he would pose a risk to the Canadian public should he be permitted to return to Canada. The Applicant submits that the Officer failed to undertake any risk assessment, thereby contravening the IRCC's *Operational Instructions and Guidelines for the issuance of Temporary Residence Permits* (the Guidelines). The Applicant emphasizes that his prior crimes were non-violent and are now dated, with the result he poses little risk to Canada and Canadians. In his view, the Officer failed to weigh his past transgressions against the positive factors in favour of a TRP.

[28] In response, the Respondent submits that departmental guidelines are not law and are not binding on the Minister or their agents. Rather, the Guidelines are just that: a mechanism to provide guidance regarding the purpose and application of the TRP regime (*Mousa v Canada (Immigration, Refugees and Citizenship)*, 2016 FC 1358 at para 11). Further, the Respondent states that the Officer was required to consider not only the Applicant's past criminality but also his long and repeated disregard for Canadian immigration laws.

[29] The Guidelines provide that a TRP is issued at the discretion of the delegated authority, the Officer in this case, who determines whether the individual's purpose for entering Canada

balances Canada's social, humanitarian and economic commitments and the health and security of Canada, per the objectives of the *IRPA*. The Guidelines state:

> In addition, an officer may consider the following:
>
> - the need for the foreign national to enter or remain in Canada is compelling
> - whether the need for the foreign national's presence in Canada outweighs any risk to Canadians or Canadian society.

[30] I find no reviewable error in the Officer's consideration of the Applicant's prior criminality and immigration history for the following reasons.

[31] First, the Guidelines provide only that the Officer may consider whether an applicant's need to be present in Canada outweighs any risk to Canadian society. The Guidelines themselves are not binding on an officer but, more importantly, they do not require a risk assessment. Risk, where relevant, is one of the factors that may be considered.

[32] Second, I agree with the Respondent that the Officer did not err in considering the Applicant's disregard for Canadian immigration laws and requirements. The Applicant entered Canada very shortly after being denied entry in January 2007 using a name he knew was not known to Canadian immigration officials. Once his refugee claim and PRRA were denied, he actively evaded detection and removal, and was successful for seven years. The Applicant only came to the attention of CBSA by chance when he was arrested in 2020.

[33] In the TRP application and in this application, the Applicant glosses over his immigration history and states that he left Canada voluntarily in 2021 because he recognized the need to

comply with the law and regularize his status from the UK. The Applicant's characterization of his departure is not consistent with the substantial evidence in the record, nor does it identify an error in the Officer's reasons. The Officer rejected counsel's submission that it was important to consider the Applicant's respect for Canadian immigration laws and voluntary decision to leave Canada. It is true that the Applicant did not vanish after his stay motion was denied. It is equally true that he left for the UK as required. I acknowledge that the Applicant's decision to comply with the law is a positive development and may signal a changed attitude and course of conduct for the future. However, the fact the Applicant did not again go into hiding does not negate his past history in Canada. The Officer committed no reviewable error in considering that history as a material element of their analysis.

III. Conclusion

[34] The Officer was required to consider all the factors relevant to the issuance of the requested TRP as an exceptional measure and, in my view, did so. The Officer weighed the Applicant's prior criminal convictions and non-compliance with immigration laws against his establishment in Canada and the evidence of his life with his family, his role within the family unit and the challenges his wife and children face in his absence. The Officer did not engage in a comprehensive BIOC analysis but nor was a full BIOC analysis required. The Officer reviewed and explained their conclusions with respect of each important aspect of the TRP application. I agree with the Applicant that the Officer should have more directly engaged with Dr. Davis' diagnosis of the major depression suffered by the Applicant's wife. However, the Officer reviewed the significant findings in the reports, including those relevant to the children.

[35] In summary, I find that the Decision as a whole is reasonable and will dismiss this application. The Officer's analysis falls within the legal and factual framework presented by the Applicant's TRP application and by the TRP regime more generally. In this regard, it is important to recall that a TRP is intended to address short-term exigent concerns necessitating the presence of an individual in Canada (*Shabdeen* at para 15). The Applicant genuinely believes that the Officer unreasonably and superficially assessed his evidence and that the ultimate denial of the TRP application was simply wrong. However, the Officer's decision is one that entails the exercise of discretion and is to be afforded deference (*Chaudhary v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 128 at para 45). The Applicant has not established a lack of logical reasoning, transparency and justification such that the Decision is not reasonable.

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

JUDGMENT IN IMM-3247-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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