

Federal Court



Cour fédérale

Date: 20240221

Docket: IMM-7439-22

Citation: 2024 FC 287

Ottawa, Ontario, February 21, 2024

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

DENNIS PHILLIP JOHN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Dennis Phillip John (the “Applicant”) seeks judicial review of the decision of an Officer (the “Officer”), refusing his application for permanent residence from within Canada, on humanitarian and compassionate (“H. and C.”) grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant is a citizen of St. Vincent and the Grenadines (“St. Vincent”) as well as Trinidad and Tobago (“Trinidad”). He entered Canada as a visitor in 2008. He identifies as bisexual.

[3] In 2019, the Applicant sought refugee protection on the basis of his sexual identity and threats from a former same-sex partner. The Immigration and Refugee Board, Refugee Protection Division dismissed his claim and an appeal to the Immigration and Refugee Board, Refugee Appeal Division was unsuccessful.

[4] In 2021, the Applicant made his H. and C. application, citing the best interests of his nieces and nephews, his establishment in Canada and threats against him in St. Vincent from his former partner. He also alleged risk arising from homophobic country conditions in Trinidad.

[5] The Officer found that the Applicant had not shown a sufficient degree of establishment in Canada and found that the Applicant could return to St. Vincent or Trinidad. The Officer also found that his departure would not directly impact the best interests of the children.

[6] The Applicant now argues that the decision is unreasonable. In particular, he submits that the Officer improperly used an elevated standard to assess establishment and unreasonably assessed and ignored evidence about the risks to him in either St. Vincent or Trinidad.

[7] The Minister of Citizenship and Immigration (the “Respondent”) contends that the Officer made no reviewable error.

[8] The decision of the Officer is reviewable on the standard of reasonableness, following the guidance in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.).

[9] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”; see *Vavilov, supra*, at paragraph 99.

[10] It is not necessary for me to address all the arguments advanced by the parties since I am satisfied, on the basis of the materials filed and the arguments of the parties, that the decision does not meet the relevant legal standard.

[11] I agree with the Applicant that the Officer’s consideration of the conditions he would face in returning to either St. Vincent or Trinidad was unreasonable.

[12] In St. Vincent, the Officer apparently did not take into account the evidence of recent threats of violence from his former partner.

[13] In Trinidad, the Officer concluded that legal rights for LGBT individuals are “improving” but did not engage with the country condition evidence to determine the actual legal status for those individuals.

[14] The reasons are not “intelligible” and “transparent”, as required by the test in *Vavilov*, *supra*.

[15] In the result, the decision will be set aside and the matter remitted to a different officer for redetermination.

[16] There is no question for certification.

JUDGMENT IN IMM-7439-22

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision is set aside and the matter is remitted to a different officer for redetermination. There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7439-22

STYLE OF CAUSE: DENNIS PHILLIP JOHN v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 17, 2024

REASONS AND JUDGMENT: HENEGHAN J.

DATED: FEBRUARY 21, 2024

APPEARANCES:

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Suzanne Bruce FOR THE RESPONDENT

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