Federal Court Cour fédérale

Date: 20240705

Docket: IMM-6515-22

Citation: 2024 FC 1058

Ottawa, Ontario, July 5, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

FARSHIN MALAEKEH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, a citizen of Iran, arrived in Canada in 1986 unaccompanied by an adult and just prior to his sixteenth birthday. He has been unsuccessful in regularizing his status in Canada on a permanent basis and most recently applied for permanent residence on humanitarian and compassionate [H&C] grounds in February 2021.

[2] A Senior Immigration Officer [Officer] refused the H&C application in a decision dated June 3, 2022. The Applicant applies under subsection 72(1) of the *Immigration and Refugee Protection Act,* SC 2001, c 27 [IRPA] for judicial review of the Officer's decision.

[3] For the reasons that follow, I dismiss this Application for Judicial Review.

II. Decision under review

[4] In seeking permanent residence from within Canada on H&C grounds, the Applicant relied on his establishment in Canada, and more specifically the time that he has spent in Canada (more than 35 years), his employment, his family and social connections in this country, and the absence of any attachment to Iran.

[5] In refusing the application, the Officer acknowledged that the Applicant had been in Canada for more than 35 years and that a certain level of establishment had occurred, but that this alone may not warrant the granting of relief. The Officer noted the absence of evidence to establish the Applicant's reported history with social services upon his arrival in Canada, evidence that the Officer indicated may have assisted in assessing factors relevant to the H&C application. The Officer also noted the absence of any evidence of adverse country conditions in Iran and their impact on the Applicant.

[6] The Officer noted the Applicant's submissions to the effect that he lacks family in Iran, that he cares for his elderly parents in Canada, that separation from his family would be impossible to think about, and would destroy his elderly parents. The Officer acknowledged

family reunification is a cornerstone of the IRPA, and that separation will place a strain on all, but indicated that options to maintain family contact are available and there was no evidence that these means could not be relied on. The Officer also highlighted the absence of any letters or statements of support from family, friends, colleagues or associates in Canada.

[7] The Officer reviewed the Applicant's reported employment history and acknowledged certificates provided by the Applicant. However, the Officer noted the absence of bank statements, pay statements, T4s or other financial or tax-related evidence and found it was unclear how the Applicant supports himself. The Officer also noted the lack of evidence of community involvement.

[8] The Officer found the evidence did not support a conclusion that the Applicant had established himself in Canada to an extent that a departure would have a negative impact on him or others.

[9] In noting the Applicant's prior criminal convictions, the Officer acknowledged, and gave positive weight, to the granting of a pardon in 2020 and noted the pardon corroborates the Applicant's assertions that he has changed his life and has developed an ability to overcome challenges. The Officer also acknowledged the 35 plus years that the Applicant has spent in Canada and his limited skills in Farsi. However, the Officer found that, due to the insufficiency of the evidence, the Applicant had not established that removal would result in undue and underserved, or disproportionate hardship for either the Applicant or those he reported depend on him.

[10] The Officer found the Applicant's establishment in Canada to be relatively modest, and that an exemption was not warranted simply because the Applicant has been in Canada for over 35 years. The Officer similarly found the evidence relating to the treatment the Applicant experienced as a young person did not warrant an H&C exemption. The Officer also gave negative weight to the Applicant's non-compliance with immigration laws in Canada.

[11] The Officer acknowledged that leaving Canada would result in inevitable hardship and that difficulties would be encountered but found those hardships to be normal and foreseeable consequences of the operation of Canada's immigration laws. The Applicant's personal circumstances did not justify the granting of H&C relief. Ultimately, the Officer concluded that the cumulative balance of factors did not favour the Applicant.

III. Issues and standard of review

[12] The Applicant raises a single overarching issue – the Officer's decision is unreasonable. In doing so, the Applicant argues the Officer erred:

A. in assessing the Applicant's establishment;

B. by failing to consider the impact on the Applicant and his family, of the Applicant having to depart Canada; and

C. by failing to consider whether requiring the Applicant to leave Canada after 35 years, as well as the resulting hardship, would be inconsistent with Canada's international obligations.

[13] The Officer's decision is reviewable on the presumptive standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 7 [*Vavilov*]; *Kanthasamy v Canada (Citizenship and Immigration*), 2015 SCC 61 at para 44; *Jaramillo Zaragoza v Canada (Citizenship and Immigration)*, 2020 FC 879 at para 10).

[14] In reviewing a decision on the standard of reasonableness, a reviewing court is required to consider whether a decision exhibits the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99). A decision is reasonable where it "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).

IV. Analysis

A. *No error in addressing establishment and hardship*

[15] The Applicant submits that, in considering establishment, the Officer minimized the impact of departing Canada on an individual in the Applicant's circumstances. It was, the Applicant argues, unreasonable to suggest that leaving Canada would not cause hardship because the disruption to the Applicant's life would be profound – he had spent the vast majority of his life in Canada, all of his family and his partner are in Canada, and he has no connections in Iran. The Officer, having accepted the information provided relating to the Applicant's family, partner and his employment, unreasonably concluded the Applicant's establishment was modest and, in turn, unreasonably relied on the Applicant's failure to attend a Canada Border Services Agency interview to conclude little weight should be given to his establishment.

[16] I am unpersuaded by the Applicant's arguments. The basic premise underlying the Applicant's position is that the Officer erred by failing to conclude the Applicant's lengthy time in Canada is sufficient to demonstrate establishment and hardship. It is not. As the Officer reasonably and correctly noted "[t]he onus is entirely upon the applicant to be clear in the submissions as to exactly what factors they wish to be considered and provide evidence to corroborate their cited factors" (emphasis added). The Officer's overarching and repeated observation in refusing the application was the dearth of evidence to support the Applicant's assertions.

[17] The Officer acknowledged and reviewed the Applicant's establishment submissions, including the impact of being uprooted from Canada after 35 years. The Officer did not minimize the impact of removal, and the context of the Applicant's circumstances were acknowledged and addressed. However, the Officer also noted the limited evidence of employment, the absence of evidence to establish the Applicant's financial circumstances, that there were no letters of support provided by family, friends or colleagues, and that there was no evidence of community involvement. The absence of evidence to demonstrate establishment distinguishes the Applicant's circumstances from much of the jurisprudence the Applicant seeks to rely on.

[18] The Officer concluded that the Applicant's establishment in Canada "as a whole over the more than 35 years he has been in Canada" was "relatively modest." This conclusion was reasonably available to the Officer.

[19] The Applicant takes issue with the Officer's treatment of his immigration history and the Officer's finding that disregard for Canadian immigration laws and processes was a circumstance warranting "giv[ing] negative weight." The argument essentially advances an alternate view of the evidence and the weight it was given, factors that do not impact upon the reasonableness of the Officer's analysis.

[20] Nor did the Officer fail to consider the Applicant's challenges on arrival in Canada as an unaccompanied 16 year old, specifically noting those circumstances are "deserving of empathy" but not determinative.

[21] That the Officer gave non-compliance with immigration laws greater weight in undertaking a global or cumulative assessment of the circumstances was also reasonable. While the Officer did not dispute the presence of family in Canada, the Officer repeatedly identified the absence of evidence to demonstrate the strength and depth of those relationships and other elements of establishment. The Officer's reasons must be read holistically in determining whether the manner in which the evidence has been weighed is justified.

[22] Although the Applicant takes issue with the Officer's decision on a multitude of grounds, the absence of evidence, as I have noted more than once above, responds to most, if not all of the arguments. The Officer did not err in assessing establishment or hardship or in undertaking a global assessment of the Applicant's circumstances.

B. *The Officer did not err by failing to expressly consider Canada's international obligations*

[23] The Applicant relies on the requirement that the IRPA (section 3) be construed in a manner that is consistent with Canada's international obligations in submitting the Officer erred by failing to account for and recognize that removal after 35 years in Canada would constitute hardship warranting relief and violate the Applicant's rights under the United Nations' *International Covenant on Civil and Political Rights*, Can TS 1976 No 47 [ICCPR]. The Applicant cites the views of the United Nations' Human Rights Committee [UNHRC] in *Deepan Budlakoti v Canada* (*Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No 2264/2013*, UN ICCPR, Human Rights Committee, 122nd sess, UN Doc CCPR/C/122/D/2264/2013 (2018) [*Budlakoti*]), a case where the Federal Court of Appeal in a related proceeding described the issue as being whether a child born in Canada to parents with diplomatic status should be recognized as a Canadian citizen or granted Canadian citizenship (*Budlakoti v Canada (Citizenship and Immigration)*, 2015 FCA 139 at para 21).

[24] Putting aside the fact that the Applicant did not argue before the Officer that denial of the application would be contrary to Canada's international obligations, I find that *Budlakoti* is of little assistance to the Applicant.

[25] In *Budlakoti*, the UNHRC relies on "strong ties" to Canada in support of the conclusion that the author of the complaint had established Canada to be "his own country" within the meaning of article 12(4) of the ICCPR (*Budlakoti* at para 9.3). The strong ties finding was made

in a context where the author of the complaint had been born in Canada, believed he was a citizen, and had been issued a passport. The UNHRC specifically notes and relies upon these circumstances in reaching the view it did. The duration of the stay was but one of those circumstances.

[26] In this instance, and as I have stated above, the Officer did consider the broader context in assessing the H&C application (see paragraph 17). This included the duration of the stay in Canada and the Applicant's family circumstances. The Officer's decision was informed by factors including the limited evidence provided in support of the application and the Applicant's non-compliance with immigration laws. As I have already concluded, it was open to the Officer to find H&C relief was not warranted. *Budlakoti* does not support the view that the Officer's conclusion is inconsistent with section 3 of the IRPA and/or Canada's international obligations. In my view, the Applicant's position does not identify an error, but rather reflects a disagreement with the outcome.

V. Conclusion

[27] For the above reasons, the Application is dismissed.

[28] The Parties have not identified a question of general importance for certification, and none arises.

JUDGMENT IN IMM-6515-22

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.

2. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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