Federal Court  Cour fédérale

Date: 20240711

Docket: IMM-4036-23

Citation: 2024 FC1096

Edmonton, Alberta, July 11, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

PHUONG THUY VY TRAN

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Phuong Thuy Vy Tran, seeks judicial review of the decision of an Officer of the Canada Border Services Agency ("CBSA") refusing to defer her removal from Canada.

[2] The Applicant originally came to Canada in January 2013, on a study permit. She then obtained a Post Graduate Work Permit, valid until December 2022. Shortly after the expiry of

that work permit, the Applicant visited a local Service Canada office to inquire about her options. She says that the agent told her they would send her a link to an application for permanent residence. Instead, she was sent forms to apply for refugee status, which she completed and submitted. At her refugee hearing, the Board member realized the error and adjourned the hearing so that the Applicant could seek legal counsel. The Applicant then withdrew her refugee claim and on November 18, 2022, submitted an application for permanent residence from within Canada on humanitarian and compassionate ("H&C") grounds.

[3] As a result of the Applicant's withdrawal of the refugee claim, a previous Departure Order became enforceable as of November 2022. The Applicant began meeting with CBSA to discuss removal and timelines. Her counsel advised CBSA that she intended to submit a formal request for a deferral of her removal. On March 13, 2023, CBSA sent removal instructions to the Applicant, noting that her removal was scheduled for April 4, 2023.

[4] On March 17, 2023, the Applicant submitted a request for an administrative deferral of her removal. In her request, the Applicant cited a number of grounds:

> Concerns that her former employer, a designated assisted living facility called Tuoi Hac Golden Manor, would need three moths to replace her. She worked there as a Licensed Practical Nurse ("LPN") from February 2020 to March 13, 2023. As of July 2022, she was the lead LPN on the night shift. She indicated that the patients have complex medical needs including dementia and chronic diseases. Many of the patients are Vietnamese elders, and she speaks Vietnamese approximately 50% of the time at work.
> Concerns about the health and care of her grandmother, who is a Canadian citizen and resides with her husband (the Applicant's grandfather), as well as the Applicant and two

> other grandchildren. The Applicant states that her grandmother has several chronic medical conditions and has been hospitalized on several occasions over the previous months. The grandmother was referred for home care assistance in February 2023, upon her most recent discharge from hospital. The Applicant indicated her grandmother was on the waitlist for homecare and that she is the only one available to provide assistance and care for the grandmother, which she does before and after work.
> Concerns about the financial support the Applicant has been sending back to Vietnam to help support her 9-year-old twin sisters' education. The Applicant submits that she would have a lower salary in Vietnam and would be unable to pay for her sisters' school fees.

[5] Concerns that she is awaiting a decision on an H&C application which was submitted on November 18, 2022. The Officer refused the deferral request on the basis that there was "insufficient objective non-speculative evidence" to justify deferring the Applicant's removal.

[6] The Applicant seeks judicial review of this decision. While she advanced several grounds in her written submissions, at the hearing the Applicant's focus was on two issues: the Officer's failure to consider the evidence regarding the shortage of health care workers in Alberta and the challenges her employer would face in finding qualified staff to replace her; and the Officer's unreasonable demand for more evidence about the Applicant's essential role in helping her grandmother deal with her health care challenges while she waited for home care assistance. The Applicant claims that these are sufficiently central and serious concerns to make the entire decision unreasonable.

[7] I agree. On the two determinative issues in this case, the Officer's analysis is unreasonable.

[8] Under subsection 48(2) of the *Immigration and Refugee Protection Act*, S.C. 2001 c 27 [*IPRA*], removal orders are to be "enforced as soon as possible" and the case-law has consistently stated that the discretion of a removals officer is quite limited. The question before the officer is when removal can be done, not whether it should occur, and the focus is on the short-term impediments and practical realities associated with removing the individual from Canada. The relevant jurisprudence was summarized in *Toney v. Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1018 at paragraph 50.

[9] In this case, the Applicant raised two specific short-term questions: the difficulty her employer would face in providing an essential service to a vulnerable clientele; and the challenges her family faced in supporting her elderly grandmother with serious health conditions during the period until home care assistance could be arranged. The Applicant was clear – both questions could be resolved in a matter of months, and that is why she requested a three-month deferral of her removal.

[10] The Officer found that the Applicant's evidence in support of these requests was insufficient. I will discuss each issue and then examine the combined effect on the decision as a whole.

[11] On the employers' challenge in replacing the Applicant, the Officer made two key findings. First, section 209 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 provides that a work permit becomes invalid when a removal order becomes enforceable. The Applicant has been subject to an enforceable removal order since November 2022, and the Officer found that delaying her removal would not have the effect of granting her any status. Therefore she would still be unable to work.

[12] Second, the Officer acknowledged the care and support that the Applicant had provided to the residents of the manor, and noted that concerns had been raised regarding the difficulty in finding a replacement. However, the Officer found these concerns to be speculative. The Officer stated: "I have insufficient objective evidence that the employer would be unable to find another person to fill the position or that they would be unable to access the Canadian labour market…".

[13] I find this unreasonable because the Officer failed to engage with the specific evidence and submissions, as well as the actual experience of the Applicant as evidenced in her immigration history. For example, the Officer concluded that deferring the Applicant's removal would not have the effect of allowing her to work, because a deferral decision does not render a removal order unenforceable. That is true as a matter of law: *Terante v Canada (Citizenship and Immigration)*, 2015 FC 1064 at para 30.

[14] The problem here is that the Officer acknowledged that the Applicant had continued to work after November 2022, when the removal order against her became enforceable. No negative comment was made on this point, and as a practical matter, at the time of the deferral request the Applicant had a work permit that was valid until 2024. While the removal order would remain enforceable as a matter of law after a deferral was granted, as a practical matter the Applicant would not be at risk of removal during the deferral period and could presumably resume working under an implied status, as she had been doing since November 2022.

[15] A more important problem with the decision is the Officer's failure to engage with the specific evidence in the record about the challenges the Applicant's employer would face in finding a qualified replacement for her. As noted above, the Applicant's statutory declaration stated that the clients she served were elderly people with complex medical needs. Many of them spoke only Vietnamese; she said she spoke that language approximately 50% of the time at work. There was general evidence about the shortage of health care workers in Alberta, as well as the employer's statement that it had encountered difficulty in finding qualified staff, and it anticipated an even greater challenge finding someone to replace the Applicant as lead LPN on the night shift. The employer's letter emphasized that it needed someone with particular skills for this position because there were fewer other staff available during the night shift.

[16] The Officer does not refer to any of these details in the decision, rejecting the staffing concerns as "speculative". In the face of the evidence submitted, that is not reasonable because it

does not demonstrate an engagement with the actual circumstances of the case. To borrow the terms used in the leading case on reasonableness review, the analysis is not justified in relation to the factual matrix that constrained the Officer: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at paras 90 and 105-107.

[17] The same concern arises in regard to the Officer's treatment of the Applicant's submissions about her grandmother's care needs. The evidence showed that the grandmother had several chronic conditions. She had been hospitalized in December 2022 (5 days), January 2023 (6 days) and again in February 2023 (5 days). Upon her release, the hospital recommended that she receive home care assistance. The Applicant stated she had been providing daily assistance to her grandmother before and after her shifts at work. She stated she was the only one in the household with the skills and capacity to provide this assistance to her grandmother. When the Applicant called Edmonton Continuing Care, she was advised that her grandmother is on a waitlist and it would take a minimum of six months for her to begin to receive home care. When the deferral request was submitted, the Applicant indicated that four months of that waiting period remained.

[18] In the face of this, the Officer's findings wilt under close examination. The Officer stated that "insufficient objective documentation has been provided to quantify the expected timeline for a home care referral…" The discharge report from the hospital contradicts this statement; the grandmother had already been referred for home care. At the time of the decision she was on a

wait list for home care services. The only uncertainty was in relation to when – as a practical matter – she would actually begin to receive it. The Officer's statement that the grandmother "will continue to have access to Canada's health and social system in the absence of [the Applicant]" is both true and of marginal relevance to the question before the Officer. The Applicant had not claimed that her mother would be denied access to a hospital in an emergency, for example. The deferral request was intended to ensure the grandmother would receive the care she needed while she was at home.

[19] As a practical matter, the Applicant was uniquely qualified to provide the type of assistance her grandmother needed during the interim period until home care services could begin. The only evidence on the file was that this would be a matter of months. This is precisely the type of short-term exigent circumstances that administrative deferrals were designed to respond to, and the Officer's rationale for denying this aspect of the request does not stand up to scrutiny.

[20] In assessing the reasonableness of this decision, the key question comes down to this: are the deficiencies discussed above "sufficiently central or significant to render the decision unreasonable"? (*Vavilov* at para 100). In my view, they are because these elements were central to the Applicant's deferral request. The Officer's analysis of these core aspects of the Applicant's request does not justify the result. More engagement with the specific circumstances

of this particular Applicant and her particular circumstances was required. The following passage from paragraph 86 in *Vavilov* captures the essence of the point:

> In short, it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.
>
> (emphasis in original)

[21] In this case, the outcome cannot stand because the Officer's reasons do not justify it, in relation to the specific factual matrix that constrained their decision-making.

[22] Based on the analysis set out above, the application for judicial review will be granted. The deferral request will be remitted back for reconsideration by a different officer. In light of the passage of time, the Applicant shall be granted the opportunity to file updated submissions and additional evidence, if she wishes to do so.

[23] There is no question of general importance for certification.

JUDGMENT in IMM-4036-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The deferral request is remitted back for reconsideration by a different officer. In light of the passage of time, the Applicant shall be granted the opportunity to file updated submissions and additional evidence, if she wishes to do so.

3. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4036-23
STYLE OF CAUSE:	PHUONG THUY VY TRAN v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
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