

Federal Court



Cour fédérale

Date: 20240307

Docket: IMM-9985-22

Citation: 2024 FC 387

Ottawa, Ontario, March 7, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

MOHAMMAD MAUBIN SARDAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the “Decision”) by a senior immigration officer (the “Officer”) denying the Applicant’s application for permanent residence from within Canada on humanitarian and compassionate (“H&C”) grounds under section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”).

II. Background

[2] The Applicant is a 41-year-old citizen of Pakistan. He entered Canada in early 2005 and claimed refugee protection shortly thereafter, alleging that he is gay and that he would face persecution in his country of citizenship. The Refugee Protection Division (the “RPD”) denied the Applicant’s refugee claim, finding his allegation that he is gay to be lacking in credibility. A subsequent pre-removal risk assessment (“PRRA”) application was also denied.

[3] The Applicant was due for removal to Pakistan in early 2009. He failed to appear and has remained in Canada since.

[4] The Applicant submitted his H&C application in early 2022. By then, his health had deteriorated and he was hospitalized due to a severe liver-related illness. He was cared for by his brother. The Applicant states that his other siblings in Pakistan would not care for him should he return to that country.

[5] The Officer began their assessment of the Applicant’s H&C application by acknowledging that “[i]nvo[ki]ng [sections 25 and 25.1 of the Act] is an exceptional measure and not simply an alternate means of applying for permanent resident status in Canada”. The Officer assessed the application by reference to (1) adverse country conditions, (2) the Applicant’s health and medical circumstances, and (3) the Applicant’s establishment in Canada.

[6] With respect to adverse country conditions, the Officer acknowledged that the Applicant was alleging once more that he is gay and that he would face prejudice and discrimination in Pakistan. However, the Officer cited the RPD's findings in that regard, observing that it is an "expert body" on such matters, that its conclusions should be given "significant weight", and that the Applicant has provided little evidence to support a contrary finding. The Officer concluded that the Applicant would not face prejudice due to his sexuality and assigned no weight to this factor.

[7] On the issue of the Applicant's health condition, the Officer accepted the Applicant's evidence that he was hospitalized for severe illness, that he may require a liver transplant, and that his brother may be a donor. However, the Officer also found that certain hospitals in Pakistan are able to provide such a treatment, among others, for the Applicant's health condition. The Officer further found that there is little evidence to suggest that the Applicant would not be able to access care in those facilities or that the brother would be unable to provide a liver sample in Pakistan. The Officer noted that there was nothing that suggests that the Applicant must receive care in Canada, beyond his personal preference. Nonetheless, the Officer also accepted that a move to Pakistan at this time would pose some difficulty for the Applicant. The Officer ultimately gave this factor a "moderate amount of positive weight" in support of the H&C application.

[8] Finally, regarding establishment, the Officer observed that the Applicant has been in Canada since 2005, describing this as "not an insubstantial amount of time", and that his brother is a Canadian citizen. The Officer further held on a balance of probabilities that the Applicant is

fluent in English. However, the Officer also noted that there was little to indicate that the Applicant was working for most of his time in Canada. And aside from letters of support from friends, there was also little to support the Applicant's claim that he has volunteered and participated in the community.

[9] On the potential for re-establishment, the Officer accepted that the Applicant's illness would make it more difficult for him to re-establish himself in Pakistan. The Officer also acknowledged that the Applicant relied on his brother for caregiving and for a potential liver sample donation, but noted that the brother would likely be able to provide such a sample in Pakistan and that the Applicant would be able to continue his recovery in that country.

[10] The Officer concluded that there was "little to indicate that the [A]pplicant has established himself significantly in Canada" and gave this factor "some weight".

[11] On examining the above factors globally, the Officer denied the Applicant's H&C application.

[12] The Applicant claims that the Decision is unreasonable. He argues that the Officer erred in their assessment of establishment and adverse country conditions, and that they disregarded evidence pertaining to Pakistan's country conditions and the availability of medical treatment in Pakistan.

III. Issues

[13] Did the Officer err in their assessment of establishment?

[14] Did the Officer err in their assessment of adverse country conditions?

[15] Did the Officer err by disregarding evidence regarding the availability of medical treatment in Pakistan?

IV. Analysis

[16] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 25).

A. *Establishment*

[17] Both parties agree that it is a reviewable error for an officer to require an H&C applicant to demonstrate that they have achieved an exceptional or extraordinary level of establishment.

[18] The Applicant states that the Officer made such an error. His position rests on his observation that the Officer found the Applicant's establishment was not "significant". The Applicant argues that the Officer's analysis was tainted by the view that only exceptional establishment warrants granting the H&C application.

[19] I am not satisfied that the Officer erred as alleged by the Applicant. The Applicant places undue emphasis on the Officer's use of the word "significant". The mere use of that word is not proof that the Officer applied an unreasonably high threshold (*Davis v Canada (Citizenship and Immigration)*, 2022 FC 238 at para 43). Moreover, the broader context shows that the Officer's use of the word "significant" alludes to the fact that establishment occurs in different degrees and is not a binary condition. This is supported by the Officer's later finding that there is *some* establishment in the Applicant's case and that this factor should accordingly be given "*some* weight" [emphasis added].

[20] The Officer's assessment of establishment was reasonable.

B. *Adverse Country Conditions*

[21] The Applicant takes issue with the Officer's reliance on the RPD's findings regarding his sexuality and risk of harm or persecution in Pakistan. He claims that, in so doing, the Officer applied the wrong legal standard, importing an analysis based on sections 96 and 97 of the Act into the Officer's analysis under section 25.

[22] However, the Officer considered the RPD's analysis and findings as highly persuasive and weighed them accordingly. The Officer explicitly considered whether the Applicant had any evidence to counter the RPD's findings and noted that they were "provided with little to counter the RPD's findings". The Officer was also clear that their "decisions are not subject to the RPD's findings", but that such findings have a significant weight. It was open to the Officer to weigh the RPD's decision accordingly.

[23] The Officer's engagement with the RPD's findings was reasonable.

C. *Disregard of Evidence*

[24] The Applicant claims that the Officer failed to consider (1) evidence that Pakistan experienced extensive floods in 2022 and that this will prevent the Applicant from receiving treatment, (2) a letter by Dr. Kelly Halliday stating that the Applicant's medical treatment has been complicated, that he is still receiving in-hospital care, and that his prognosis for recovery "remains guarded", and (3) country evidence indicating that the quality of healthcare in Pakistan is generally not adequate.

[25] While the Applicant does point to evidence of extensive floods in Pakistan in 2022, he offers no evidence beyond mere speculation to show that the floods have impacted the health sector so as to prevent the Applicant from receiving the care he needs. Moreover, the Officer examined the Applicant's medical documentation generally and acknowledged that it indicates that "the [A]pplicant remained in the hospital", evidently alluding to Dr. Halliday's letter. Finally, the Officer engaged directly with the quality of care in Pakistan and identified evidence that pertains to the Applicant's condition specifically. In light of this context-specific assessment, it was not necessary for the Officer to go further and assess other evidence that discusses the quality of care in Pakistan in a general sense.

[26] The Officer's engagement with the evidence was reasonable.

[27] The application is dismissed.

JUDGMENT in IMM-9985-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9985-22

STYLE OF CAUSE: MOHAMMAD MAUBIN SARDAR v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 27, 2024

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APPEARANCES:

Linda Kassim FOR THE APPLICANT

Suzanne Bruce FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis and Associates FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario