Federal Court  Cour fédérale

Date: 20240823

Docket: IMM-6659-23

Citation: 2024 FC 1316

Ottawa, Ontario, August 23, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

JOSEPH IROKA
MUNIRA AHMED HASSEN
MARIO CHINAZA IROKA
VINJOE CHIGOZIE IROKA
SAMIRA NNEOMA IROKA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family: a married couple and their three minor children. The Applicants came to Canada approximately five years ago. They made a refugee claim. The claim was rejected, as was their appeal. Leave to challenge the appeal refusal was also denied by this

Court. The Applicants then filed an application for permanent residence based on humanitarian and compassionate grounds ("H & C Application"), asking for relief based on their establishment in Canada, the best interests of their three children, and the hardship in returning to Nigeria. An officer at Immigration, Refugees and Citizenship Canada (IRCC) refused the H&C Application. The Applicants are challenging this refusal on judicial review.

[2] In my view, the determinative issue is the Officer's treatment of the Applicants' submissions about their work on the frontlines during the early days of the COVID-19 pandemic. As appropriately acknowledged by the Respondent, the Officer did not address this issue in their decision. I do not agree with the Respondent that this was not significant. In my view, it was a relevant factor raised by the Applicants that ought to have been weighed by the Officer. I find it unnecessary to address the Applicants' other arguments because I find, in any case, the matter must be sent back to be redetermined.

II. Analysis

A. *H&C Applications*

[3] Foreign nationals applying for permanent residence in Canada can ask the Minister to use their discretion to relieve them from requirements in the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA] because of humanitarian and compassionate factors (s 25(1)). The Supreme Court of Canada in *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], citing *Chirwa v Canada (Minister of Citizenship and Immigration) (1970)*, 4 IAC 338, confirmed that the purpose of this humanitarian and compassionate discretion

is “to offer equitable relief in circumstances that ‘would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another’” (at para 21).

[4] Given that the purpose of humanitarian and compassionate discretion is to “mitigate the rigidity of the law in an appropriate case”, there is no limited set of factors that warrant relief (*Kanthasamy* at para 19). The factors warranting relief will vary depending on the circumstances, but “officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them” (*Kanthasamy* at para 25; *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 [*Baker*] at paras 74-75).

B. *Contribution as Essential Worker during COVID-19 Pandemic*

[5] In 2021, the Government of Canada created a Temporary Public Policy under section 25.2 of the IRPA to recognize the “extraordinary contribution of refugee claimants working in Canada’s health care sector during the COVID-19 pandemic” and that “as these individuals face an uncertain future in Canada… current circumstances merit exceptional measures to provide these individuals with Permanent Residence status in recognition of their service during the pandemic.”

[6] The male adult Applicant worked as a security guard at a long-term care facility during the pandemic. He attested in an affidavit that as part of his work as a security guard , he was asked to do COVID-19 screening and assist residents. However, he did not qualify for the Temporary Public Policy because he was not working in one of the designated occupations set

out in the policy. As part of their request for the relief, the Applicants explained that they did not qualify for the Temporary Public Policy and asked that the Officer consider their contribution to the healthcare sector in the early days of the pandemic.

[7] The Officer does not mention this part of the Applicants' request for relief in their weighing of the factors raised by the application. This same issue was considered by this Court in *Chinwuba v Canada (Citizenship and Immigration)*, 2023 FC 679 at paragraphs 32-37 and *Uwaifo v Canada (Citizenship and Immigration)*, 2022 FC 679 at paragraphs 32-36, where the Court found in both cases that it was unreasonable for the officer to not evaluate this factor as part of the applicants' personal circumstances.

[8] The Respondent argued that it was not necessary for the Officer to do so, though of course it would have been better if they had. The Respondent argued that given the Officer's other findings, the failure to consider this factor was not determinative.

[9] I cannot agree. The Applicants' contribution in the health care sector during the pandemic was one of the factors specifically raised in the Applicants' submissions and in their affidavit evidence. It was a relevant factor raised by the application. As there was no assessment of this issue, the matter needs to be reconsidered. As was noted by Justice Diner in *Bhalla v Canada (Citizenship and Immigration)*, 2019 FC 1638, when an officer overlooks elements upon which the application is based, the balancing will necessarily be deficient, as the reviewing court cannot know what weight would have been assigned to the factor if it had been properly considered (at para 22).

[10] The Officer's treatment of this issue is not responsive to the Applicants' submissions or evidence (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 127-128); nor did the Officer consider all the relevant factors raised by the application as is required (*Kanthasamy* at para 25; *Baker* at paras 74-75). Accordingly, the decision is unreasonable and must be redetermined.

C. *Disposition*

[11] The application for judicial review is granted and sent back to a different decision-maker for redetermination. No party raised a question for certification and none arises.

JUDGMENT in IMM-6659-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision dated May 13, 2023 is set aside and sent back to be redetermined by a different decision-maker; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6659-23
STYLE OF CAUSE:	JOSEPH IROKA, MUNIRA AHMED HASSEN, MARIO CHINAZA IROKA, VINJOE CHIGOZIE IROKA, AND SAMIRA NNEOMA IROKA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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DATED:	AUGUST 23, 2024

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