Federal Court  Cour fédérale

Date: 20240820

Docket: IMM-9257-23

Citation: 2024 FC 1291

Toronto, Ontario, August 20, 2024

PRESENT: Madam Justice Go

BETWEEN:

ANTHONIA CHIOMA AZIKE
GRACE CHIMAMANDA AZIKE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Anthonia Chioma Azike [Principal Applicant or PA] and her minor daughter, Grace Chimamanda Azike [minor Applicant] [together, the Applicants] are citizens of Nigeria and the United States [US], respectively. After coming to Canada in 2018, the Applicants claimed refugee protection but their claim was denied and their appeal dismissed.

[2] The Applicants filed for an application for permanent residence on humanitarian and compassionate [H&C] grounds. The Applicants based their H&C application on their establishment in Canada, hardships upon return to Nigeria, and the best interests of the minor Applicant, who was 5-years-old at the time. On June 19, 2023, a Senior Immigration Officer [Officer] refused the Applicants' H&C application [Decision]. The Officer concluded the requested exemption under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [*IRPA*] was not warranted.

[3] The Applicants seek a judicial review of the Decision. I grant the application as I find the Officer's assessment of the PA's establishment unreasonable.

II. Issues and Standard of Review

[4] The Applicant challenges the reasonableness of the Decision based on the following arguments:

a. The Officer erred by requiring the Applicants to demonstrate an exceptional level of establishment.

b. The Officer erred by evaluating the Applicants' circumstances under a section 96 and 97 risk assessment, in breach of subsection 25(1.3) of the *IRPA*.

c. The Officer failed to properly assess the best interests of the child.

[5] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[6] A reasonable decision "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. The onus is on the Applicants to demonstrate that the decision is unreasonable: *Vavilov* at para 100.

III. Analysis

[7] I find the determinative issue was the Officer's unreasonable assessment of the Applicants' establishment.

[8] While I am not convinced that the Officer required the Applicants to show an extraordinary level of establishment, I agree with the Applicants that the Officer failed to explain why they gave the Applicants' establishment "moderate weight" in light of the evidence and submissions before the Officer.

[9] In support of their H&C application, the Applicants provided extensive evidence and submissions with respect to the PA's work as a personal support worker [PSW] at the height of the COVID-19 pandemic. The Applicants submitted that the PA received professional training and began working as a PSW in June 2020. The Applicants also noted that while many workers were afraid to go to work during the COVID-19 pandemic, the PA worked tirelessly on the frontline to care for the vulnerable.

[10] The Applicants pointed out that the Government of Canada created a temporary public policy in December 2020 to acknowledge the contribution of refugee claimants and former claimants and provide them with a pathway towards permanent residency in Canada.

[11] The Applicants also referred to a decision from this Court to submit that in the assessment of H&C factors, the "moral debt owed to immigrants who worked on the frontline to help protect vulnerable people in Canada" during the pandemic cannot be understated. While the Applicants did not include a citation in their H&C submission, they were quoting from Justice Ahmed's decision in *Mohammed v Canada (Citizenship and Immigration)*, 2022 FC 1 at paras 40 to 46.

[12] The Applicants asked that the PA's significant contribution be similarly recognized as she has been working as a PSW since June 2020 and would meet almost all of the specified eligibility criteria of the Health Care Workers' permanent residence pathway program.

[13] The Officer reviewed the PA's employment history as a PSW, noting the various employment letters and pay stubs the PA provided, and concluded:

> Overall, I find the [PA] has provided sufficient evidence of probative value regarding her employment in Canada. As such, I assign moderate weight to employment as it relates to establishment in Canada.

[14] The Officer, however, made no mention of the PA's work during the COVID-19 pandemic. Nor did the Officer consider the Applicants' submission that the PA's contribution be

treated similarly to those who were granted pathway to permanent residence status under the special program set up by the Government of Canada.

[15] As *Vavilov* confirms, "[t]he principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties … The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually *listened* to the parties:" *Vavilov* at 127. While the reviewing courts cannot expect decision makers to "respond to every argument or line of possible analysis," a decision maker's failure "to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it:" *Vavilov* at 128.

[16] In this case, the fact that the PA put her health at risk while working as a PSW during the pandemic was a key aspect of the Applicants' H&C request, a point the Applicants reinforce in their argument before the Court. While the Officer considered the PA's employment as a PSW, the Officer did not grapple with the Applicants' central submission regarding her contributions during the pandemic.

[17] I reject the Respondent's submission that the Officer did consider all the factors but reasonably afforded the Applicants' establishment moderate weight. I also disagree that the Applicants are asking the Court to reweigh the evidence.

[18] In light of the Applicants' extensive submissions on the PA's significant contributions during COVID-19, which the Officer did not acknowledge nor analyse, the Officer failed to explain why they gave the Applicants' establishment factor "moderate weight." As such, I find the Decision lacks the requisite justification, intelligibility and transparency and must therefore be set aside.

IV. Conclusion

[19] The application for judicial review is granted.

[20] There is no question for certification.

JUDGMENT in IMM-9257-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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