Federal Court Cour fédérale

Date: 20240906

Docket: IMM-7814-22

Citation: 2024 FC 1396

Toronto, Ontario, September 6, 2024

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

NELSON CHUKWUEMEKA NJOKU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Nelson Chukwuemeka Njoku [the Applicant], is a citizen of Nigeria. He applied for permanent residence from within Canada on Humanitarian and Compassionate grounds [the H&C Application] pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The Applicant applied based on his establishment in Canada and hardship if he were forced to return to Nigeria.

[2] An Immigration Officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC] refused the H&C Application [the H&C Decision]. The Applicant brings this application for judicial review of the H&C Decision on the basis that it is unreasonable and the Applicant was denied procedural fairness.

[3] For the reasons detailed below, I find that the Applicant has failed to discharge his burden of showing the H&C Decision is unreasonable or that he was denied procedural fairness; accordingly, this application for judicial review is dismissed.

II. The Legislative Framework

[4] Pursuant to subsection 25(1) of the *IRPA*, the Minister may grant a foreign national permanent resident status or an exemption from any applicable criteria or obligations of the *IRPA* if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national.

[5] A decision made on H&C grounds is both discretionary and exceptional. It is not intended to serve as an alternative path to immigration, and should be applied sparingly (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at paras 23, 85).

III. Facts

[6] The Applicant is a 26-year-old citizen of Nigeria. He has two sisters in Canada who are also foreign nationals. His mother, father, and other sisters are in Nigeria.

[7] The Applicant came to Canada as an international student to complete secondary school when he was 17 years old. He received his Ontario Secondary School Diploma in 2015, and then completed a Computer Systems Technician – Networking Diploma from St. Clair College in 2019. He has tutored other students in this program.

[8] Following his studies, the Applicant applied for a post-graduate work permit, but did so after his study permit expired. The application was refused because he did not apply to restore his temporary status within the statutory timelines set out in the *IRPA*. As a result, the Applicant has been without status since the expiry of his study permit in July 2019. The Applicant made a previous H&C application in 2020. That application was incomplete and was refused.

A. *The Applicant's H&C Application*

[9] The Applicant's H&C Application is based on his established ties to Canada and the hardship he would face if he were forced to return to Nigeria.

[10] The Applicant's establishment is based on evidence of his integration into Canadian society over seven years including his: Canadian education credentials; work experience as a tutor in the in-demand field of STEM; English language proficiency; and strong community ties

to Canada including through volunteer work. The Applicant provided 17 letters of support from community organizations, students he tutored, and his friends and family who clearly support and value their relationship with the Applicant.

[11] The Applicant submits that he would face hardship if he is forced to return to Nigeria. He submits that Nigeria has high unemployment and high telecommunications costs that would make it difficult to get a job and maintain the social and community relationships that he developed in Canada.

B. *The H&C Decision*

[12] Based on a global assessment of the Applicant's H&C factors, the Officer was not satisfied that the H&C considerations justified an exemption under subsection 25(1) of the *IRPA*.

[13] Regarding establishment, the Officer noted that the Applicant has been in Canada for seven years and seven months, but that three of those years were accumulated without lawful status in Canada. On this point, the Officer specifically considered that the Applicant is not subject to a removal order and could have left Canada to apply for status from Nigeria.

[14] The Officer ultimately gave establishment in Canada "some weight" but found that the Applicant's level of establishment is at a level that would be expected of a person living in Canada for over seven years, and any positive weight was mitigated by the Applicant's disregard for Canadian immigration laws by remaining in the country after his student status expired.

[15] Regarding hardship, the Officer noted that the Applicant grew up in Nigeria, has family there, and that he could apply for status in Canada from Nigeria. The Officer afforded the Applicant's submissions of hardship minimal weight. While the Officer accepted that the objective documentary evidence demonstrates high unemployment and high telecommunications costs in Nigeria, nevertheless the Officer noted that H&C applications are not intended to make up for differences in standards of living. The documentary evidence did not establish that the Applicant himself would face personal hardship.

IV. Issues and Standard of Review

[16] The Applicant has raised the following issues which he says warrant the Court's intervention:

A. The Officer placed an excessive burden of proof on the Applicant; and

B. The Officer unreasonably assessed the Applicant's evidence of establishment and hardship.

[17] For issues going to the merits of an administrative decision, the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paragraph 10. A reasonable decision must be "based on an internally coherent and rational chain of analysis" and it must be justified in relation to the factual and legal constraints applicable in the circumstances (*Vavilov* at para 85). While a Court must avoid reassessing and reweighing the evidence, nevertheless it must engage in a robust review to ensure that the decision is intelligible, justified and transparent, and that the decision maker did not

fundamentally misapprehended or fail to account for the evidence before it (*Vavilov* at paras 125-126).

[18] Breaches of procedural fairness in administrative contexts are reviewable on a standard akin to correctness (*Canadian Pacific Railway Company v Canada (AG)*, 2018 FCA 69 [*CPR*] at para 54). The ultimate question is whether the Applicant knew the case he had to meet and had an opportunity to respond to it before a fair and impartial decision maker (*CPR* at para 41).

V. Analysis

A. *Did the Officer place an excessive burden of proof on the Applicant?*

[19] The Applicant submits that the Officer imposed an excessive burden of proof on the establishment requirement and that it is not enough for an officer to acknowledge or note the evidence, they must analyze it.

[20] I do not agree that the Officer placed an excessive burden of proof on the Applicant. Rather, the Applicant is impermissibly inviting this Court to reweigh the evidence in his H&C Application.

[21] Contrary to the Applicant's assertion, the Officer's reasons show that the Officer was alive to the Applicant's evidence and its impact. For example, the Officer considers how much weight to give to the letters of support, in light of the limited interdependence the Applicant has shown in those relationships. The Officer also analyzed the role of Applicant's family in Nigeria

who could, temporarily, help to overcome any hardship he may face with becoming re-established in that country.

[22] It is not for the Court on judicial review to interfere with the weight an H&C officer gives to the different factors, even if it would have weighed the factors differently (*Hamzai v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1108 at para 24, citing *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 [*Legault*]]). Given the factually-driven nature of H&C applications, the Court should only intervene when an officer's findings are capricious, perverse, or made without regard to the evidence (*Legault* at para 11). The Applicant has failed to show any such error in the Officer's analysis.

B. *Did the Officer unreasonably assess establishment and hardship?*

[23] The Applicant submits that the Officer erred in law by failing to have regard to the totality of the evidence when making the H&C Decision including by: failing to find that his many letters of support were a sufficient basis for the Officer to grant his H&C Application; assigning negative weight to the Applicant's unauthorized stay in Canada; and failing to consider the economic and social hardship the Applicant would face in Nigeria, including the associated psychological distress.

[24] I disagree. An applicant must show how their degree of establishment and hardship are beyond what would normally be expected (*Shah v Canada (Citizenship and Immigration)*, 2022 FC 424 at para 16), and it was open to the Officer to find that the Applicant's establishment is not so out of the ordinary in assessing the weight to be attributed to it (*Santos v Canada*

(Citizenship and Immigration), 2019 FC 1332 at para 24, citing *De Sousa v Canada (Citizenship and Immigration)*, 2019 FC 818 at para 27).

[25] Nor is it improper for an officer, as part of their balancing exercise, to assign negative weight to an applicant's unauthorized stay in Canada (*Williams v Canada (Citizenship and Immigration)*, 2022 FC 695 at para 16 and *Na v Canada (Citizenship and Immigration)*, 2023 FC 850 at para 18). I note that at the hearing of this application, counsel for the Applicant additionally argued that the Applicant was denied procedural fairness in not having an opportunity to respond to the Officer's consideration of his years of unlawful status. No judicial authority was cited to support this argument, and ultimately, I am not persuaded that the Applicant was denied procedural fairness – he knew the case he had to meet and was able to respond – this was not his first H&C application.

[26] In assessing hardship, the Officer considered the Applicant's education, language ability, tutoring experience, volunteer work, and many friendships in Canada, as well as the presence of family in Nigeria. The Applicant did not advance proof of psychological impact or distress if he were forced to return to Nigeria, beyond that of being apart from his friends and community in Canada. While the Applicant did submit documentary evidence addressing how unemployment in Nigeria is impacting the psychological well-being of the youth of that country, this is not a particularized form of hardship faced by the Applicant.

[27] Ultimately, I can see no error in the Officer having considered that the hardship asserted did not meet the requisite standard such that it "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another." (*Kanthasamy* at para 23).

VI. Conclusion

[28] The Applicant has not shown the Officer's H&C Decision to be unreasonable; accordingly, this application for judicial review is dismissed.

[29] There is no proposed question for certification.

JUDGMENT in IMM-7814-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

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

"Allyson Whyte Nowak"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Matthew Tubie	FOR THE APPLICANT
Sarah Merredew	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Matthew Nicholas LLP Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT