Federal Court Cour fédérale

Date: 20240910

Docket: IMM-6460-23

Citation: 2024 FC 1416

Toronto, Ontario, September 10, 2024

PRESENT: Madam Justice Go

BETWEEN:

GLENROY FEARON EDWARDS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Glenroy Fearon Edwards [Applicant] is a citizen of Jamaica. The Applicant worked in Canada as a seasonal agricultural worker from 2010 to 2019, after which he remained in Canada as a visitor until December 2020.

[2] On December 6, 2019, the Applicant married R.M.J. The couple separated on January 19, 2023. Before their separation, R.M.J. submitted a spousal sponsorship application for the Applicant. This application was refused on January 20, 2023 because the Applicant's sponsor did not meet the minimum necessary income requirement.

[3] The spousal sponsorship application was then converted to an application for permanent residence on humanitarian and compassionate [H&C] grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The Applicant cited the following factors in his H&C application: (a) establishment in Canada, (b) the best interests of the Applicant's children and a grandchild [BIOC], all of whom reside in Jamaica, (c) hardships in Jamaica, and (d) family violence considerations.

[4] On May 4, 2023, a Senior Immigration Officer [Officer] refused the Applicant's H&C application [Decision].

[5] The Applicant seeks a judicial review of the Decision. I find the Decision unreasonable and I grant the application.

II. Issues and Standard of Review

[6] The Applicant raises the following issues:

a. Did the Officer err by unreasonably assessing the hardships the Applicant would face were he to return to Jamaica?
b. Did the Officer err by unreasonably assessing the Applicant's establishment in Canada?
c. Did the Officer err by unreasonably assessing the BIOC?

d. Did the Officer err by unreasonably assessing family violence considerations?

[7] 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*]. 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 Applicant to demonstrate that the decision is unreasonable: *Vavilov* at para 100.

III. Analysis

[8] I find the Officer made reviewable errors in refusing the Applicant's H&C application. In particular, I find the Officer applied the wrong test for assessing hardships, and failed to address the family violence considerations.

A. *The Officer applied the wrong legal test for assessing hardships*

[9] The Applicant submitted in the H&C application that he would suffer hardships upon his return to Jamaica. The Applicant pointed to adverse country conditions such as high unemployment, weak economy, and stigma against adult education. While the Officer acknowledged that these conditions may not be favourable, the Officer did not find them to constitute "an exceptional circumstance to justify a positive exemption." The Officer also found that insufficient evidence was provided to satisfy the Officer that the Applicant's "fundamental rights will be denied." The Officer noted that the purpose of section 25 of the *IRPA* "is to give

the Minister the flexibility to deal with extraordinary situations which are unforeseen by *IRPA* where humanitarian and compassionate grounds compel the Minister to act."

[10] In making these findings, I agree with the Applicant that the Officer applied the wrong legal test.

[11] By stating the purpose of section 25 is to deal with "extraordinary situations," the Officer's reasons ran counter to the test for H&C as outlined in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*]. The Supreme Court of Canada determined that H&C relief should be warranted in circumstances that "would excite a reasonable [person] in a civilized community a desire to relieve the misfortunes of another:" *Kanthasamy* at para 21.

[12] As Justice Zinn explained in Zhang v Canada (Minister of Citizenship and Immigration) 2021 FC 1482:

> [23] There is a significant difference between observing that this exceptional relief is provided for because the personal circumstances of some are such that deportation falls with more force on them than others, and stating that the relief is available only to those who demonstrate the existence of misfortunes or other circumstances that are exceptional relative to others. The first explains why the exemption is there, while the second purports to identify those who may benefit from the exemption. The second imports a condition into the exception that is not there.
>
> [Emphasis original]

[13] By referencing "exceptional circumstances," and by suggesting that the stated purpose of section 25 of the *IRPA* is to deal with "exceptional situations," the Decision signalled the

Officer's expectation of the Applicant to demonstrate "exceptional" hardships. Further, the Officer's remark that insufficient evidence was provided to show that the Applicant's "fundamental rights will be denied" also indicates that the Officer adopted a threshold of exceptionality when assessing hardships.

[14] I reject the Respondent's argument that the Officer's comment about the denial of fundamental rights was a minor part of the reasons. Read in its entirety, the Decision reveals that the Officer was focusing on whether the Applicant's hardships met the threshold of being "exceptional" rather than considering whether the Applicant's circumstances as a whole justified H&C relief.

[15] The Respondent also argues that the Officer reasonably found the Applicant's submissions contained generalized statements that did not link to his particular circumstances. However, I note that the Decision did not contain such a finding, and I do not agree with the Respondent that such a finding was "implicit" in the Decision.

B. *The Officer failed to assess family violence considerations*

[16] The Applicant raises the issue of family violence considerations as a factor that should have been assessed in the H&C application. In his affidavit dated March 12, 2023, the Applicant described the physical and emotional abuse that he suffered at the hands of his ex-wife and her family due to his lack of status and his race. The Applicant points out that the Decision was silent on this evidence and did not consider family violence as a factor in their assessment.

[17] The Respondent submits that the Officer did not commit any error by not referring to the details surrounding the Applicant's separation from his ex-wife because the Applicant's submissions did not explain how these details supported the H&C application. The Respondent argues the absence of submissions cannot reasonably be said to have put before the Officer a live issue of family violence considerations, and that it is not the Officer's role to fill in the blanks. As such, the Applicant is attempting to add a new factor in support of his H&C application.

[18] I disagree with the Respondent. The Decision did not state the evidence on family violence was not assessed because the Applicant failed to make any submissions on the issue. Instead, as the Applicant submits, the Decision was completely silent on the issue of family violence and made no mention to the Applicant's affidavit evidence. I also find this is not a new issue given the evidence on family violence was squarely before the Officer.

[19] The Respondent further suggests that the Officer was aware of the family violence considerations as the Decision referred to the couple's separation. However, as the Applicant points out, the Officer could have obtained the information about the couple's separation from the Applicant's H&C submission. That, of itself, did not indicate the Officer was also aware of the family violence considerations. Besides, the same submission also notified the Officer that an explanation and an affidavit would follow, but as noted above, the Officer made no mention of the Applicant's affidavit in the Decision.

[20] While the Applicant may not have provided submissions directly on the issue of family violence, the Applicant's affidavit provided details about the abuse he allegedly endured during

the time he resided with his ex-wife and her family. The Officer's failure to address the evidence on family violence considerations, and whether or not such evidence supported the Applicant's H&C application, render the Decision unreasonable.

[21] For these reasons, I grant the application. I need not consider the remainder of the Applicant's submissions.

IV. Conclusion

[22] The application for judicial review is granted.

[23] There is no question for certification.

JUDGMENT in IMM-6460-23

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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