Federal Court  Cour fédérale

Date: 20240910

Docket: IMM-4108-23

Citation: 2024 FC 1418

Ottawa, Ontario, September 10, 2024

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

NNENNA OKOROAFOR
VICTOR NNAMDI OKOROAFOR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by an officer of Immigration, Refugees and Citizenship Canada [Officer] denying permanent residence for humanitarian and compassionate [H&C] grounds to Nnenna Okoroafor [Principal Applicant] and her adult son, Victor Nnamdi Okoroafor [Associate Applicant], under section 25 of the *Immigration and*

Refugee Protection Act, S.C. 2001, c. 27 [*IRPA*] because, despite some level of the Applicants' establishment in Canada and medical hardship faced by the Associate Applicant, their ties to Nigeria and the availability of specialized care to manage the Associate Applicant's condition did not rise to such an exceptional level as warranting an exemption from immigration requirements [Decision].

[2] For the reasons that follow, this application for judicial review is dismissed. After parsing through the Applicants' numerous arguments, they have not demonstrated any error in the Officer's reasons or considerations, and their arguments amount to an effort to have this Court reweigh the evidence, which this Court cannot do on judicial review.

II. Background

[3] The Applicants are citizens of Nigeria who have resided in Canada since November 2016. The pair sought permanent residency on H&C grounds. The Principal Applicant's husband and three other children remain in Nigeria, while she and the Associate Applicant have stayed in Canada, maintaining their legal status through various permits.

[4] The Principal Applicant has demonstrated a degree of establishment in Canada through her employment. She initially worked in a factory before taking a full-time position as a collection agent and a part-time position as a personal attendant at a care home. During the COVID-19 pandemic, she worked as an essential worker, caring for vulnerable clients. The Applicants have also integrated into their community, volunteering with their church and other organizations, and the Associate Applicant attended a French language school.

[5] The Associate Applicant suffers from neurofibromatosis type 1 (NF1) and an associated orthopedic condition, tibial pseudoarthrosis, which has significantly impacted his left leg. He has received specialized medical care in Canada, undergoing surgeries at the Shriners Hospital in Montreal (including the most recent one for limb reconstruction performed in November 2021) and requires ongoing treatment and supervision due to the complexity of his condition. The Applicants argue that returning to Nigeria would pose significant health risks to the Associate Applicant due to the inadequate medical infrastructure for his specific needs.

[6] The Applicants' family ties remain strong in Nigeria, where the Principal Applicant's spouse and other children reside. Despite these connections, the Applicants have expressed a desire to remain in Canada, emphasizing that returning to Nigeria would disrupt their lives, particularly for the Associate Applicant, whose health issues necessitate specialized care not readily available in Nigeria. The Officer who assessed their H&C application, however, concluded that the Applicants did not demonstrate an exceptional level of establishment in Canada, and that adequate medical treatment could potentially be accessed in Nigeria or by traveling to the USA or Canada for treatment as needed, which the Applicants have shown they are able to do when necessary.

III. Decision under Review

[7] The Officer's Decision and reasons touch upon various aspects of the case, including the Applicants' establishment in Canada, medical hardship, economic hardship, and other relevant factors.

[8] The Officer first assessed the Applicants' establishment in Canada. The Officer acknowledged that the Applicants have lived in Canada for approximately six years. The Principal Applicant is employed as a collection agent and a personal attendant. The Officer gave medium positive weight to the Applicants' employment and financial circumstances. The Applicants also have community ties through their church and the Neurofibromatosis Society of Ontario. The Associate Applicant attended a French language school in Quebec, and the Officer gave medium weight to this consideration.

[9] The Officer then examined the medical hardship faced by the Associate Applicant. The Officer recognized that the Associate Applicant suffers from neurofibromatosis type 1 (NF1) and tibial pseudoarthrosis, conditions that require specialized medical care. The Officer accepted that medical care in Nigeria is inadequate compared to Canada and awarded high weight to the hardship the Associate Applicant might face upon returning to Nigeria. The Officer reviewed medical opinions from specialists both in Canada and Nigeria regarding the level of care needed for his condition. However, the Officer noted that the evidence presented did not provide clear guidance on the specific type of informed physician needed to monitor his health in Nigeria or elsewhere, especially since his condition was undiagnosed in Nigeria until he sought treatment abroad.

[10] Despite acknowledging the potential medical hardship, the Officer concluded that this hardship could be mitigated. The Officer found that the Associate Applicant had previously traveled to the USA for treatment and had successfully returned to Canada for further care, demonstrating a capacity to seek specialized treatment outside of Nigeria when required. The

Officer highlighted that there was insufficient evidence to indicate that the Associate Applicant would face obstacles in returning to the USA or Canada for follow-up care if necessary, as he had done in the past. Additionally, the Officer considered the broader context of healthcare in Nigeria, noting that challenges in accessing quality healthcare typically arise for those unable to afford such care. Given the Applicants' history of accessing specialized medical treatment for the Associate Applicant both in Nigeria and abroad, the Officer reasoned that the family would be able to manage minor complications and could seek complex treatment overseas if required. The Officer gave little weight to generalized healthcare conditions in Nigeria, concluding that the family has the means to afford quality healthcare.

[11] The Officer also considered the potential economic hardship the Applicants might face in Nigeria. The Officer noted that the Principal Applicant's professional development and work experience could be assets in Nigeria and found little evidence to suggest that the Applicants would face significant financial difficulties. The Officer gave little weight to generalized adverse conditions affecting the Applicants, noting that their circumstances were not uniquely linked to issues such as crime and insecurity in Nigeria.

[12] Lastly, the Officer evaluated the best interests of the child (BIOC). The Associate Applicant, being over 18 years of age, was not eligible for a BIOC assessment. The Officer considered the interests of the Principal Applicant's children in Nigeria but found no indication that the refusal of the H&C application would compromise their well-being.

[13] In conclusion, the Officer determined that the Applicants did not demonstrate sufficient H&C factors to warrant an exemption, and their application for permanent residence was subsequently refused. The Officer's Decision was based on reasonableness and thoroughly considered all relevant factors and evidence.

IV. Issues

[14] The Applicant raises five issues:

1. Did the Officer err in assessing the Applicants' establishment?
2. Did the Officer err in assessing the Associate Applicant's medical hardship?
3. Did the Officer err in their assessment of economic hardships of returning to Nigeria?
4. Did the Officer err in their assessment of hardship from separating ties in Canada?
5. Did the Officer err in their assessment of the best interest of the child?

V. Standard of Review & Relevant Law

[15] I begin by noting the parties agree that the applicable standard of review is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25). I agree that the appropriate standard of review for H&C decisions is reasonableness (*Qureshi v Canada (Citizenship and Immigration)*, 2020 FC 88 at paras 5-8; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at paras 8, 44-45; *Vavilov* at paras 16-17).

[16] To avoid intervention on judicial review, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99). A reasonable decision will always depend on the constraints imposed by the legal and factual context of the particular decision under review (*Vavilov* at para 90). A decision may be unreasonable if the decision-maker misapprehended the evidence before it (*Vavilov* at paras 125-126). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[17] A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

[18] The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

[19] Section 25(1) of the *IRPA* gives the Minister discretion to exempt foreign nationals from the ordinary requirements of the *IRPA* if the Minister is of the opinion that such relief is justified by H&C reasons, taking into account the best interests of a child directly affected.

[20] In considering an H&C application, the officer must consider whether the facts, established by the evidence, would excite in a reasonable person in a civilized community a desire to relieve the misfortunes of another — so long as these misfortunes "warrant the granting of special relief" from the effect of the provisions of the *IRPA*. The purpose of the H&C provision is to provide equitable relief in those circumstances (*Kanthasamy* at paras 13 and 21).

[21] The onus of establishing that an H&C exemption is warranted lies with the applicant (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 45). Lack of evidence or failure to adduce relevant information in support of an H&C application is at the peril of the applicant (*Rainholz v Canada (Citizenship and Immigration)*, 2021 FC 121 at para 18).

[22] In assessing whether an applicant has established sufficient H&C considerations to warrant a favourable exercise of discretion, all of the relevant facts and factors advanced by the applicant must be considered and weighed (*Kanthasamy* at para 25, citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) [*Baker]* at paras 74-75). The words "unusual and undeserved or disproportionate hardship" should be seen as instructive, but not determinative (*Kanthasamy* at para 33).

[23] Assessing the BIOC is highly contextual, and the guidance in *Kanthasamy* describes the application of this assessment to be responsive to each child's particular age, capacity, needs, maturity, and level of development. The officer must determine what appears most likely in the circumstances to be conducive to the kind of environment in which a particular child has the best

opportunity for receiving the needed care and attention. When legislation such as subsection 25(1) of the *IRPA* specifies that the BIOC who is "directly affected" be considered, those interests are a singularly significant focus and perspective (*Kanthasamy* at paras 35-36, 40).

[24] The Supreme Court in *Kanthasamy* cited its decision in *Baker* where the "best interests" principle was identified as an important part of the evaluation of H&C grounds and where the decision maker should give this factor substantial weight, and be alert, alive and sensitive to it. It does not mean that children's best interests must always outweigh other considerations, or that there will not be other reasons for denying an H&C claim. However, a decision under subsection 25(1) of the *IRPA* will be unreasonable if the interests of children affected by the decision are not sufficiently considered (*Kanthasamy* at paras 38 to 39).

[25] The decision-maker must do more than simply state that the interests of a child have been taken into account. Those interests must be well identified, defined, and examined with a great deal of attention in light of all the evidence (*Kanthasamy* at para 39).

VI. Analysis

A. *Issue #1 – Establishment*

[26] The Applicants submit that the Officer's reasons and Decision demonstrate a disregard for the purposes of the *IRPA* and that the Officer's "analysis ignores the massive evidence that was presented in front of the [Officer] to prove the Applicants' establishment in Canada". In all, the Applicants' submissions appear to be an argument for the reweighing of specific evidence

and arguments in their favour because the Officer disagreed with them about the strength of their case. These submissions cannot be accepted. On its face, I agree with the Respondent that there is nothing in the evidence or reasons to suggest the Officer ignored any evidence or misapprehended the Applicants' submissions, particularly on establishment.

[27] The Applicants submit the Officer erred by not taking into consideration the Principal Applicant's employment in Canada as a Personal Attendant working with vulnerable clients, including individuals who were COVID-19 positive. The Applicants' argument is without merit as the Officer indicated "[a]s a Personal Attendant, the PA is an essential working caring for vulnerable clients, including individuals who were COVID-19 positive". With respect to the Principal Applicant's work in healthcare, I agree with the Respondent that it was open for the Officer not to automatically grant this application in light of her work because, at the time of the H&C application, it was only for a short period of time and in a limited fashion (medical-adjacent). It was open to the H&C Officer to use its discretion to assign limited additional weight to this factor in the circumstances of this case. In *Taqi v Canada (Citizenship and Immigration),* 2023 FC 1607 at paragraph 18, Justice Southcott similarly held:

> [18] I agree with the Respondent's submission that the Applicant's employment during the pandemic cannot be regarded as a key issue or central argument advanced in her H&C application. As noted earlier in these Reasons, the Officer reviewed, and afforded some weight, to the Applicant's employment history including her work as a Personal Care Aid. Applying the principles identified in *Vavilov*, that aspect of the Decision withstands reasonableness review.

B. *Issue #2 – Medical hardship*

[28] Similar to issue #1, the Applicants are essentially arguing for a reweighing of the evidence. The reality is the Applicants failed to submit sufficient evidence and/or updated evidence on the development and requirements for the Associate Applicant's medical conditions, providing little evidence of additional check-ups for him since 2018 and not providing evidence of current required specialized care and/or availability in Nigeria in the future.

[29] Further, the Officer in fact gave high degree of weight to the potential medical hardship faced in Nigeria in light of the lack of availability of sufficient treatment for NF1 and tibial pseudoarthrosis as compared to Canada, but this was mitigated by the country condition evidence demonstrating challenges in accessibility to quality health services were faced by Nigerians unable to afford health care and the Applicants' demonstrated means and willingness to travel to the USA or Canada for treatment as periodically required (constant care was not demonstrated). Since the Applicants have proven themselves willing and able to leave Nigeria for treatment, it was open for the Officer to give little weight to the insufficiency of available treatment in Nigeria. I find the case at hand to be distinguishable from *Vincent v. Canada (Citizenship and Immigration)*, 2022 FC 1022 [*Vincent*] where the applicant grew up in poverty, which is not the case here, and with the Officer adequately weighing the risks associated with removal. In *Vincent*, the Court found the officer had erred by assessing the mitigation hardship the applicant and the family would face, "rather than adequately weighing the risks associated with a removal from Canada" (*Vincent* at para 30). In contrast to *Vincent*, in this case, the Officer's analysis was not merely limited to mitigation of hardship. Rather, the Officer undertook a detailed assessment of the Applicants' particular medical circumstances and the evidence before them in the H&C application. As part of adequately reviewing the risks of removal as per of the Court's guidance

in *Vincent* at para 30, the Officer then proceeded to review the Associate Applicant's particular treatment options and circumstances. The Officer reasonably noted that the Associate Applicant had been seeing specialized doctors in Nigeria from a young age, and that the Applicants had been able to afford medical treatment abroad. The Officer reasonably identified gaps in this evidence that led to their conclusion that there is insufficient evidence of treatment the Associate Applicant requires on a forward-looking basis and of any medical risks associated with a removal from Canada. In particular, the Officer noted there was medical evidence from 2018 that indicated that the Associate Applicant has a "stable state of health". The Officer reasonably found that there was insufficient evidence the Applicant's conditions cannot at least be monitored in Nigeria and that any further complications, should they arise, could not be treated abroad as had been done previously. Given the evidence put forward in this case, the Officer reasonably concluded the Applicants had been able to access specialized care previously, both domestically and abroad, and there is insufficient evidence about both the Associate Applicant's current health care needs and any barriers to being able to access monitoring in Nigeria.

C. *Issue #3 – Economic hardship*

[30] The Applicants submit that the Officer's assessment of the economic hardships the Applicants would face in Nigeria is flawed and unreasonable, as the Officer used the Principal Applicant's resilience against her, citing *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1142 at para 37:

> [37] In any case, this Court has consistently admonished officers who have held the fact that an individual is "resourceful" and "enterprising" against them. Following the Officer's reasoning, "the more successful, enterprising and civic minded an applicant is while in Canada, the less likely it is that an application under

> section 25 [of the *IRPA*] will succeed" (*Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 at para 26; *Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72 at para 35; *Jeong v Canada (Citizenship and Immigration)*, 2019 FC 582 at para 53; *Aguirre Renteria v Canada (Citizenship and Immigration)*, 2019 FC 134 at para 8). One would expect that the message has been received at this point.

[31] The Applicants' submissions on "economic hardship" misunderstand, in my view, the Officer's analysis, arguing that the Officer essentially suggested that the Principal Applicant had some job or opportunity waiting for her in Nigeria and that this undermined the analysis. With respect, the Officer merely considered the Principal Applicant's ability to re-establish herself based on her professional development, education, work experience, and credentials and noted they "would likely be an asset" in re-establishing herself in the Nigerian workforce, which served to address the Applicants' concerns about economic hardship and obstacles in finding employment in Nigeria. This is not holding the Principal Applicant to a high bar, nor is it a suggestion that there will be *no* economic hardship. Rather, it is merely a recognition of the fact that she is very qualified and able to acquire and hold any one of several potential employment opportunities in Nigeria. These findings are reasonable in my view. In essence, the Officer's findings amount to a simple reality that, understanding some degree of hardship from relocation will always be expected, "these hardships did not amount to difficulties beyond what might be normally expected when a person leaves one country for another" (*Arvan v Canada (Citizenship and Immigration)*, 2024 FC 223 at para 28). As submitted by the Respondent, it was open to the Officer who considered the Principal Applicant's degree in Law, her work in Nigeria in the legal profession, her subsequent professional development and work in Canada, to give this economic hardship factor little weight.

[32] As with the previous issues, there is nothing in the evidence or reasons to suggest the Officer ignored any evidence or submissions, and the Applicants' submissions amount to a reweighing of evidence on the basis that the Officer disagreed with them on the strength of their case.

D. *Issue #4 – Separating ties*

[33] Contrary to the Applicants' submissions, the Officer took into account the relationships they had developed in Canada and it was open for the Officer to find that the Applicants "could maintain their relationships from abroad through technology like video calling and social media." The Respondent points out that no evidence was tendered on the Associate Applicant's psychosocial health or that his mental health was affected, such that alternative communication methods would be inaccessible.

[34] In addition, the consideration for "separating ties" is not generally about being removed from friends they have made in Canada, but specifically separating *family* ties with people *already in Canada* (see for example *Rainholz v Canada (Citizenship and Immigration)*, 2021 FC 121 at para 16).

[35] In contrast to the Applicants' submissions, there are clear considerations from the record that the Applicants are making this H&C application to reconnect ties to family that are already separated, and the Applicants' submissions on this point appear to be making the argument that they can only *reconnect* family ties if their application is granted. In an excerpt of the support letter from the Principal Applicant's husband, he states that he was unsuccessful in applying for a

visitor visa to Canada, and he pleads with the Officer to grant the Applicants' H&C application so they can "invite" him to Canada. Likewise, an excerpt of the letter from the Associate Applicant explicitly states his intention to invite his family to Canada if he becomes a permanent resident. Not only does the factor of separating family ties *in Canada* not seem to apply to the Applicants' circumstances, and so the Officer did not err here, but it stands to reason that eventually removing them to their country of origin would actually have the effect of reuniting the Applicants with the family members they are currently separated from in Canada and whom are unable to visit due to the Applicants' lack of permanent resident status.

E. *Issue #5 – Best interests of the child*

[36] This Court has consistently held that the BIOC considerations generally only apply to children under the age of 18 (*Nahrendorf v Canada (Citizenship and Immigration),* 2022 FC 190, [*Nahrendorf*] at para 10). The Associate Applicant being over the age of majority, the Officer concluded that the "Best Interests of the Child" does not apply because "on the date this application was locked-in, February 10, 2022, the Associate Applicant was 18 years of age. Children 18 years or older are not eligible for a BIOC assessment. Considerations related to the Associate Applicant will be assessed under other sections, including establishment and hardship." The Applicants did not raise the unreasonableness of the Decision on the basis that the Officer did not conduct the best interests of the child analysis for the Associate Applicant as an adult child (*Nahrendorf* at para 10, citing *Chaudhary v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 128 at paras 32, 34; *Noh v Canada (Citizenship and Immigration)*, 2012 FC 529 at para 63; *Yoo v Canada (Citizenship and Immigration)*, 2009 FC 343 at para 32).

[37] Rather, the Applicants alleged the Officer erred in its assessment of the best interests of the children when they decided that the children in Nigeria would likely benefit if reunited with their mother and brother. The Applicants argue that while the children in Nigeria miss their mother and their brother, they are selfless and understand the importance of the Associate Applicant's medical treatment in Canada and fully support the Applicants' continue presence in Canada. The Applicants also submit that the option to reunite is not only in Nigeria but in Canada if their H&C application is accepted, which would allow her children to receive the best education and future they could have in Canada. The Respondent points out that, although the Applicants did not put forward any submissions regarding the best interests of the Principal Applicants' children residing in Nigeria, the Officer considered their overall wellbeing and education in H&C assessment. It was reasonably open to the Officer to find that the family's reunion in Nigeria would likely benefit their relationships, which was based on the information in the record, and it is inappropriate for me to reweigh the evidence to consider their possible future reunification in Canada.

[38] I understand the value of bringing families together, and I appreciate the burden that the geographic separation of the Applicants' family has likely had on the Applicants, and the sacrifices they made as a family to provide medical care in Canada to the Associate Applicant. However, the H&C process is reserved to make exceptions to the ordinary immigration process for cases where the applicant's "personal circumstances are such that having to go outside of Canada to apply for a visa would cause a degree of hardship that 'would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another'" (*Ahmed v Canada (Citizenship and Immigration), 2022 FC 618 at para 21, citing Kanthasamy* at para 21).

Based on the record and submissions, it was both open and reasonable for the Officer to find that the Applicants' circumstances do not warrant exceptional relief from the requirement to go outside of Canada and engaging in the ordinary immigration process.

VII. Conclusion

[39] For the foregoing reasons, this application for judicial review is dismissed. The Officer's consideration of establishment, medical hardship, and economic hardship were reasonable and grounded in the record before them. Likewise, the Officer's assessment of the Applicants' family ties and determination that the "best interests of the child" factor does not apply to the Associate Applicant were also reasonable.

[40] The parties confirmed that there were no questions of general importance for certification, and I agree.

JUDGMENT in IMM-4108-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Ekaterina Tsimberis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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