Federal Court  Cour fédérale

Date: 20241024

Docket: IMM-12790-23

Citation: 2024 FC 1687

Toronto, Ontario, October 24, 2024

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

WASI HYDER

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant and his wife, both citizens of Pakistan, arrived in Canada in 2017 and claimed refugee status. Their refugee claim was denied and their application for leave to judicially review that denial was dismissed. Two years later, the Applicant submitted a pre-removal risk assessment [PRRA] based on additional evidence related to the same risk that underpinned their refugee claim. They received a negative PRRA decision and their application for judicial review of the negative PRRA decision was dismissed.

[2] Two years later, the Applicant and his wife made 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*]. On August 10, 2023, the application was refused. The Officer found: (a) they had provided insufficient documentary evidence demonstrating that they would endure hardship due to their religion upon return to Pakistan; (b) their degree of establishment over the prior five years was nothing beyond what one would expect them to have achieved in the circumstances; and (c) there was little evidence to persuade the Officer that the nature of any of their relationships in Canada are such that separation would have a serious negative impact.

[3] On this application, the Applicant seeks judicial review of the H&C decision on the basis that the decision was unreasonable. While only the Applicant is named in the style of cause, I will refer to the Applicant and his wife collectively as the "Applicants", which is how they are referred to in the H&C decision and the submissions of the parties.

[4] The parties agree and I concur that the applicable standard of review of an H&C decision is reasonableness [see *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44]. When reviewing for reasonableness, the Court must take a "reasons first" approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 8, 59]. 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 [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65

at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418 at para 11].

[5] Subsection 25(1) of the *IRPA* gives the Minister discretion to exempt foreign nationals from the ordinary requirements of that statute and grant permanent resident status in Canada if the Minister is of the opinion that such relief is justified by H&C considerations. An H&C determination under subsection 25(1) of the *IRPA* is a global one, where all the relevant considerations are weighed cumulatively in order to determine if relief is justified in the circumstances. Relief is considered justified if the circumstances would excite in a reasonable person in a civilized community a desire to relieve the misfortunes of another [see *Kanthasamy*, *supra* at paras 13, 28; *Caleb v Canada (Citizenship and Immigration)*, 2020 FC 1018 at para 10].

[6] The granting of an exemption for H&C reasons is an exceptional and highly discretionary remedy "deserving of considerable deference by the Court" particularly in relation to the weight an immigration officer gives to the assessment of H&C factors [see *Clarke v Canada (Citizenship and Immigration)*, 2023 FC 756 at para 5; *Krivykh v Canada (Citizenship and Immigration)*, 2022 FC 124 at para 6; *Qureshi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 335 at para 30; *Braud v Canada (Citizenship and Immigration)*, 2020 FC 132 at para 52].

[7] The Applicants assert that the decision is unreasonable as the Officer failed to adopt a holistic approach in their assessment as required by *Kanthasamy*. There is no merit to this assertion. I find that the Officer's reasons demonstrate that they assessed each of the H&C factors

brought forward by the Applicants and made a determination as to the weight ascribed thereto. Having done so, the Officer then conducted a global assessment of all submissions and evidence, which led them to the conclusion that an H&C exemption was not warranted.

[8] The Applicants assert that the Officer erred in their assessment of their establishment in Canada by assigning little weight to the evidence provided regarding this factor and thus failed to properly assess "the family and community ties of the Applicants including their daughter, their grandson, and sister of the secondary applicant". There is also no merit to this assertion. While the Applicants may not agree with the Officer's findings, it is not this Court's role to reassess and reweigh the evidence to reach a conclusion that is more favourable to them [see *Vavilov, supra* at para 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59].

[9] Moreover, the Officer's weighing was expressly premised on the fact that the Applicants submitted little evidence regarding their relationship with their family in Canada. There is nothing unreasonable about this determination. The Applicant's written statement that accompanied the H&C application contained no details of their relationship, and degree of interaction, with family in Canada. Additionally, there was no evidence from any of their family members other than one very short letter from what appears to be a nephew that provides no details of their relationship. With respect to their community ties, the Applicants similarly provided scant details of their community activities. While the Applicants provided the Officer with seven letters from community members, they are each only a few sentences in length, provide few details of any community involvement, mostly speak to the Applicant's character and are "template-like" in nature, as they all read similarly.

[10] The Applicants assert that, in addressing their ability to reintegrate back into society in Pakistan, the Officer unfairly drew an adverse inference with respect to their finances and their son's academic success in stating, "I find little reason why the applicants' son would be unable to offer some level of support to his parents upon return to Pakistan." Contrary to the Applicants' assertion, I find that the Officer made no such adverse inference. Rather, the Officer reasonably considered the evidence before them in assessing the Applicants' ability to return to Pakistan, which included evidence about their finances and evidence that their son had finished his engineering degree and works at a reputable firm in Pakistan. Moreover, in making that statement, the Officer was addressing the Applicants' specific submission that they would have nowhere to live in Pakistan and no relatives to rely on for support.

[11] The Applicants further assert the Officer made a fundamental error in failing to acknowledge the adverse country conditions in Pakistan and that sending them back at their current age would cause them immense hardship including economic hardships and a risk of death and prosecution from anti-Shia extremist groups. However, contrary to the Applicants' assertion, the Officer expressly considered the adverse country conditions, these asserted hardships and the Applicants' risk. The Officer noted that this same risk was previously assessed in both their refugee claim and their PRRA, but nonetheless considered the full evidentiary record before them regarding that risk. Importantly, the evidence did not include any new evidence of threats following the PRRA determination. Based on that evidence, I find that the Officer's determination that there was insufficient evidence before them to contradict the finding made by the RPD was reasonable.

[12] As the Applicants have failed to demonstrate that the decision is unreasonable, the application for judicial review shall be dismissed.

[13] Neither party proposed a question for certification and I agree that none arises.

JUDGMENT in IMM-12790-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The parties proposed no question for certification and none arises.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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