Federal Court  Cour fédérale

Date: 20240108

Docket: IMM-9857-22

Citation: 2024 FC 24

Ottawa, Ontario, January 08, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

ZHUQI ZHOU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Zhuqi Zhou, is a citizen of China. He is 72 years old. The Applicant first came to Canada in 2001 to care for his aging father. He remained here after his visitor visa expired and continued to look after his father until he passed away.

[2] The Applicant made several applications related to his immigration status. In 2007, he made a refugee claim, which was refused. In 2010, he sought humanitarian and compassionate

(H&C) relief to allow him to apply for permanent residence from within Canada, and also filed a Pre-Removal Risk Assessment. The latter two applications were refused in 2012.

[3] The Applicant remained in Canada without status. In March 2021, he filed his second H&C application, which was refused. That decision was reversed on judicial review and the matter was sent back for redetermination: *Zhou v Canada (Citizenship and Immigration)*, 2022 FC 1046.

[4] Upon redetermination, the Applicant's H&C claim was again refused. The decision-maker, a Senior Immigration Officer ("Officer"), focused on three aspects of the request: the Applicant's establishment in Canada, the best interests of the children, and the hardship of returning to China.

[5] On establishment, the Officer recognized the Applicant's volunteerism and ties to his community, but also noted that he had never been employed in Canada and had been out of status for many years. The Officer also noted that the Applicant had family ties in Canada but also had close family in China, including his wife and only child. The best interests of the child analysis was short because the Applicant had not filed evidence showing that any of his nieces and nephews in Canada were under age 18. Although the Officer acknowledged the Applicant's close relationship with his pastor's son, the evidence did not establish significant hardship associated with their separation.

[6] On hardship of returning to China, the Officer noted the question around whether the Applicant would qualify for a pension on his return, as well as the possible stigma he would face as the caregiver for his wife, who has a mental illness. The Applicant claimed to have physical restrictions associated with the accidents he experienced in Canada (he was hit by a car while riding his bike on two separate occasions), but the Officer noted the absence of evidence about the Applicant's ongoing medical needs or physical disability caused by these events. Lastly, the Officer noted the Applicant's claim of risk as a Christian in China, but found that he had not demonstrated why he could not continue to practice his religion in a state-sanctioned church.

[7] For all of these reasons, the Officer found that the evidence did not support granting H&C relief. The Applicant seeks judicial review of that decision.

[8] Applying the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], I conclude that the decision is not reasonable. Two central elements of the *Vavilov* framework guide my analysis. First, the onus is on the Applicant to demonstrate an error that is "sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). Second, it is only in exceptional circumstances that a reviewing court will interfere with a decision-maker's findings of fact (*Vavilov* at para 125).

[9] The Applicant submits that the analysis of his establishment in Canada was unreasonable, because the Officer gave too much weight to his lack of employment and unauthorized stay,

while discounting his family ties to Canada. I am not persuaded. These arguments simply ask the Court to re-weigh the evidence, which is not the role of a reviewing court. The Applicant has failed to show that this is an "exceptional circumstance" of the sort described in *Vavilov* at para 125. There is no basis to interfere with the Officer's findings on establishment.

[10] The Applicant also challenges the Officer's analysis of the best interests of the child, but again I find that his arguments are about the weighing of the evidence. On this question, the Officer's analysis is based on the evidence that was in the record, and the reasoning is clear. The Applicant has not demonstrated that this is an "exceptional circumstance" (*Vavilov*, para 125) and there is no basis to intervene in regard to this aspect of the decision.

[11] Finally, the Applicant contends that the Officer's consideration of the hardship he would face on returning to China was unreasonable. On this point, I agree with the Applicant that the Officer's analysis is flawed. I find that this is a sufficiently central aspect of the Officer's analysis to make the decision unreasonable.

[12] The Officer acknowledged that there was uncertainty about whether the Applicant's prior work experience in China would make him eligible for a pension upon his return to that country. The Officer also mentioned the evidence about the small amount of pension income the Applicant would receive even if he entitled to receive one, and the lack of other social benefits available to him. In addition, the Officer accepted the evidence that the Applicant's wife has a mental illness and their daughter has been supporting her.

[13] The Officer accepted all of these facts, as well as the evidence that the Applicant had not worked during the 20 years he spent in Canada, and that he had sustained injuries as a result of being hit twice by cars while riding his bike. The Officer noted the evidence showing that the Applicant had qualified for Ontario Disability Support payments at least once, and the Applicant's evidence and submissions claimed he had continued to receive disability benefits, although he did not provide evidence in support of this.

[14] Based on a review of all of this evidence, the Officer concluded: "Having reviewed the [Applicant's] personal circumstances and submissions, I am not satisfied that Mr. Zhou is ineligible for pensions or that he would be unable to meet his needs and those of his spouse." The problem with this key finding by the Officer is that it does not reflect a realistic, common-sense evaluation of the evidence previously accepted by the Officer.

[15] At a minimum, the evidence accepted by the Officer shows the following: the Applicant is 72 years old, and has been seriously injured in two car accidents; he has not been in the workforce for the 20 years he spent in Canada; he may qualify for some sort of pension when he returns to China, but at best it would provide him with a minimal income; and his wife has a serious mental health condition that would require substantial ongoing support from him.

[16] The law is clear: in analyzing a claim for H&C relief, and Officer is required to consider the individual's circumstances as a whole instead of taking a segmented approach (*Kanthasamy v Canada (Citizenship and Immigration),* 2015 SCC 61 at para 45). In *Muti v Canada (Citizenship*

and Immigration), 2022 FC 1722, Justice Nicholas McHaffie summarized the case-law on this Court's approach to reviewing H&C decisions:

> [10] This Court is often called upon to assess whether an immigration officer who has refused an H&C application has appropriately applied the approach or test for H&C relief as outlined in *Kanthasamy*. This Court has set aside H&C decisions on grounds, among others, that they fail to demonstrate a compassionate approach; unduly focus on hardship rather than conducting an assessment of all relevant factors; fail to grapple with the applicant's particular circumstances; or engage in a segmented analysis rather than a holistic one: *Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72 at paras 33–35; *Zhang* at paras 1–3, 14; *Gregory* at paras 36–37; *Reducto v Canada (Citizenship and Immigration)*, 2020 FC 511 at paras 50–51.

[17] In my view, the analysis of the H&C claim is unreasonable because the Officer failed to grapple with the practical consequences of the Applicant's personal circumstances. There is no consideration of the situation the Applicant would face if he did not qualify for a pension, nor any consideration of the practical realities he would face in supporting himself and his wife on the meagre pension he would receive even if he qualified for one. The Officer needed to show they had engaged with the reality of this particular Applicant and his personal circumstances. Instead, the Officer engaged in an analysis that was somewhat removed from the specific realities the Applicant faced.

[18] On this point, I should underline that the conclusion reached by the Officer is one that was available on the evidence. However, I find that this decision fails to meet the standard of responsive justification in accordance with the *Vavilov* framework because the Officer's

reasoning does not demonstrate an engagement with the specific evidence before them about the Applicant's personal circumstances.

[19] For these reasons, I find the Officer's decision is unreasonable. The application for judicial review is granted. The matter is remitted back for redetermination by a different Officer.

[20] There is no question of general importance for certification.

JUDGMENT in IMM-9857-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The matter is remitted back for redetermination by a different Officer.

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

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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