Federal Court  Cour fédérale

Date: 20200220

Docket: IMM-2439-19

Citation: 2020 FC 270

Ottawa, Ontario, February 20, 2020

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

BARTOSZ TOMASZ LADA
AMELIA BOGUSLAWA LADA
KAROLINA LADA AND
MARTYNA LADA, BY HER LITIGATION GUARDIAN, BARTOSZ TOMASZ LADA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Bartosz and Amelia Lada are citizens of Poland. They have two daughters: Karolina, aged 18, and Martyna, aged 14. The family entered Canada in 2012 as visitors. Their visitor status expired in January 2014. They have continued to live and work in Canada ever since.

[2] The Ladas seek judicial review of a decision by a Senior Immigration Officer [Officer] with Immigration, Refugees and Citizenship Canada [IRCC] dated March 29, 2019. The Officer refused the Ladas' request to apply for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds.

[3] The Ladas submitted their H&C application in October 2017. On March 7, 2019, the Humanitarian Migration Department of the IRCC sent the Ladas a letter informing them that their H&C application remained in queue. They were nevertheless invited to submit documents pertaining to their admissibility within 30 days. The Officer refused the Ladas' H&C application on March 29, 2019, just 22 days later.

[4] The Ladas say it was procedurally unfair for the Officer to render a decision before 30 days had elapsed from the date of the letter from the Humanitarian Migration Department, and before they had submitted documents pertaining to their admissibility.

[5] The Minister replies that an H&C application involves two distinct stages: Stage 1 involves an assessment of an applicant's eligibility for H&C relief, while Stage 2 involves an assessment of an applicant's admissibility. The documents requested by the Humanitarian Migration Department related only to Stage 2, and were irrelevant to the Stage 1 decision made by the Officer. Indeed, the Officer was likely unaware of the Humanitarian Migration Department's request for documentation until she was asked to reconsider her decision on April 1, 2019.

[6] The Ladas also argue that the Officer's decision was unreasonable. They say the Officer used boilerplate language to dismiss every factor advanced by the Ladas in support of their H&C application, repeatedly stating that there was "insufficient objective evidence".

[7] The Minister acknowledges that the Officer's decision was repetitive, but maintains that each conclusion of "insufficient objective evidence" was reasonable, and the decision as a whole was thorough, transparent, intelligible and justified.

[8] For the reasons that follow, the Officer's decision was procedurally fair and reasonable. The application for judicial review is dismissed.

II. Background

[9] The Ladas admitted in their H&C application that they did not come to Canada as visitors, but always intended to emigrate from Poland. They say that in 2013 they received bad advice from an immigration consultant, who took their money but did nothing in return. The Ladas took no further steps to regularize their status in Canada until they submitted their H&C application in October 2017.

[10] The Ladas relied on the following factors in support of their H&C application: their establishment in Canada through work, school and community; the inadequate representation of the immigration consultant; the best interests of their children; and the psychological and other hardships they would face if they returned to Poland.

[11] By letter dated March 7, 2019, the Ladas were asked by the Humanitarian Migration Department to "submit documentation and undergo screening related to your admissibility requirements (and those of your dependent family members)". The letter explained that admissibility entailed "medical, criminality, security, financial and identity assessments of each potential immigrant and their family members". According to the letter, by submitting the requested documents before an officer's decision, the Ladas could speed up the finalization of their application and the granting of permanent residence in the event that their request for an exemption was approved. The Ladas were asked to submit the documentation within 30 days.

III. Decision under Review

[12] The Officer issued her decision on March 29, 2019, without having received or considered the documentation requested by the Humanitarian Migration Department on March 7, 2019.

[13] The Officer gave some positive weight to the parents' employment in Canada, their ability to manage their finances, the relationships they had developed in Canada, the best interests of Karolina and Martyna, and the Ladas' negative experience with the immigration consultant in 2013. However, the Officer concluded that the Ladas had made speculative assertions regarding the hardships they would face in Poland, and had offered little objective evidence to support their H&C application.

IV. Reconsideration

[14] Following receipt of the Officer's decision, the Ladas complained to the IRCC on March 31, 2019 that the decision was made before the time for providing additional documentation had expired. On April 1, 2019, the Ladas asked the Officer to reconsider her decision, and submitted the documentation that the Humanitarian Migration Department had requested.

[15] The Officer reconsidered the application in light of the additional documentation, and reaffirmed her original decision by letter dated April 3, 2019. The Ladas have not sought leave to commence an application for judicial review of the Officer's reconsideration, and that decision is not before the Court.

V. Issues

[16] This application for judicial review raises the following issues:

A. Was the Officer's decision procedurally fair?

B. Was the Officer's decision reasonable?

VI. Analysis

A. *Was the Officer's decision procedurally fair?*

[17] Procedural fairness is a matter for the Court to determine. The standard for determining whether the decision-maker complied with the duty of procedural fairness is generally said to be correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 34, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79). The ultimate question is whether the applicants knew the case to meet, and had a full and fair chance to respond.

[18] The Ladas say they had a reasonable expectation that a decision regarding their H&C application would not be made until the time they were given to submit additional documentation had expired (citing *Pascal v Canada (Citizenship and Immigration)*, 2017 FC 595 at paras 9-12). They also maintain that the Officer's reconsideration of her decision was tainted by bias. As previously noted, however, the Officer's reconsideration decision is not before this Court.

[19] It is well established that the determination of an H&C application involves a two-stage process. This is clearly explained in the IRCC's program delivery instructions titled "Humanitarian and compassionate: Processing in-Canada applications", available on the IRCC's website.

[20] The Ladas were awaiting a Stage 1 determination regarding their eligibility for H&C relief. A Stage 2 determination regarding their admissibility would be made only if the Stage 1

eligibility determination was favourable. A different decision-maker would then assess the Ladas' medical, security, criminal, financial and identity statuses. These screening criteria are distinct from those that animate an H&C determination, which is concerned with applicants' degree of establishment in Canada, the hardship they will face if they return to their country of origin, the best interests of any children, and similar considerations.

[21] The letter dated March 7, 2019, from the Humanitarian Migration Department included the following:

> Your application **remains in queue** to be reviewed by an Immigration Officer who will decide whether or not to grant your request for exemption(s) from certain legislative requirements to allow processing of your application for permanent residence from within Canada.
>
> While a decision **has not yet been taken** on your request for exemption(s), we are writing today to request that you submit documentation and undergo screening related to your admissibility requirements (and those of your dependent family members). Admissibility relates to medical, criminality, security, financial and identity assessments of each potential immigrant and their family members.
>
> When a decision is made on your request for exemption(s), you will be informed. If the decision is to grant the requested exemption(s), at that time IRCC will again request the documents and examinations listed below if they are not already submitted. At that time the missing submissions will be what is delaying the finalization of your application.
>
> By submitting these requested documents now, before an officer's decision, you have the potential to speed up the finalization of your application and granting of permanent residence to you (and the family members included) should your request for an exemption(s) be approved.
>
> …

> Please submit the requested documents/information within 30 days from the date of this correspondence.
>
> [Underline added; bold in original.]

[22] In fairness to the Ladas, it may not have been immediately obvious to them that the March 7, 2019 letter concerned the Stage 2 admissibility assessment, not the Stage 1 eligibility assessment. However, the Ladas were represented by experienced counsel who presumably knew or ought to have known that admissibility factors would be assessed independently of H&C factors.

[23] The March 7, 2019 letter described the documents requested under separate headings, such as: “medical examination”; “police certificates”; “passport”; “right of permanent residence fee”; and “financial information”. Read as a whole, and aided by legal counsel, the Ladas should have understood that this letter concerned the Stage 2 admissibility assessment, not the Stage 1 eligibility assessment. With the possible exception of documents related to the parents’ employment or the children’s educational achievements, the information sought in the March 7, 2019 letter was unrelated to the H&C considerations the Ladas had advanced to support their application.

[24] The letter from the Humanitarian Migration Department could have been worded more clearly. One may also question the efficiency of asking applicants to incur the cost and inconvenience of compiling documents that are relevant only to the Stage 2 admissibility assessment when the Stage 1 eligibility assessment may be decided against them. But these are policy considerations that do not affect the procedural fairness of the decision under review.

[25] The letter from the Humanitarian Migration Department did not create a reasonable expectation on the part of the Ladas that the Officer would await documentation pertaining to their admissibility before rendering a decision on their eligibility for H&C relief. The Officer's decision was procedurally fair.

B. *Was the Officer's decision reasonable?*

[26] The Officer's assessment of the H&C factors advanced by the Ladas is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 48). The Court will intervene only if "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). These criteria are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes that are defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[27] The Ladas say that the Officer merely summarized the factors they had advanced in support of their H&C application, and then concluded they had provided "insufficient objective evidence". They say the Officer failed to provide a rationale for her repeated conclusions that none of the factors were supported by sufficient evidence.

[28] The Ladas take issue with the following determinations made by the Officer respecting their degree of establishment in Canada:

(a) Mr. Lada could find similar work as a tile installer in Poland: the Ladas say he demonstrated he could not return because of psychological trauma he suffered, arising from his former employment as a miner in Poland;

(b) there was insufficient evidence of Ms. Lada's employment in Canada: the Ladas say she was self-employed as a cleaner, and receipts were eventually provided in response to the letter from the Humanitarian Migration Department after the Officer issued her decision;

(c) Ms. Lada said she had a job offer, but this had not been updated: the Ladas say the evidence should not have been rejected only because it was not recent;

(d) there was insufficient evidence the Ladas had completed courses in English as a second language: they say they learned English by other means; and

(e) there was insufficient evidence that the Ladas' family in Poland could not provide assistance, including accommodation and emotional support: they say their family in Poland is poor and cannot help.

[29] The Officer's reasoning regarding the Ladas' degree of establishment in Canada was transparent, intelligible and justified. While the Officer repeatedly stated that the Ladas had provided insufficient objective evidence to support the H&C factors they advanced, these conclusions were always accompanied by explanations. The number of times the Officer

mentioned the insufficiency of the evidence was an indication of her diligence in assessing the many assertions the Ladas had made with little or no supporting evidence.

[30] While the Officer gave some positive weight to the Ladas' establishment, there was little evidence they were so integrated into Canadian society that their departure would cause hardship deserving of H&C relief (*D'Souza v Canada (Citizenship and Immigration)*, 2017 FC 264 at para 13; *Ziotosz v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 724 at para 35). The Officer was not obliged to give positive weight to the length of time the Ladas had spent in Canada without status and in violation of Canada's immigration laws (*Bruce v Canada (Citizenship and Immigration)*, 2015 FC 1049 at para 14; *Singh v Canada (Citizenship and Immigration)*, 2012 FC 612 at para 11; *Mann v Canada (Citizenship and Immigration)*, 2009 FC 126 at paras 12-14). The Ladas' decision to leave Poland for Canada and remain in this country without status was wholly voluntary.

[31] The Ladas' argument that their adverse experience with the immigration consultant weighed in favour of a positive H&C assessment was without merit. The Ladas did nothing to regularize their status in Canada between 2013 and 2017.

[32] The Ladas' strongest argument concerns the best interests of their daughters, both of whom were brought to Canada as young children and spent formative years here. The Ladas say that both of their daughters have thrived in Canada's educational system and will find it difficult to adjust to life in Poland. They claim that leaving Canada will hamper the eldest daughter's university prospects and she will no longer have adequate financial and other support. The Ladas

argue that the Officer failed to clearly articulate the best interests of the children and therefore could not have reasonably balanced them against other considerations (citing *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 35-41).

[33] In the alternative, the Ladas argue that the Officer unreasonably held that it was in the children's best interests to return to Poland, despite overwhelming evidence to the contrary. They say the children will suffer financially, will find it difficult to reintegrate given the language barrier, and are unlikely to return to Canada on student authorizations.

[34] Despite my sympathy for the circumstances in which the children find themselves, it was open to the Officer to conclude the harms they allegedly faced in Poland were largely unsupported by evidence (*Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 5). The Officer did not neglect to consider the best interests of the children; she simply concluded that there was insufficient evidence demonstrating "that the general consequences of relocating and resettling back in Poland would be counter to the best interest of the children". The onus was on the Ladas to satisfy the Officer that they were eligible for H&C relief. The onus was not on the Officer to demonstrate they were not.

[35] The Officer gave some positive weight to the children's interests in remaining in Canada. However, this did not in itself entitle the Ladas to an affirmative H&C determination (*Garraway v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 286 at paras 57-58).

[36] Finally, the Ladas complain that the Officer unreasonably dismissed the psychological assessments they submitted. The Officer did not accept the conclusions of one psychologist because he met with the Ladas only briefly, and offered no diagnosis or recommended therapy. The Officer questioned the psychologist's objectivity and professionalism due to extraneous comments such as "[i]t is my professional opinion that Mr. Lada, his wife, and two daughters, are assets to this country …", and "if this family is permitted to stay in Canada and allocated Permanent Residency, I believe that they will continue on the path of a stable, fulfilling life centered on family values." The Officer did not mention a second document, which purported to be an excerpt from a psychologist's report that was prepared in relation to an unidentified person.

[37] The Officer's rejection of the psychological evidence was reasonable. The Officer accepted the assertion that Mr. Lada experienced trauma arising from his previous employment as a miner in Poland. However, the Officer reasonably found that Mr. Lada had a diverse skill set, was currently working in home improvement, and had not demonstrated he would be unable to find similar work in Poland. There was nothing to suggest that Mr. Lada would be obliged to work as a miner if he returns to Poland. The psychological evidence offered in respect of the two children consisted primarily of common-sense observations. The Officer's reasons for ascribing little weight to this evidence were transparent, intelligible and justified.

VII. Conclusion

[38] The Officer's decision was procedurally fair and reasonable. The application for judicial review is dismissed. None of the parties proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Simon Fothergill"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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