Federal Court Cour fédérale

Date: 20210630

Docket: IMM-1315-20

Citation: 2021 FC 654

Ottawa, Ontario, June 30, 2021

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

CHESLAVA TITOVA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Ms. Cheslava Titova seeks judicial review of the November 8, 2019 decision of a Senior Immigration Officer, representative of the Minister of Citizenship and Immigration Canada [the Officer], who decided not to grant her an exemption based on humanitarian and compassionate [H&C] considerations, per section 25 of the *Immigration and Refugee Protection Act* SC 2001, c 27 [the Act].

[2] For the reasons set out below, Ms. Titova's Application for judicial review will be dismissed.

II. Facts and context

[3] Ms. Titova is a Russian citizen. Sometime in 2017, she applied for a Canadian visitor's visa to visit her boyfriend in Canada, and on June 20, 2017, she received a Canadian multiple-entry visitor's visa, valid until March 13, 2024.

[4] On July 21, 2017, she was admitted into Canada as a visitor, met her boyfriend in person for the first time, and on September 17, 2017, they married.

[5] In December 2017, Ms. Titova filed an application for Canadian permanent resident status under the In-Canada spousal program, sponsored by her husband. On January 25, 2018, this application was rejected as incomplete.

[6] On March 22, 2018, Ms. Titova sent another application for Canadian permanent resident status under the In-Canada spousal program, again sponsored by her husband, and on July 2018, she received the related two-year open work permit, valid until July 6, 2020.

[7] In September 2018, Ms. Titova's husband requested his sponsorship be withdrawn, but a few days later, he asked the Canadian authorities to disregard his previous request. In February 2019, Ms. Titova's permanent resident application was "approved in principle".

[8] However, from March 15, 2019 onward, as per the Superior Court proceedings Ms. Titova introduced, the spouses lived separate and apart (page 99 of the Certified Tribunal Record). On June 19, 2019, Ms. Titova's husband requested his sponsorship be withdrawn, and on July 12, 2019, Ms. Titova's application for permanent resident status under the In-Canada spousal program was denied. On July 22, 2019, Ms. Titova introduced the afore-mentioned divorce procedures before the Superior Court in Montreal.

[9] On September 9 2019, Ms. Titova applied, in Canada, for Canadian permanent resident status on the basis of humanitarian and compassionate considerations, per section 25 of the Act [the H&C Application]. As H&C considerations, Ms. Titova's counsel then submitted, essentially, that Ms. Titova (1) is a victim of emotional and financial domestic violence at the hands of her ex-husband and his mother; (2) would have to start from scratch upon return to Russia; (3) is not eligible for other immigration programs; (4) wants to develop her life in Canada; and (5) is financially independent. With the H&C Application, Ms. Titova submitted the forms, photos and copies of: the confirmation of the list of French courses she completed from August 2018 to July 2019 and the course she was then enrolled in, ID documents, the introductory application to institute proceedings in divorce, her bachelor's degree, her diploma, the letters her ex-husband wrote to CIC, some documents describing their initial relationship, and documentary documents on domestic violence.

[10] On November 8, 2019, Ms. Titova's H&C Application was refused.

III. The Decision

[11] In their decision, the Officer provides a summary of Ms. Titova's immigration information. In the section dedicated to the decision and reasons, the Officer first notes that applicants bear the onus of satisfying the decision-maker that the granting of permanent resident status or an exemption from any applicable criteria or obligations of the Act is justified by humanitarian and compassionate considerations.

[12] The Officer outlines that an H&C exemption is a discretionary and exceptional measure, and then examines three factors, hence (1) Ms. Titova's level of establishment; (2) the relationship with her estranged spouse and her circumstances; and (3) the hardship she would suffer in Russia.

[13] In regards to her level of establishment, the Officer notes essentially that Ms. Titova is employed, is attempting to learn French, attends church, lives alone, pays her rent and does not list having any immediate family members in Canada.

[14] The Officer adds there is little indication Ms. Titova has been in receipt of social assistance, and notes that it is expected of foreign nationals in Canada to be financially independent during their stay. The Officer commends Ms. Titova's willingness to learn French, noting however, that it is not uncommon for individuals to have a certain degree of establishment after residing in Canada for over two years. The Officer notes that no personal or reference letters have been received in support of her application and integration. Ultimately, the Officer

finds, based on the information and evidence submitted, that Ms. Titova has demonstrated a low to moderate level of establishment in Canada, and gives her establishment little weight in the application.

[15] In regards to Ms. Titova's relationship with her estranged spouse, the Officer acknowledges the allegations raised by counsel in the submissions attached to the H&C Application. The Officer notes that Ms. Titova's counsel stated Ms. Titova's estranged spouse drained her bank account and resources, cancelled her spousal sponsorship application, demanded money and menaced her with arrest and deportation, mentioned bankruptcy which led her to give him and his mother more money, and did not make contributions to the family's expenses. The Officer notes however that Ms. Titova no longer lives with her spouse, has been separated since March 2019 and filed divorce procedures. The Officer sympathises, as Ms. Titova's sponsorship application was withdrawn after approval in principle, but notes that it is not uncommon for relationship to breakdown while a spousal sponsorship is in process. The Officer gives this consideration some weight, but indicates this is only one of many important factors to consider when making an H&C decision, and does not outweigh all other factors in a case.

[16] The Officer notes that Ms. Titova does not have a removal order from Canada, her work permit remains valid and as she can apply to extend again her temporary resident status in Canada. The Officer adds that this would allow Ms. Titova to settle her affairs in Canada, finalise her divorce, and claim money from her estranged spouse. She also has a multiple-entry temporary resident visa, valid until March 2024.

[17] In regards to the hardship in Russia, the Officer notes again counsel's submissions, notably that Ms. Titova would need to start her life from scratch and could not return to her former employment in Russia, and that the Russian government does not provide social welfare. The Officer outlines Ms. Titova would not return to an unknown and foreign country as she was born, educated, worked and resided in Russia. The Officer finds Ms. Titova is highly educated and likely still familiar with the society, customs, language and culture of the country. The Officer notes Ms. Titova listed her parents, adult son and two sisters residing in Russia, that there is little information indicating her family would be unable or unwilling to provide her with emotional/physical care and/or short term support. He also notes that Ms. Titova, through her experience in Canada, has shown herself to be resilient and self-sufficient. She also gained work experience and language skills which could aid her job prospects. The Officer finds that these ties would aid her re-establishment in Russia. Ultimately, the Officer finds the applicant failed to demonstrate her particular circumstances that would go beyond the typical impacts of leaving Canada and gives the hardship of returning to Russia little weight.

[18] The Officer summarises the purpose of the H&C application, and ultimately, does not find the humanitarian and compassionate considerations submitted by Ms. Titova to justify the exceptional remedy of an exemption under subsection 25(1) of the Act.

IV. Section 25 of the Act

[19] Section 25 of the *Immigration and Refugee Protection Act* (SC 2001, c 27) [the Act] states:

> 25 **(1)** Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

[20] The Minister outlines the applicable principles in his memorandum. It is a fundamental principle under Canadian law that those who want to become permanent residents of Canada must apply for permanent residence from outside Canada. This obligation is stated at subsection 11(1) of the Act, and is reiterated at section 6 of the *Immigration and Refugee Protection Regulations* SOR/2002-227 [the Regulations].

[21] It is only in exceptional circumstances that the Minister may allow someone to be exempted from that clearly stated obligation. The burden to demonstrate the existence of such circumstances lies on the person requesting the exemption and factors raised are to be assessed globally rather than separately. Subsection 25(1) of the Act is not intended to be an alternative immigration scheme (*Kanthasamy v Canada (Minister of Citizenship and Immigration)*, [2015] 3 SCR 909, para 23).

[22] In the context of an H&C Application, the applicant bears the onus of establishing that the exemption is warranted. Finally, the H&C exemption is not intended to eliminate any kind of hardship for an applicant, but rather to provide relief from "*unusual, undeserved or*

disproportionate hardship". An applicant must satisfy the officer that, given that person's personal circumstances, the requirement to obtain a visa from outside Canada in the standard prescribed manner would cause such hardship.

V. The arguments raised by the Applicant

[23] Before the Court, Ms. Titova submits that the Officer's written refusal reasons demonstrate a capricious review of her situation and proofs. First, Ms. Titova submits that, other than an acknowledgment of the domestic violence details, the Officer's analysis is devoid of any reasonable discussion/analysis of her predicament and trivialise domestic violence. Second, she adds that concerning her establishment in Canada, the Officer gave no more that a cursory account, afforded insufficient weight, and found without an explanation that her ongoing full-time university education in the French language is insignificant.

VI. Parties' Submissions and Analysis

A. *Standard of Review*

[24] I agree with the parties that the presumptive standard of review is reasonableness, and nothing refutes the presumption in this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44 [*Kanthasamy*]).

[25] When the reasonableness standard of review is applied, the burden is "on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100). The Court's focus

must be "on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83) to determine whether the decision is "based on an internally coherent and rational chain of analysis and […] is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). It is not for the Court to substitute its preferred outcome (*Vavilov* at para 99).

[26] As the Supreme Court stated at paragraph 125 of *Vavilov*, it is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker" Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review.

B. *Did the Officer trivialise domestic violence?*

[27] Ms. Titova first notes that the Officer's comment that it is not uncommon for foreign nationals to return to their home country after studying or working in Canada for a couple of year is out of place in a domestic violence H&C review. However, she stresses that the prefacing application was by sponsorship, not for a student or work permit (which Ms. Titova submits, do require return to one's native country). This statement suggests that the domestic violence application is frivolous.

[28] Ms. Titova adds that the Officer's analysis is unintelligible, lacking transparency, and otherwise unreasonable. Specifically, she adds there is insufficient discussion to explain the Officer's conclusions, notably on Ms. Titova's relationship with her estranged spouse. She notes that the Officer merely acknowledged some of the details of domestic violence, notably that her spouse drained her bank account and resources, cancelled her spousal sponsorship application twice, demanded money and menaced her with arrest and deportation, mentioned bankruptcy which led her to give him and his mother more money, and did not make contributions to the family's expenses. Ms. Titova argues that the Officer did not weigh this evidence, simply noting that it did not outweigh the other factors.

[29] Ms. Titova adds that the Officer trivialised her situation, noting that it is not uncommon for relationships to break down while a sponsorship is in process. She adds there is also no indication of the basis for that conclusion, and the conclusion is inconsistent with Immigration, Refugees and Citizenship Canada's domestic violence policy, and the fact that the application was granted priority review for these reasons.

[30] The Minister first responds that the burden to show circumstances warranting an exemption on H&C grounds lies with the applicant and that section 25(1) of the Act is not intended to an alternative to the immigration scheme (*Kanthasamy* at para 23). He adds that the fact that country conditions are less desirable than those in Canada is not enough to justify an exemption (citing, inter alia, *Adams v Canada (Citizenship and Immigration)*, 2009 FC 1193 at para 29) and that an H&C decision does not involve a determination of legal rights (*Barrak v Canada (Citizenship and Immigration)*, 2008 FC 962 at para 29). The Minister adds that the

decision did not deny Ms. Titova status in Canada, but simply required her to submit an application from outside Canada, per section 11(1) of the Act. Ms. Titova did not meet her burden to show that submitting her application from outside Canada would cause unusual, underserved or disproportionate hardship (*Ibabu v Canada (Citizenship and Immigration)*, 2015 FC 1068 at para 22).

[31] The Minister submits that the Officer's decision considered all the evidence and weighed the factors submitted by Ms. Titova. The Minister also submits that Ms. Titova's arguments take issue with a selective set of examples simply aimed at supporting the Officer's conclusions. The Court should not reweigh the evidence or the factors. The Officer specifically noted that he had given weight to the unfortunate circumstances and breakdown of her relationship with her estranged spouse. The Minister cites *JML v Canada (Citizenship and Immigration)*, 2008 FC 1152 [*JML*], where this Court dismissed an application with domestic violence circumstances.

[32] In reply, regarding the *JML* decision cited by the Minister, Ms. Titova notes that a comparison of domestic violence experience is unwarranted and prejudicial. Immigration, Refugees and Citizenship Canada has provided a list of domestic violence categories, neither of which is more "telling" than the other. She adds that the Officer's discussion in the decision at issue was reasonable and intelligible, unlike the Officer's analysis here.

[33] Ms. Titova has not convinced me that the Officer trivialised domestic violence. I have carefully read the Officer's reasons and note that they did outline and acknowledge the facts related by counsel and Ms. Titova's unfortunate circumstances.

[34] The Officer's statement that it is not uncommon for foreign nationals to return to their home country after studying or working in Canada for a couple of year was part of this assessment of Ms. Titova's level of establishment and, even assuming it is displaced, it does not render the decision unreasonable. Furthermore, the Applicants have not convinced me that the Officer's assertion that it is not uncommon for relationships to break down while a sponsorship is in process, is unreasonable and justifies the intervention of the Court. The fact that Ms. Titova had been separated, and living apart from her spouse since March 2019, that she had initiated divorce proceedings, and that she had some flexibility in regards to her status and entry into Canada, could reasonably be considered relevant by the Officer given the circumstances..

[35] As the Court stated in *JML*, "It should never be forgotten that granting relief under section 25 is an "exceptional remedy" dependent on the Minister's discretion. An applicant is not entitled to a particular outcome, and it is not sufficient that an applicant's plight may invite sympathy. The onus is on the applicant to satisfy the officer that, in the applicant's personal circumstances, the requirement to obtain a visa from outside Canada in the standard manner would cause unusual and undeserved or disproportionate hardship. The test cannot be whether Canada would be a more desirable place to live than the applicant's country of origin. Nor should this Court intervene only for the reason that it may have come to a different conclusion. As long as the officer properly examined the totality of the evidence and came to a defensible and acceptable outcome, her decision should be insulated from judicial review as the weight to be given to any particular fact remains entirely within her expertise".

[36] And the Court adds that “It is trite law that the proper test for assessing humanitarian and compassionate applications is whether the general obligation for all foreign nationals to apply for permanent residence from abroad would cause the applicant unusual, undeserved or disproportionate hardship”.

[37] In this case, the Officer did examine the allegations raised by counsel and gave some weight to Ms. Titova’s difficult situation. However, it was open to the Officer to consider that this factor is one of many others, and does not necessarily outweigh them, particularly in light of the more recent circumstances. Although, a different officer may have reached a different conclusion, the Officer’s assessment is intelligible, coherent and transparent. It relates to the evidence that was in fact adduced in support of the H&C Application. The role of the Court in judicial review is not to reweigh the different factors and the Officer’s conclusion does not justify the intervention of the Court.

C. *Establishment*

[38] Ms. Titova submits that her main argument relates to the Officer’s analysis of her establishment in Canada, and that the Officer did not give proper weight to said establishment by considering it as low to moderate and by giving it little weight. Ms. Titova contends on the contrary that the evidence shows otherwise. She adds that the Officer’s discussion of her establishment in Canada is inconsistent, as it presents two opposite viewpoints on the same subject (essentially stating positive establishment factors while affording them little weight). She notes that an H&C request is interpreted from the perspective of a reasonable person (*Kanthasamy* at para 101) and that using her integration success or efforts to nullify the H&C

Application is inconsistent with the guidance of the Federal Court (*Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 at paras 20, 24, and 26). This success cannot be used to suggest that it will be replicated outside Canada.

[39] The Minister responds that the Officer's decision considered all the evidence and weighed the factors submitted by Ms. Titova. The Minister also submits that Ms. Titova's arguments take issue with a selective set of examples simply aimed at supporting the Officer's conclusions. The Court should not reweigh the evidence or the factors. Specifically, in denying the application, the Officer noted that he did not receive letters from individuals in Canada to support her application and that Ms. Titova had significant ties to Russia, through her education, family ties, language skills, and work experience. The Officer found that a two-year absence from Russia was not a disproportionately long time, as she had resided there for most of her life. Ms. Titova had therefore not demonstrated unusual hardship if she returned to Russia.

[40] In reply, Ms. Titova notes that the Officer's explanations regarding her return to Russia shows many details being considered, such as her education, work experience, and social and family ties in Russia. This analysis shows that this topic was the only one to be given reasonable attention by the Officer.

[41] In regards to establishment, Ms. Titova relied on the fact that she learned French, attended church and worked to gain financial independence, which can reasonably be expected of foreign nationals. She unfortunately provided very little in terms of evidence of more profound establishment, and it was thus reasonable for the Officer to consider she reached a low

to moderate establishment, as there was simply not much to rely on. I understand Ms. Titova disagrees with the Officer's conclusion; however, it is not for the Court to alter the weight given to various humanitarian and compassionate considerations. Again, on judicial review, the Court is not permitted to substitute its own assessment of the evidence for that of the administrative decision maker, and must in fact "refrain from reweighing and reassessing the evidence considered by the decision maker" (*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55).

VII. Conclusion

[42] For these reasons, the Application will be dismissed.

<u>JUDGMENT in IMM-1315-20</u>

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed.

2. No question is certified.

"Martine St-Louis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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