

Federal Court



Cour fédérale

Date: 20210826

Docket: IMM-5582-19

Citation: 2021 FC 883

Ottawa, Ontario, August 26, 2021

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

MA. THERESA MADERA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ma Theresa Madera is a citizen of the Philippines. She seeks judicial review of a decision by an officer [Officer] with Immigration, Refugees and Citizenship Canada to refuse her request to apply for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds.

[2] This is the third time Ms. Madera has sought to remain in Canada on H&C grounds, and the third time her request has been refused. The circumstances leading to the first and second refusals were succinctly summarized by Justice Patrick Gleeson in *Madera v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 108 [*Madera*] at paragraphs 1 and 2:

Ms. Madera, the applicant, is a citizen of the Philippines who arrived in Canada in October 2010 under the Live-in Caregiver Program. Her work permit required that she work for the employer identified in the permit. She did not. She subsequently changed employers and, in 2012, she applied for a new work permit to reflect her current employer. The 2012 application was refused due to non-disclosure of criminal charges, information that was requested on the application form. In May 2013, she again applied and at that time, was ordered to leave Canada. She did not leave as ordered. In May 2014, she submitted an application for permanent residence from within Canada on Humanitarian and Compassionate [H&C] grounds.

Her H&C application was initially refused, but on agreement, the application was returned for redetermination. In May 2016, the H&C application was again refused. It is this second refusal decision that is the subject of the Application before me.

[3] Ms. Madera's most recent H&C application was refused on October 17, 2019. This is the decision currently before the Court.

[4] The Officer's decision to refuse Ms. Madera's request to apply for permanent residence from within Canada on H&C grounds was reasonable. The application for judicial review is therefore dismissed.

II. Decision under Review

[5] According to Notices of Assessment issued by the Canada Revenue Agency, Ms. Madera earned \$3,000 in 2010, \$9,000 in 2011, \$12,000 in 2012, \$7,381 in 2013, \$6,730 in 2014, \$6,480 in 2016, \$6,120 in 2017, and \$7,370 in 2018. In her application for H&C relief, she said she was financially supporting her elderly parents in the Philippines, as well as her sister Imelda, a single mother with three children.

[6] The Officer found that Ms. Madera herself relied, at least in part, on financial assistance from her aunt and uncle. In light of her modest income, the Officer concluded that Ms. Madera had not demonstrated she was financially independent, or that she had sufficient earnings to establish herself in Canada while continuing to send money to her family in the Philippines. The Officer also found there was insufficient evidence to demonstrate that Ms. Madera's mother relied on her to pay for medication she requires for a heart condition.

[7] The Officer noted that Ms. Madera's niece Faith was attending private school in the Philippines. While the Officer considered it reasonable to assume that private schools offer better teaching materials and smaller classrooms, the Officer referred to "objective documentation" indicating that private schools follow the same curriculum as public schools in the Philippines. The Officer therefore held that Ms. Madera had failed to demonstrate Faith would be denied an education if she were unable to attend a private school.

[8] The Officer acknowledged that it is very difficult to find work in the Philippines. However, the Officer noted that Ms. Madera was an experienced domestic worker who had been employed in Hong Kong for approximately four years before coming to Canada. The Officer therefore concluded that Ms. Madera could explore similar avenues in the future, if she was unsuccessful in the Philippines.

[9] The Officer observed that Ms. Madera's prolonged stay in Canada of nearly nine years without legal status was not due to circumstances beyond her control.

III. Issue

[10] The sole issue raised by this application for judicial review is whether the Officer's decision was reasonable.

IV. Analysis

[11] The Officer's decision 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 10). 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 defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[12] Ms. Madera says the Officer relied on extrinsic evidence to support the conclusion that public schools in the Philippines are free of charge and follow the same curriculum as private schools. She says this extrinsic evidence was never disclosed to her. Counsel for the Respondent concedes that the “objective documentation” referred to by the Officer respecting public schools and curricula in the Philippines does not appear in the certified tribunal record.

[13] The onus was on Ms. Madera to demonstrate that her sister’s children would suffer hardship if the H&C application was refused. No detailed information was provided to the Officer regarding the extent to which Ms. Madera’s nephews depend on her financially. Given her meagre earnings and the availability of public education in the Philippines, the Officer reasonably concluded that Ms. Madera had failed to demonstrate her niece would be denied an education if Ms. Madera were to leave Canada. Being unable to attend a private school is not usually considered to be a hardship warranting H&C relief (*Oluwafemi v Canada (Citizenship and Immigration)*, 2009 FC 1045 at para 54).

[14] The Officer acknowledged Ms. Madera’s submission that the Philippine Health Insurance Corporation does not provide comprehensive coverage, and pays for only a defined set of services at predetermined rates. However, the Officer reasonably found that Ms. Madera had provided insufficient evidence to demonstrate that her mother must pay for her medication out-of-pocket. No receipts were provided. In her affidavit, Ms. Madera’s mother did not specifically

mention medication as one of the things for which she relies on Ms. Madera, saying only that she and her husband are “fully dependent” on her for the basic necessities of life.

[15] Ms. Madera says the Officer showed an “unreasonable preoccupation” with the fact that she had lived in Canada without status for almost nine years. However, it is well-established that applicants cannot, and should not, be rewarded for accumulating time in Canada when they have no legal right to do so (*Edo-Osagie v Canada (Minister of Citizenship and Immigration)*, 2017 FC 1084 at para 17, citing *Semana v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1082 at para 17). This very point was made by Justice Gleeson in upholding the refusal of Ms. Madera’s previous H&C request (*Madera* at para 9).

[16] The Officer did not confine the analysis to Ms. Madera’s legal status in Canada, but acknowledged the other indicia of establishment submitted by Ms. Madera:

The Applicant submits a letter from St. Paschal Baylor Church dated on May 31, 2013 in which it states that the Applicant has been a member of the church and the choir since May 2011. The Applicant’s good character traits are also highlighted in the letter.

The Applicant submits a letter from S.E.A.S. Centre dated on November 12, 2015 in which it states that the Applicant volunteered for their organization since 2013.

In submission is a letter of support from the Applicant’s aunt and uncle who reside in Canada. The Applicant’s aunt and uncle provide some background information about their niece, the Applicant, and also wish to have the Applicant remain in Canada permanently.

[17] As Justice Gleeson found in *Madera* (at para 10):

While an Officer may well act unreasonably where the question of legal status results in an Officer failing to consider the question of unusual or disproportionate hardship (*Klein v Canada (Citizenship and Immigration)*, 2015 FC 1004) this is not what happened here. The Officer's analysis did not cease with the determination that Ms. Madera had failed to regularize her legal status. Instead, in determining no unusual or disproportionate hardship warranting an H&C exemption, the Officer undertook an analysis of the economic situation in the Philippines, addressed Ms. Madera's claim that she was supporting her parents, sister and niece in the Philippines and considered her employment opportunities in the Philippines.

[18] Finally, Ms. Madera cites *Hermann v Canada (Citizenship and Immigration)*, 2014 FC 266 [*Hermann*] to challenge the Officer's finding that she could explore opportunities in other countries, such as Hong Kong, if she is unsuccessful in re-establishing herself in the Philippines. In *Hermann*, the applicants sought an exemption on H&C grounds because they wished to home-school their children. Home-schooling was illegal in their native Germany, but the officer found that the family could relocate to the United Kingdom, then a member state of the European Union. Justice Russel Zinn ruled as follows (*Hermann* at paras 13-14):

The relocation to the UK, colourfully, but perhaps inaptly described by counsel as an External Flight Alternative, was never suggested by the Applicants and they had no notice from the officer that it was under consideration in their H&C application. They were unreasonably, and in my view illegally, denied the opportunity to make submissions on this rather unique consideration.

[19] In the unusual circumstances of *Hermann*, the applicants' potential hardship was not assessed against their home country, but another country to which they might have access. This was done without notice or an opportunity to be heard.

[20] In this case, the potential hardship to Ms. Madera and her family was assessed against the prospect of her returning to her native Philippines. The Officer found that it would be very difficult for Ms. Madera to find employment in the Philippines, not that it would be impossible. Ms. Madera was presumably aware of her past experience as a domestic worker who had demonstrated resourcefulness in securing employment in different places. The Officer's finding in this respect was amply supported by the evidence.

V. Conclusion

[21] The application for judicial review is dismissed. Neither party 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

DOCKET: IMM-5582-19

STYLE OF CAUSE: MA. THERESA MADERA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE BETWEEN TORONTO
AND OTTAWA, ONTARIO

DATE OF HEARING: JULY 21, 2021

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: AUGUST 26, 2021

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