Federal Court  Cour fédérale

Date: 20210922

Docket: IMM-549-21

Citation: 2021 FC 981

Ottawa, Ontario, September 22, 2021

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

GURMIT SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns the decision of a senior immigration officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC") denying the Applicant's humanitarian and compassionate ("H&C") grounds application for permanent residence. The Officer was not satisfied that the H&C considerations were sufficient to justify an exemption under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "*IRPA*").

[2] The Applicant submits that the Officer's decision is unreasonable because the Officer speculated that the Applicant would have a home to reside in if he were to return to India. The Applicant further argues that the Officer failed to analyse coherently the Applicant's submission that he derives significant personal and emotional fulfillment from his work in Canada.

[3] For the reasons that follow, I find the Officer's decision is reasonable. The Officer considered and weighed all of the relevant evidence and reasonably concluded that the Applicant's situation did not meet the threshold to warrant an H&C exemption. I therefore dismiss this application for judicial review.

II. Facts

A. *The Applicant*

[4] The Applicant, Mr. Gurmit Singh, is a 58-year-old citizen of India. He entered the United States of America ("USA") in 1991 and made an asylum claim, which was refused. The Applicant's spouse and eldest son eventually met him in the USA. His two other children remained behind in India. The Applicant and his spouse both have siblings and other family members currently residing in India. Sadly, his son who remained in India has since passed away. His daughter has a child of her own and resides with her in-laws in India.

[5] While in the USA, the Applicant and his spouse owned a restaurant for many years. They entered Canada on September 27, 2009 and made a claim for refugee protection on October

28, 2009. Their claims were refused, and their application for leave to the Federal Court was denied.

[6] On February 27, 2014, the Applicant submitted an application for permanent residence from within Canada on H&C grounds, which was refused on August 28, 2014. On May 14, 2014, he submitted a pre-removal risk assessment, which was refused on January 30, 2015. The Applicant was issued multiple work permits while in Canada, the latest of which was valid until January 21, 2021 and did not confer temporary resident status.

[7] The Applicant's second H&C application, which is the subject of this judicial review, was submitted on April 4, 2019, and was refused on January 4, 2021. The H&C application of the Applicant's spouse was also refused.

[8] The Applicant and his spouse have resided throughout Canada since their arrival in 2009, most recently residing in Blairmore, Alberta. Prior to that, they resided in Delta, Vancouver, Montreal, and Lasalle. A work permit was issued to the Applicant in January 2010 but he did not start working until October 2013. From 2013 to 2018, the Applicant worked as a cook for various restaurants, a labourer, and a manager at a motel. He has been employed as a taxi driver since August 2016 and is currently employed at a motel that his son owns.

[9] The Applicant resides with his son and daughter-in-law. He states that it is his son's cultural duty to support him financially and emotionally in his old age, and he would like to stay in Canada with his son. The Applicant's son wrote him a letter of support, in which the son

explained that the Applicant assists with the operations of the motel. The Applicant's son, in his affidavit, stated that he will "commence a sponsored application" for the Applicant in the event that this application is refused.

B. *Decision under Review*

[10] The Officer stated that the factors relied upon by the Applicant in his H&C application were the following: his establishment in Canada, family reunification, and lack of familial support in India.

[11] In considering the Applicant's establishment in Canada, the Officer accepted that the Applicant has worked for most of the time he has resided in Canada and has been financially self-sufficient. The Officer commended the Applicant's volunteer work while living in British Columbia and noted that the Applicant has friends and some family in Canada. The Officer concluded, however, that these relationships did not justify an exemption should separation occur.

[12] The Officer accepted that the Applicant demonstrated a level of integration in Canada, but contended that this was a level to be expected of someone in Canada for over 11 years. The Officer concluded that some weight was to be given to the Applicant's establishment.

[13] With regard to the family reunification factors, the Officer acknowledged the cultural duty of the Applicant's son to provide for the Applicant financially and emotionally and the Applicant's desire to remain living with his son in Canada. The Officer noted, however, that

family separation is an inherent part of the immigration process, and was a reality when the Applicant and his spouse left two of their children in India when they departed. The Officer also noted that family reunification is not a determinative factor in an H&C application.

[14] With respect to the Applicant's son's motel business, the Officer noted that while the Applicant helps with the business, he is remunerated for his work and there was no evidence put forward indicating that his son would not be able to find another employee.

[15] In considering the Applicant's submission that he would lack familial support in India, the Officer noted that the Applicant has an adult child and a grandchild in India, as well as siblings. The Applicant's wife also has family in India. The Officer acknowledged that some hardships may befall the Applicant, but concluded that there was insufficient evidence to establish that the Applicant would not be able to re-integrate or re-establish himself in India. The Officer noted that the Applicant was born, raised, and educated in India and found the Applicant to be resourceful, highlighting that the Applicant had established himself in both the USA and Canada "with little if any family support."

[16] The Officer briefly considered the best interests of the Applicant's grandchild in India. The Officer found that it would be in that child's best interest to have access to the Applicant.

[17] The Officer found that the Applicant's son, in his affidavit, stated that he would commence a sponsorship application for the Applicant if his H&C application was unsuccessful.

The Officer found that this statement indicated that the son was aware of another avenue towards permanent residence for the Applicant.

III. Legislative Framework

[18] Under subsection 25(1) of the *IRPA*, the Minister of Citizenship and Immigration may grant discretionary relief from the requirements of the *IRPA* to certain foreign nationals on H&C grounds:

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
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	25 (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte

compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	tenu de l'intérêt supérieur de l'enfant directement touché.

[19] Citing *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 ("*Kanthasamy*"), among other cases, Justice Little described the purpose of H&C applications and the relevant considerations in *Rainholz v Canada (Citizenship and Immigration)*, 2021 FC 121 ("*Rainholz*"):

> [14] Humanitarian and compassionate considerations refer to "those facts, established by the evidence, which would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another — so long as these misfortunes 'warrant the granting of special relief' from the effect of the provisions of the [*IRPA*]". The purpose of the H&C provision is provide equitable relief in those circumstances.
>
> [15] Subsection 25(1) has been interpreted to require that the officer assess the hardship that the applicant(s) will experience on leaving Canada. Although not used in the statute itself, appellate case law has confirmed that the words "unusual", "undeserved" and "disproportionate" describe the hardship contemplated by the provision that will give rise to an exemption. Those words to describe hardship are instructive but not determinative, allowing subs. 25(1) to respond flexibly to the equitable goals of the provision.
>
> [16] An applicant may raise a wide variety of factors to show hardship on an application for H&C relief. Commonly raised factors include establishment in Canada; ties to Canada; health considerations; consequences of separation of relatives; and the BIOC. The H&C determination under sub. 25(1) is a global one, and relevant considerations are to be weighed cumulatively as part of the determination of whether relief is justified in the circumstances.
>
> [17] The discretion in subs. 25(1) must be exercised reasonably. Officers making humanitarian and compassionate determinations

> must substantively consider and weigh all the relevant facts and factors before them.
>
> [18] The onus of establishing that an H&C exemption is warranted lies with the applicants. Lack of evidence or failure to adduce relevant information in support of an H&C application is at the peril of the applicant.
>
> [citations omitted, emphasis added]

IV. Issue and Standard of Review

[20] The sole issue arising on this application is whether the Officer's decision is reasonable.

[21] It is common ground between the parties that the applicable standard of review for the Officer's decision is reasonableness. I agree (*Rainholz* at para 23, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*")).

[22] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). 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 (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[23] For a decision to be unreasonable, an applicant bears the onus of establishing that the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing the evidence that was before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

V. Analysis

[24] The Applicant submits that the Officer erred by speculating that the Applicant and his spouse will have a place to reside in India upon return. This alleged error is the thrust of the Applicant's argument that the Officer's decision is unreasonable.

[25] The Applicant further submits that the Officer failed to provide a coherent analysis of the evidence of the Applicant's son, that the Applicant has "significant and personal fulfillment in Canada due to [his] contribution in the family business." The Applicant asserts the Officer assessed this evidence through a monetary lens without regard for the "significant emotional and personal fulfillment" the Applicant reaps from his work in the family business.

[26] The Respondent submits that the Applicant is ultimately seeking to have evidence re-weighed. The Respondent cites *Kanthasamy* for the proposition that an H&C decision is highly discretionary and the onus is on the Applicant to establish that unusual and undeserved or disproportionate hardship affects them personally or directly (*Kanthasamy* at para 48). The Respondent submits that the Applicant failed to establish that he and his spouse would not be able to re-integrate themselves into their community should they return to India.

[27] The Respondent argues that H&C exemptions are extraordinary and not intended to be an alternative immigration scheme. The Respondent submits, "it is clear from the reasons that the Officer took into account all the evidence" and made a reasonable decision.

[28] In my view, the Respondent misapprehends the analysis applicable in an H&C application. The correct approach, as determined by the Supreme Court of Canada in *Kanthasamy*, is for the Officer to determine whether the evidence as a whole justifies relief rather than treating the words "unusual and undeserved or disproportionate hardship" as creating thresholds for relief (*Kanthasamy* at para 33). I agree with the Respondent, however, that H&C relief is exceptional and the onus is on the Applicant to establish that an exemption should be granted (*Evans v Canada (Citizenship and Immigration)*, 2021 FC 733 at para 49).

[29] Despite the Respondent's misstatement of the H&C framework, in my view, the Officer's decision follows a rational chain of analysis and is justified in relation to the relevant facts and law (*Vavilov* at para 85). The Officer considered and weighed the evidence before him and reasonably determined that, although the Applicant would face some hardship upon return, that hardship could be mitigated.

[30] With respect to the Applicant's submission that the Officer unreasonably speculated that he and his spouse would have a home to reside in if returned to India, there is no indication the Officer took this approach. The Officer noted the Applicant's statement that they would have nowhere to reside if they returned to India. The Officer further acknowledged that they would be unable to live with their children in India. However, the Officer concluded that there was little

evidence to demonstrate that the Applicant was estranged from his children and that they would be unable to offer care and support on a short-term basis. The Officer also found that the Applicant's siblings reside in India and may be able to offer some support to assist with the Applicant's reintegration.

[31] At no point did the Officer state that the Applicant's family could offer him a home to live in. Ultimately, the Officer concluded that there was insufficient evidence to establish that the Applicant would be unable to re-integrate or re-establish himself in India. The Officer pointed out that the Applicant was born, raised, and educated in India and would not be returning to an unknown and foreign country. The Officer also noted that the Applicant was able to establish himself in the USA and Canada despite having little if any familial support.

[32] The Applicant further submits that the Officer failed to reasonably analyze his son's statement that the Applicant and his spouse have significant emotional and personal fulfillment in Canada due to their contributions to the family business. The Applicant asserts the Officer assessed this evidence through a monetary lens, determining that the Applicant's son could hire someone to do the work that the Applicant currently does at the motel. A review of the decision indicates that the Officer's finding that the Applicant's son could hire an employee was in response to the submission that the Applicant's son requires his support to operate the motel.

[33] In any event, I find that the Officer's failure to elaborate further on one specific factual element of the Applicant's case does not render the Officer's decision unreasonable.

Establishment is only one factor in the H&C analysis, and the Officer was not obligated to make an explicit finding on every argument raised by the Applicant (*Vavilov* at para 128).

VI. Conclusion

[34] In my view, the Officer's decision is reasonable. The Officer outlined and assessed the factors relied upon by the Applicant in his submissions. The weight that the Officer attached to the relevant evidence was within the Officer's discretion. The Officer's decision allows the Court to understand the reasoning process, and there are no serious flaws in the decision. I therefore dismiss this application for judicial review.

[35] The parties have not proposed a question for certification, and I agree that none arises.

JUDGMENT in IMM-549-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No question is certified.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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