Federal Court  Cour fédérale

Date: 20211122

Docket: IMM-5051-20

Citation: 2021 FC 1280

Ottawa, Ontario, November 22, 2021

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

MAHMOOD SAAD FAEQ AL-ABAYECHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant seeks judicial review of a decision rejecting his application for permanent residence on humanitarian and compassionate (H&C) grounds, pursuant to section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*).

[2] For the reasons that follow, the application is dismissed.

II. **Background**

[3] The Applicant is a Sunni Muslim. He was working at the Baghdad airport as an engineer and came to Canada on November 1, 2015. He made a claim for protection on the grounds that he feared persecution at the hands of Shia extremist groups and the Shia government because he is Sunni and from Daesh or ISIS on the basis that he was a moderate and not religious enough. His claim was rejected by the Refugee Protection Division on credibility grounds in December 2016. An appeal to the Refugee Appeal Division was denied in August 2017.

[4] The Applicant has remained in Canada due to the Temporary Suspension of Removals (TSR) to Iraq and these proceedings. He has been employed on a work permit as an industrial mechanic. He is supporting his parents who arrived in Canada in 2017 and also do not have status.

[5] The application for permanent residence on H&C grounds was submitted in August 2018 and refused on October 1, 2020. It was based on establishment in Canada, family ties to Canada and hardship the Applicant would face in Iraq.

III. **Issues and Standard of Review.**

[6] There is one issue to be addressed on this application:

> Is the Officer's decision unreasonable?

[7] The Applicant and the Respondent submit that the standard of review is reasonableness. I agree. As determined by the Supreme Court of Canada in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 30, reasonableness is the presumptive standard for most categories of questions on judicial review, a presumption that avoids undue interference with the administrative decision maker's discharge of its functions. While there are circumstances in which the presumption can be set aside, as discussed in *Vavilov*, none of them arise in the present case.

[8] The court conducting a reasonableness review must focus on the decision the administrative decision maker actually made (*Vavilov* at para 15), including the justification offered for it. To determine whether the decision is reasonable, the reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at paras 86 and 99). Thus, decision-maker's findings should not be disturbed as long as the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (Dunsmuir v New Brunswick, *2008 SCC 9*, at para 47).

[9] In conducting a reasonableness review of factual findings, deference is warranted and it is not the role of the Court to reweigh the evidence or the relative importance given by the decision-maker to any relevant factor (*Kanthasamy* v Canada (Minister of Citizenship and *Immigration*), 2015 SCC 61 [*Kanthasamy*] at para 112; *Vavilov* at para 96) The party

challenging the decision bears the burden of showing that it is unreasonable (*Vavilov* at para 100).

[10] Not all errors or concerns about a decision will warrant intervention. To intervene, the reviewing court must be satisfied that there are "sufficiently serious shortcomings" in the decision such that it does not exhibit sufficient justification, intelligibility and transparency. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep". The problem must be sufficiently central or significant to render the decision unreasonable: Vavilov, at para 100; Canada (Citizenship and Immigration) v Mason, *2021 FCA 156*, at para 36.

IV. **Analysis**

A. *Establishment*

[11] The Applicant submits that the Officer used his successful establishment against him which undermined the hardship he would face if returned to Iraq. He contends that the Officer misapprehended or disregarded the Applicant's evidence on his relationship with his parents, and discounted the Applicant's ties to friends and colleagues in Canada.

[12] The Court has held that an H&C officer can't ascribe positive weight to an applicant's establishment, on the one hand, and on the other, use it to attenuate future hardship: *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1633, at para 27; *Aguirre Renteria v Canada (Citizenship and Immigration)*, 2019 FC 134, at para 8.

[13] In this instance, while the Officer noted that the Applicant's acquired skills of resiliency, drive and determination would potentially facilitate his return to Iraq, he found that the Applicant's establishment was not uncommon for individuals who reside in Canada. It is not so out of the ordinary that it would carry significant weight. In my view, this was not an unreasonable finding. As stated by Justice Roy in *De Sousa v Canada (Citizenship and Immigration)*, 2019 FC 818 at para 28:

> …I fail to see how regular, ordinary establishment in Canada can be given significant weight as a decision maker must decide whether the evidence rises to the level of exciting in a reasonable person in a civilized community a desire to relieve the misfortunes of another. The fact that the establishment is not extraordinary should not be held against an applicant. It is merely neutral. The presence of establishment that is in line with reasonable expectations can hardly excite the desire to relieve the misfortunes of someone.
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> See also: *Rong v Canada (Citizenship and Immigration)*, 2021 FC 690, at para 32.

[14] It has been stated that an officer should not use descriptive terms such as "exceptional and extraordinary" to create a heightened standard: *Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158 [*Damian*] at paras 17-21. However, s 25 of *IRPA* is not simply an alternative immigration scheme and an applicant has to establish reasons for why they should be allowed to remain in Canada which may fairly be described as "exceptional or extraordinary" when used in the sense of relative to other persons who apply for an exemption from the normal visa requirements *Huang v Canada (Citizenship and Immigration)*, 2019 FC 265 [*Huang*] at para 20.

[15] I don’t read the Officer’s reasons in this case as setting a higher threshold but as simply noting that the Applicant’s establishment did not stand out.. The Officer noted that the Applicant had done what is reasonably expected in a common level of establishment - working, volunteering, learning the language and making friends. Nor did the Officer undermine the hardship the Applicant would face in Iraq by referring to his abilities, unlike the situation in *Damian*. The Officer reasonably noted that the Applicant had managed to cope with the difficulties of being a member of the Sunni minority in a Shia-dominated society in obtaining education and employment.

[16] The Officer made a minor factual error with respect to the Applicant’s address. It is clear that he resides with his family and supports his parents. The Officer acknowledged that the Applicant wished to live near them and weighed the family ties in his favour as well as his broader social network in Canada. However, as noted above, the parents also lack status in Canada and may themselves face removal to Iraq should their own application for judicial review of a negative H&C decision be dismissed. At present, they too benefit from the active TSR.

B. *Adverse country conditions*

[17] The Applicant contends that the Officer trivialized conditions in a country where Canada has imposed a TSR and did not follow the compassionate approach required by *Kanthasamy.* But the Supreme Court in *Kanthasamy*,at paras 55-56, required that an applicant show that they would be personally affected by adverse country conditions which he was unable to do to the officer’s satisfaction.

[18] A TSR does not necessarily lead to a specific outcome but must be taken into account when assessing the Applicant's personal circumstances: *Ndikumana v Canada (Citizenship and Immigration)*, 2017 FC 328 [*Ndikumana*]at para 18; *Likale v Canada (Citizenship and Immigration)*, 2015 FC 43 [*Likale*] at para 40.

[19] The Officer recognized the active TSR to Iraq and did attribute some weight to that fact but did not find it to overweigh all of the other factors in the application. In doing so, the Officer did not minimize the conditions in Iraq but rather analyzed whether the Applicant was distinguishable from any other person in that country and required relief in Canada. An officer can give less weight to country conditions if the TSR means that an applicant will not be returning to his country in the foreseeable future and facing those conditions: *Ndikumana* at para 19; *Likale* at paras 36 and 38; *Alcin v Canada (Citizenship and Immigration)*, 2013 FC 1242 at para 55.

C. *Evidence*

[20] The Applicant submits that the Officer disregarded the evidence presented and used its absence in his analysis to discount the hardship the Applicant would face in Iraq. I disagree. While the Officer did not refer to each item of evidence, he justified his decision by referring to "insufficient objective evidence" and did not suggest that none was provided.

[21] The Officer did not explicitly refer to certain evidence, such as a letter from the Applicant's sister explaining how he would be affected because of his profile should he return to Iraq. The Officer did consider the employment rate in Iraq and analyzed it in light of the

Applicant's education, work experience in Iraq and support to be expected from his siblings there. With that evidence, the Officer was not satisfied that the Applicant would be disproportionately affected.

[22] Section 25 of *IRPA* is not a relief scheme for all who come from less advantageous countries and manage to make their way to Canada. It is not unreasonable to expect that when an applicant had worked for many years in his country of origin that he would have the necessary resources to readjust to life in that country: *Likale* at para 36.

[23] The Applicant contends that the Officer failed to be sensitive to his status as a *moderate* Sunni Muslim. The Officer refers to the Applicant as being a practicing adherent of the Sunni branch of the religion, which is correct, but doesn't capture the nuance of someone who may be targeted by more extremist practitioners such as the members of ISIS for not being scrupulous enough in his faith. In my view, it would be difficult for an officer considering a s 25 application to ascertain just where on a spectrum of belief an applicant falls and how that might affect their personal situation. To the extent that this was a flaw or shortcoming in the decision, I don't think it was sufficiently central or significant to render the whole decision unreasonable.

[24] The Officer was not satisfied that the Applicant provided sufficient evidence that he will personally be at risk upon return to Iraq, especially because he used to reside in Iraq, as a Sunni Muslim, and his siblings continue to reside there. While the Applicant may face some level of discrimination from members of the Shia majority and the Shia-led government, the Officer reasonably found that was insufficient to outweigh the other factors in making the H&C

determination. It is perhaps worth noting again that the Applicant's claimed risk of persecution had been considered by the RPD and RAD and found not to be credible.

V. **Conclusion**

[25] For these reasons, I am satisfied that the Officer's decision to dismiss the Applicant's request for permanent residence on H&C grounds was reasonable. It bore the hallmarks of reasonableness – justification, transparency and intelligibility – and was justified in relation to the relevant factual and legal constraints. The decision falls within the range of acceptable outcomes defensible on the facts and the law.

[26] The parties offered no serious questions of general importance for certification and I am satisfied that there is none.

JUDGMENT IN IMM-5051-20

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified.

"Richard G. Mosley "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5051-20
STYLE OF CAUSE:	MAHMOOD SAAD FAEQ AL-ABAYECHI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HEARD VIA VIDEOCONFERENCE OTTAWA
DATE OF HEARING:	OCTOBER 14, 2021
JUDGMENT AND REASONS:	MOSLEY J.
DATED:	NOVEMBER 22, 2021

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