Federal Court  Cour fédérale

Date: 20211215

Docket: IMM-133-21

Citation: 2021 FC 1418

Ottawa, Ontario, December 15, 2021

PRESENT: Madam Justice Walker

BETWEEN:

ALAA SALEH H ALZOUBEI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a citizen of Libya who seeks judicial review of a January 4, 2021 decision (Decision) denying his application for permanent residence based on humanitarian and compassionate (H&C) grounds.

[2] For the reasons that follow, the application will be dismissed. The Applicant's argument that the senior immigration officer assigned to his file incorrectly assessed the importance of the administrative deferral of removals (ADR) in place for Libya is not persuasive. The Applicant's

secondary arguments contesting the reasonableness of other aspects of the officer's Decision are largely a request that the Court reweigh the evidence and do not reveal a reviewable error that warrants the Court's intervention.

I. Context

[3] The Applicant entered Canada in March 2014 as a temporary resident and was issued a study permit. He left Libya due to the escalating civil war that began after the fall of the Gaddafi regime in 2011. The Applicant married in 2015 and his spouse joined him in Canada in November of that year. The couple have two young Canadian children.

[4] The Applicant is pursuing a PhD in Mechanical Engineering at the University of Victoria and has a valid study permit until 2022. His spouse holds a work permit that is also valid until 2022.

[5] On June 20, 2019, the Applicant submitted an H&C application for himself and his spouse based on the family's establishment in Canada, the best interests of the children (BIOC) and the adverse country conditions in Libya that the Applicant states have continued to deteriorate since his departure in 2014.

II. Decision under review

[6] In the Decision, the officer assessed each of the H&C factors identified by the Applicant:

1. Establishment: The officer ascribed some weight to the Applicant's part-time employment in 2016-2018 but found that the Applicant had provided insufficient evidence of a recent job as a driver for Uber Eats. The officer acknowledged the Applicant's concern about providing financially for his family in Libya and his

friendships in Canada. After noting the Applicant's supportive family relationships in Libya, the officer concluded by giving some weight to the Applicant's employment and volunteer efforts. The officer also noted that it was not uncommon for H&C applicants to put down roots and have some establishment relative to their time in Canada.

2. Country conditions in Libya: The officer found that the Applicant had submitted insufficient evidence of his relatives' personal experiences in Libya. Similarly, the Applicant had not substantiated his fear of abduction should he and his family return to Libya. Nonetheless, the officer noted that Canada has implemented an ADR for Libya and assigned this factor great weight. The officer then stated the Applicant and his spouse would not be required to leave Canada until the situation in Libya improves and concluded that the current country conditions would not have a significant negative impact on the family.

3. BIOC: The officer found that it was reasonable to conclude that the Applicant's sons were not attending school in Canada due to their age. The officer concluded that the Applicant had provided little information that the children's well-being would be adversely affected if the parents were unable to obtain permanent status in Canada.

[7] In summary, the officer acknowledged that the Applicant and his spouse had resided in Canada for approximately five years with some evidence of employment and volunteer work. The officer accepted the very unstable situation in Libya but stated that the Applicant was not currently facing removal and had not demonstrated that an inability to apply for permanent residence in Canada would have significant negative impacts on him or his family. The officer concluded that the Applicant's circumstances and H&C factors, including the best interests of the children, did not warrant the granting of an exemption pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act).

III. Analysis

[8] The Applicant argues that the officer's analysis of each of the factors that support his H&C application was flawed and that the Decision must be set aside. His arguments challenge the merits of the Decision and the standard of review is that of reasonableness (*Canada (Minister*

of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Ahmed v Canada (Citizenship and Immigration)*, 2020 FC 777 at paras 13, 37-39). The Court's focus in this application is the Decision itself and the officer's reasoning process and conclusion (*Vavilov* at para 83).

[9] Subsection 25(1) of the Act permits the Minister to grant relief to a foreign national seeking permanent resident status who is inadmissible or otherwise does not meet the requirements of the Act if the Minister is satisfied that relief is justified on H&C grounds. The provision is grounded on equitable considerations and is intended to provide flexibility to mitigate the effects of a rigid application of the law in appropriate cases, while not establishing an alternate immigration system (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 19, 23 (*Kanthasamy*)). Decision makers must consider and weigh all relevant facts and H&C factors and consider whether those factors when "established by the evidence, […] 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 Immigration Act" (*Kanthasamy* at para 13, citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338).

[10] The primary issue in this matter centres on the officer's treatment of the ADR in place for Libya. Briefly, an ADR is implemented to temporarily defer removals to a country in crisis where the situation in the country poses a generalized risk to the civilian population, whether due to civil war, environmental disaster or other temporary but grave situation. The Canada Border Services Agency implemented the ADR for Libya in March 2015.

[11] The Applicant submits that the officer erred in their treatment of the ADR as an alternative to obtaining permanent residency (*Bawazir v Canada (Citizenship and Immigration)*, 2019 FC 623 (*Bawazir*)) but I do not find the Applicant's submissions persuasive.

[12] A moratorium on removals does not preclude the refusal of an H&C application (*Milad v Canada (Citizenship and Immigration)*, 2019 FC 1409 at para 34 (*Milad*); *Emhemed v Canada (Citizenship and Immigration)*, 2018 FC 167 at para 9). An officer cannot ignore an ADR, or a temporary suspension of removal, and must assess the effect of the moratorium on removal as part of their obligation to consider each H&C application on its own facts.

[13] The Applicant relies on *Bawazir* and *Milad* in support of his argument that the officer's treatment of the ADR in this case was flawed but the underlying facts and analyses in those cases are distinguishable. In *Bawazir*, the Court found that the officer effectively dismissed the ADR for Yemen when it was clearly relevant to their analysis. In *Milad*, Justice Kane found that the officer erred in their analysis of an H&C application by a citizen of Libya because the officer did not consider the applicant's updated submissions which referred to a moratorium on removals to the country.

[14] In this case, the officer understood the importance of the ADR to their analysis. The officer stated that the ADR "is indicative that conditions in Libya are far from ideal and I assign this factor great weight". The officer then considered whether the Applicant could be removed from Canada despite the ADR and determined that neither the Applicant nor his spouse would be excluded from the protection afforded by the ADR and, further, stated that they both have status

until 2022 and " as per the ADR […] would be eligible for work/study permits". The officer reasonably concluded that the Applicant and his family would not be returned to Libya until conditions in that country improve and the ADR, in place since 2015, is removed.

[15] The Applicant argues that the officer incorrectly stated that the ADR confers the right to study and work. I do not agree with the Applicant's interpretation of the officer's statement in the Decision. The officer referred to eligibility for further permits and not to a right to further permits. The inclusion of the words "as per the ADR" does not affect the meaning of the officer's statement. The statement appears at the conclusion of the officer's analysis of the ADR's application to the Applicant and his spouse. In that context, it is reasonable to conclude that the reference to the ADR is an extension of the officer's finding that the two adults are not excluded from protection.

[16] The Applicant also argues that the officer failed to consider the effect of indefinite temporary residence on the Applicant's other H&C factors, namely the well-being of his children. However, the officer addressed this issue in the BIOC analysis, stating that the Applicant had provided very little evidence to demonstrate that the children's well-being would be affected if their parents are unable to obtain permanent status in Canada.

[17] In addition to his submissions regarding the ADR, the Applicant challenges the officer's assessment of his establishment, the best interests of the children generally, and the risks to the Applicant and his family in Libya.

[18] First, I find no reviewable error in the officer's analysis of the Applicant's establishment in Canada. I agree with the Applicant that an officer cannot discount an applicant's establishment because it is not uncommon or exceptional (*Osun v Canada (Citizenship and Immigration)*, 2020 FC 295 at para 16). Rather, an officer is required to assess the evidence of an applicant's establishment and the weight to be accorded the establishment as a humanitarian consideration. In this case, the officer did not simply consider the Applicant's establishment against a comparative standard of uncommon or exceptional establishment. The officer engaged with each aspect of the Applicant's evidence at some length and determined, on a cumulative basis, the extent to which his establishment weighed in favour of an H&C exemption.

[19] Second, I also find no reviewable error in the officer's BIOC analysis. The officer acknowledged the importance of the best interests of the two children and assessed the children's lives in Canada. The officer considered the Applicant's concern that his children would suffer psychological harm if the H&C application were denied, whether they accompany their parents to Libya in the event of removal or remain in Canada without their parents. The officer noted again that a refusal of the H&C application would not result in removal of the parents and concluded that the Applicant had provided very little evidence to substantiate his position that the children's well-being would be affected if the parents do not obtain permanent status in Canada.

[20] The Applicant submits that the officer was required to consider the individual interests of each of the children and failed to do so. I do not agree because the Applicant did not present distinct concerns affecting one son as opposed to the other in his H&C application. The

Applicant bore the onus of identifying and providing evidence in support of his application, including evidence specific to his children's circumstances and best interests (*Daniels v Canada (Citizenship and Immigration)*, 2019 FC 469 at para 32). In light of the closeness in age of the two boys, I find that the officer committed no error in undertaking a combined assessment of their best interests.

[21] The Applicant also submits that the officer incorrectly relied on the sons' young ages to conclude that they had not been assimilated to Canada. The use of the word 'assimilated' has caused the Applicant to question the transparency of the officer's reasoning. He argues that such an analysis diminishes the effects on first generation Canadians of being uprooted from Canada.

[22] The Applicant correctly summarizes the concerns expressed by this Court regarding an officer's reliance on a child's ability to assimilate or adapt in a new country. I agree that the language of assimilation used by the officer in the decision is concerning. However, I find that the officer did not base their BIOC analysis on a problematic assumption of adaptability or ability to assimilate (*Edo-Osagie v Canada (Citizenship and Immigration)*, 2017 FC 1084 at paras 27-28).

[23] I have reviewed the file before the officer and find that the analysis in the Decision is responsive to the H&C submissions and evidence. Having referred to the children's young lives in Canada, the officer focussed their analysis on the Applicant's concerns of disruption to the children in the event of removal and of psychological harm due to their parents' lack of status. The issue identified by the Officer was a lack of evidence, including a lack of psychological

evidence to substantiate these concerns. The record contains little information about the children and how their well-being would be affected. The Applicant has established no error in the analysis that warrants the Court's intervention.

[24] Finally, the Applicant argues that the officer's assessment of the situation in Libya is unintelligible and reflects, in part, veiled credibility findings. The officer's analysis of the country conditions in Libya is twofold: (1) the impact of the ADR, addressed above; and (2) the Applicant's evidence of his family's experiences in Libya. In this latter regard, the officer concluded that there was insufficient evidence of certain events as recounted by the Applicant. The Applicant had provided no affidavits or information from his family in Libya in support of the H&C application and his evidence regarding the bombing of his aunt's home consisted of pictures of a destroyed house accompanied by untranslated wording.

[25] I find the officer's reasoning and conclusions regarding the situation in Libya are logical and transparent, and are commensurate with the evidence submitted. The officer unequivocally accepted the dire situation in Libya as reflected by the ADR. There is no suggestion in the Decision that the officer made veiled credibility findings due to the absence of supporting evidence from family members.

IV. Conclusion

[26] For the foregoing reasons, the application is dismissed.

[27] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-133-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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