Federal Court Cour fédérale

Date: 20220412

Docket: IMM-3505-20

Citation: 2022 FC 526

Ottawa, Ontario, April 12, 2022

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

ZENY PAGALING

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of the Philippines. A Senior Immigration Officer [Officer] refused her application for permanent residence from within Canada on Humanitarian and Compassionate [H&C] grounds.

[2] The Applicant applies under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of the July 29, 2020 refusal decision. She submits the Officer failed to consider relevant aspects of her immigration history, unreasonably assessed elements of the application and fettered their discretion.

[3] The Respondent submits the Applicant has failed to demonstrate the decision is unreasonable or establish any other ground that would justify the Court's intervention.

[4] For the reasons that follow, the Application is dismissed.

II. Background

[5] The Applicant reports she left the Philippines in 1999 to work in Hong Kong and provide financial support to her husband, elderly parents and two daughters in the Philippines. The Applicant arrived in Canada in 2008 under the live-in caregiver program [LCP].

[6] The Applicant has a lengthy immigration history. The following summary, taken from the H&C decision and the submissions of the parties, highlights portions of that history.

[7] After arrival in Canada, the Applicant renewed her work permit several times and in 2011 applied for permanent residence under the LCP. Shortly thereafter, the Applicant's employer terminated her for reasons that included a belief the Applicant engaged in additional work without authorization.

[8] The Applicant's application for permanent residence was refused, the officer finding she had worked in Canada without authorization. This decision was never challenged on judicial review. It has been submitted on behalf of the Applicant that she was unaware of her right to seek judicial review of the negative decision.

[9] In January 2015, the Applicant submitted a work permit application. The application was refused and the Applicant ordered to leave Canada as her temporary resident status had expired. An Exclusion Order then issued in February 2015. The Applicant pursued judicial review of that Order. In August 2015, this Court granted the application for judicial review.

[10] In March 2015, the Applicant requested a reconsideration of her permanent residence application. The request was refused in April 2015. As was the case in respect of the initial permanent residence decision, it does not appear the Applicant sought judicial review of the refusal to reconsider.

[11] The Applicant filed an H&C application in April 2016 that was refused in May 2017. An application for leave to seek judicial review of that decision was refused in October 2017. A second H&C application and a pre-removal risk assessment [PRRA] application were both denied in May 2019. The Applicant was granted leave by this Court to commence an application for judicial review of the May 2019 H&C decision. The H&C decision was then set aside on the consent of the parties and redetermined by the Respondent.

[12] On redetermination, the H&C application was again refused. That decision is the subject of this Application.

III. Decision under Review

[13] In considering the application for H&C relief, the Officer reviewed and considered the Applicant's immigration history and in particular the remarks and notes relating to her permanent residence application and those relating to her request that the application be reconsidered. The Officer also addressed the Applicant's establishment in Canada, hardship should the Applicant return to the Philippines and the potential financial consequences of the Applicant's return for her two adult daughters and family in the Philippines.

A. *Establishment*

[14] The Officer noted the Applicant had resided in Canada for over 12 years and was employed for most of this time. The Officer recognized the Applicant currently works as a live-in caregiver and acknowledged the Applicant has developed a valuable relationship with her current employer and her patient. The Officer acknowledged a letter of support from the employer stating the Applicant provided their mother, an Alzheimer's patient, with excellent care "that no one can." The Officer also acknowledged an undated letter stating the Applicant works as a hotel housekeeper but noted the Applicant did not list this employment on her application forms. The Officer recognized the Applicant provided a bank statement, a letter from a church and personal support letters.

[15] The Officer found some negative impact might result should the Applicant return to the Philippines due to the nature of her employment but found it is not uncommon for employers to undergo staff changes. The Officer concluded the Applicant had demonstrated a moderate level of establishment and that establishment in Canada was to be given some weight.

B. *Immigration history*

[16] In the H&C application, the Applicant maintained she had not worked without authorization and the decision reached on her LCP application for permanent residence concluding otherwise was unreasonable and unfair. The Officer reviewed the circumstances surrounding the permanent residence decision and gave the Applicant's submissions in this respect minimal weight, noting there was little evidence to support them. The Officer drew a negative inference from the fact that the Applicant did not seek reconsideration of the negative permanent residence decision until more than two years after the issuance of the negative decision.

[17] The Officer further noted the Applicant had defied four explicit instructions to depart Canada in the preceding three years and provided no evidence to demonstrate she was prevented from leaving Canada. The Officer found this attracted substantial negative weight, as did the fact that the Applicant had unlawfully resided in Canada for over five years.

C. *Hardship and adverse conditions in the Philippines*

[18] The Officer gave minimal weight to the Applicant's argument that she would suffer psychological hardship if required to return to the Philippines, noting the absence of documentary evidence in support of the assertion. The Officer also noted the Applicant's PRRA application referred to an abusive spouse in the Philippines but gave this minimal weight, again noting the absence of evidence to support the claim.

[19] The Officer recognized the Applicant may have some difficulty re-establishing herself in the Philippines because of the length of her time in Canada and gave this factor some weight. However, the Officer noted the Applicant was born, raised and educated in the Philippines, she speaks Tagalog and she has a number of family members in the country. The Officer found the Applicant's skills and experiences acquired in Canada are transferable and would aid in finding employment. The Officer also found the Applicant has some savings to help with her re-establishment and there is no indication her daughters would be unable or unwilling to assist her financially.

[20] The Officer acknowledged adverse country conditions but gave this factor little weight, finding the Applicant's evidence was limited to conditions facing the general population of the Philippines such as generally low wages, unemployment and poverty.

D. *Interests of adult children*

[21] The Officer noted the Applicant provided evidence indicating she had funded the post-secondary education of her two daughters and she financially supported her parents. The Officer noted her daughters are employed in the Philippines (one as a nurse and the other as a pharmacist) and acknowledged letters from the daughters indicating their combined salaries were insufficient for their daily expenses. The Officer recognized the financial circumstances of the family may not be ideal but also noted the Applicant's savings would assist with her re-establishment and provide ongoing support to her family. The Officer noted there was little evidence to indicate her daughters would not be prepared to assist the Applicant as they are gainfully employed.

E. *Global assessment*

[22] The Officer accorded positive weight to some of the above factors but found several factors supported a negative decision. The Officer placed significant negative weight on the Applicant's non-compliance with directions from Immigration, Refugees and Citizenship Canada and ultimately concluded the Applicant's H&C considerations did not justify the exceptional relief she sought.

IV. Issues

[23] The Applicant has raised three issues that I have identified as follows:

A. Whether the Officer gave sufficient weight to the refused LCP application for permanent residence in considering the H&C application;

B. Whether the Officer's factual findings and/or legal analyses were unreasonable; and

C. Whether the Officer was biased or otherwise fettered their discretion.

V. Standard of Review

[24] The parties agree the Officer's decision is to be reviewed on the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25 [*Vavilov*]). 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). The onus is on the Applicant to demonstrate the decision is unreasonable. To set aside a decision on this basis, "the reviewing court must be satisfied that 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).

[25] The parties have not taken a position on the standard of review to be applied in considering the Applicant's allegations of bias and fettering. In considering the issue of bias, I have been mindful that questions of fairness are reviewed by asking whether a fair and just process was followed having regard to all of the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*]). This review is "best reflected in the correctness standard," although no standard of review is actually being applied

(*CPR* at para 54; see also *Grewal v Canada (Citizenship and Immigration)*, 2020 FC 1186 at para 5; *Sun v Canada (Citizenship and Immigration)*, 2020 FC 477 at para 27; *Taseko Mines Limited v Canada (Environment)*, 2019 FCA 319 at para 49; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

VI. Analysis

A. *The Officer's consideration of the refused LCP application was reasonable*

[26] The Applicant submits the Officer failed to give sufficient consideration to the circumstances resulting in the rejection of the Applicant's permanent residence application under the LCP. The Applicant relies on *Bailey v Canada (Citizenship and Immigration)*, 2017 FC 816 [*Bailey*], to argue a greater measure of sympathy was warranted based on the Applicant's understandable expectation that she would remain in Canada under the LCP.

[27] The Respondent submits and I agree that the circumstances in *Bailey* do not equate to those disclosed in this instance. In *Bailey*, the Applicant was denied the opportunity to remain in Canada due to the "abuse and exploitation of her employer," a situation that was very clear on the evidence (*Bailey* at para 2). The Court intervened because "the officer did not give adequate understanding to significant evidence in the Applicant's favour" (*Bailey* at para 5).

[28] In this instance, the Applicant was unsuccessful because she was found to have engaged in unauthorized employment. It was not the conduct of an employer that prevented the Applicant from obtaining permanent resident status in this case.

[29] I do recognize the Applicant continues to dispute the finding that she had engaged in unauthorized employment. The Officer also recognized this to be so. The decision reflects the Officer's engagement with and consideration of the Applicant's submissions in this regard, including her limited evidence. The Officer also reproduced a portion of the notes from the Applicant's interview with the decision maker at the time. The Officer then concluded there to be little substantiating information or evidence to demonstrate the decision was unfair or suffered from a clerical or other error.

[30] While the Applicant's submissions express clear disagreement with the Officer's conclusion, the Applicant has not pointed to any evidence the Officer overlooked or misapprehended. This, too, distinguishes this case from *Bailey*. The Officer's analysis was transparent, justified and intelligible. The conclusions reached were reasonably open to the Officer.

B. *The Officer's factual findings and legal analyses were not unreasonable*

[31] The Applicant submits the Officer erred by failing to conduct a global assessment of her circumstances, performing instead a piecemeal analysis of the H&C factors. She further submits it was an error for the Officer to consider her savings and Canadian work experience as circumstances that would facilitate her return to the Philippines, particularly in light of her submissions that young people dominate the workforce in the Philippines and she may be unable to find employment. The Applicant also submits it was unreasonable to rely on her unauthorized presence in Canada to assign only moderate weight to her establishment.

[32] I am satisfied the Officer engaged in a global assessment of the Applicant's circumstances. The Officer's reasons expressly state a global assessment of all of the circumstances was undertaken. The Officer acknowledges the positive and negative aspects of the application, flags what the Officer viewed as the most notable factors and then reaches a conclusion. The Officer did analyze aspects of the Applicant's claim under separate headings and assign low, moderate or significant weight to individual factors, but this approach to an H&C application is neither unusual nor unreasonable.

[33] Although the Officer incorrectly held the Applicant had been absent from the Philippines for 10 years instead of 21, the Officer nonetheless recognized her lengthy absence from her home country. The Officer also noted the Applicant's submission that she would experience psychological distress if she were required to return. It was reasonable for the Officer to have expected some documentary evidence to corroborate the Applicant's view that her return would cause her psychological distress. The Officer further noted the Applicant's familiarity with the Philippines and reasonably held she was likely to still be familiar with the society, customs, language and culture.

[34] The Officer did not commit a reviewable error in finding the Applicant would benefit from her skills and experience should she return to the Philippines. This conclusion reasonably follows from the Officer's recognition of her work experience and post-secondary education. Similarly, the Officer did not err in noting the Applicant's financial and family circumstances would ease her reintegration should she return to the Philippines. These finding are evident on their face and were not determinative of the application.

[35] There is no indication the Officer relied on the duration of the Applicant's unauthorized residence in Canada to justify assigning only moderate weight to her establishment. The Officer considered this factor independently of the establishment assessment and assigned it considerable negative weight. The Officer found the Applicant demonstrated a moderate level of establishment in Canada based on her circumstances rather than her legal status.

[36] The Applicant also submits the Officer erred in making a number of findings. These submissions reflect nothing more than disagreement, which is insufficient to establish a reviewable error. For example, the Applicant submits the Officer erred in finding: (1) her current employer had failed to show why they could not hire another worker; (2) her skills were transferable; and (3) that she would not suffer psychological trauma from the rejection of her application. In each of these instances, the Applicant cites no objective evidence that undermines the reasonableness of these findings.

[37] The Applicant has not identified an error or shortcoming in the decision that undermines the justification, intelligibility and transparency of the Officer's factual findings, analysis and conclusions.

C. *The Applicant has not demonstrated a reasonable apprehension of bias or that the Officer fettered their discretion*

[38] The Applicant submits the Officer engaged in an analysis designed to reject her application. The Applicant submits the Officer's political values bled into their assessment and influenced the negative conclusion.

[39] Respectfully, this argument is wholly without merit. Decision-makers are presumed to be impartial and "[a] 'serious' and 'substantial' demonstration made by 'convincing evidence'" is required to rebut this presumption (*Es-Sayyid v Canada (Public Safety and Emergency Preparedness)*, 2012 FCA 59 at para 39). Bald and generalized assertions not anchored to the evidence fall well short of this high threshold.

[40] Similarly, the Applicant has failed to demonstrate how the Officer may have fettered their discretion. The submissions made in this regard simply restate the Applicant's disagreement with the Officer's analysis and conclusions.

VII. Conclusion

[41] The Officer's decision is reasonable and the Application is dismissed. The parties have not identified a question of general importance for consideration and none arises.

JUDGMENT IN IMM-3505-20

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed; and

2. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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