Federal Court  Cour fédérale

Date: 20220425

Docket: IMM-3056-20

Citation: 2022 FC 593

Ottawa, Ontario, April 25, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

NABILA DEMIAN GERGES NASSRY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Nassry, is a 76-year-old citizen of Egypt, whose two children and three grandchildren have permanent status in Canada. She has been living continuously in Canada with her daughter and her family since 2018 and came to Canada for a number of extended visits since 2013. In 2018, Ms. Nassry made an application for permanent residence based on humanitarian and compassionate grounds ("H & C Application"). A senior immigration

officer (“Officer”) from Immigration, Refugees and Citizenship Canada [IRCC] refused the application. Ms. Nassry is challenging this refusal in this judicial review.

[2] Ms. Nassry argues that the Officer made unreasonable determinations with respect to her establishment in Canada, hardship in returning to Egypt and the best interests of her granddaughter. I have found that the Officer failed to consider all the relevant factors raised by the application, and in particular, her strong ties to her two children and their families in Canada.

[3] For the reasons set out below, the application for judicial review is granted.

II. Background Facts

[4] Ms. Nassry is a citizen of Egypt. Her husband passed away over 25 years ago. Ms. Nassry’s son, daughter and grandchildren (aged 14, 18, and 23 at the time the application was considered) all live in Canada with permanent status. The only remaining immediate family member she has in Egypt is her sister, who is over 80 years old.

[5] Ms. Nassry’s daughter and her family came to Canada approximately 12 years before the application was filed, when her youngest granddaughter, who is now 14 years old, was 6 years old.

[6] After they came to Canada, Ms. Nassry visited her children and grandchildren in Canada for extended stays from 2013 until 2018. She would stay in her daughter’s home during these

stays. From July 2018, Ms. Nassry has stayed continuously in Canada, living in her daughter's home.

[7] She filed the H & C Application in October 2018. It was refused in July 2020.

III. Issues and Standard of Review

[8] Ms. Nassry has raised a number of issues on judicial review. As I set out below, I have found the Officer's failure to weigh her family ties in Canada to be determinative. The absence of consideration of this factor requires the application to be redetermined. As such, I have not dealt with the other issues raised by Ms. Nassry.

[9] In reviewing the decision of the Officer, I applied a reasonableness standard of review. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

IV. Analysis

A. *H & C Applications*

[10] Foreign nationals applying for permanent residence in Canada can ask the Minister to use their discretion to relieve them from requirements in the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] because of humanitarian and compassionate factors (*IRPA*, s 25(1)).

The Supreme Court of Canada in *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, confirmed that the purpose of this humanitarian and compassionate discretion is "to offer equitable relief in circumstances that 'would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another'" (at para 21).

[11] Given that the purpose of humanitarian and compassionate discretion is to "mitigate the rigidity of the law in an appropriate case", there is no proscribed and limited set of factors that warrant relief (*Kanthasamy* at para 19). The factors warranting relief will vary depending on the circumstances, but "officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them" (*Kanthasamy* at para 25; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 74-75 [*Baker*]).

B. *Failure to consider family ties*

[12] I find that the Officer failed to consider all of the relevant factors raised by Ms. Nassry. In particular, I find the decision unreasonable because the Officer did not consider the strength of her family ties in Canada.

[13] One of the key reasons identified by Ms. Nassry for making the application was her "significant family ties in Canada." In the Officer's best interests of the child analysis, Ms. Nassry's family ties in relation to her grandchildren, and in particular, her 14-year-old

granddaughter were considered. However, the family ties between Ms. Nassry and her adult children were not considered anywhere in the decision.

[14] A central theme in the request for relief was the mutual interdependence between Ms. Nassry and her adult daughter and son. Ms. Nassry's affidavit, her daughter's affidavit, and her son's letter speak to this mutual interdependence and the hardship it would cause the family to not be together as Ms. Nassry continues into her old age. Ms. Nassry's children described the difficulty of being able to stay for extended periods in Egypt with Ms. Nassry because of their family and employment obligations in Canada, and their fear that as Ms. Nassry ages, she will not be able to easily visit them in Canada and will be alone in Egypt.

[15] The bond between Ms. Nassry and her only two children, and their strong desire to care for their mother in her old age, is not considered in the Officer's decision. Family ties are not considered as a factor to be weighed in relation to Ms. Nassry's establishment in Canada, despite Ms. Nassry's counsel raising it as an issue that weighs heavily in favour of positive establishment in Canada; nor are these family ties considered in the hardship portion of the decision.

[16] Ms. Nassry's family ties in Canada were a relevant factor raised by her application. As there was no assessment of this issue, the matter needs to be reconsidered. As was noted by Justice Diner in *Bhalla v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1638, when an officer overlooks elements upon which the application is based, the balancing will

necessarily be deficient, as the reviewing court cannot know what weight would have been assigned to the factor if it had been properly considered (at para 22).

[17] The application for judicial review is granted and sent back to a different decision-maker for redetermination. No party raised a question for certification and none arises.

JUDGMENT IN IMM-3056-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and sent back to a different decision-maker for redetermination;

2. No party raised a question for certification and none arises.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3056-20
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