Federal Court  Cour fédérale

Date: 20220608

Docket: IMM-6729-20

Citation: 2022 FC 860

Ottawa, Ontario, June 8, 2022

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

MOHAMMADALI NOURI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mohammadali Nouri is a citizen of Iran. He seeks judicial review of a decision by a senior immigration officer [Officer] to refuse his request to apply for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds.

[2] This was the second H&C request submitted by Mr. Nouri. The first H&C request was approved in principle, but ultimately rejected because Mr. Nouri was unable to produce his Iranian passport or an Iranian police certificate. The second H&C request was substantially the same as the first, but included the missing passport and police certificate.

[3] The Officer failed to justify the departure from the previous approval in principle of Mr. Nouri's H&C request. The Officer also misapprehended the evidence of Mr. Nouri's employment history in Canada, and did not grapple meaningfully with Mr. Nouri's role as a parental figure in the lives of four young children. The application for judicial review is therefore allowed.

II. Background

[4] Mr. Nouri is 40 years old. He arrived in Canada on April 16, 2012 and made a claim for protection as a refugee. His claim was refused by the Refugee Protection Division [RPD] of the Immigration and Refugee Board. He sought leave to commence an application for judicial review of the RPD's decision, but this was refused.

[5] Mr. Nouri submitted an H&C application in December 2014. This was approved in principle in March 2015. However, for reasons beyond his control, Mr. Nouri was unable to produce a valid Iranian passport and police certificate, and the application was ultimately refused in February 2018.

[6] Mr. Nouri requested an extension of his work permit, which was approved until March 7, 2016. On July 16, 2018, he filed a second H&C application supported by his Iranian passport and an Iranian police certificate. The second application was rejected by the Officer on October 15, 2020, and a removal order was issued against Mr. Nouri.

[7] Mr. Nouri also requested a Pre-Removal Risk Assessment [PRRA], but this resulted in an adverse decision in December 2020.

[8] Mr. Nouri claims to be at risk in Iran due to his religious conversion from Islam to Christianity. He adopted the Christian faith in Iran, and was baptised in September 2012 after arriving in Canada. His family are also Christian converts.

[9] Since coming to Canada, Mr. Nouri has maintained gainful employment in the construction industry. In 2016, he incorporated his own construction company.

[10] Mr. Nouri has lived with his sister Shahla and her family since his arrival in Canada. The family consists of Ms. Nouri, her spouse and their four young children. Mr. Nouri says that he has a very close bond with the children, all of whom are Canadian citizens. His brother-in-law is not actively or consistently present due to the nature of his work, and Mr. Nouri has helped to fill the gap with his involvement in the children’s upbringing. His mother and another sister also live in Canada.

[11] The Officer determined that Mr. Nouri's circumstances did not merit the extraordinary and discretionary relief contemplated by s 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

III. Issue

[12] The sole issue raised by the application for judicial review is whether the Officer's decision was reasonable.

IV. Analysis

[13] The Officer's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10). The Court will intervene only if "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). A Court must consider both the outcome of the administrative decision and its underlying rationale (*Vavilov* at para 15).

[14] The criteria of "justification, intelligibility and transparency" are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86).

[15] Mr. Nouri submitted his second H&C request on June 21, 2018. In the letter that accompanied the request, his former counsel wrote the following:

> In response to your letter of February 23, 2018 which ultimately denied the previous H&C application due to failure to produce a valid Iranian passport and police certificate, the applicant now submits herewith a new application that includes both of the aforesaid. The previous application had been approved in principle with notification by letter dated March 11, 2015 subject to security and medical.

[16] The Officer acknowledged that Mr. Nouri's previous H&C request had been approved in principle, but made no further reference to the earlier decision. While not bound by the previous decision, the Officer was obliged to provide a reasonable justification for departing from it (*Faisal v Canada (Citizenship and Immigration)*, 2021 FC 412 at para 26). The Officer failed to do so.

[17] Furthermore, it appears the Officer misapprehended the evidence concerning Mr. Nouri's employment history in Canada. The Officer made the following findings respecting Mr. Nouri's employment before he incorporated his own construction company in 2016:

> It is submitted that the applicant has been employed as a construction worker at Norstar Construction since October of 2012. However, the employment letter dated May 29, 2018, indicates that the applicant has been an employee at Norstar Construction for the past two years. Details were not provided concerning the applicant's employment status and his source of income from 2012 to 2016.

[18] The Officer acknowledged the letter from Norstar Construction dated May 29, 2018, which confirmed Mr. Nouri had been employed by that company for the preceding two years.

However, the Officer appears not to have considered a second letter from the same company dated November 9, 2014, confirming that he had worked there since his arrival in Canada in 2012.

[19] The Officer did not dispute Mr. Nouri's submission, supported by statements from family members, that he had become an integral part of his sister's family and provided significant assistance by being actively involved with the children. The Officer appears to have accepted that Mr. Nouri's brother-in-law, the children's father, was not actively present to assist with the children due to the nature of his work, and his sister was heavily dependent on Mr. Nouri's support and assistance. The Officer nevertheless found there was not "sufficient corroborative evidence" to demonstrate Mr. Nouri's absence would have a negative impact on the children.

[20] Mr. Nouri says that the Officer's conclusion flies in the face of common sense, and is inconsistent with the admonition of the Supreme Court of Canada that a child is never deserving of hardship (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 41). The Officer should have considered the totality of the evidence, and evaluated the impact on the children of Mr. Nouri's absence, and whether this could be ameliorated or otherwise mitigated (*e.g.*, by regular phone calls, video chats, summer visits, *etc*.). This did not occur here.

[21] The "best interests of the child" are determined by considering the benefit to the child of the parent's non-removal from Canada, as well as the hardship the child will suffer as a result of the parent's removal. The benefits and hardship are two sides of the same coin (*Hawthorne v*

Canada (Minister of Citizenship and Immigration), 2002 FCA 475 [*Hawthorne*] at para 4). This analytical framework applies equally to persons, such as Mr. Nouri, who perform parental roles.

[22] An immigration officer must demonstrate that he or she was "alert, alive and sensitive" to the child's best interests (*Hawthorne* at para 10). Here, the Officer's reasons include no substantive discussion of Mr. Nouri's role as a parental figure in the lives of his nieces and nephews beyond an acknowledgment that he "may have assisted and helped with tasks concerning the children". Nor did the Officer assess the impact on the young children of Mr. Nouri's prolonged absence from Canada if he must apply for permanent residence from abroad.

[23] The Officer failed to justify the departure from the previous approval in principle of Mr. Nouri's first H&C request. The Officer also misapprehended the evidence of Mr. Nouri's employment history in Canada, and did not grapple meaningfully with Mr. Nouri's role as a parental figure in the lives of four young children. The application for judicial review must therefore be allowed.

V. Conclusion

[24] The application for judicial review is allowed. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, and the matter is remitted to a different immigration officer for redetermination.

"Simon Fothergill"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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