Federal Court Cour fédérale

Date: 20221025

Docket: IMM-4987-21

Citation: 2022 FC 1458

Ottawa, Ontario, October 25, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

SHOBOWALE OYINKANSOLA MACAULAY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Shobowale Oyinkansola Macaulay, seeks judicial review of a decision dated July 9, 2021, by a senior immigration officer (the "Officer") with Immigration, Refugees and Citizenship Canada. The Officer refused the Applicant's application for permanent

residence from within Canada on humanitarian and compassionate ("H&C") grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Applicant submits that the Officer engaged in an unreasonable assessment of the evidence, ignored relevant evidence, imposed an excessive and unreasonable burden on the Applicant, and fettered discretion. The Applicant further submits that the Officer erred and breached the Applicant's right to procedural fairness in conducting extrinsic research without disclosing the findings to the Applicant and giving her an opportunity to respond.

[3] For the reasons below, I find that the Officer's decision is unreasonable. This application for judicial review is granted.

II. Facts

A. *The Applicant*

[4] The Applicant is a 28-year-old citizen of Nigeria. When she was two years old, the Applicant was diagnosed with Sickle Cell Disease ("SCD"). She requires ongoing treatment for the symptoms of SCD.

[5] On September 3, 2012, when she was 18 years old, the Applicant arrived in Canada on a temporary resident visa and a student permit, which both expired in December 2015. She has remained in Canada since then.

[6] In the approximately nine years the Applicant has been in Canada, she has earned an International Foundations degree in Science & Engineering, and further obtained a bachelor's degree in 2019. She has found friendships and become an active member and volunteer of her church, All Nations Full Gospel.

[7] In February 2021, the Applicant submitted an application for permanent residence status on H&C grounds. The application was dismissed in a decision dated July 9, 2021.

B. *Decision Under Review*

[8] In refusing the H&C application, the Officer considered the Applicant's establishment, the risk and adverse country conditions she may face upon return to Nigeria, and her medical conditions.

(1) Establishment

[9] The Officer noted that the Applicant has resided in Canada for approximately nine years and acknowledged the several letters of support reflecting on her character and the relationships she has developed. The Officer therefore gave some consideration to the Applicant's establishment in Canada, but did not find it to be exceptional, finding that it is not uncommon for individuals residing in Canada to attend school, church and make friends. The Officer found insufficient evidence showing these relationships could not be maintained through other means of communication if the Applicant returned to Nigeria or that they were characterized by a degree of interdependency and reliance that justified granting more than some weight to this

factor. The Officer also assigned negative weight to the circumstances surrounding the Applicant's establishment because she remained in the country without status for several years, without attempting to regularize it.

[10] The Applicant also submitted that she would suffer from hardships returning to Nigeria due to adverse country conditions, such as the weak economy, health care and safety risks. While the Applicant submitted evidence surrounding the negative country conditions, the Officer found she failed to indicate how these documents related to her personal circumstances in Nigeria, and that the experiences shown in these articles are shared by most Nigerians. The Officer found that although the conditions in Nigeria are not favourable, the evidence did not satisfy that Applicant's fundamental rights would be denied upon return to Nigeria. The Officer noted that the purpose of H&C considerations under section 25 of *IRPA* is to deal with exceptional situations, and differences in the financial and social environments between Canada and Nigeria did not constitute an exceptional ground.

[11] Lastly, the Officer gave particular consideration to the Applicant's SCD, for which she requires ongoing monitoring. The Officer stated that while returning to Nigeria would mean returning to a lower standard of living and health care, the Applicant did not provide sufficient objective evidence demonstrating that adequate treatment would be unavailable to her in Nigeria. The Office acknowledged the evidence showing health care limitations and treatment of SCD in Nigeria. However, the Officer conducted independent research and found evidence indicating that SCD is one of the top ten non-communicable diseases in Nigeria, and the government is committed to combating SCD and providing the necessary medical support to its citizens. The

Officer ultimately found insufficient evidence to demonstrate that the Applicant would experience a directly negative effect as a result of Nigeria's healthcare system.

[12] The Officer noted that while it may be difficult for the Applicant to return to Nigeria after almost nine years in Canada, she spent the majority of her life in Nigeria and her mother, father and brother all reside there. The Officer found insufficient evidence to indicate that the Applicant's family would be unable to assist her in reintegrating into the community. She would be returning to a familiar place, language and culture. The Officer reiterated that the Applicant bears the onus of satisfying the decision-maker that granting H&C relief is justified. The Officer found that the Applicant failed to discharge this onus and therefore refused the application.

III. Issue and Standard of Review

[13] This application raises the sole issue of whether the Officer's decision is reasonable.

[14] The appropriate standard of review is reasonableness, as established in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*"). In *Vavilov*, the Supreme Court stated that the standard of review analysis begins with a presumption of reasonableness (at para 16). The specific categories of questions for which this presumption can be rebutted, as laid out in *Vavilov*, do not apply in this case (at para 17). This is consistent with this Court's jurisprudence reviewing H&C decisions: *Mateos de la Luz v Canada (Citizenship and Immigration)*, 2022 FC 599 at para 15; *Rannatshe v Canada (Citizenship and Immigration)*, 2021 FC 1377 at para 4; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 ("*Kanthasamy*") at paras 8, 44-45.

[15] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[16] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156, at para 36).

IV. Analysis

[17] The Applicant submits that the Officer's decision was unreasonable on the basis of several reviewable errors. The Applicant argues the Officer would not have reached the same conclusion if they had not unreasonably assessed the evidence, ignored relevant evidence, or imposed an excessive and unreasonable burden on the Applicant.

[18] The Applicant submits that the Officer equated Canada with Nigeria, only drawing "cosmetic distinctions" by concluding that the Applicant could resume her life in Nigeria, without considering the history of suffering the Applicant left behind and the socio-economic hardships plaguing Nigeria. The objective evidence shows these realities are absent in Canada.

[19] The Applicant further submits that the Officer breached procedural fairness by conducting an independent research for extraneous evidence, without disclosing the findings to the Applicant to give her the opportunity to respond. The Applicant argues this is contrary to this Court's jurisprudence because the websites consulted were not "standard", such as National Documentation Packages of the Immigration and Refugee Board. The Applicant submits that the Officer's independent research includes outdated information from the Federal Ministry of Health in Nigeria under a previous government, speaking only to future or proposed plans and not the current experiences of those with SCD. In comparison, the Applicant claims her evidence provided numerous objective evidence going to the current state of SCD in Nigeria.

[20] The Applicant submits that the Officer imposed an excessive burden on the Applicant when stating that the Applicant did not provide "objective documentation to indicate that health care plans in Nigeria are so prohibitively expensive that the Applicant would be unable to obtain a regular healthcare checkup for her medical condition." The Applicant maintains that she did not have to prove that the cost was prohibitively expensive and that this is an excessive standard, contrary to the Supreme Court's warning against the imposition of excessive burdens on H&C applicants in *Kanthasamy*.

[21] The Applicant also argues that the Officer drew negative inferences from the evidence without giving serious consideration to her explanations. For instance, the Officer found the Applicant provided insufficient objective evidence to support the conclusion that her prolonged stay in Canada was the result of circumstances beyond her control. However, the Applicant's narrative clearly stated that her prolonged stay in Canada is the result of circumstances which includes her ill health in 2015 and her inexperience with immigration matters that led to her exceeding the stipulated immigration period. The Applicant also submits that the Officer's assessment of the Applicant's establishment should not have been made from the perspective of the Applicant's stay in Canada without status, but with focus on her strong community ties in Canada and the dangers posed by a return to Nigeria.

[22] The Applicant submits that the Officer adopted an excessive standard to evaluate the application when stating that "the purpose of section 25 of the *IRPA* is to give the Minister the flexibility to deal with situations which are unforeseen by *IRPA*," and the "unforeseen" element applies an incorrectly high standard to H&C considerations. The Applicant argues that in light of *Kanthasamy*, it is sufficient for the situation to attract the humanitarian and compassionate consideration of Canadians.

[23] The Respondent maintains that the decision is reasonable and the Officer did not err in finding that the circumstances of the Applicant do not warrant an exemption on H&C basis.

[24] First addressing the standard of living, the Respondent submits that the Officer reasonably acknowledged that Nigeria may "not be comparable to Canada" and noted the

differences in living standards and health care. The Officer decided that Parliament's intent under section 25 of the *IRPA* was not to make up for the difference in standard of living between Canada and other countries. The Applicant also did not identify the adverse country conditions related to her individual situation.

[25] On procedural fairness, the Respondent submits that while Officer has a duty to give an opportunity to an applicant to respond to evidence they relied on and which was not brought by the Applicant, there are exceptions to this. Specifically, the document itself does not determine whether the evidence ought to have been disclosed to an applicant and rather, the Court must consider the information contained in the document, citing *Mkhonta v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 991 at para 20 citing *De Vazquez v Canada (Citizenship and Immigration)*, 2014 FC 530 at paras 27-28. In this case, the Officer's extrinsic evidence included information from the World Health Organization ("WHO") and Nigeria's own national guidelines on addressing diseases like SCD, which are credible, relevant, and obvious sources in this case.

[26] On the Officer's assessment of evidence, the Respondent submits the analysis was reasonable and proportional to the evidence before it. The Respondent argues that the Applicant is essentially requesting that this Court reweigh the evidence. A decision-maker does not have to refer to every piece of contrary evidence, and can instead address the substantive point the evidence stands for, rather than explicitly referring to the document itself (*Sarissky v Canada (Citizenship and Immigration)*, 2013 FC 186 at para 4).

[27] On the establishment factor, the Respondent submits that the Officer did not err in giving considerable weight to the Applicant being in Canada for several years without status, especially since this Court has confirmed that illegal stays in Canada are a reasonable and relevant factor to consider in H&C applications. The Respondent ultimately submits that while the Officer may have used better language to express the conclusion, the Officer's decision is justifiable, transparent, and intelligible when reviewed globally with the record.

[28] In my view, the Officer's error in assessing the evidence on the Applicant's health condition is sufficiently serious to warrant this Court's intervention.

[29] I do not agree with the Applicant that the Officer breached procedural fairness by looking to extrinsic evidence and conducting independent research into SCD in Nigeria. This Court has affirmed that when considering whether an officer erred in relying on "extrinsic" evidence, it is not the document itself that determines whether it is "extrinsic", but whether "the information itself contained in that document is information that would be known by an applicant, in light of the nature of the submissions made" (*De Vazquez v Canada (Citizenship and Immigration)*, 2014 FC 530 at para 28). The information from WHO and the Nigerian national guidelines that was obtained by the Officer is readily accessible and credibly sourced.

[30] However, the Officer's error was not in seeking extrinsic evidence or the contents of this evidence, but in the selective assessment of the evidence as a whole. The Officer failed to conduct a proper and holistic assessment of the evidence, favouring extrinsic documents over the considerable evidence provided by the Applicant that directly speaks to the lack of effective

treatment for SCD in Nigeria and the risk this would pose to her life. The evidence shows a high mortality rate for those living with SCD in Nigeria, and significant psychological and financial burdens for those living with the disease. While the Officer does not have to refer to every piece of evidence that is contrary to their findings, I do not find the Officer's preference and reliance of the documents obtained during their independent search was reasonable in light of the documentary evidence provided by the Applicant.

[31] The majority of the Officer's extrinsic research emphasises that the Nigerian government is taking steps to address the issues pertaining to SCD and increasing medical supports for those with SCD. This evidence does not contradict the Applicant's evidence, which goes directly to the current situation for those with SCD in Nigeria, regardless of future improvements. For the time being, the circumstances set out in the Applicant's evidence remain the norm.

[32] In my view, it is unreasonable for the Officer to place such considerable weight on evidence surrounding potential *future* improvements in the Applicant's quality of life in Nigeria, instead of the clear evidence indicating the risk she would face in Nigeria *today*. Not only is this a selective weighing of evidence, but it is not in line with the compassionate considerations at the core of section 25 of *IRPA* to send an individual back to a situation of risk on the premise that this risk may one day improve. This constitutes a serious shortcoming in the decision that does not exhibit the requisite degree of justification, intelligibility and transparency.

[33] I also take issue with the Officer's finding that the Applicant's prolonged stay in Canada was not the result of circumstances beyond her control. The evidence is clear that the Applicant

was unable to finish her bachelor's degree in 2015 because of the "rigors and trauma caused by her ailment prevented her from getting her degree simultaneously." The Applicant stated that she got sick in 2015 and was admitted at the hospital because of SCD, which would have obviously affected her ability to regularize her status.

[34] A reasonable decision is "justified in light of the facts" and takes into account "the evidentiary record and the general factual matrix" (*Vavilov* at para 126). By engaging in an improper and selective assessment of the Applicant's evidence in this case, the decision is not justified in light of the record and is therefore unreasonable.

V. Conclusion

[35] The Officer's selective assessment of the evidence on the Applicant's medical condition renders this decision unreasonable. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-4987-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The decision under review is set aside and the matter remitted back for redetermination by a different officer.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4987-21
STYLE OF CAUSE:	SHOBOWALE OYINKANSOLA MACAULAY v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	AUGUST 24, 2022
JUDGMENT AND REASONS:	AHMED J.
DATED:	OCTOBER 25, 2022

APPEARANCES:

Kingsley I. Jesuorobo	FOR THE APPLICANT
Nur Muhammed-Ally	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kingsley Jesuorobo & Associates Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT