Federal Court Cour fédérale

Date: 20230123

Docket: IMM-3495-21

Citation: 2023 FC 99

Ottawa, Ontario, January 23, 2023

PRESENT: Madam Justice Walker

BETWEEN:

BELAL KASSEM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Belal Kassem, is a stateless Palestinian who was born and grew up in the United Arab Emirates (UAE). The Applicant came to Canada in December 2016 and studied engineering at Carleton University from January 2017 until graduating in June 2020. During his studies, the Applicant worked as an intern at a software company but has not worked since graduation.

[2] The Applicant submitted an application for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds in November 2020 and requested a Temporary Resident Permit (TRP) in the event that his H&C application was refused. The Applicant based his H&C application on three factors: (1) establishment in Canada; (2) family ties; and (3) adverse conditions in Lebanon and Palestine.

[3] The Applicant was a temporary resident of the UAE but is now out of status. The Applicant's Lebanese travel document expired in 2019 and he has never lived in Palestine.

[4] A senior immigration officer refused the H&C application in a decision dated May 11, 2021. The Applicant now seeks judicial review of the officer's decision.

I. The H&C Decision

[5] The officer assessed each of the factors the Applicant presented for consideration in his H&C application:

Establishment in Canada

[6] The officer accepted that the Applicant has achieved a level of integration and establishment in Canadian society through his education, internship in Canada and friendships. While he presented articles speaking to a shortage of STEM (science, technology, engineering and mathematics) workers in Canada, the Applicant appears to have made little effort to secure employment following his graduation. The officer acknowledged that the Applicant will be missed by his friends in Canada should he be required to leave but stated that separation is one of

the inherent and unfortunate outcomes that may arise in the immigration process. The officer noted that the Applicant may maintain contact with his friends via mail, telephone and the internet.

Family ties to Canada

[7] The officer referred to the Applicant's uncle, aunt and cousins in Québec and Alberta and acknowledged that his relatives were happy to be reunited with him. They will be subject to some degree of emotional and psychological hardship if they are separated but there was little evidence to suggest the Applicant and his relatives could not continue to build on their time together in Canada by maintaining electronic communications until they could be reunited.

[8] The officer concluded that the Applicant's establishment was at a level expected of a person who had been in Canada for four years and gave his establishment little weight. The officer also concluded that the Applicant's ties to Canada were not greater that his ties to the UAE where all of his immediate family reside.

Adverse country conditions: the UAE, Lebanon, Palestine

[9] The UAE: The officer focused their analysis on the likelihood that, should the Applicant be required to leave Canada, he would return to the UAE. The Applicant spent the entirety of his life in the UAE before coming to Canada. He was raised and educated in the UAE and is familiar with the language and culture. It was unclear why the Applicant stated that he could not return to the UAE and join his immediate family members, who have resided in the country as temporary residents for decades. Critical to the officer's analysis was the Applicant's lack of evidence of

any application or inquiry made on his behalf to reacquire a temporary residence permit for the UAE. There was no evidence that any family member had been refused an extension to their temporary residence permit.

[10] Lebanon: The officer discounted the Applicant's statement that he could not return to Lebanon because his travel document had expired in December 2019. The onus was on the Applicant to provide all evidence in support of his statements and the officer found that the Applicant had provided little information demonstrating what efforts had been made to renew his travel document or why he could not renew the travel document. The officer noted the Applicant's concern that he would not have the benefits accorded to a citizen in Lebanon and would be subject to discrimination in relation to employment and education but the officer emphasized the Applicant's more likely return to the UAE.

[11] Palestine: The officer acknowledged that the Applicant has never lived in Palestine and that, should he be sent there upon removal from Canada, he would face unemployment, an unstable labour market, and poor economic and social conditions. However, the officer was not persuaded that the Applicant would be returning to Palestine.

[12] In conclusion, the officer stated that they had considered the issues and evidence presented by the Applicant. Although Canada may be a more desirable place to live than the Applicant's country of return, the purpose of H&C relief is not to compensate for differences in the standard of living. The officer concluded that the information and documents submitted by the Applicant do not justify an exemption based on H&C considerations.

II. Analysis

1. The officer's failure to address the Applicant's request for a TRP

[13] The Applicant applied for a TRP should his H&C application be denied but the officer did not address the request. I agree with the parties that, as the Applicant's request for a TRP was not considered, the request must be remitted to a different officer for determination (*Li v Canada (Citizenship and Immigration)*, 2020 FC 754 at para 11).

2. Is the H&C decision reasonable?

[14] The Applicant submits that the officer erred in their analysis and conclusions regarding his establishment in Canada, his ability to return to the UAE, and the adverse country conditions in Lebanon and Palestine. The Applicant also submits that the officer committed a determinative error in failing to carry out an analysis of the best interests of the children (BIOC) in light of his relationships with his cousins' minor children in Alberta.

[15] The parties agree, as do I, that the Applicant's submissions must be reviewed by the Court for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 39, 44 (*Kanthasamy*)). Where the Court reviews an administrative decision for reasonableness, its role is to examine the reasons given by the decision maker and determine whether the decision "is based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

(a) Establishment in Canada

[16] The Applicant submits that the officer's assessment of his establishment in Canada is unreasonable because of the officer's statement that his establishment "is at a level that would be expected of a person in his circumstances to obtain" without explaining the yardstick against which the establishment was measured. The Applicant also submits that his family ties in Canada result from in-person contact and cannot be maintained electronically, and that the officer failed to consider the impact on his work prospects of the COVID-19 pandemic.

[17] I am not persuaded by the Applicant's arguments. The concern of the officer throughout their analysis of the Applicant's request for H&C relief is a lack of evidence in support of the request. I will return to this issue in each of the following sections.

[18] With respect to establishment, the Applicant has pointed to no factual error and no omission in the officer's summary of his evidence. The Applicant had been present in Canada at the time of the decision for four years; he has completed an engineering degree during which he worked as an intern in a software company; he has cultivated friendships and has ties with his extended family in Canada. The Applicant is supported financially by his father.

[19] The Applicant argues that the officer required an atypical or exceptional level of establishment in order to warrant relief and that the officer erred in focusing on how the Applicant's establishment in Canada compares to that of a person in similar circumstances.

[20] In their decision, the officer stated:

> I accept that the applicant has demonstrated a level of integration into Canadian society and community. Furthermore, I acknowledge the applicant has resided in Canada for approximately four years and while I recognize that the applicant likely has obtained a level of establishment in Canada, I find that his establishment is at a level that would be expected of a person in his circumstances to obtain.

[21] In my view, the officer did not apply a higher and unreasonable threshold in their assessment of establishment in Canada. The comment that the Applicant's establishment is that which would be expected of a similarly situated individual is descriptive and is consistent with the approach set out in *Kanthasamy* (*Truong v Canada (Citizenship and Immigration)*, 2022 FC 697 at para 13).

[22] The Applicant argues that the officer erred in faulting him for remaining unemployed since June 2020 without taking into consideration the effects of the COVID-19 pandemic but I find the officer's reasoning in this regard fairly reflects the Applicant's own evidence. The Applicant sought to support his continued presence in Canada with a series of articles regarding shortages of STEM workers in Canada. The officer reasonably pointed out, however, that the Applicant had provided no evidence of any efforts on his part to find employment despite the apparent need for STEM personnel. The officer was required to respond to the Applicant's central issues and concerns and was not required to consider every possible argument (*Vavilov* at para 128). The onus was on the Applicant to demonstrate any adverse effects of the pandemic on employment opportunities in his field.

[23] Finally, the Applicant argues that his family ties are based on the in-person contact that has been possible since he arrived in Canada. While the Applicant and his extended family would prefer to meet in person, the officer's observation that they could maintain contact via electronic means gives rise to no reviewable error.

(b) Adverse country conditions/Return to the UAE

[24] The Applicant submits that the officer was unduly preoccupied with the UAE as a country of reference even though he has no legal status in or right of return to the country (*Abdullah v Canada (Citizenship and Immigration)*, 2019 FC 954 (*Abdullah*); *Joe v Canada (Citizenship and Immigration)*, 2009 FC 116 (*Joe*)). The Applicant argues that this preoccupation is an error that resulted in the officer discounting the hardships he would face if forced to return to Lebanon or Palestine. The Applicant also argues that the officer's reliance on his failure to regularize his status in the UAE is unreasonable (*Abeleira v Canada (Citizenship and Immigration)*, 2015 FC 1340 (*Abeleira*)).

[25] I have carefully considered the Applicant's submissions and the relevant jurisprudence. I am not persuaded by those submissions for the following reasons.

[26] First, the Applicant submitted no evidence of any attempt on his part to obtain a temporary residence permit in the UAE or of any reason for which he would be precluded from so doing. Again, the Applicant bore the burden of establishing his request for H&C relief. In the context of an obvious country of reference, it was open to the officer to consider the absence of an explanation of why the Applicant could not obtain such a permit. The officer reasonably noted

that the Applicant had spent his youth and was educated in the UAE until leaving for Canada to study engineering, and that his immediate family continues to reside in the UAE without issue.

[27] In *Abeleira*, Justice LeBlanc, as he then was, found that it was open to the officer to consider that the applicant's status as a stateless person was not beyond his control. However, Justice LeBlanc also stated that this fact alone was not enough to conclude that there was insufficient evidence of hardship and to reject the H&C application outright (*Abeleira* at paras 21-22). In the present case, the officer did not rely solely on the Applicant's failure to take steps to reacquire a temporary residence permit in the UAE. Rather, the officer assessed each of the H&C factors raised by the Applicant. The Applicant's characterization of the officer's review of the UAE as a preoccupation is not reflective of the tenor or content of the reasoning in the decision.

[28] Second, the Applicant's circumstances differ from those of the applicant before Justice McHaffie in *Abdullah*. In that case, Mr. Abdullah presented evidence that he could not obtain a new work visa from Saudi Arabia. The officer appeared to have overlooked or ignored this evidence and Justice McHaffie wrote (*Abdullah* at para 30):

> [30] The officer thus appears to have reached a conclusion that Mr. Alhaj Abdullah could be removed to Saudi Arabia without concluding that he had legal status in that country or a right to return there, and in the face of evidence that indicated that he did not have such status or right. In keeping with the principle in *Joe*, this is an error.

[29] In the present case, the Applicant submitted no evidence suggesting he could not return to the UAE. I agree with the Respondent that the facts in this case are more similar to those in issue

in *El Assadi v Canada (Citizenship and Immigration)*, 2014 FC 58 (*El Assadi*). The applicants in *El Assadi* were stateless Palestinians who requested H&C relief from a removal order issued for failure to comply with the requirements for permanent residency in Canada. The Immigration Appeal Division (IAD) acknowledged that the applicants may face hardship in Lebanon but focused its analysis on the UAE, where the principal applicant had lived since 1980. The IAD rejected the applicants' submission that they were unable to obtain temporary resident status in the UAE. Justice Kane did not agree with the argument that this finding was unreasonable, stating that "[t]he applicants had the burden of demonstrating that sufficient H&C considerations existed to warrant an exemption from the residency requirements of the [*Immigration and Refugee Protection Act*]" (*El Assadi* at para 52).

[30] Third, having acknowledged the discrimination, precariousness and barriers in society in Lebanon faced by stateless Palestinians, the officer stated that they were not persuaded that the Applicant would be returning to Lebanon. On the facts presented by the Applicant, a return to the UAE should he be forced to leave Canada was a logical and rational consideration for the officer. The Applicant's submissions before the Court regarding the adverse country conditions in Lebanon are reflected in the officer's decision. I agree with the Applicant that the officer's summary of those country conditions is brief but I have not been persuaded that it is unreasonable. I make the same finding with respect to the officer's assessment of the conditions in Palestine.

[31] Fourth and finally, while I agree that it would have been preferable for the officer to address the Applicant's arguments on the situation of stateless persons in Canada, I am not

convinced that the officer committed a reviewable error. The Applicant has not established that he is prevented from returning to the UAE. His suggestion that he will live in indefinite limbo in Canada is not a central issue in his H&C application.

(c) BIOC

[32] The Applicant submits that the officer committed a determinative error by failing to consider the best interests of his cousins' minor children in Calgary and disputes the officer's statement that they had considered all of the evidence. According to the Applicant, his cousin's letter of support states that he and his spouse rely on the Applicant to babysit their children when they need to work extra hours to make ends meet. The Applicant argues that this letter necessitated a BIOC analysis.

[33] I agree with the Respondent that the Applicant's argument is not well-founded. The Applicant made no mention of the best interests of any children in his H&C application. The application does not raise the interests of his cousins' children or explain how their interests would be adversely affected should the Applicant be required to leave Canada. The letter in question does make reference to the children and the fact that the Applicant acted as a babysitter. However, I find that this reference does not give rise to an obligation on the part of the officer to conduct a BIOC analysis.

[34] The children in question live in Alberta and the Applicant resides in Ottawa. The letter provides little detail as to the scope, frequency or duration of the babysitting. It does not speak of reliance by the parents on the Applicant; it is intended to demonstrate his character. In my view,

the content of the letter cannot be said to raise an obvious concern such that the officer should have inferred the necessity of a BIOC analysis. The officer acknowledged the letter and the Applicant's relationship with the children, which appears to be conducted at an appreciable distance. The Applicant does not raise a reviewable error.

III. Conclusion

[35] For the foregoing reasons, I will allow the application in part.

[36] The Applicant's request for a TRV will be remitted to a different officer for review and decision.

[37] The application for judicial review of the officer's H&C decision will be dismissed. The burden was on the Applicant to establish that the decision is unreasonable and I find that he has not discharged that burden. The officer's conclusion that the information and documents submitted by the Applicant do not justify an exemption based on H&C considerations is intelligibly explained and justified. The officer neither ignored nor misconstrued the Applicant's evidence. The officer reasonably concluded that the Applicant's desire to remain in Canada now that he has completed his studies does not warrant discretionary relief.

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

JUDGMENT IN IMM-3495-21

THIS COURT'S JUDGMENT is that:

1. The Applicant's request for a Temporary Residence Permit is remitted to a different officer for decision.

2. The application for judicial review of the decision dated May 11, 2021 of a senior immigration officer refusing the Applicant's H&C application is dismissed.

3. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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