Federal Court Cour fédérale

Date: 20230213

Docket: IMM-7757-21

Citation: 2023 FC 207

Ottawa, Ontario, February 13, 2023

PRESENT: Mr. Justice McHaffie

BETWEEN:

SHOAIB MUHAMMAD KHAN
SADIA SHOAIB
MUHAMMAD ABDULLAH KHAN
MUHAMMAD AMMAR KHAN
MINAHIL KHAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants are a family of five who are citizens of Pakistan. They ask this Court to set aside the refusal of their application for permanent residence on humanitarian and compassionate [H&C] grounds.

[2] Parliament has entrusted immigration officers with the discretion to review applications for H&C relief, consider the relevant circumstances and factors, and exercise their discretion in deciding whether relief should be granted. On judicial review, the Court does not and cannot conduct its own assessment of the merits of an H&C application. Rather, it may only intervene if the applicants have shown the decision to be unreasonable, in the sense that it is internally incoherent, or lacks the justification, transparency, and intelligibility required of a reasonable decision.

[3] For the following reasons, I conclude the applicants have not shown the decision at issue to be unreasonable. The application must therefore be dismissed.

II. Issues and Standard of Review

[4] The parties agree that the refusal of an H&C application is reviewable on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25.

[5] The central issue on this application is therefore whether the decision of the senior immigration officer refusing the applicants' H&C application was reasonable. Within this general issue, the applicants argue that the officer unreasonably assessed (1) their establishment and ties to Canada; (2) their risk and the country conditions in Pakistan; (3) the medical and mental health evidence; and (4) the best interests of the children.

[6] In their written submissions, the applicants also argued that the decision was unfair, but this was, appropriately, not pursued in oral argument. The applicants' challenges are not to the process by which the decision was reached, but to the substance of the decision. No issue of procedural fairness is raised.

III. Analysis

A. *The Applicants' H&C Application*

[7] The applicants arrived in Canada in 2017. They made a claim for refugee protection, which was dismissed by the Refugee Protection Division [RPD]. An appeal to the Refugee Appeal Division and a subsequent application for leave to seek judicial review to this Court were also dismissed.

[8] In 2020, the applicants applied for relief on H&C grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The H&C application invoked the best interests of the children, the family's establishment and family ties in Canada, medical and mental health considerations, and the hardship the applicants would face if required to return to Pakistan given its current conditions. The applicants provided detailed submissions and supporting documents, including letters of support from friends, community members, and family; information about the work and financial status of the principal applicant, Shoaib Muhammad Khan; information about the children's interests and their efforts and achievements in school; a psychotherapist's report describing the results of an interview with the family; and

country condition evidence describing the situation in Pakistan. They provided further submissions and documents on a periodic basis while the H&C application was under review.

[9] In lengthy and thorough reasons, the officer considered these factors, giving some of them positive weight. However, the officer was ultimately not satisfied that the H&C considerations justified an exemption under subsection 25(1) of the *IRPA*.

B. *The Officer's Decision was Reasonable*

(1) Establishment and family ties

[10] The applicants underscore their close ties to other family in Canada, including in particular three of Mr. Khan's siblings and their respective families. They point to the letters of support from these family members and suggest that the officer overlooked, or underappreciated, these bonds. However, the officer directly considered these relationships, finding that the evidence and submissions were "persuasive and demonstrative of significant family ties," giving weight to those ties in consequence. The applicants may have preferred that greater, or even determinative, weight would have been given to these bonds. However, the Court's role on judicial review is not to reassess or reweigh the evidence, nor to exercise its own discretion in place of the decision maker. Its role is limited to assessing whether the decision is lawful, justified, transparent, and intelligible: *Vavilov* at paras 15, 75, 125–126.

[11] The applicants further argue that it was unreasonable for the officer to overlook the fact that the family has few remaining relatives in Pakistan. I disagree. While there was passing

mention of this in the applicants' H&C application, the officer was not obliged to refer to every fact or submission, however subordinate: *Vavilov* at para 128. The thrust of the applicants' H&C submissions related to their establishment and ties in Canada and not the absence of such ties in Pakistan. The officer thoroughly considered and weighed the applicants' submissions and evidence on this central issue.

[12] The same can be said of the applicants' other submissions with respect to establishment. Each seeks to either have the Court give greater weight to factors considered by the officer, or criticize the officer for not referring to subsidiary facts. Indeed, the applicants expressly submitted that they "simply disagree" with the officer's weighing of the evidence and the H&C factors. This is not the purpose of judicial review and does not satisfy the applicants' onus to demonstrate unreasonableness: *Pham v Canada (Citizenship and Immigration)*, 2021 FC 757 at para 32, citing *Dhesi v Canada (Attorney General)*, 2018 FC 283 at para 24.

[13] The applicants also filed evidence on this application, responding to certain concerns raised by the officer (*e.g.*, the source of funds in a bank account, a discrepancy regarding income, and whether the applicants were paying rent) and setting out events post-dating the officer's decision (*e.g.*, with respect to the sons' postsecondary education). The law is clear that the role of the Court on judicial review is to assess the decision on the basis of the evidence that was before the decision maker: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 18–19. Subject to a few exceptions, an applicant is not permitted to add new evidence to the record before the Court to contradict or respond to issues addressed by the decision maker: *Access Copyright* at para 20. None of these

exceptions applies in this case, so the Court cannot consider the additional evidence filed by the applicants on this application for judicial review (notably paragraphs 14 to 20 and Exhibits E to J to Mr. Khan's affidavit). I note that in any case, the issues this evidence speaks to, namely clarification of aspects of the children's education and Mr. Khan's economic circumstances, do not appear to have been determinative in the overall circumstances of the matter.

(2) Risk and country conditions in Pakistan

[14] The applicants' H&C application highlighted widespread crime, violence, and insecurity in Pakistan. It also referred to the incidents that had given rise to the applicants' original refugee claim. The applicants argued that country conditions in Pakistan are such that they would face considerable risk and hardship if required to return.

[15] Again, the officer considered the various risks that had been identified. They noted that the facts giving rise to the original refugee claim had been considered by the RPD, which had questioned the credibility of at least some aspects of the account. The officer reviewed the evidence and concluded that Karachi was a particularly crime-prone city, and that the applicants could mitigate their risks to some degree by moving away from Karachi to another location. Although the notion of an "internal flight alternative" is part of a refugee protection assessment rather than an H&C application, this Court has recognized that the potential mitigation of risks through internal migration may be a relevant consideration on an H&C application: *Monsalve v Canada (Citizenship and Immigration)*, 2022 FC 1253 at para 42; *Consuegra Pulido v Canada (Citizenship and Immigration)*, 2023 FC 61 at paras 12–16; *Akponah v Canada (Citizenship and Immigration)*, 2017 FC 1103 at para 29. While recognizing the overall risks in Pakistan and

sympathizing with the applicants' fears, the officer considered the applicants' particular situation and background in their analysis, noting that they were not similarly situated to those experiencing poverty or discrimination.

[16] The applicants argue that they face the same hardship and risk throughout Pakistan, that it was unreasonable for the officer to refer to the possibility of internal migration, and that the officer ignored relevant evidence of risk. However, as the respondent points out, these submissions are made without reference to any particular evidence on the record, and without demonstrating how, or in what respects, the officer's decision either failed to consider or fundamentally misapprehended the evidence: *Vavilov* at paras 125–126. The applicants' assertion that they would face the same risk throughout Pakistan, made without reference to the record, amounts to no more than simple disagreement with the officer's assessment of the evidence. I am not satisfied that the applicants have demonstrated that the decision was unreasonable in this respect.

[17] In submissions, counsel relied on the current situation of insecurity in Pakistan, including reference to a very recent terrorist attack at a Peshawar mosque, and to floods in that country in the summer of 2022. However, even if there had been evidence on the record with respect to these events and the current situation in Pakistan, which there was not, events arising after the decision was made in October 2021 cannot render the decision unreasonable. At the risk of repetition, the Court's role on judicial review is not to determine what risks the applicants face now, or whether an H&C application can or should be granted now, but only to consider whether

the decision was reasonable in light of the evidentiary record before the officer at that time: *Spring v Canada (Citizenship and Immigration)*, 2014 FC 41 at paras 16–17.

(3) Medical and mental health evidence

[18] In support of their H&C application, the applicants filed a report from a psychotherapist, giving her clinical impressions after an interview with the family, and opining that it would be in the family's best interests to remain in Canada. After a lengthy consideration of the circumstances in which the report was prepared, its conclusions, and its content, the officer concluded it should be given very little weight.

[19] The applicants assert that the officer ignored the harm described in the report. This is not so. The officer clearly did not ignore either the report or the harm described in it. To the contrary, the officer gave it considered thought, and explained why they found it should be given little weight. The applicants clearly disagree with the officer's conclusion, but this is not enough to show it is unreasonable.

[20] The applicants argue it was unreasonable for the officer to have discounted the psychotherapist's report because it was based on a single visit. I disagree. The officer did not disregard the report solely on this basis. Nor did the officer fail to explain or justify their conclusions. The officer considered both the circumstances and contents of the report, and set out in detail the various reasons why they found it was entitled to little weight. This Court has confirmed the reasonableness of this approach: see, *e.g.*, *Egwuonwu v Canada (Citizenship and*

Immigration), 2020 FC 231 at paras 74–84; *Chehade v Canada (Citizenship and Immigration)*, 2017 FC 293 at paras 13–15.

(4) Best interests of the children

[21] The applicants' arguments with respect to the officer's treatment of the best interests of the children similarly amount to no more than disagreement with the officer's conclusions and weighing. There is no doubt that the three children involved (an adult child and two minor children) have created bonds in Canada, have worked hard in school and in their communities, have become established to some degree in Canada, and are appreciated by family and friends. The officer recognized all of these truths, giving them positive weight in the overall analysis. They also recognized and considered the shortcomings of the education system in Pakistan, the security risks, as well as (in the case of the daughter) the presence of gender-based discrimination in education and more broadly. The officer balanced these and other factors with the evidence of the applicants' particular circumstances, acknowledging the impacts of removal while assessing the factors mitigating those impacts.

[22] Contrary to the applicants' submissions, I cannot conclude that the officer ignored or failed to consider relevant factors, or that their analysis of the best interests of the children was otherwise unreasonable. Having reviewed the decision in detail, I also cannot agree with the applicants' criticism that it does not adequately consider or address the situation of the daughter in particular. While the outcome is evidently not what the applicants were hoping for, the officer reasonably considered the applicants' application, exercised the discretion conferred on them by

the *IRPA*, and explained their reasons for doing so. The decision is reasonable and there is no basis for this Court to set it aside.

IV. Conclusion

[23] The application for judicial review is therefore dismissed.

[24] Neither party proposed a question for certification and I agree that none arises in the matter.

JUDGMENT IN IMM-7757-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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