

Federal Court



Cour fédérale

Date: 20230217

Docket: IMM-779-22

Citation: 2023 FC 233

Ottawa, Ontario, February 17, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

JOSE BARTOLO BONILLA MONGE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Jose Bartolo Bonilla Monge (“Mr. Bonilla”), came to Canada approximately ten years ago through the Seasonal Agricultural Worker Program. He worked on farms in Ontario. Mr. Bonilla left the first farm he worked on in Canada after a new employer led him to believe that he could have better working conditions and a route to permanent residence

for him and his family in Honduras. Instead, the new employer confiscated the passports and identity documents of Mr. Bonilla and a number of other workers, forced them to live in deplorable conditions, and subjected them to abusive working conditions for minimal and inconsistent pay. After approximately one year in these conditions, Mr. Bonilla and the other workers managed to escape. Mr. Bonilla contacted the police to assist in retrieving his identity documents. Mr. Bonilla also cooperated with the police's investigations into the trafficking allegations against his former employers. These employers were eventually charged with i) trafficking in persons by recruiting and ii) withholding or destroying travel or identity documents in relation to trafficking in persons.

[2] Mr. Bonilla applied for permanent residence from within Canada on humanitarian and compassionate grounds ("H & C Application"). A central part of his application detailed the abuse that he and other workers faced on the farm and the assistance that he provided to the police in the prosecution of his former employers. A Senior Immigration Officer at Immigration, Refugee and Citizenship Canada [IRCC] ("the Officer") refused Mr. Bonilla's H & C Application. Mr. Bonilla is challenging this refusal in this judicial review.

[3] I agree with Mr. Bonilla that the Officer failed to evaluate the central basis on which he sought relief. Namely, the Officer did not properly consider that, while working as a temporary worker in Canada, he was subjected to abusive working conditions that interrupted his plan for permanent immigration status. The Officer discounted Mr. Bonilla's cooperation with the police's human trafficking investigation of his former employers. I also find that the Officer made negative inferences about Mr. Bonilla's establishment that were unsupported by the

evidence. Ultimately, the Officer's establishment analysis does not meaningfully grapple with the Applicant's submissions and evidence and instead reads as an attempt to reverse engineer an outcome.

[4] Based on the reasons below, the application for judicial review is granted.

II. Background

[5] Mr. Bonilla is a citizen of Honduras. He completed six years of schooling in Honduras and then had to leave school to work and financially support his family. When he was twenty years old, in December 2013, he came to Canada to work in agriculture on a two-year work permit as a Temporary Foreign Worker.

[6] After approximately a year and a half of working on a farm in Canada, Mr. Bonilla met a father and daughter who introduced themselves respectively as a pastor and an immigration lawyer. They promised Mr. Bonilla and some other workers a better job with better pay and a four-year open work permit, as well as the chance to become permanent residents and bring their families to Canada. Mr. Bonilla took a job they arranged for him at a poultry farm in Dashwood, Ontario.

[7] When he arrived on the farm, his employer took his passport from him on the pretext that it was needed to extend his work permit in Canada. The employer housed Mr. Bonilla and the other workers in deplorable conditions, did not permit them to leave the home after a certain hour, and deducted large sums from their pay for vague immigration processing fees. Ultimately,

the employers did not obtain a work permit for Mr. Bonilla, nor help him in bringing his family to Canada as promised.

[8] Eventually, in September 2016, Mr. Bonilla and the other workers escaped from their employers and went to the police. Mr. Bonilla's former employers were charged with several counts of trafficking in persons by recruiting and seven counts of withholding or destroying travel or identity documents in relation to trafficking in persons. Mr. Bonilla was subpoenaed as a witness in those proceedings.

[9] In October 2018, IRCC issued Mr. Bonilla a temporary resident permit and work permit valid until April 2019. Mr. Bonilla applied to extend these permits on two occasions, in April 2019 and April 2021. Both times, IRCC refused his applications.

[10] In June 2020, Mr. Bonilla filed the H & C Application underlying this judicial review. The Officer refused the application on January 7, 2022.

III. Issues and Standard of Review

[11] The determinative issue in this judicial review is whether the Officer considered all the relevant factors and evidence in the H & C Application. In reviewing the decision of the Officer, I apply 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

[12] 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 *Kanhasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 [*Kanhasamy*], 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’” (*Kanhasamy* at para 21).

[13] Given that the purpose of humanitarian and compassionate discretion is to “mitigate the rigidity of the law in an appropriate case,” there is no limited set of factors that warrant relief (*Kanhasamy* 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” (*Kanhasamy* at para 25; *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 74-75).

[14] The focus of Mr. Bonilla’s request for relief was his experience of abusive working and living conditions at a farm in Ontario. Mr. Bonilla provided a detailed affidavit in support of his H & C Application setting out his experience, including his deplorable work and living

conditions. Mr. Bonilla explained that he was unable to leave the farm because his employers confiscated his passport and promised that they were renewing his work permit and arranging for his family to come to Canada. It was because of this experience that Mr. Bonilla fell out of status.

[15] Mr. Bonilla explains in his affidavit how he brought his employers' abuse to light by contacting the police and cooperating with their investigation. Mr. Bonilla's evidence is supported by multiple newspaper articles about his former employers and the allegations against them of abusive working conditions and targeting migrant workers with precarious status. As noted above, Mr. Bonilla also provided evidence about the former employers facing trafficking charges and copies of the subpoenas directing Mr. Bonilla to testify at a criminal trial in February and April 2021.

[16] Despite Mr. Bonilla raising his experience with his former employers as a central factor favouring relief, the Officer's evaluation of it is limited. The Officer recounts this history as part of their description of Mr. Bonilla's background in Canada. There is, however, no evaluation of this key factor and no assessment of the abusive working conditions and their impact on Mr. Bonilla's status in Canada nor of Mr. Bonilla's contributions through his cooperation with the police investigation.

[17] The extent of the Officer's analysis of this factor is limited to finding that there is insufficient evidence that Mr. Bonilla is needed in Canada after the 2021 trial. Not only is this approach unresponsive to Mr. Bonilla's submissions and evidence, given that he was not asking

to remain in Canada so that he could continue to assist with the investigation, it also demonstrates a lack of empathy and compassion to Mr. Bonilla's circumstances.

[18] This lack of consideration of Mr. Bonilla's experiences in Canada is apparent in the Officer's reliance on Mr. Bonilla's non-compliance with immigration law as a basis to discount his positive integration in Canada. This Court has repeatedly found that "a decision-maker must assess the nature of the non-compliance and its relevance and weight against the applicant's H&C factors in each case" (*Mitchell v Canada (Minister of Citizenship and Immigration)*, 2019 FC 190 at para 23; see also: *Trinidad v Canada (Minister of Citizenship and Immigration)*, 2023 FC 65 at paras 27-41; *Mateos de la Luz v Canada (Minister of Citizenship and Immigration)*, 2022 FC 599 at para 28). The Officer failed to do this assessment.

[19] The Officer's reasons do not consider how being the victim of abusive working conditions in Canada led to Mr. Bonilla remaining in Canada without secure immigration status. The Officer also did not factor into this assessment the multiple attempts Mr. Bonilla made to regularize his status throughout his time in Canada. Nor is there any acknowledgement of Mr. Bonilla's significant contribution in bringing his abusive working conditions to light and assisting with the criminal investigations.

[20] The Officer's failure to grapple with Mr. Bonilla's circumstances in Canada and to consider the relevant factors he raised in his application "call[s] into question whether the decision maker was actually alert and sensitive to the matter before it" (*Vavilov* at para 128).

This is a sufficient basis to set aside the Officer's determination and have the matter redetermined.

[21] The Officer makes an additional negative finding with respect to Mr. Bonilla's establishment in Canada that I find puzzling and unsupported by the evidence. The Officer noted that Mr. Bonilla worked as a farm labourer and then, after he received a temporary resident permit, worked as a general labourer until the expiry of this permit in April 2019. The Officer acknowledged that T4s had been provided to validate Mr. Bonilla's employment in 2014-2015 and 2018-2019. The Officer took issue with Mr. Bonilla's "financial standing" after April 2019, when he no longer had a valid work permit and was employed in "occasional informal work." The Officer noted "insufficient objective documentation has been provided that validates his financial standing and/or his general ability to be self-supporting." The Officer concluded by finding: "I am not satisfied that adequate arrangements for the care and support of the applicant have been made."

[22] This Court in *Magonza v Canada (Minister of Citizenship and Immigration)*, 2019 FC 14 at para 58 [*Magonza*] explained: "When we review a finding that the evidence was insufficient, it is useful to ask: what other evidence could reasonably have been brought?" In *Sarker v Canada (Minister of Citizenship and Immigration)*, 2020 FC 154 at paragraph 11, citing *Magonza*, this Court noted in the context of an H & C application: "While the concept of sufficiency of evidence is an issue that will attract much deference on the part of the reviewing court (*Vavilov* at para 125), findings of insufficiency must be explained."

[23] It is not clear what sort of evidence the Officer was requiring to demonstrate that adequate arrangements were made for Mr. Bonilla's care and support. Mr. Bonilla had provided a letter from a friend from his church community in whose home he was living. This friend noted that in 2017 "due to [Mr. Bonilla's] great personal qualifications and christian values I decided to support him by giving [him] housing." The friend further notes that he and his children "consider Mr. Bonilla as part of our family." The Officer makes no reference to this support.

[24] Moreover, the Officer's conclusions are unsupported when considering the context of this H & C Application. Mr. Bonilla provided evidence that he was forced to leave school at approximately 11 years of age to work on a farm in Honduras, that he worked in Canada on farms in horrible conditions, that he sent remittances from his work in Canada to his family in Honduras, that he had support from his church community in Canada, and that he was able and willing to work in Canada if he had a work permit. In light of this evidence, the Officer's comment that there is insufficient evidence about Mr. Bonilla's ability to be self-supporting in Canada does not make sense.

[25] The application for judicial review is allowed. Neither party raised a question for certification and I agree that none arises.

JUDGMENT IN IMM-779-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;
2. The matter is sent back to a different decision-maker to be redetermined; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-779-22

STYLE OF CAUSE: JOSE BARTOLO BONILLA MONGE v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JANUARY 18, 2023

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: FEBRUARY 17, 2023

APPEARANCES:

Mary Jane Campigotto FOR THE APPLICANT

Leanne Briscoe FOR THE RESPONDENT

SOLICITORS OF RECORD:

Campigotto Law Firm FOR THE APPLICANT
Windsor, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario