Federal Court  Cour fédérale

Date: 20231012

Docket: IMM-1171-22

Citation: 2023 FC 1360

Ottawa, Ontario, October 12, 2023

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

JOSEPH DADZIE GODDAY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicant seeks judicial review of a decision of an immigration officer [Officer] denying his application for permanent residence based on humanitarian and compassionate [H&C] grounds under section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] I am allowing the application because the Officer overlooked key evidence in assessing the Applicant's claim that he was a *de facto* stateless person and that he was unable to return to Côte d'Ivoire. Given this determination, it is not necessary to address the other issues raised by the Applicant. The Applicant also requests costs, but I am not satisfied that there are special reasons warranting an award of costs in this case.

II. Background

[3] The Applicant, a citizen of Côte d'Ivoire, arrived in Canada as a stowaway on a ship in June 2003. He has resided in Canada ever since.

[4] This is the third redetermination of the Applicant's H&C application filed in May 2018. On this redetermination, the Applicant filed updated submissions and evidence. The Applicant's previously filed evidence and submissions were also before the Officer on this redetermination.

[5] On January 21, 2022, the Officer denied the Applicant's H&C claim, concluding that he failed to demonstrate that granting permanent residence or an exemption from any applicable criteria of the IRPA is justified by H&C considerations.

[6] In assessing the Applicant's claim that he was a *de facto* stateless person, the Officer acknowledged that he "has been in Canada over the last few years due to his inability to obtain the required travel documents from Côte d'Ivoire". The Officer found, however, that the Applicant failed to provide sufficient evidence that he made all reasonable efforts to obtain the travel documents. While the Officer ultimately assigned positive weight to the Applicant's

potential *de facto* statelessness status, they found this factor alone did not justify an exemption on H&C grounds.

III. Issues and Standard of Review

[7] The Applicant challenges the reasonableness of the Officer's denial of his H&C claim on a number of grounds. I find that the Officer's decision concerning the Applicant's *de facto* statelessness claim is determinative of this application and I have not considered the other grounds raised by the Applicant in disposing of this application.

[8] There is no dispute that the applicable standard of review is that of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The Supreme Court of Canada has held that "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.

[9] A reviewing court does not assess a decision-maker's reasons against the standard of perfection: *Vavilov* at para 91. A decision should not be set aside unless there are "sufficiently serious shortcomings" such that it does not exhibit the requisite attributes of "justification, intelligibility and transparency". Furthermore, a reviewing court "must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable": *Vavilov* at para 100.

IV. Analysis

A. *The Officer's assessment of de facto statelessness is unreasonable*

[10] The Officer overlooked key evidence in assessing the Applicant's claim that he was *de facto* stateless. In concluding there were still avenues open for the Applicant to obtain travel documents from Côte d'Ivoire, the Officer failed to consider the Applicant's evidence that he was lacking critical, essential information required to obtain Ivorian travel documents. More specifically, the Applicant stated that he did not know the exact location where he was born, the correct spelling of his and his parents' names, and the order of his three names.

[11] While a decision-maker is not required to mention every piece of evidence or argument bearing on an issue, the more significant the unmentioned evidence is, the more willing the reviewing court is to infer that an officer unreasonably failed to account for the evidence: *Vavilov* at paras 125-127. Here, the overlooked evidence went to the core of assessing the Applicant's *de facto* stateless claim. The Officer's failure to mention and grapple with this key evidence vitiates the decision.

[12] The Officer accurately summarized the Applicant's evidence of his December 2021 conversation with Peter Dawes, Honorary Consul of Côte d'Ivoire in Toronto, about the process of obtaining Ivorian travel documents. The Officer accepted that it would not be possible for the Applicant to obtain any kind of Ivorian travel document without first obtaining a record of his birth, since he never had an Ivorian passport. The Officer acknowledged that because there is no central repository of birth records in Côte d'Ivoire, a manual search would need to be conducted

with either the municipality or the local churches in the city of the Applicant's birth. To conduct such a search, the Applicant would need to know the correct spelling of his name, of his parents' names, and would need to arrange for an individual to be physically present in Côte d'Ivoire to assist: Officer's Reasons for Decision dated January 21, 2022, p 5 [Officer's Reasons].

[13] After summarizing this evidence, the Officer concluded that the Applicant had failed to establish that he had pursued all available avenues:

> While I am sympathetic to the applicant's issues in obtaining the required documentation, I find that applicant still has some avenues to obtain them. The applicant states that he has no one in Côte d'Ivoire who would be able to go in person to search for his birth certificate, however, I find that the applicant may be able to find alternative methods to obtain the information, such as hiring an individual in Côte d'Ivoire or personally contacting various offices/churches within Côte d'Ivoire that may have the document. Based on the submission before me, I find that the counsel and applicant have not exhausted all their avenues to obtain the required information. I do not find the summary of a telephone conversation with Mr. Dawes to be sufficient evidence to establish that the applicant is unable to retrieve his birth certificate or his right to Ivorian citizenship. [Emphasis added]

[14] In coming to this conclusion, however, the Officer failed to consider and assess the totality of the evidence relevant to the Applicant's *de facto* stateless claim. Specifically, the Officer did not engage with the Applicant's affidavit dated May 2, 2018, which addressed his lack of identity. The Applicant stated that "due to my parents dying when I was very young, my lack of identity documents, and the fact that I was illiterate before arriving in Canada, many of the details of my own identity are unclear to me": Affidavit of Joseph Dadzie Godday dated May 2, 2018 at para 4 [2018 Affidavit].

[15] Significantly, the Applicant attested that:

(1) He does not know his exact date of birth. His aunt told him it was either in 1982 or 1983: 2018 Affidavit at para 12.

(2) He does not know his official name. His aunt used the names Joseph, Dadzie, and Godday, but he does not know the order these names are in (i.e., which is his first, middle, and last name): 2018 Affidavit at paras 14-15.

(3) He does not know if his birth was ever registered or documented: 2018 Affidavit at para 14.

(4) He does not recall ever seeing his name written down before coming to Canada, but he could not read or write so he would not have recognized it even if he had seen it written: 2018 Affidavit at para 17.

[16] Furthermore, while the Officer referred to the Applicant's conversation with Mr. Dawes, as detailed in the Applicant's affidavit dated January 17, 2022, the Officer made no mention of other relevant evidence contained in that same affidavit. This evidence addressed the Applicant's lack of knowledge regarding critical information required to obtain the travel documents:

> 10. However, I do not know where exactly I was born and I do not have contact with any family members who may be in a position to assist me. I also do not know the correct spelling of my parents' names, and I am also not certain as to how my name would have been spelled at the time my birth may have been registered. [Emphasis added]

[17] The Officer's failure to engage with this key evidence in the Applicant's May 2018 and January 2022 affidavits results in a critical gap in the Officer's reasoning. The Officer fails to grapple with the obvious question of how a search could be conducted at all, if the Applicant is not privy to essential information required for the search.

[18] Based on the totality of the evidence, the Officer's finding that the Applicant could hire an individual, or that he could personally contact various offices or churches, to search for the records is illogical. In the absence of the required information, attempting to conduct a search in the manner suggested would be a futile exercise or, as the Applicant's counsel aptly characterized it, "a wild goose chase".

[19] It was certainly open to the Officer to question the credibility of the Applicant's evidence, but this was not the case here. Rather, the Officer simply overlooked or ignored key evidence.

[20] Notably, the Officer makes no mention of the Canada Border Services Agency [CBSA]'s unsuccessful efforts to establish the Applicant's nationality. According to the evidence on the record, the CBSA was unable to obtain an Ivorian travel document in October 2008, when the Applicant was first detained, and was further unable to identify the Applicant as an Ivorian national in December 2016. This is relevant evidence bearing on the Officer's conclusion that there are still avenues left for the Applicant to pursue.

[21] Finally, I recognize that the Officer did assign "positive weight" to the Applicant's circumstances, finding that they were "sympathetic to the fact the applicant may be a de factor [sic] stateless person": Officer's Reasons, p 6. The assignment of positive weight, however, does not mean the Officer had the requisite attentiveness and consideration of the Applicant's situation as a whole to withstand the reasonableness standard: *Izumi v Canada (Citizenship and Immigration)*, 2023 FC 1 at para 38.

[22] The Officer determined that the Applicant's circumstances as a potential *de facto* stateless person did not solely justify an exemption under H&C grounds. Had the Officer properly engaged with and assessed the totality of the Applicant's evidence that he did not know essential information required to obtain travel documents, the Officer may have come to a different conclusion and decided that this factor alone justifies an H&C exemption.

[23] Based on the foregoing, there are serious shortcomings in the Officer's analysis of the Applicant's *de facto* stateless claim. The Officer's reasoning fails to exhibit the requisite attributes of justification, intelligibility, and transparency: *Vavilov* at para 98. The Officer's decision is set aside and the matter is remitted for determination so that a new officer can properly consider and assess all the evidence related to the Applicant's *de facto* stateless claim.

B. *Costs are not justified*

[24] In my view, costs are not justified in this case. The general rule is that costs are not awarded in immigration matters, unless there are "special reasons": Rule 22, *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [*Immigration Rules*].

[25] While the Immigration Rules do not define "special reasons", this Court has consistently characterized special reasons as setting a "high threshold" or a "high bar": *MFS v Canada (Citizenship and Immigration)*, 2023 FC 321 at para 4; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1643 at para 45 [*Singh*]; *Sisay Teka v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 314 at paras 41-42.

[26] The Court has found "special reasons" in instances where one party has acted in a manner that may be characterized as unfair, oppressive, improper, or actuated by bad faith: *Almuhtadi v Canada (Citizenship and Immigration)*, 2021 FC 712 at para 56; *Taghiyeva v Canada (Citizenship and Immigration)*, 2019 FC 1262 at paras 17-23.

[27] The Applicant argues that costs are justified here because of the "extraordinary history of this case and the Minister's decision to unreasonably oppose the present application despite the evident legal errors in the decision under review": Applicant's Further Memorandum of Fact and Law at para 70. I am not persuaded by either of these arguments.

[28] While I am sympathetic to the fact that the Applicant has brought four applications for leave and judicial review, each of the three previous applications was discontinued without costs as the Respondent agreed to redetermine the application. Justice Little's reasoning in *Singh* for refusing to award costs in similar circumstances is equally applicable here:

> [46] Applying this standard, I find no special reasons for a costs award in this case. The conduct of the respondent and the officer do not justify a costs award. The respondent resolved the first two applications for judicial review without a hearing in this Court. While I am sympathetic to the applicant's frustration to be faced with another redetermination, no specific facts or circumstances were argued to meet the high threshold in the case law governing costs awards in this context. Considering that case law, I do not believe that a third determination in the circumstances of this case constitutes such special reasons. [Emphasis added]

[29] Further, the fact that the Respondent was unsuccessful in this application does not justify an award of costs. I agree with Justice Gascon that, "special reasons do not arise merely because the Minister elected to exercise his statutory right to challenge an application for judicial review

of a decision and is not successful": *Shekhtman v Canada (Citizenship and Immigration)*, 2018 FC 964 at para 44.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is allowed.
2. The Officer's decision dated January 21, 2022 is set aside and the matter is remitted for determination by another officer.
3. No costs are awarded.
4. There is no question for certification.

"Anne M. Turley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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