Federal Court  Cour fédérale

Date: 20231013

Docket: IMM-934-21

Citation: 2023 FC 1363

Ottawa, Ontario, October 13, 2023

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

GRIFFITHS GYAMFI ADU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Griffiths Gyamfi Adu**,** seeks judicial review of a decision made by a Senior Immigration Officer (SIO) of Immigration, Refugees and Citizenship Canada (IRCC) on January 25, 2021, rejecting the Applicant's application for permanent resident status in Canada on Humanitarian and Compassionate (H&C) grounds pursuant to Section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] For the reasons that follow, I am allowing this application.

II. **Background**

[3] The Applicant is a citizen of Ghana. In August 2014, when the Applicant was seventeen years old, he entered Canada with his mother. The Applicant attended Niagara Christian Community of Schools in Fort Erie, Ontario, and received his Ontario Secondary School Diploma in June 2015.

[4] In January 2015, the Applicant was admitted to Seneca College to begin the Chemical Laboratory Technician program in September 2015. The Applicant's evidence indicates he withdrew on December 22, 2016.

[5] Since June 2018, the Applicant has been working as an operations technician in Vaughan, Ontario.

[6] On April 11, 2019, IRCC received the Applicant's application for permanent residence in Canada on H&C grounds.

[7] In a decision dated January 25, 2021, the Applicant's H&C application was refused.

III. **Decision under Review**

[8] The SIO reviewed the documents submitted, including the Applicant's written statement in which he shared his close relationship with his twenty-two year-old sister, Lily, who has developmental disabilities. The SIO also reviewed a letter of support in which Lily's primary care provider commented that she is aware that the Applicant accompanies Lily to her medical appointments and assists her with daily needs.

[9] With respect to Lily's welfare, the SIO recognized that the Applicant appears to be very close to his sister but noted that the extent of Lily's health issues was not clear and there is little to show that no one else, other than the Applicant, could help take care of her. The SIO further noted there have been several instances in which considerable distance existed between the Applicant and his sister, such as the time when the Applicant went away for schooling. The SIO noted that in this highly technological era there are many ways to keep in touch globally and it would not be unreasonable for the two of them to resume being connected technologically as well in the future.

[10] The Applicant has another sister in Canada, Patricia, who is a single mother of three. The SIO reviewed Patricia's letter where she indicated that she appreciates the Applicant's assistance especially with her children. However, the SIO noted that apart from this letter and the Applicant's written statements, no further corroborating evidence has been provided to indicate the Applicant's ties to Patricia's children.

[11] Regarding adverse country conditions, the Applicant expressed concerns about not being able to pursue a career in the fashion industry in Ghana or to attend such an institute. The SIO noted that apart from the Applicant's written statements, there is a lack of corroborating evidence.

[12] The Applicant also forwarded three general country condition documents to demonstrate a high rate of unemployment rates among youth in Ghana. The SIO noted that there is little evidence to demonstrate that the Applicant would be personally adversely impacted with the high rate of unemployment among youth in Ghana or by other major issues in the country such as unsafe prison conditions, violence against women and journalists. The SIO also noted that the Applicant continues to have immediate family members including siblings who continue to reside in Ghana and there is a lack of evidence to indicate they have faced issues with the unemployment rate.

[13] The SIO was not satisfied that sufficient evidence was provided concerning the care the Applicant provides to his sister Lily with developmental disabilities, his connection to his family in Canada, particularly his relationship with his older sister's children, and the adverse country conditions in Ghana. Therefore, the SIO rejected the Applicant's application for permanent resident status in Canada on H&C grounds pursuant to Section 25 of *IRPA*.

IV. **Issues and Standard of Review**

[14] The Applicant takes issue with the reasonableness of the decision. In particular, the Applicant submits that the SIO unreasonably assessed the evidence, ignored relevant evidence

and imposed an excessive and unreasonable burden on the Applicant while fettering their own discretion.

[15] The Applicant submits the SIO's remarks concerning the Applicant's sister's affidavit suggest that the SIO doubted the affiant's submissions, which amounted to a negative credibility finding. Therefore, it is the Applicant's point of view that his right to procedural fairness was breached, as he did not have the opportunity to respond to the concerns of the SIO.

[16] On the first issue the parties agree, as do I, that the standard of review is reasonableness. The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness*: Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. While this presumption is rebuttable, no exception to the presumption is present in this matter.

[17] A reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it: *Vavilov* at para 15. Overall, a reasonable decision is one that 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.

[18] The second issue raised by the Applicant is one of procedural fairness. The standard of review for this is whether the decision is fair in all the circumstances, which has been described

as akin to correctness review: See *Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Association of Refugee Lawyers v Canada (Immigration, Citizenship and Refugees)*, 2020 FCA 196 at para 35. See also: *Ganeswaran v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1797, at para 20-28.

V. **Analysis**

[19] For the following reasons, I find that the SIO unreasonably concluded that the Applicant's H&C application should be refused.

[20] The Respondent correctly noted that the onus is on the Applicant to establish an exemption from the usual immigration laws based on H&C factors, and provide sufficient probative and reliable evidence to support his claim: *Singh v Canada (Citizenship and Immigration)*, 2007 FC 1356 at para 32. However, I share the same view as the Applicant on this issue.

[21] Although it was acknowledged, it appears that in his assessment the SIO disregarded the Applicant's level of involvement in Lily's life and his contribution to the welfare and well-being of his sister on a daily basis. Rather, the SIO focused on the fact that the Applicant did not provide evidence that he is the only one who is able to assist Lily.

[22] It is trite law that a decision-maker need not refer to each piece of evidence as they are presumed to have considered all the evidence on the record: *Ruszo v Canada (Citizenship and*

Immigration), 2018 FC 943 at para 34. However, when directly relevant evidence goes to the heart of the decision-maker's concerns and it is not analyzed or considered by the SIO it is open to an inference that the SIO made an erroneous finding of fact without regard to the evidence or, contrary evidence was ignored: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration) (1998)*, 1998 CanLII 8667 (FC), 157 FTR (TD) at para 17; *Cezair v Canada (Citizenship and Immigration)*, 2018 FC 886 at para 27.

[23] In the case at bar, the SIO's concern as to why no one else can provide assistance to Lily is well established in the letters of support, as they speak to the nature of the assistance and the frequency – which would explain why the Applicant is the best fit for his sister's needs. The SIO mentioned generally that he had considered the letters of support provided, yet, the findings are not made in light of this evidence nor were the letters explicitly analyzed. As a result, it is not clear whether the SIO actually assessed the totality of the evidence.

[24] The SIO does not seem to have engaged with the family's personal circumstances. The Applicant provided a letter of support from his older sister Patricia, in which she indicated that the Applicant's presence is very much needed, as he is helping her with her children and chores, so she can focus on her work and provide a balanced life for her children. Consequently, it is only reasonable to consider that Patricia does not have the time to assist her sister Lily in the same way as the Applicant. This is also made clear by the other letters of support, as they indicate the extent of the Applicant's contribution to Lily's life – the Applicant is consistently assisting his sister Lily on a daily basis, and he is the one who is called whenever Lily needs additional assistance.

[25] The letters show that the SIO cannot assume or expect that Patricia will be able to assist her sister on a daily basis, due to her own personal circumstances. Therefore, it appears the SIO's decision was not made in light of the evidence presented as it is unclear who else could possibly assist Lily in the same way as the Applicant.

[26] If the Applicant had other members of his family in Canada that could possibly assist Lily, the SIO's decision would have been reasonable. By assessing the nature of the assistance, it becomes clear that a family member is the best fit for Lily's needs. For instance, the Nurse's letter indicates that Lily needs assistance when her sister Patricia is at work – it is reasonable to expect a family member to provide such assistance.

[27] The SIO stated there were many times the Applicant and his sister Lily were apart from one another, including the time when the Applicant first came to Canada. However, the SIO appears to have ignored the fact that Lily has family in Ghana, and therefore, while the Applicant was in Canada, Lily was with other siblings in Ghana. Consequently, the Applicant's assistance was not required.

[28] The Respondent correctly states that the Applicant had previously kept in touch with Lily when he was in Canada and she was in Ghana. However, the issue is not whether the Applicant can keep in touch with his sister, but rather the importance of his physical presence near his sister, in Canada, to physically assist her on a daily basis. The Applicant has been taking care of Lily ever since she arrived in Canada in 2016.

[29] Moreover, the SIO noted that the Applicant could keep in touch with Lily by being connected technologically. Here, the SIO was clearly not engaging with the evidence presented and ignored the nature of the assistance the Applicant has been and is providing to Lily. The nurse, the Vice-President of the high school as well as a Senior Pastor commented on the nature of the assistance the Applicant provides to his sister namely:

1. bringing her to all her appointments;
2. taking care of her at home when Patricia is at work;
3. taking her to school;
4. going to school whenever assistance is required;
5. accompanying Lily on every youth trip;
6. bringing her to church every Sunday.

[30] The above-noted type of assistance cannot be provided from overseas.

[31] In coming to the finding that these very personal services could be provided to Lily by the Applicant from overseas with the use of technology, it is questionable whether the SIO truly assessed and reflected upon the evidence and Lily's severe disabilities.

[32] The SIO mentioned generally that he had considered the letters of support. In my view, the letters establish why no one else can provide the same assistance to Lily as the Applicant has been providing to her, particularly from overseas. Although it was acknowledged, it seems as if in their assessment, the SIO disregarded the degree of the Applicant's involvement in Lily's life and the Applicant's contribution to the welfare and well-being of Lily on a daily basis.

[33] The SIO instead focused on the fact that the Applicant did not provide evidence that he is the only one who is able to assist Lily. In that respect, the SIO appears to have overlooked or undervalued the letters from Patricia, the nurse and the Vice-Principal of the high school outlining the many physical aspects of what the Applicant does for Lily as listed previously and the fact that Patricia is unable to attend to Lily when she is working.

[34] It is trite law that a decision-maker need not refer to each piece of evidence, as they are presumed to have considered all the evidence on the record: *Ruszo v Canada (Citizenship and Immigration)*, 2018 FC 943 at para 34 ; *Jama v Canada (PSEP)*, 2019 FC 1459 at para 17. However, when the evidence goes to the heart of the decision-maker's concerns, it becomes important to explicitly address it: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 1998 CanLII 8667 (FC) at para 17; *Cezair v Canada (Citizenship and Immigration*), 2018 FC 886 at para 27.

[35] Overall, although it is open to the SIO to arrive at such a conclusion, the findings must be made in light of the evidence. In addition, the evidence that goes to the heart of the SIO's concerns must be explicitly assessed by the SIO but it was not.

[36] I do not agree that the SIO breached the Applicant's right to procedural fairness. As the Respondent noted, the SIO did not make negative credibility findings regarding Patricia's support letter, so the SIO was not required to provide the Applicant with an opportunity to respond. In fact, the SIO's decision does not suggest that they doubted the account provided by

Patricia. Rather, the SIO concluded that insufficient evidence was provided; other than the Applicant's written statements, Patricia's letter of support contains little detail.

[37] I agree that the onus is on the Applicant to provide sufficient evidence to satisfy the decision-maker and advance his case: *Abolupe v Canada (Citizenship and Immigration)*, 2020 FC 90 at para 57. In the case at hand, the Applicant provided a support letter from his sister Patricia where she explains the Applicant's role in her family's life.

[38] The SIO has the duty to adequately assess the evidence put before them. The SIO disregarded the importance of the Applicant's presence in Patricia's life and as a father figure in her children's lives. Patricia stated in her letter that as a father figure she is convinced that "this is necessary for their development into mature rounded individuals. I believe that a separation would cause them serious emotional pain and it would be detrimental to their overall well-being". Although it is not explicitly formulated this way by either party in their memorandums, the "best interest of the children" was an issue before the SIO.

[39] The SIO disregarded or ignored this information. The SIO has the duty to adequately assess the evidence put before him. The SIO disregarded the importance of the Applicant's presence in his sister Patricia's life and her children's lives. It is well established in caselaw that "the officer must always be alert, alive and sensitive to the interests of the children": *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 SCC 2S.C.R 817 [*Baker*], at para 75; *Kanthasamy v Canada (Minister of Citizenship & Immigration)*, 2015 SCC 61 [*Kanthasamy*], at para 38; *Canada (Minister of Citizenship and Immigration) v Hawthorne*, 2002 FCA 475, at para

10. It is also true that the children's interests must be given substantial weight, but are not necessarily determinative of the application: *Rainholz v Canada (Minister of Citizenship & Immigration)*, 2021 FC 121 at para 88.

[40] It has clearly been established in *Kanthasamy* at paragraph 39 that:

> A decision under s. 25(1) will therefore be found to be unreasonable if the interests of children affected by the decision are not sufficiently considered: *Baker*, at para. 75. This means that decision-makers must do more than simply state that the interests of a child have been taken into account: *Hawthorne*, at para. 32. Those interests must be "well identified and defined" and examined "with a great deal of attention" in light of all the evidence*: Legault v. Canada (Minister of Citizenship & Immigration)*, [2002] 4 F.C. 358 (Fed. C.A.), at paras. 12 and 31; *Kolosovs v. Canada (Minister of Citizenship & Immigration)* 2008 FC 165; 323 FTR 181 (Eng.)(F.C.), at paras. 9-12.

[41] In *Kanguatjivi v Canada (Citizenship and Immigration)*, 2018 FC 327, at paragraph 56, the Chief Justice reiterated that:

> [. . .] In this regard, the evidence with respect to the child's interests must be examined with care and attention in light of all the evidence, and in the context of the child's personal circumstances: *Garraway v. Canada (Minister of Immigration, Refugees, and Citizenship)*, 2017 FC 286 (F.C.), at para 33 [*Garraway*]. However, once that has been done, it is up to the officer to determine what weight those interests should be given in the circumstances: *Legault*, above, at para 12. There is no “magic formula to be used by immigration officers in the exercise of their discretion”: *Hawthorne v. Canada (Minister of Citizenship & Immigration)*, 2002 FCA 475 (Fed. C.A.), at para 7 [*Hawthorne*]; see also *Kisana v. Canada (Minister of Citizenship & Immigration)*, 2009 FCA 189 (F.C.A.), at para 32 [*Kisana*] and *Garraway*, above, at paras 32-33.

[42] It is trite law that the Applicant must provide sufficient evidence to demonstrate that they will personally be affected by the adverse country conditions in Ghana. This has been established in *Kanthasamy* and reiterated in many cases: H&C applicants must be able to "show a link between the evidence of hardship and their individual situations. It is not enough just to point to hardship without establishing that link".

[43] Although I agree that it is not unreasonable for the SIO to request further corroborative evidence, it is my view that the Decision became unreasonable when the SIO omitted to address the best interests of Lily. Had the SIO considered that issue and yet concluded, due to insufficient evidence, that they were not convinced that Lily would face undeserved hardship, the Decision would have been reasonable.

[44] In *Lalane v Canada (Citizenship and Immigration)*, 2009 FC 6 at paragraph 1, Mr. Justice Shore noted:

> The allegation of risks made in an application for permanent residence on humanitarian and compassionate grounds (H&C) must relate to a particular risk that is personal to the applicant. The applicant has the burden of establishing a link between that evidence and his personal situation. Otherwise, every H&C application made by a national of a country with problems would have to be assessed positively, regardless of the individual's personal situation, and this is not the aim and objective of an H&C application. That conclusion would be an error in the exercise of the discretion provided for in section 25 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*) which is delegated to, *inter alia*, the Pre-removal Risk Assessment (PRRA) officer by the Minister (*Mathewa v. Canada (Minister of Citizenship & Immigration*), 2005 FC 914 (F.C.) at para. 10; see also chapter IP 5 of the Citizenship and Immigration Canada manual on inland processing of applications, entitled "Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds", which

> expressly provides that the risk identified in an H&C application must be a personalized risk (section 13, p. 34)…

VI. **Conclusion**

[45] For the reasons set out above, this application for judicial review is allowed and the Decision is set aside.

[46] This matter shall be returned for redetermination by another SIO.

JUDGMENT in IMM-934-21

THIS COURT'S JUDGMENT is that:

1. This application is allowed and the Decision is set aside.

2. The matter shall be returned for redetermination by another SIO.

3. There is no serious question of general importance for certification.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-934-21
STYLE OF CAUSE:	GRIFFITHS GYAMFI ADU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	MARCH 24, 2022
JUDGMENT AND REASONS:	ELLIOTT J.
DATED:	OCTOBER 13, 2023

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