Federal Court Cour fédérale

Date: 20231106

Docket: IMM-7480-22

Citation: 2023 FC 1478

Ottawa, Ontario, November 6, 2023

PRESENT: Madam Justice Pallotta

BETWEEN:

SOTONYE PEARL YOUNG ARNEY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Sotonye Pearl Young Arney, applies for judicial review of an immigration officer's (Officer) decision that refused her application for permanent residence made from within Canada. The Officer was not satisfied that humanitarian and compassionate (H&C) considerations warranted an exemption, under subsection 25(1) of the *Immigration and Refugee*

Protection Act, SC 2001, c 27 [*IRPA*], from the requirement that applications for permanent residence must be made from outside of Canada.

[2] Ms. Arney is a Nigerian citizen who came to Canada to study in 2012. She was forced to abandon her studies when her father's business ran into financial difficulties, and he could no longer provide financial support. Ms. Arney's study permit expired in March 2015. She filed an H&C application in September 2021, relying on her establishment in Canada and the economic hardship she would face in Nigeria.

[3] Ms. Arney submits the Officer unreasonably concluded that her circumstances did not warrant an exemption under section 25 of the *IRPA*. First, the Officer applied unreasonable standards, and used Ms. Arney's lack of status and work without authorization to undermine any positive weight afforded to her establishment and ties to Canada. Second, instead of assessing the actual hardship she would face by returning to Nigeria and uprooting her decade-long establishment in Canada, the Officer centred the analysis on factors that might mitigate hardship, and used the resilience and perseverance that were necessary to become self-sustaining in Canada against her.

[4] The respondent submits the Officer considered the evidence, weighed the H&C factors, and reasonably concluded that H&C considerations did not warrant an exemption in Ms. Arney's case. The respondent submits Ms. Arney's arguments do not establish a reviewable error, and instead ask the Court to draw different inferences from her evidence and reach a different conclusion than the Officer.

[5] For the reasons below, I find Ms. Arney has not established that the Officer's decision to refuse H&C relief was unreasonable. Accordingly, this application for judicial review must be dismissed.

II. **Issues and Standard of Review**

[6] The sole issue in this application is whether the Officer's decision is unreasonable based on the Officer's alleged errors in assessing whether Ms. Arney's circumstances warrant H&C relief.

[7] The parties agree that an officer's decision to refuse an H&C exemption is reviewable on a standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]; see also *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 42-45 [*Kanthasamy*]. The reasonableness standard of review is a deferential but robust form of review: *Vavilov* at paras 12-13, 75 and 85. The reviewing court does not ask what decision it would have made, attempt to ascertain the range of possible conclusions, conduct a new analysis, or seek to determine the correct solution to the problem: *Vavilov* at para 83. Instead, the reviewing court must focus on the decision actually made, including the reasoning process and the outcome, and consider whether the decision as a whole is transparent, intelligible, and justified in relation to the relevant factual and legal constraints that bear on the decision: *Vavilov* at paras 15, 83, 99. The party challenging the decision bears the burden of establishing sufficiently central or significant flaws to render the decision unreasonable: *Vavilov* at para 100.

A. *Establishment*

[8] As noted above, Ms. Arney submits the Officer unreasonably discounted her level of establishment and gave her lack of status in Canada and unauthorized employment exclusive weight. An H&C application becomes a hollow exercise if the usual laws and regulations are dispositive: *Aboubacar v Canada (Minister of Citizenship and Immigration)*, 2014 FC 714 at para 20 [*Aboubacar*]. As the purpose of an H&C application is to offer relief to those who have not complied with Canada's immigration scheme, the nature of any non-compliance and its relevance must be assessed against the applicant's H&C factors: *Mateos de la Luz v Canada (Citizenship and Immigration)*, 2022 FC 599 at para 28 [*Mateos*].

[9] Ms. Arney submits the Officer unreasonably expected positive evidence that she remained in Canada due to circumstances that were beyond her control. The failure to leave Canada, while a factor to be considered, cannot be conclusive: *Jaramillo Zaragoza v Canada (Citizenship and Immigration)*, 2020 FC 879 at paras 36-38 [*Jaramillo Zaragoza*].

[10] According to Ms. Arney, the Officer did not balance the evidence reasonably, or give proper consideration to all of the H&C factors in her case. The Officer did not give adequate consideration to the level of establishment Ms. Arney gained by studying and making important connections within her community, even though this occurred during the four years when she was in Canada with valid status: *Augusto v Canada (Citizenship and Immigration)*, 2022 FC 226 at paras 21-23, 43. Instead of examining whether the disruption to her establishment weighed in favour of granting the exemption, Ms. Arney contends the Officer took an incorrect, comparative

approach that assessed her establishment relative to others who are similarly placed: *Natesan v Canada (Citizenship and Immigration)*, 2022 FC 540 at paras 57-58. Ms. Arney submits the Officer imposed arbitrary thresholds and comparators in assessing her application, and contrary to *Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158 at paragraph 21, used the term "exceptional" as a threshold to meet; the respondent's position that the Officer used "exceptional" as a descriptor cannot be sustained because it is not supported by an affidavit from the Officer.

[11] Ms. Arney has not established that the Officer unreasonably assessed establishment.

[12] The Officer did not use "exceptional" as an elevated threshold. The word "exceptional" appears once in the decision, as part of the statement, "the purpose of invoking subsection 25(1) of the *IRPA* is not to compensate for the difference in a standard of living, but rather to allow for an exceptional response to a particular set of circumstances where humanitarian and compassionate grounds justify the granting of relief." In *Kanthasamy*, the Supreme Court of Canada used the word "exceptional" in a similar way to describe the nature of H&C relief: *Kanthasamy* at para 63. The Officer did not err by taking a comparative approach to establishment. The Officer considered Mr. Arney's evidence of establishment, found her establishment in Canada to be at a level that would be expected for someone in her circumstances, and afforded her establishment moderate weight in the assessment of whether H&C relief was warranted. The Officer did not impose a threshold to meet, or discount her establishment; rather, the Officer afforded a weight to this factor that was commensurate with the level of establishment Ms. Arney had achieved.

[13] The Officer also weighed Ms. Arney's contravention of Canadian immigration laws in the analysis of H&C considerations and, unlike the situation in *Mateos*, did not place undue emphasis on her negative immigration history. *Aboubacar* is also distinguishable. In addition to the fact that the officer in *Aboubacar* had applied the wrong test, the officer had treated non-compliance with the *IRPA* as dispositive of the H&C application, without properly considering whether an exception to the *IRPA* should be made. In Ms. Arney's case, the officer did not treat non-compliance with Canada's immigration laws as a dispositive of her H&C application.

[14] An officer is entitled to consider an applicant's negative immigration history in the assessment of H&C considerations: *Mateos* at para 28; *Jaramillo Zaragoza* at para 38. Here, the Officer did not unreasonably diminish Ms. Arney's level of establishment due to her lack of status in Canada, and the Officer properly considered the H&C factors in her case.

[15] I do not agree that the Officer unreasonably expected evidence establishing that Ms. Arney remained in Canada due to circumstances that were beyond her control. The Officer noted the lack of evidence that Ms. Arney attempted to regularize her status or remained in Canada for reasons beyond her control as one factor that weighed in the balance. As the respondent correctly notes, the Officer was entitled to consider whether or not the circumstances that led Ms. Arney to remain in Canada without status were beyond her control: *Jaramillo Zaragoza* at para 38.

B. *Hardship*

[16] Ms. Arney submits the Officer unreasonably used her adaptability and resilience against her, finding that the experience, education, and skills she has acquired would assist her in obtaining employment in Nigeria: *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1142 at para 37; *Vincent v Canada (Citizenship and Immigration)*, 2022 FC 1022 at para 26. She submits the Officer's assessment was inappropriately focused on whether it would be impossible to mitigate hardship, rather than hardship itself.

[17] Also, Ms. Arney contends the Officer made unsupported and unintelligible findings. The Officer found that Ms. Arney would be able to find employment in Nigeria when she had been away for more than a decade and there was no evidence she had ever worked in Nigeria. The Officer also found Ms. Arney would be able to rely on her family for support when there was evidence that she was sending money in small amounts to assist her family in Nigeria. Ms. Arney submits the Officer's analysis of economic hardship was unreasonable in view of the requirement to assess hardship as a whole and with a measure of sensitivity for her specific circumstances, including the financial difficulties that arose while in Canada. The Officer's recognition of her difficulties in Canada and her desire to continue her education in Canada, while failing to appreciate the difficulty of securing employment in Nigeria, was unintelligible.

[18] Lastly, Ms. Arney argues the Officer failed to make a global assessment, and the decision reflects a segmented approach that did not consider her circumstances as whole.

[19] Ms. Arney has not established that the Officer's hardship assessment was unreasonable.

[20] The Officer noted the hardship Ms. Arney alleged—that she would be returning to unstable employment which would expose her to poverty and economic hardship, and that her mother and father depend on her for financial assistance. However, the Officer found there was "little evidence in the H&C materials that demonstrates the applicant would not be able to find employment in Nigeria". I do not agree with Ms. Arney that the Officer used her adaptability and resilience against her, or unreasonably focused on mitigation of hardship instead of the actual hardship she would face by uprooting her establishment in Canada. Rather, the Officer assessed whether Ms. Arney was likely to face the hardship she alleged, and concluded there was insufficient evidence to establish that she would. The Officer engaged with the evidence and demonstrated an internally coherent and rational chain of analysis in assessing hardship.

[21] I disagree that the Officer unreasonably found Ms. Arney could rely on financial support from her family. To the contrary, the Officer acknowledged the family's circumstances, and found that Ms. Arney's work experience and skills would assist her to obtain employment "to support herself and assist her family". The challenged finding about family support, which was made in the context of assessing Ms. Arney's ability to re-integrate or re-establish herself into her community, was that there was little evidence in the H&C materials to demonstrate that Ms. Arney's mother, father, and extended family in Nigeria would not support her and assist her to become re-established in the community.

[22] Ms. Arney has not established that the Officer failed to consider her circumstances as a whole, in a global assessment. In support of this allegation, Ms. Arney states the Officer relied on multiple findings that failed to account for important evidence in the record, and the Officer failed to consider the associated hardship of uprooting her life to return to her country of origin. I have addressed these points above. I find no error in the Officer's factual findings. The Officer considered the factors that Ms. Arney raised to support her H&C application, including the hardship of uprooting her life in Canada, as well as an additional factor she had not raised, namely, the best interests of two children Ms. Arney had looked after. The Officer concluded that a section 25(1) exemption was not warranted based on Ms. Arney's circumstances, and Ms. Arney has not established that the Officer erred by failing to consider all of her circumstances to reach that conclusion.

III. **Conclusion**

[23] This application for judicial review is dismissed. Ms. Arney has not established a reviewable error that warrants setting aside the Officer's decision. Ms. Arney disagrees with the Officer's findings and weighing of the H&C factors; however, officers are entitled deference in their weighing of H&C factors.

[24] No question for certification arises in this case.

JUDGMENT in IMM-7480-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7480-22
STYLE OF CAUSE:	SOTONYE PEARL YOUNG ARNEY v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	MAY 23, 2023
JUDGMENT AND REASONS:	PALLOTTA J.
DATED:	NOVEMBER 6, 2023

APPEARANCES:

Athena Portokalidis	FOR THE APPLICANT
Leanne Briscoe	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bellissimo Law Group PC Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT