

Federal Court



Cour fédérale

Date: 20231211

Docket: IMM-12868-22

Citation: 2023 FC 1670

Ottawa, Ontario, December 11, 2023

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

NKEM JOMO JOYETTE

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 a Senior Immigration Officer [Officer] dated November 15, 2022 [Decision] denying his application for permanent residence on humanitarian and compassionate [H&C] grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] I am allowing the application because the Officer's finding that there was insufficient evidence that the Applicant will face hardship due to his sexuality if he is returned to Saint Vincent and the Grenadines [St. Vincent] is unreasonable. The Officer failed to engage with the evidence before them and explain why there was little evidence to "assuage" the findings of the Refugee Protection Division [RPD]. Given this determination, it is unnecessary for me to address the other legal issues raised by the Applicant.

II. Background

[3] The Applicant is a citizen of St. Vincent who entered Canada as a visitor on July 11, 2002. The Applicant submitted his first H&C application on October 28, 2016. That application was refused on December 6, 2017.

[4] On January 4, 2019, the RPD refused the Applicant's refugee claim. The Refugee Appeal Division [RAD] dismissed the Applicant's appeal and upheld the RPD's determination on August 26, 2020.

[5] On February 17, 2022, the Applicant submitted the H&C application under review. The Applicant based his application on the following factors: his family ties in Canada, his establishment in Canada, the best interests of his nieces and nephews, and the hardship he would face as a bisexual man upon removal to St. Vincent.

[6] By letter dated November 15, 2022, the Officer refused the Applicant's H&C application because the factors cited in his application were deemed insufficient to warrant an exemption on H&C grounds.

[7] With respect to the Applicant's claim that he felt unsafe in St. Vincent due to his sexual orientation, the Officer referred to the Applicant's refugee claim and the RPD decision:

"After a review of all the information, including the claimant's testimony, the Minister's evidence and Counsel's submissions, I find on a balance of probabilities, that the claimant has not established his identity as a bisexual nor that he was perceived as such in St. Vincent. As I do not find the claimant is bisexual, no other grounds exist in the claim to consider." There is little evidence before me to assuage the RPD's findings. There is insufficient evidence before [me] to conclude the client will endure hardship due to his sexuality. I therefore award this consideration little weight [emphasis in original].

Officer's Reasons for Decision dated November 15, 2022 at p 5
[Officer's Reasons]

III. Issue and Standard of Review

[8] I find that the determinative issue is the Officer's assessment of the Applicant's claim of hardship based on his sexual orientation.

[9] There is no dispute that the applicable standard of review is reasonableness. 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": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 95 [Vavilov]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8. To withstand scrutiny, a decision must exhibit "the hallmarks of reasonableness – justification, transparency and intelligibility": *Vavilov* at para 99.

IV. Analysis

[10] An H&C exemption under subsection 25(1) of the *IRPA* is an exceptional and highly discretionary remedy: *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 94; *Miyir v Canada (Citizenship and Immigration)* 2018 FC 73 at para 12 [*Miyir*]; *Nguyen v Canada (Citizenship and Immigration)*, 2017 FC 27 at para 29. While significant deference is owed to an H&C officer, “deference is not a blank cheque and there must be reasoned reasons to ground a justified outcome”: *Miyir* at para 13.

[11] In my view, the Officer’s conclusion that there was insufficient evidence to establish hardship due to sexual orientation is unreasonable. More specifically, the Officer’s insufficiency finding was not supported by any reasons that are responsive to the evidence before them.

[12] In support of his H&C application, the Applicant submitted a lengthy personal statement addressing the violence and threats he faced in St. Vincent based on his sexual orientation. The Applicant explained that based on these past experiences, he was not open about his sexuality. Furthermore, the Applicant explained why he had difficulty responding to questions about his sexual orientation before the RPD, stating that: “[w]hen I was at the refugee hearing it was the first actual time I ha[d] been asked questions about my sexual identity and I was very unsure how to respond to these personal questions and it made me feel very uncomfortable and anxious”. He stated that although it was difficult for him to discuss the past incidents, he would address them in his statement in support of his H&C application.

[13] This Court has held that it is reasonable for an H&C officer to defer to the RPD's credibility findings, where the evidence merely corroborates allegations already found not credible. However, in those cases, the officers analyzed the applicants' evidence and explained why there was an insufficient evidentiary basis before them to overcome the RPD's adverse credibility findings: *Bhujel v Canada (Citizenship and Immigration)*, 2023 FC 828 at para 24; *Montes Torres v Canada (Citizenship and Immigration)*, 2023 FC 382 at para 13; *Bekauri v Canada (Citizenship and Immigration)*, 2023 FC 94 at paras 5, 19; *Oladekoye v Canada (Citizenship and Immigration)*, 2022 FC 449 at para 21; *Osun v Canada (Citizenship and Immigration)*, 2020 FC 295 at para 12; *Shah v Canada (Citizenship and Immigration)*, 2018 FC 537 at para 54; *Miyir* at para 26.

[14] In contrast, in this case, the Officer did not engage with the Applicant's evidence, but rather baldly asserted that there was "little evidence before [them] to assuage the RPD's findings" and "insufficient evidence" to conclude that the Applicant would endure any hardship due to his sexuality: Officer's Reasons at p 5. The Officer never explains where the evidence falls short.

[15] While an administrative decision-maker's reasons are not to be held to a standard of perfection, their reasons must "justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion": *Vavilov* at para 96. It is not for the Court to "fill in the blanks".

[16] An H&C officer is entitled to reject evidence, but must explain why they are rejecting it. It was incumbent on the Officer to assess and consider the evidence and provide intelligible, justified,

and transparent reasons for why the evidence was insufficient to depart from the RPD's credibility determination.

[17] The Respondent asserts that the Applicant's personal statement is a "self-serving document" with no probative value and that no corroborating evidence was adduced by the Applicant. However, the Officer did not make these findings and the Respondent cannot now offer after-the-fact explanations to supplement the Officer's reasons: *Vavilov* at para 97; *Ali v Canada (Citizenship and Immigration)*, 2023 FC 671 at para 29; *Montero v Canada (Citizenship and Immigration)*, 2021 FC 776 at para 30.

[18] Based on the foregoing, the Officer's Decision is not reasonable. The Decision is set aside and the matter is remitted to another officer to determine the application afresh.

[19] The parties did not propose a certified question and I agree that none arises.

JUDGMENT in IMM-12868-22

THIS COURT'S JUDGMENT is that:

1. The application is allowed.
2. The Officer's Decision dated November 15, 2022 is set aside and the matter is remitted for determination by another officer.
3. There is no question for certification.

"Anne M. Turley"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12868-22

STYLE OF CAUSE: NKEM JOMO JOYETTE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 6, 2023

**JUDGMENT AND REASONS
FOR JUDGMENT:** TURLEY J.

DATED: DECEMBER 11, 2023

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