Federal Court  Cour fédérale

Date: 20240117

Docket: IMM-727-22

Citation: 2024 FC 65

Ottawa, Ontario, January 17, 2024

PRESENT: Mr. Justice Norris

BETWEEN:

MUBARAKA ARIF

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a 42-year-old citizen of Pakistan. She first entered Canada in August 2013 as a permanent resident under the sponsorship of her then-husband. The applicant returned to Pakistan the next month and remained there until September 2015. In the meantime, in December 2014 the Ontario Superior Court of Justice granted the applicant's husband's application for a divorce. As well, the applicant's husband wrote to Citizenship and Immigration

Canada in August 2013 stating that, while he had sponsored his wife in good faith, he now wished to withdraw his sponsorship because she had no intention of living with him as his wife.

[2] As a result of her husband's complaint, the applicant was eventually referred to the Immigration Division (ID) of the Immigration and Refugee Board of Canada (IRB) for an admissibility hearing. In 2017, the ID determined that the applicant is inadmissible to Canada due to misrepresentation on the basis that her marriage was not genuine. The Immigration Appeal Division (IAD) of the IRB dismissed the applicant's appeal in June 2019, concluding that the exclusion order issued by the ID was legally valid and that special relief was not warranted. Like the ID, the IAD found that the applicant was not a credible witness. The IAD also found that the applicant was entirely lacking in remorse for her actions. The applicant did not challenge the IAD's decision.

[3] The applicant applied for a pre-removal risk assessment (PRRA) but the application was refused in April 2020. That decision was upheld on judicial review: see *Arif v Canada (Citizenship and Immigration)*, 2021 FC 1048.

[4] In October 2020, the applicant applied for permanent residence in Canada on humanitarian and compassionate (H&C) grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). She contended that relief was warranted on the basis of her establishment in Canada, which included her steady employment, her friendships in Canada, and the fact that she is in a long-term romantic relationship with a Canadian citizen who resides here. The applicant also relied on the hardship she alleged she would suffer in Pakistan

stemming from, among other things, the stigma she would bear as a single divorced woman and the fact that her parents, who are devout Christians, had disowned her because of her divorce. The evidence the applicant relied on in the latter regard was largely the same as she had presented in support of her PRRA application. Despite the findings of the ID and the IAD regarding the applicant's marriage, the applicant did not present any evidence to suggest that she accepted these findings or was remorseful for her actions.

[5] In a decision dated May 5, 2021, a Senior Immigration Officer concluded that H&C relief was not warranted. The officer found that, while some positive factors were present, they were insufficient to overcome the negative considerations, "mainly the applicant's misrepresentation and lack of remorse."

[6] The applicant now applies for judicial review of this decision under subsection 72(1) of the *IRPA*. She submits that the decision is unreasonable. For the reasons that follow, I do not agree. This application must, therefore, be dismissed.

[7] The parties agree, as do I, that the officer's decision is to be reviewed on a reasonableness standard (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44).

[8] 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 (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from a reviewing court (*ibid.*). The onus is

on the applicant to demonstrate that the officer's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, at para 100).

[9] When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov*, at para 125). Nor is it the role of the reviewing court to reweigh or reassess the factors the officer considered in determining whether H&C relief was warranted. Given the discretionary nature of H&C decisions, generally the decision maker's determinations will be accorded a considerable degree of deference by a reviewing court (*Williams v Canada (Citizenship and Immigration)*, 2016 FC 1303 at para 4).

[10] Before turning to the applicant's grounds for review, I note that the applicant's affidavit supporting the present application includes information that was not before the H&C officer. The general rule is that only material that was before the original decision maker may be considered on an application for judicial review (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 17-20; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 13-28; *Sharma v Canada (Attorney General)*, 2018 FCA 48 at paras 7-9; and *Andrews v Public Service Alliance of Canada*, 2022 FCA 159 at para 18). While this general rule admits of exceptions, none of the recognized exceptions apply here. Accordingly, I will disregard any information in the record that was not before the H&C officer.

[11] The applicant submits that the officer's assessment of her establishment in Canada is unreasonable. Contrary to the applicant's submission, the officer did not assess her establishment through a hardship lens. The officer found that the applicant's establishment was entitled to some positive weight. The applicant submits that it was unreasonable for the officer not to have given this factor more weight but she has not identified any flaws in the officer's assessment that would warrant intervention. In essence, her argument is simply an invitation for me to reweigh this factor and to come to a more favourable conclusion than the officer did. As stated above, this is not my role on judicial review under the reasonableness standard. The same holds true with respect to the applicant's contention that the officer placed undue weight on the applicant's misrepresentation and lack of remorse as negative factors.

[12] The applicant also submits that the officer misapprehended the evidence relating to her experiences in Pakistan when she returned to visit from time to time and took her testimony on this issue before the IAD out of context. According to the applicant, this calls into question the reasonableness of the officer's assessment of the hardship she alleged she would face if she were required to return to Pakistan.

[13] I am unable to agree. On the record before the officer, it was open to the officer to conclude that the applicant had presented insufficient evidence to support her claim that she would suffer hardship in Pakistan, in particular due to her alleged estrangement from her family because of her divorce. The officer's interpretation of the affidavit from the applicant's mother is not unreasonable. As well, the officer reasonably relied on the applicant's testimony before the IAD that, when she returned to Pakistan between October 2016 and March 2017, she did not

experience any difficulties despite the fact that her family knew she was divorced. In its 2019 decision, the IAD had expressly relied on this testimony in concluding that special relief was not warranted. When she subsequently sought H&C relief, the applicant did not call the IAD's reliance on this testimony into question in any way. Against this backdrop, it was open to the H&C officer to conclude that the narrative the applicant was relying on in support of her application was inconsistent with accounts she had given previously. While not determinative, it also bears noting that similar findings by the PRRA officer were upheld as reasonable on judicial review: see *Arif*, at paras 27-30.

[14] In sum, the H&C officer provided transparent and intelligible reasons explaining why relief was not warranted in the applicant's case. While the applicant is understandably disappointed with this decision, she has not established any basis on which to interfere with the officer's assessment of the evidence or ultimate conclusion.

[15] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-727-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Mayank Bhasin	FOR THE APPLICANT
Nicole Rahaman	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jain Immigration Law Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT