Federal Court  Cour fédérale

Date: 20240222

Docket: IMM-7687-22

Citation: 2024 FC 294

Ottawa, Ontario, February 22, 2024

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

LYDIA RUKHABER
LEO RUKHABER

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Lydia Rukhaber, the Principal Applicant [PA] and Leo Rukhaber, the Associate Applicant [AA] [together, Applicants], seek judicial review of a July 27, 2022 decision [Decision] of a Senior Immigration Officer [Officer] refusing their application for permanent residence on humanitarian and compassionate [H&C] grounds.

[2] The application is dismissed. The Decision is reasonable.

II. Background

[3] The PA and AA, aged 67 and 72 years old respectively, are retired and naturalized German citizens. They were born in Kazakhstan and were able to immigrate to Germany in 1991 after the dissolution of the Soviet Union. The Applicants have been living in Canada as visitors since October 2020. The Applicants' authorization to live in Canada expired on April 10, 2022, upon which they submitted their H&C application.

[4] The Applicants are parents to three naturalized Canadian adult children and grandparents to 19 grandchildren, all of whom live in Canada. The Applicants reside with each of their children at various times and help them as the need arises.

[5] Although the Applicants could visit Canada from Germany, it is financially difficult given their retirement and insufficient income for frequent trips. The Applicants submit that returning to Germany would mean seeing the family in Canada once every five to ten years. The oldest child says that the Applicants need the support from their family in Canada as they age. The family cannot visit the Applicants in Germany often.

III. The Decision

[6] The Officer assessed various considerations, including establishment in Canada, financial considerations, age and health considerations, family ties in Canada, family separation considerations, and best interests of the grandchildren.

[7] The Officer noted the short duration of their time in Canada, which was two years, compared to their time in Germany. The Officer noted that they chose not to assimilate into German culture and that there was no evidence that they would experience any difficulties if they were to return to Germany. This factor was given little positive weight.

[8] Regarding financial considerations, the Officer acknowledged that the Applicants were retired but that it was unclear if they were financially independent. The Applicants stated that they sold their property in Germany and that their children provide them with necessities and money. There was little evidence to suggest the Applicants' three children would not continue that support or that the Applicants would be destitute in Germany. This factor was given little weight.

[9] The Officer then noted that there was no evidence that the Applicants would face difficulties related to travel or their daily living due to their ages. There was little evidence of medical or psychological issues or that they did not have the ability to live on their own. The Applicants were living on their own before coming to Canada. This factor was given little weight.

[10] Regarding family ties in Canada, the Officer noted that the Applicants were living with one of their children but they stayed with their other children from time to time. As all of their children and grandchildren were living in Canada, the Officer granted considerable positive weight to their family ties in Canada.

[11] In considering family separation, the Officer focused on the grandchildren. There was little evidence that the children or grandchildren could not try to sponsor the Applicants in the future or that the Applicants could not continue to visit Canada during such sponsorship application processes. While the Applicants would feel lonely and goalless living in Germany, they did not provide supportive corroborative evidence to explain why temporary resident status does not meet their needs. The Officer acknowledged that travelling between Canada and Germany can be costly and time consuming but that was not an exceptional circumstance. The Officer granted little weight to this factor.

[12] Lastly, regarding best interests of the children, the Officer acknowledged the assistance the Applicants provide to their children and that they have loving relationships with their grandchildren. However, there was little corroborative evidence submitted to suggest how the grandchildren would be affected if the Applicants were to return to Germany. The Applicants did not come to Canada until 2020, by which time 18 of their grandchildren were already born. There was no evidence that their children were having difficulties raising their own children and, if the Applicants were to return to Germany, the grandchildren would continue to have all the benefits associated with Canadian citizenship. The Officer acknowledged that it is difficult to suggest that removing the Applicants would be in the best interests of the grandchildren and granted positive weight to this factor. However, the Officer noted that this factor was not determinative.

[13] The Officer concluded that, having weighed the Applicants' submissions globally and cumulatively, no one factor or combination of factors was determinative of warranting an H&C

exemption. The Officer was not satisfied, given the evidence on file and the particular circumstances of the Applicants, that an exemption was warranted.

IV. Issues and Standard of Review

[14] The sole issue raised by the Applicants is whether the Decision is reasonable. This issue raises the following sub-issues:

(1) Did the Officer apply an elevated standard?

(2) Did the Officer provide adequate reasons?

[15] The merits of the Decision is subject to a reasonableness review. None of the exceptions outlined in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] arise in this matter (at paras 16-17). A reasonableness review requires the Court to examine outcome of the decision and its underlying rational to assess whether the decision, as a whole, bears the hallmarks of reasonableness—intelligibility, transparency, and justification—and whether it are justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at paras 87, 99). If the reasons of the decision-maker allow a reviewing Court to understand why the decision was made, and determine whether it falls within the range of acceptable outcomes, the decision will be reasonable (*Vavilov* at paras 85-86).

V. Analysis

A. *Did the Officer apply an elevated standard?*

(1) Applicants' Position

[16] The Officer erroneously conducted an analysis on the "exceptional threshold", which was not accepted by the majority in the Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*]. The Officer required the Applicants to demonstrate that there were exceptional circumstances that warranted an exemption.

[17] A decision under section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 is "an important decision that affects in a fundamental manner the future of individuals' lives" (*Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at para 15). The root of a section 25 determination is compassion and shared human experience (*Dela Cruz Ignacio v Canada (Citizenship and Immigration)*, 2022 FC 953 at para 27 [*Dela Cruz*]). The H&C analysis must be conducted to the standard of *Kanthasamy* which is "exciting in a reasonable person in a civilized community a desire to relieve the misfortunes of another, provided those misfortunes justify the granting of relief" (*Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158 at para 21). H&C discretion is an exception but it does not require that an applicant be exceptional or that there are exceptional, extraordinary circumstances. An officer errs when importing a standard of "exceptional" or "extraordinary" that does not comply with the standard from *Kanthasamy* (*Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158 at para 21).

(2) Respondent's Position

[18] The Officer applied the correct standard in *Kanthasamy*. The Officer's use of the word "exceptional" does not necessarily indicate an elevated standard was applied. When reading the Officer's use of the word "exceptional" in context, the Officer was merely indicating that the Officer considered expending time and money travelling between Canada and Germany worth of little weight. The analysis as a whole demonstrates that the Officer approached the H&C analysis with empathy, particularly in relation to the Applicants' family ties in Canada.

(3) Conclusion

[19] First, the Officer's use of the word "exceptional" was only in relation to the family separation consideration. There is nothing to suggest that the Officer has applied this standard to the entirety of the analysis.

[20] Second, the use of the word "exceptional" does not necessarily indicate that the Officer did not comply with the standard in *Kanthasamy*. At various points in the Decision, the Officer demonstrates the reasoning and compassion expected in *Kanthasamy*, stating:

> I acknowledge they stated they were unable to fully assimilate in Germany, however, it appears Lydia and Leo chose to not completely assimilate themselves into the German culture. There is little evidence submitted to suggest they would experience any difficulties if they were to return to Germany.
>
> …
>
> There is little evidence provided to suggest they would not be able to return to Germany solely based on their age. There is also little evidence provided to suggest they are no longer fit for travel or experiences difficulties while travelling. There is little evidence submitted to suggest they would require support in their activities of daily living.

> …
>
> I acknowledge it is unfortunate that Canada cannot offer permanent residents [*sic*] to every parents and grandparents of citizens and permanent residents of Canada.
>
> …
>
> I acknowledge Lydia and Leo stated they feel lonely and goalless to live in Germany. I accept that family is important to them and they love living with their children and grandchildren.

[21] The above passages demonstrate that the Officer put themself in the shoes of the Applicants, as emphasized in *Dela Cruz*, and considered the degree of hardship, and how it may excite in a reasonable person a desire to relieve the misfortunes of another, as required in *Kanthasamy*.

[22] Although the Officer's use of the words "exceptional circumstances" in one instance is unfortunate, it does not result in an error of law. When reading the Decision as a whole, the Officer clearly applied the standard prescribed in *Kanthasamy*.

B. *Did the Officer provide adequate reasons?*

(1) Applicants' Position

[23] The Officer merely listed the factors, categorized them as being positive, and failed to provide a rational analysis and explanation to explain why these central features to the application are not determinative (*Vavilov* at para 81).

[24] The Officer failed to provide responsive justification as to why other factors were weighed more heavily than the best interests of the grandchildren were. By doing so, the Officer failed to clearly define the grandchildren's interests and examine them in light of the evidence (*Kanthasamy* at para 39). The Officer also failed to conduct the level of analysis required to be alive, alert, and sensitive to the child's best interests (*Kolosovs v Canada (Citizenship and Immigration)*, 2008 FC 165 at paras 9-12).

(2) Respondent's Position

[25] The Officer's reasons were adequate as a whole and the fact that the Officer granted positive weight to some factors does not necessitate a positive outcome.

[26] The Applicants are asking this Court to re-weigh the evidence but this Court ought not to interfere with an Officer's weighing of the evidence (*Vavilov* at para 125; *Braud v Canada (Citizenship and Immigration)*, 2020 FC 132 at para 52 [*Braud*]).

[27] Lastly, the Officer reasonably considered the best interests of the grandchildren. The Court has held that without more, the separation between a child and an extended family member such as a grandparent is not sufficient to warrant H&C relief (*Li v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1235 at paras 35-36).

(3) Conclusion

[28] The Officer provided adequate reasons as to why the application was refused. H&C considerations are highly discretionary, and it is not up to this Court to consider how each factor was weighed. As stated in *Braud*:

> [52] Decisions made under subsection 25(1) of the IRPA are highly discretionary, and a reviewing court should not find that an immigration officer's decision is unreasonable simply because it does not like the outcome and would have decided otherwise. Even in situations where the factual context of an application may arouse some sympathy, the reviewing court must resist the temptation to rule on the application for judicial review on the basis of the conclusion that it could have itself drawn had it occupied the place of the decision maker. In particular, considerable deference is owed to the weight given to the assessment of H&C factors made by an officer. As long as all of the evidence has been properly examined, the question of the weight remains entirely within the expertise of the immigration officer.
>
> [Citations omitted, emphasis added.]

[29] After reviewing the record, including the H&C submissions, I do not find that the Officer erred in considering the evidence. While the PA provides a declaration explaining the Applicants' reasons for seeking permanent residence on H&C grounds, the application consists only of background information about the Applicants and their children, heartfelt letters from the grandchildren, their children and a daughter and son-in-law, and letters of support. Based on the record, there is a basis for the Officer's insufficiency findings. In my view, the Officer engaged with the submissions and reasonably concluded that the evidence was insufficient to warrant an exemption on H&C considerations.

[30] Applicants have an obligation to put their best foot forward (*Bradshaw v Canada (Minister of Public Safety and Emergency Preparedness)*, 2018 FC 632 at paras 76-83). The application before the Officer was lacking in several respects, as indicated by the Officer in the Decision. I see no reason to disturb the Officer's Decision.

VI. Conclusion

[31] The application for judicial review is dismissed.

[32] The parties did not raise a question for certification and I agree that none arises.

JUDGMENT in IMM-7687-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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