Federal Court Cour fédérale

Date: 20240711

Docket: IMM-10582-22

Citation: 2024 FC 1098

Ottawa, Ontario, July 11, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

RAKESH KUMAR SOHPAUL

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Rakesh Kumar Sohpaul [Applicant], seeks judicial review of a decision by a representative of the Minister of Immigration, Refugees and Citizenship Canada [Officer] dated October 13, 2022 refusing an application for humanitarian and compassionate relief [H&C] rendered pursuant to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27

[IRPA], on the basis that the Applicant failed to demonstrate sufficient establishment, hardship, or impact on the best interests of the child that would warrant extraordinary relief [Decision].

[2] For the reasons that follow, this application for judicial review is dismissed. It was not unreasonable for the Officer to find the Applicant had not met the onus to prove an exception to the ordinary immigration process, based on the record before them.

II. Background

[3] The Applicant's wife was a co-applicant on the H&C application as a dependent spouse. She is not a named applicant in this application for judicial review. The Officer's Decision refers to the Applicant as "the principal applicant," as well as "the applicants" collectively. For ease of reference, I will refer to the Applicant and to the couple in these Reasons.

[4] The Applicant, a 56-year-old citizen of India, first came to Canada on June 12, 2016, with his wife under a multiple-entry temporary resident visa. This visa was valid until August 25, 2020. During this period, the couple made annual visits to Canada, primarily to spend time with their family, including their children and grandchildren who reside in Brampton, Ontario.

[5] On January 26, 2020, the couple entered Canada once again, with authorization to stay until July 26, 2020.

[6] Following the expiry of their authorized stay, the couple sought advice from an immigration consultant to remain in Canada legally. They applied for a "Super Visa" but the

application was rejected on January 31, 2022, because such applications must be submitted from outside Canada.

[7] The couple attempted to extend their visitor status, but their application was refused on August 29, 2022, because it was submitted beyond the regulatory 90-day period.

[8] Throughout this time, the couple remained in Canada without legal status.

[9] On May 10, 2022, they applied for permanent residence on H&C grounds, citing their deep establishment in Canada, the best interests of their grandson, and other factors such as the hardships they would face if they returned to India. They argued that their continuous residence in Canada since 2016, their close family bonds, and their role in providing essential support to their family, especially in caring for their grandson, justified their stay.

III. Decision under review

[10] The Officer acknowledged that the couple had lived in Canada continuously for approximately 2 years and 10 months, accumulating a total of about 5 years and 10 months of residence through multiple visits since 2016. The Officer considered establishment in Canada to be moderate and noted that they had been without legal status since July 26, 2020. The Officer emphasized that the responsibility for their unauthorized stay rested with the couple, who had not followed correct procedures despite being advised by an immigration consultant.

[11] The Officer also examined the Applicant’s family ties and support in Canada, including the presence of their children and grandchildren in Brampton, Ontario. While recognizing the emotional and practical support the couple provided to their family, particularly their role in caring for their grandson, the Officer found that the primary caregiving responsibilities lay with the child's parents.

[12] The Officer found that the documentation did not sufficiently demonstrate that the child's well-being would be compromised if the couple returned to India. Additionally, the Officer highlighted that relationships are not bound by geography and that modern technology could help maintain family connections even if they were not physically present in Canada.

[13] The Officer also considered the Applicant’s claim that they would face significant hardship if they returned to India. However, the evidence provided did not establish that the couple would be unable to reintegrate into their home country, where they had spent the majority of their lives and had some remaining family ties. The Officer noted that the couple had valid passports and no mobility or health issues preventing them from travelling. Moreover, the Officer mentioned that the applicants had some professional skills and business experience, which could potentially aid their reintegration and employment prospects in India.

[14] The Officer also weighed the best interests of the child, specifically the grandson. While the presence of the couple was beneficial to their family, the Officer found that this factor alone did not justify granting H&C relief. The legal and primary responsibility for the child's care rested with his parents, who could continue to provide a stable environment.

[15] The Officer concluded that the H&C considerations, including family ties, potential hardships, and the best interests of the child, did not collectively meet the threshold for an exemption under section 25(1) of the IRPA. Therefore, the application for permanent residence on H&C grounds was refused.

IV. Issues and Standard of Review

[16] At its core, the Applicant essentially argues the Officer did not appropriately weigh evidence. The Applicant alleges three issues:

a) Did the Officer err in basing findings on extrinsic evidence?

b) Did the Officer err in basing findings on irrelevant considerations?

c) Did the Officer err in basing findings on speculation?

[17] The parties seem to agree, as do I, that the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]). To avoid intervention on judicial review, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99). A reasonable decision will always depend on the constraints imposed by the legal and factual context of the particular decision under review (*Vavilov* at para 90). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125-126). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

[18] The Respondent highlights that an officer's H&C decision under subsection 25(1) of the IRPA is highly discretionary, since this provision "provides a mechanism to deal with exceptional

circumstances," and the officer "must be accorded a considerable degree of deference" by the Court (citing *Cieslak v Canada (Citizenship and Immigration*), 2018 FC 579 at para 8 [*Cieslak*]).

V. Analysis

A. *Weight assigned to evidence and considerations*

[19] H&C is an exceptional and discretionary measure. The Court should not interfere with the weight given to the relevant factors by an officer, even if the Court might have weighed them differently. A significant degree of deference must be accorded to officers exercising this duty under subsection 25(1) of the IRPA (*Arvan v Canada (Citizenship and Immigration)*, 2024 FC 223 at para 30, citing *Cieslak* at para 8 and *Legault v Canada (Minister of Citizenship and Immigration*) 2002 FCA 125 at para 15; *Williams v Canada (Citizenship and Immigration)*, 2016 FC 1303 at para 4).

[20] It is through this lens that I address the Applicant's arguments.

[21] Regarding the establishment factor, the Applicant alleges the Officer provided little or no reasoning as to why their nearly six years residing in Canada did not demonstrate sufficient establishment.

[22] I agree with the Respondent that while the Officer gave some weight to the Applicant's time in Canada, it is one of the factors to be assessed, and that time spent in Canada alone does not warrant an H&C exception. It was open for the Officer to weigh the evidence on the establishment

as they did. The Applicant is asking me to reweigh the assessment of the time spent in Canada under the establishment factor, which I cannot do on judicial review.

[23] Regarding the best interests of the child, the Applicant argues their removal would adversely affect the best interests of their granchild, and the Officer's findings on this factor were based on extrinsic evidence by unfairly comparing their grandchild to other children. The Respondent submits that there was little evidence, if any, to support the Applicant's assertion that their grandchild would be neglected if the Applicant returned to India.

[24] I disagree that this type of assessment falls into the category of "extrinsic evidence" as the Applicant asserts. The Officer addressed the relationship between the Applicant and their grandchild to other children insofar as the Officer determined the Applicant's relationship is no different from the typical relationship a grandparent has with a grandchild. The assessment of the best interest of the child demonstrated that the Officer was alert and alive to the Applicant's submissions why this factor warranted H&C consideration. The evidence demonstrated that the child's parents were his primary caregivers who provided for him. He also had other relatives that were involved with their family.

[25] In reviewing the Decision as a whole, I find that the Officer grappled with the evidence to assess whether it supported any exceptional nature or circumstance such that this relationship with their grandson should attract exceptional H&C relief. The Applicant is asking me to reweigh the evidence.

[26] Similarly, the Applicant claims the Officer's finding that the Applicant could work in India as a painter was based both on extrinsic data and mere speculation.

[27] Here, the Officer mentioned that the Applicant submitted little evidence or information on this point. However, based on the Applicant's employment history and the fact that he obtained a Labour Market Impact Assessment as a painter, the Officer found it at least likely that the Applicant had experience as a painter and that the same experience "could reasonably be utilized to obtain employment in India to assist in their financial self-sufficiency."

[28] With respect, I disagree with the Applicant's characterization of the Officer's assessment as either using extrinsic information or based on speculation. The Officer considered that the Applicant would be reasonably able to find work in India. This was a reasonable conclusion based on the evidence was submitted in support of the H&C application.

B. *Allegations against an immigration consultant*

[29] In his H&C application, the Applicant alleged that their former immigration consultant provided them with bad advice, which contributed to their Super Visa application being rejected. On judicial review, the Applicant submits that the Officer "completely misunderstood the nature of the solicitor-client relationship" between the Applicant and their consultant.

[30] I note that an allegation made against an authorized representative in Citizenship, Immigration and Refugee Cases is informed by the protocol as outlined in paragraphs 46-63 of this Court's *Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee*

Protection Proceedings [Protocol]. There is no evidence that the Applicant followed the Protocol, which requires notice be given to the authorized representative in advance of such allegations (*Ayala v Canada (Citizenship and Immigration)*, 2024 CanLII 44179 (FC)).

[31] In this case, the Officer considered that "misunderstandings and negligence may have resulted in the applicants remaining in Canada without status." However, the Officer indicated that the Applicant still had other options to regularize their status by applying for temporary residence or permanent residence from abroad. They have valid passports, are not under removal orders, and there is no evidence supporting limits to their ability to travel.

[32] Given that the Applicant still had other options to regularize his immigration status, it was not unreasonable for the Officer to give little weight to the bad advice they received in the assessment of H&C factors. In other words, it was open for the Officer to make this conclusion and it is not the role of this Court on judicial review to reweigh this evidence to come to a different conclusion. The Applicant's arguments constitute a disagreement with the Officer's conclusions.

VI. Conclusion

[33] The Decision bears the hallmarks of reasonableness – it is justified, transparent and intelligible. The Decision was not unreasonable and is justified in relation to the facts and law that constrain the decision-maker. As such, this application for judicial review is dismissed.

[34] The parties confirmed that there were no questions for certification, and I agree that none arise in the circumstances of this case.

JUDGMENT in IMM-10582-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There are no questions for certification.

"Phuong T.V. Ngo"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	RAKESH KUMAR SOHPAUL v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
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