Federal Court  Cour fédérale

Date: 20241121

Docket: IMM-1557-24

Citation: 2024 FC 1862

Toronto, Ontario, November 21, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

FEDIR YATSULA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Toronto, Ontario on November 19, 2024 and edited for syntax, grammar, case citations and relevant provisions)

[1] The Applicant Fedir Yatsula is a citizen of Ukraine who came to Canada in 2016 on a study permit. He remained in Canada, receiving several study permit extensions, as well as a work permit and related extensions.

[2] Mr. Yatsula currently holds a temporary resident visa [TRV] valid until March 2028 and his work permit is valid until June 2025. Mr. Yatsula's parents similarly have TRVs and have come to Canada to visit him on occasion. All these documents were issued under the Canada-Ukraine Authorization for Emergency Travel [CUAET].

[3] Mr. Yatsula had hoped to qualify for permanent residence through the Ontario Immigrant Nominee Program and the Express Entry Program (in one of the economic streams), but the combination of his age and lack of English proficiency has impeded his eligibility under these programs. Instead, he sought to regularize his status in Canada with an application for permanent residence on humanitarian and compassionate [H&C] grounds.

[4] An immigration officer of Immigration, Refugees and Citizenship Canada [IRCC] refused Mr. Yatsula's H&C application [Decision]. He therefore seeks to have the Decision set aside.

[5] I find that the sole issue for determination is the reasonableness of the Decision; there are no circumstances here that displace this presumptive standard of review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 17, 25.

[6] I further find that Mr. Yatsula has met his onus of demonstrating that the Decision is unreasonable, and thus will be set aside, for lack of justification, transparency and intelligibility (*Vavilov*, at paras 99-100). I have three reasons.

[7] First, reading the Decision holistically, I agree with Mr. Yatsula that the officer assessed his situation unreasonably through the lens of "exceptional circumstances" in the same sense described in three recent decisions of this Court: *Wray-Hunt v Canada (Citizenship and Immigration)*, 2023 FC 1687 at para 17; *Henry-Okoisama v Canada (Citizenship and Immigration)*, 2024 FC 1160 at paras 29-37; and *Olasehinde v Canada (Citizenship and Immigration)*, 2024 FC 1634 at paras 4-5.

[8] For example, the officer observes that "subsection 25(1) of the IRPA is an exceptional measure and not simply an alternate means of applying for permanent residence status in Canada." In other circumstances, I might have been prepared to infer that the officer meant "exceptional" in the sense of an exemption or exception to the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. I find, however, that the officer's reference to "extraordinary situations" (in the sense of a precondition to the application of H&C relief) and the determination that Mr. Yatsula's circumstances are not "special," point to the officer having committed a reviewable error by applying a high "exceptionality" threshold in assessing the test under subsection 25(1) of the *IRPA*.

[9] While Mr. Yatsula argues that the officer's reference to "deep-rooted connection" is another example of the heightened H&C threshold applied by the officer, I disagree and rely on this Court's decision in *Bhatia v Canada (Citizenship and Immigration)*, 2017 FC 1000 at para 33 where Justice Gascon refers to "deep roots."

[10] Second, while the officer acknowledges the war in Ukraine, I am not convinced that the Decision reflects an assessment of Mr. Yatsula's situation according to *Chirwa* and whether his circumstances "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another": *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 21, citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338 at 350 [*Chirwa*].

[11] Stated another way, in my view the Decision does not manifest "a decision-maker hav[ing] the ability to empathize with an applicant for relief by placing [them]self in the applicant's shoes to clearly understand and be sensitive to the applicant's circumstances": *Dowers v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 593 at para 3; *Bawazir v Canada (Citizenship and Immigration)*, 2021 FC 1343 [*Bawazir*] at paras 34, 39; *Helalifar v Canada (Citizenship and Immigration)*, 2022 FC 1040 at para 32.

[12] For example, the officer focuses on Mr. Yatsula's life and accomplishments in Ukraine until the time he left for Canada several years before the war began, without any expressed appreciation for what life in war-torn Ukraine might be like were he to return there (once the administrative deferral of removal [ADR] currently in place regarding Ukraine is ended), other than an unempathetic and, hence, unreasonable reference to "differences in standard of living between Canada and Ukraine."

[13] Further, as this Court previously has observed, the existence of the ADR shows that Canada considers the conditions in the countries covered by it, including Ukraine, as a result of

war (whether civil or as between nations), pose a general risk to the entire civilian population of those countries. Such circumstances engage the equitable purpose that underlies subsection 25(1) of the IRPA: *Bawazir*, above at para 17.

[14] Third, I also agree with Mr. Yatsula that it was speculative of the officer to state that his work permit, which is valid until June 2025, is also subject to further extension. Contrary to the Respondent's submission, I do not read this statement as meaning it should be extendable. I also find the reasoning here illogical. The officer makes a speculative observation about the future of the work permit, while in the next paragraph of the Decision takes a negative view of Mr. Yatsula's father's statement that there is no future for him in Ukraine on the basis that it is speculative.

[15] For these reasons, the application for judicial review is granted. The Decision will be set aside and the matter will be returned to a different immigration officer for redetermination.

[16] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-1557-24

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is granted.
2. The January 23, 2024 decision of Immigration, Refugees and Citizenship Canada [IRCC] is set aside, with the matter returned to IRCC for redetermination by a different officer.
3. There is no question for certification.

"Janet M. Fuhrer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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