Federal Court Cour fédérale

Date: 20250102

Docket: IMM-627-22

Citation: 2025 FC 3

Ottawa, Ontario, January 2, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

VIVIEN MAIGA DAGUIL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Vivien Miaga Daguil, seeks judicial review of a decision of a Senior Immigration Officer (the "Officer") dated January 6, 2022, refusing her application for permanent residence on humanitarian and compassionate (H&C) grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Applicant submits that the decision is unreasonable, the Officer disregarding her evidence of hardship and failing to provide a rational chain of analysis for discounting her establishment in Canada.

[3] For the reasons that follow, I find that the Officer's decision is unreasonable. This application for judicial review is granted.

II. **Facts**

[4] The Applicant is a citizen of the Philippines. She obtained a work permit and arrived in Canada in 2013. Upon arrival, the Applicant learned that the position her work permit was predicated on had been fabricated.

[5] The Applicant eventually secured a series of jobs. Her initial employer failed to apply for a Labour Market Impact Assessment ("LMIA"), despite promising to do so. When her work permit expired, subsequent employers exploited her, paying her less than minimum wage, withholding some payments entirely, and attempting to extort her.

[6] Since her arrival in Canada, the Applicant has sent remittances to her family in the Philippines. Her family's financial need was heightened following Typhoon Hainan in 2013, which damaged her father's farm.

[7] During this time, the Applicant sought to regularize her status in Canada. Despite paying thousands of dollars to immigration consultants, her applications were not approved. One of her previous immigration consultants has since been charged with immigration fraud.

[8] In 2020, the Applicant applied for permanent residence on H&C grounds, citing her establishment in Canada, her family's reliance on her for financial support, and the hardship she and her family would face due to poverty and poor employment prospects in the Philippines.

[9] On January 6, 2022, her application was refused. The Officer determined that "[t]he crux" of the application was the Applicant's "assertion that she is her family's 'breadwinner,'" and there was insufficient evidence that the Applicant "would not be able to find employment in the Philippines and continue supporting her family financially to some extent." This is the decision that is presently under review.

III. **Issue and Standard of Review**

[10] The sole issue in this application is whether the Officer's decision is reasonable.

[11] The parties submit that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25 ("*Vavilov*")). I agree.

[12] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13, 75, 85). The reviewing court must determine whether the decision under review, including both

its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole 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 (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[13] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

IV. **Analysis**

[14] The Applicant submits that the Officer's decision is unreasonable. According to the Applicant, the Officer disregarded her submissions on hardship and failed to provide a rational chain of analysis for discounting her establishment in Canada.

[15] The Respondent submits that the Officer's decision contains no reviewable error. The Respondent maintains that H&C applicants must demonstrate exceptional circumstances to justify an exemption from the normal operation of *IRPA* and that the Officer reasonably concluded that the Applicant failed to do so.

[16] I agree with the Applicant.

[17] As I previously held, "[a]n individual's circumstances do not need to be 'exceptional' to warrant H&C relief" (*Henry-Okoisama v Canada (Citizenship and Immigration)*, 2024 FC 1160 ("*Henry-Okoisama*") at para 41 [citations omitted]). Rather, the existence of H&C factors may warrant an "exception" to the normal operation of *IRPA* (*Henry-Okoisama* at paras 35-37, citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 ("*Baker*") at para 15 (SCC) and *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 ("*Kanthasamy*") at paras 19, 21). The Applicant was not required to demonstrate her circumstances were exceptional such that she was allowed to remain in Canada. It is a reviewable error for the Officer to have held her to this standard (*Henry-Okoisama* at para 47).

[18] It is also a reviewable error for the Officer to have disregarded materials that "squarely…contradict" their findings on hardship (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 ("*Cepeda-Gutierrez*") at para 17 (FC)). The Officer determined that there was insufficient evidence that the Applicant would be unable to secure employment in the Philippines since she "has some post-secondary education in the Philippines and has worked in Taiwan." However, the record clearly demonstrated that, despite her education and work experience, the Applicant "had no way of supporting [her]self or [her] family" and repeatedly had to seek employment abroad due to the unavailability of work in the Philippines. The Applicant's personal experiences were supported by country condition evidence about systemic age discrimination in hiring practices and hardship faced by repatriated Filipino workers. The Officer was obliged to address this evidence in their reasons (*Cepeda-*

Gutierrez at para 17). Their failure to do so renders the decision unjustified in light of the record (*Vavilov* at para 126).

[19] Furthermore, the Officer failed to explain their conclusion that country conditions do not "present an exceptional difficulty" to the Applicant and her family. The Officer's reasons on this issue consist of a summary of the H&C factors in favour of the Applicant alongside a note that "the [A]pplicant has some post-secondary education in the Philippines and has worked in Taiwan." As previously noted, the "specific and contradictory evidence submitted by the [A]pplicant" demonstrates that her education and work experience are not indicative of employability (*Ocampo v Canada (Citizenship and Immigration)*, 2015 FC 1290 at para 9). As a result, the Officer effectively concluded that the Applicant brought insufficient evidence of hardship immediately after listing the extensive H&C factors militating against this view. I agree with the Applicant that "these 'reasons' are not really reasons at all, essentially consisting of a review of the facts and the statement of a conclusion, without any analysis to back it up" (*Adu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 565 at para 14).

[20] The Officer's consideration of establishment is similarly flawed, as the Officer failed to provide a rational chain of analysis for finding that the Applicant's unauthorized employment detracts from her establishment in Canada (*Vavilov* at para 85). This Court noted in *Wray-Hunt v Canada (Citizenship and Immigration)*, 2023 FC 1687 that, "[w]hile officers are entitled to consider immigration status…H&C applications are often predicated on the fact that applicants do not have status in Canada. Accordingly, it is an error for an officer [to] focus unreasonably on an applicant's unauthorized status and repeatedly discount positive establishment factors for this reason" (at para 15). This is particularly the case with respect to employment, as H&C

applicants cannot reasonably be expected to stop seeking the means to purchase basic needs such as food and shelter while attempting to regularize their status in Canada.

[21] In this case, the Officer acknowledged the Applicant "had no actual employer in Canada" when she first arrived, "had no money to go home," sought an LMIA from her employer, and "tried to regularize her status on several occasions." However, the Officer then concluded that "the [A]pplicant's actions show a disregard for Canada's immigration laws" and that "the [A]pplicant chose to continue working in Canada knowing that she was unauthorized to do so" [emphasis added]. Given the statements that appear immediately prior to this conclusion and contradict it, one would expect the Officer to provide at least some analysis for their findings. The absence of such an analysis renders the decision unintelligible and unjustified with respect to the evidence (*Vavilov* at para 99).

[22] Citing *Madera v Canada (Citizenship and Immigration)*, 2021 FC 883 ("*Madera 2021*"), the Respondent submits that the Officer's assessment of establishment was reasonable as "applicants cannot, and should not, be rewarded for accumulating time in Canada when they have no legal right to do so" (at para 15). However, *Madera 2021* is distinguishable from the present proceeding. The applicant in *Madera 2021* "changed employers" of her own accord, despite the availability of the job underlying her work permit (*Madera v Canada (Immigration, Refugees, and Citizenship)*, 2017 FC 108 at para 1 ("*Madera 2017*"), cited in *Madera 2021* at para 2). She also failed to disclose criminal charges in a subsequent work permit application and "did not leave [Canada] as ordered" (*Madera 2017* at para 1, cited in *Madera 2021* at para 2). None of these factors are present in this case.

[23] Significantly, the Court in *Madera 2017* acknowledged that "an Officer may well act unreasonably where the question of legal status results in an Officer failing to consider the question of unusual or disproportionate hardship" (at para 10 [emphasis added]). The Officer in this proceeding has fallen into precisely this error. In my view, the Applicant does not seek to be "rewarded for accumulating time in Canada when [she] ha[s] no legal right to do so" (*Madera 2021* at para 15). Like all who apply for H&C relief and are to some extent not compliant with the *IRPA* (*Augusto v Canada (Citizenship and Immigration)*, 2022 FC 226 at para 23), she seeks consideration for H&C factors that warrant an exception to the *IRPA*'s normal operation, including both hardship upon removal and her establishment in Canada (*Henry-Okoisama* at paras 35-37, citing *Baker* at para 15 and *Kanthasamy* at paras 19, 21). Due to deficiencies in the reasons, it is not clear that the Officer adequately assessed these factors.

V. **Conclusion**

[24] For these reasons, I grant this application for judicial review. The decision is unreasonable. It fails to account for the Applicant's evidence of hardship and lacks a rational chain of analysis for discounting the Applicant's establishment in Canada (*Vavilov* at paras 85, 126). The decision is quashed and the matter remitted for re-determination. No questions for certification were raised, and I agree that none rise.

JUDGMENT in IMM-627-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted.

2. The decision is quashed and the matter remitted for re-determination.

3. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Bjorn Harsanyi	FOR THE APPLICANT
Meenu Ahluwalia	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stewart Sharma Harsanyi Barristers and Solicitors Calgary, Alberta	FOR THE APPLICANT
Attorney General of Canada Calgary, Alberta	FOR THE RESPONDENT