Federal Court Cour fédérale

Date: 20250115

Docket: IMM-6658-23

Citation: 2025 FC 78

Toronto, Ontario, January 15, 2025

PRESENT: Mr. Justice Norris

BETWEEN:

XIAO HUA LIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a citizen of China. In January 2023, she 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*). The applicant's husband, who is also a citizen of China, was included on the application as a dependent and co-applicant. Previously, both had sought refugee protection in Canada but their claims were rejected. The

H&C application was based on the couple's establishment in Canada and on the best interests of their two Canadian-born children, who were ages 10 and 4 when the application was submitted.

[2] A Senior Immigration Officer refused the application in a decision dated May 18, 2023.

[3] The applicant now applies for judicial review of this decision under subsection 72(1) of the *IRPA*. She contends that the decision is unreasonable in several respects. As I will explain, I am not persuaded that there is any basis to interfere with the officer's decision. This application will, therefore, be dismissed.

[4] The parties agree, as do I, that the officer's decision should be reviewed on a reasonableness standard (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44; *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10).

[5] A decision is reasonable if it is "based on an internally coherent and rational chain of analysis and [is] justified in relation to the facts and law that constrains the decision maker" (*Vavilov*, at para 85). It is not the role of the reviewing court to reweigh or reassess the evidence or interfere with the decision maker's factual findings unless there are exceptional circumstances (*Vavilov*, at para 125). This constraint on the reviewing court is especially important when considering a decision made under subsection 25(1) of the *IRPA*. Such decisions are highly discretionary and, as a result, the decision maker's weighing of relevant factors warrants a considerable degree of deference from the reviewing court (*Williams v Canada (Citizenship and Immigration)*, 2016 FC 1303 at para 4; *Legault v Canada (Minister of Citizenship and*

Immigration), 2002 FCA 125 at para 15). To set aside a decision on the basis that it is unreasonable, 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).

[6] By way of background, the applicant first arrived in Canada in January 2012 on a work permit. She was 25 years of age at the time. The following month, she made a claim for refugee protection on the basis of her fear of persecution in China as a practicing Christian. The claim was rejected by the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB) in November 2018. An application for leave and for judicial review of this decision was dismissed at the leave stage in April 2019.

[7] Meanwhile, the applicant's husband came to Canada in January 2017 and submitted a claim for refugee protection upon or shortly after arrival. The claim was based on his fear of persecution due to his public criticism of local government officials in China. The claim was allowed by the RPD but, on appeal by the Minister, the RPD's decision was reversed by the Refugee Appeal Division (RAD) of the IRB, which found that the applicant's husband is neither a Convention refugee nor a person in need of protection. In December 2022, the applicant's husband submitted an application for a pre-removal risk assessment. The application was refused in March 2023.

[8] The applicant's husband converted to Christianity after arriving in Canada. He and the applicant attend the same church, the Living Stone Assembly in Scarborough, Ontario.

[9] As noted above, the H&C application was based on the applicant's and her husband's establishment in Canada as well as the best interests of their children.

[10] With respect to establishment in Canada, in submissions in support of the H&C application, counsel for the applicant focused on four specific respects in which the couple were established here: (1) their work ethic and economic self-sufficiency; (2) their volunteer service in the community; (3) their friendships and social networks; and (4) their other ties to Canada. With respect to the last factor, counsel noted that the applicant and her husband benefited from the freedom to practice their religion in Canada, something they would be denied if they had to return to China.

[11] The applicant submits that the officer's assessment of her and her husband's establishment is unreasonable but I am unable to agree. For the most part, the applicant simply disagrees with the weight the officer attributed to this factor, both overall and in specific respects. This is not a basis for interfering with the decision. The officer's assessment of the hardship the applicant alleged she and her husband would face in relation to restrictions on their ability to practice their religious faith in China is responsive to the limited submissions that were made to the officer in this connection. It is also consistent with an important legal constraint on the officer, which is that the officer "may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider the elements related to the hardships that affect the foreign national" (*IRPA*, subsection 25(1.3)). While recognizing that China is an authoritarian state and that human rights violations are rampant, the officer found that the

applicant had provided very little evidence to demonstrate that she and her husband would be unable to practice their Pentecostal faith. This is a reasonable conclusion on the submissions and evidence before the officer.

[12] The applicant also submits that the officer's assessment of the best interests of the children is unreasonable but, again, I am unable to agree.

[13] Subsection 25(1) of the *IRPA* expressly requires a decision maker to take into account the best interests of a child directly affected by the decision. The best interests principle is "highly contextual" because of the "multitude of factors that may impinge on the child's best interests" (*Kanthasamy*, at para 35). Since this is a highly fact-specific and individualized inquiry, the onus is on an applicant seeking H&C relief to provide evidence to support their reliance on a child's best interests (*Zlotosz v Canada (Citizenship and Immigration)*, 2017 FC 724 at para 22; *Lovera v Canada (Minister of Citizenship and Immigration)*, 2016 FC 786 at para 38). Here, however, the applicant provided only very general submissions concerning why it would be in the best interests of her children to remain in Canada. The officer concluded that the applicant had not presented sufficient evidence to establish that the best interests of the children weighed heavily in favour of granting the H&C application. On the information concerning the children that was before the officer, this was an entirely reasonable determination.

[14] In sum, the officer's decision provides a thorough and well-reasoned explanation for why H&C relief was not warranted. The decision was responsive to the submissions presented in support of the application. It demonstrates that the officer was alert and sensitive to the grounds

on which relief was sought (*Vavilov*, at para 128). While the applicant was no doubt disappointed with the decision, she has not established any basis for this Court to interfere with it. Consequently, this application for judicial review must be dismissed.

[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-6658-23

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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