Federal Court  Cour fédérale

Date: 20250127

Docket: IMM-15819-23

Citation: 2025 FC 165

Ottawa, Ontario, January 27, 2025

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

DAMION DERESCIO WILSON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the "Decision") by a Senior Immigration Officer (the "Officer") at Immigration, Refugees, and Citizenship Canada ("IRCC"). The Decision denied the Applicant an exemption from the permanent resident application process based on humanitarian and compassionate ("H&C") grounds pursuant to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "*IRPA*").

[2] For the reasons discussed below, the application for judicial review is dismissed.

II. Background

[3] The Applicant, Mr. Damion Derescio Wilson, is a 43-year-old citizen of Jamaica. He entered Canada on May 5, 2016 for the purposes of visiting family. He applied to restore his status and extend his stay having overstayed his authorized visit on two occasions, permitting him to stay until June 2018. The Applicant has been without status since 2018.

[4] In August 2020, the Applicant fell and suffered an incomplete spinal cord injury. The Applicant had surgery and underwent rehabilitation. He was released from the hospital in December 2020 and began physiotherapy in March 2021. The Applicant receives $100 bi-weekly from the Workplace Safety and Insurance Board ("WSIB").

[5] The Applicant has his sister, aunt, and cousin in Canada. The Applicant has his girlfriend and her two sons in Jamaica. He supported them financially for a few years while his girlfriend was in prison for drug-smuggling.

[6] On July 6, 2022, the Applicant applied for permanent residence on H&C grounds.

III. The Decision

[7] In a letter dated November 27, 2023, the Officer denied the Applicant's application for permanent residence on H&C grounds.

[8] The Officer reviewed the Applicant's immigration history and H&C factors raised, including the adverse country conditions, establishment in Canada, and his injury from his fall, and found that based on a global assessment, an H&C exemption was not warranted.

[9] With respect to hardship, the Officer considered the Applicant's submissions and evidence on every aspect of alleged hardship faced in his return to Jamaica, including: discrimination against those who are disabled, lack of access to medical support through WSIB, stigma associated with being deported to Jamaica, crime, and results of socio-economic fall-out due to the COVID-19 pandemic. The Officer concluded that each of the hardships alleged were either unlikely to occur on a balance of probabilities, based on the evidence before them, or was of little probative weight. While the Officer noted that there would be some hardship in returning to Jamaica, the Officer found that the Applicant was established in his home country prior to his departure and that there was little evidence to demonstrate that those who have assisted the Applicant in Canada financially and emotionally would be unwilling to do so if he were to return to Jamaica.

[10] The Officer considered the Applicant's injury and the possible social and familial supports as well as employment opportunities available to the Applicant. The Officer noted that the Applicant did not adduce evidence from the relevant health authorities confirming that an acceptable treatment is unavailable in Jamaica and that there was evidence, while limited, that he has ties in Jamaica, that he would have access to these ties and other familial and social support in Jamaica, and that the evidence does not support a finding that the Applicant would be unable to obtain employment in Jamaica.

[11] With respect to establishment in Canada, the Officer gave positive weight to the Applicant's demonstrated familial ties and evidence of friendship, but gave negative weight to the lack of evidence demonstrating how he has financially supported himself, noting the lack of tax returns, bank statements, and invoices. The Officer found the Applicant's establishment in Canada to be "quite modest" and gave this factor modest weight.

[12] The Officer gave negative weight to the Applicant's actions with respect to requesting extensions to his visitor visa without leaving Canada and his identification of having worked in Canada despite not having authorization to do so.

[13] Lastly, the Officer also considered the best interests of his girlfriend's children and noted that the children reside in Jamaica and that there was no evidence they would be adversely affected if the Applicant was no longer in Canada.

[14] The Officer also refused the Applicant's request for a Temporary Resident Visa pursuant to section 24(1) of the *IRPA*. The Officer found that despite the Applicant appearing eligible, the Applicant failed to demonstrate that his stay would be temporary in duration and that he would leave Canada by the end of the authorized stay.

IV. Issues

[15] This judicial review raises three issues:

A. Is the fresh evidence admissible?

B. Is the Officer's Decision reasonable?

C. Was procedural fairness breached?

V. Analysis

[16] The standard of review with respect to the Officer's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25). The standard of review with respect to the Applicant's procedural rights is correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35 and 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

A. *Fresh Evidence*

[17] The Applicant has included a WSIB policy document from 2004 in his Application Record, which appears to have not been before the Officer, and is not contained in the CTR. The Applicant submits that this evidence should be admitted as it provides "general background in circumstances where the information might assist [the Court] in understanding the issues relevant to the judicial review".

[18] At the hearing counsel for the Applicant conceded that this evidence would not be admissible and withdrew his submissions on this point. This was appropriate, as this evidence goes to the merits of the case, and does not meet any of the exceptions to the general rule that only material that was before the original decision-maker may be considered on judicial review (*Rafieyan v Canada* (*Citizenship and Immigration)*, 2007 FC 727 at para 20).

B. *The Decision was Reasonable*

[19] The Applicant does not explain how the Decision is unreasonable, but simply lists the evidence that supports the findings the Applicant would have preferred the Officer to make, and argues that there was no evidence before the Officer to support some of the "conclusions/speculations" the Officer did make. At the hearing, counsel for the Applicant argued that the Officer treated the evidence as not credible. I do not agree that this was the case. The Officer found the Applicant's evidence credible and considered it in their Decision, but found that it was insufficient to demonstrate on a balance of probabilities the findings the Applicant would have preferred.

[20] The Applicant fails to engage with the Officer's reasoning and the ways in which the Officer addressed the evidence. The Decision demonstrates that the Officer made their conclusions after reviewing and considering all of the evidence raised by the Applicant. The Applicant's arguments in this regard amount to mere disagreement with the Officer's conclusions. The Applicant has failed to demonstrate that this assessment was unjustified, unintelligible, or lacked transparency.

[21] I agree with the Respondent that the Officer did not engage in speculation. The Officer's conclusions that the Applicant would have access to WSIB support services, health and support services in Jamaica, and support from his support network in Canada, are reasonable conclusions drawn from the evidence. Additionally, the Officer provided ample details for how they came to

each of these conclusions. The Applicant fails to reasonably engage with the Officer's reasons and analysis; it is insufficient to assert that there was "no evidence".

[22] The onus is on an applicant to present relevant evidence and submissions that would permit the Officer to exercise their discretion to grant an H&C exemption (*Zlotosz v Canada (Citizenship and Immigration)*, 2017 FC 724 at para 31). The lack of concrete evidence is not a license to say the Officer engaged in speculation (*Diaz Pena v Canada (Citizenship and Immigration)*, 2019 FC 369 at para 37).

[23] While I am sympathetic to the Applicant's situation resulting from his injury, it is not open to this Court to substitute their discretion for that of the Officer (*Lewis-Asonye v Canada (Citizenship and Immigration)*, 2022 FC 1349 at para 47). I acknowledge, as did the Officer, that the Applicant would face some hardship in returning to Jamaica. However, the Officer found this hardship did not counterbalance the factors weighing against the Applicant. Given the highly discretionary nature of H&C relief, significant deference is owed to the Officer's findings (*Miyir v Canada (Citizenship and Immigration)*, 2018 FC 73 at para 12).

[24] The Applicant has failed to demonstrate how the Officer's Decision was unreasonable, in that it fails to reveal a rational chain of analysis or that the conclusion reached cannot follow from that analysis (*Vavilov* at para 103).

C. *No Breach of Procedural Fairness*

[25] The Officer did not breach procedural fairness by not offering the Applicant an interview "to address any concerns about the case." The Officer correctly noted that in the context of H&C applications, the right to be heard does not require an absolute right to an interview or hearing (*Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para 34). Since the Officer had no concerns about the credibility of the submissions or testimony of the Applicant, the Officer was correct to conclude that an oral hearing was not required (*Duka v Canada (Citizenship and Immigration)*, 2010 FC 1071 at paras 11-13).

VI. Conclusion

[26] The Decision was reasonable and the process by which it was reached was procedurally fair. This application for judicial review is dismissed.

JUDGMENT in IMM-15819-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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