Federal Court Cour fédérale

Date: 20250124

Docket: IMM-1436-23

Citation: 2025 FC 149

Ottawa, Ontario, January 24, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

IRENE ANYANGO NYAMONDO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Irene Anyango Nyamondo, seeks judicial review of the refusal of her application for permanent residence on humanitarian and compassionate ("H&C") grounds by an Officer (the "Officer") of Immigration, Refugees and Citizenship Canada on January 13, 2023. The Officer determined that the Applicant's circumstances, including her establishment in

Canada and the best interests of her children ("BIOC"), did not warrant H&C relief pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Applicant submits that the Officer infringed her procedural rights and rendered a decision that is unreasonable.

[3] Although I find no breach of procedural fairness, I agree that the Officer's decision is unreasonable in light of the facts and law. This application for judicial review is granted.

II. **Facts**

[4] The Applicant is a citizen of Tanzania. Her three children reside in Kenya. The Applicant supports her three children as a single mother.

[5] The Applicant applied for a visa to attend an academic conference at McGill University. Having obtained her visa too late to join the program, the Applicant gained admission to another program at Red Deer College. The Applicant's last entry to Canada occurred in March 2019.

[6] The Applicant submitted two study permit applications in 2019 and subsequently applied for a visitor record, a work permit, and permanent residence on H&C grounds. Her applications were refused.

[7] Since her temporary resident status expired in 2020, the Applicant has worked as a babysitter. She has also volunteered at her church and several local organizations.

[8] In January 2023, the Applicant's second application for permanent residence on H&C grounds was refused. Among other findings, the Officer determined that the Applicant's establishment in Canada and the best interests of her three children in Kenya did not warrant H&C relief. This is the decision that is presently under review.

III. **Issues and Standards of Review**

[9] The issues in this application are whether the Officer's decision is reasonable and was rendered in a procedurally fair manner.

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

[11] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 37-56 ("*Canadian Pacific Railway Company*"); *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). I find that this conclusion accords with the Supreme Court of Canada's decision in *Vavilov* (at paras 16-17).

[12] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). 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 reasonable

decision 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, an 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).

[14] Correctness, by contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 (at paras 21-28; see also *Canadian Pacific Railway Company* at para 54).

IV. **Analysis**

A. *There was No Breach of Procedural Fairness*

[15] The Applicant submits the Officer impugned her credibility and infringed her procedural rights by failing to hold an interview or provide a procedural fairness letter ("PFL"). The Respondent disagrees, submitting that the Officer did not impugn the Applicant's credibility.

[16] I agree with the Respondent. In my view, there is nothing in the decision to indicate that the Officer disbelieved the Applicant. They simply found insufficient evidence to warrant relief under subsection 25(1) of the *IRPA* (*Dedvukaj v Canada (Citizenship and Immigration)*, 2024 FC 1300 at para 153, citing *Garces Canga v Canada (Citizenship and Immigration)*, 2020 FC 749 at para 40). As the Officer made no credibility determinations, they were not obliged to hold an interview or send a PFL. The Applicant's procedural rights were not infringed.

B. *The Decision is Unreasonable*

[17] The Applicant submits that the Officer erred in their assessment of establishment and the BIOC factors. The Applicant asserts that the Officer unreasonably dismissed her establishment in Canada on the basis of her lack of status and disregarded evidence of the harm her children would face upon her removal to Tanzania.

[18] The Respondent submits that the Officer's findings on establishment and the BIOC analysis were reasonable. The Respondent states the Officer was entitled to consider the Applicant's noncompliance with Canadian immigration laws and duly assessed the Applicant's evidence on the BIOC factors. According to the Respondent, the Applicant's submissions amount to a request to reweigh the evidence, which is barred under reasonableness review.

[19] I agree with the Applicant.

[20] The Officer did not simply grant consideration to the Applicant's noncompliance with Canadian immigration laws. They wielded it to diminish otherwise meritorious establishment factors. This constitutes a reviewable error, as "an H&C application invariably involves some non-compliance with the *IRPA*" (*Augusto v Canada (Citizenship and Immigration)*, 2022 FC 226 at para 23 ("*Augusto*")).

[21] As a result, the Officer's reasons lack a rational chain of analysis for discounting the Applicant's establishment in Canada (*Vavilov* at para 85). As affirmed by my colleague Justice Heneghan in *Charles v Canada (Citizenship and Immigration)*, 2021 FC 682, "[t]he failure to regularize immigration status is not, per se, a factor that minimizes a person's establishing in Canada" (at para 7, cited in *Augusto* at para 22). Neither is the absence of evidence that the Applicant would be unable to return to Tanzania, as inability to return is a requirement of the test for refugee protection and has no place in H&C claims (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 51 ("*Kanthasamy*")). Similarly, my colleague Justice Diner has held that "[e]stablishment should be treated as a unique category, separate from other considerations such as the hardship (or lack thereof) an applicant may face upon removal" (*Singh v Canada (Citizenship and Immigration)*, 2019 FC 1633 at para 25). The Officer in this case dismissed the Applicant's establishment due to her lack of status and her insufficient evidence of being "unable to return to Tanzania" and being "destitute" upon removal. This is simply a hardship analysis in place of an establishment analysis and a mischaracterization of the relevant legal test.

[22] Moreover, the Officer's BIOC analysis was seriously flawed. The Officer determined that the best interests of children "in most cases" is to be around their parents, and that the BIOC factors favoured a negative decision in this case as removal would "physically place [the Applicant] closer to her children." This vague assertion does not account for the particular, individualized interests of each child (*Kanthasamy* at para 35). It also does not account for the materials on the record, which indicate that the Applicant relies on her income in Canada to provide for her three children's living expenses. It was not open to the Officer to speculate as to whether the Applicant's removal would be in the best interests of her children when the Applicant had furnished evidence – including statements from her children – that this was not the case. In my view, the Officer's BIOC assessment is devoid of the compassion inherent to the H&C framework and therefore not justified in light of the facts or law (*Kanthasamy* at para 39; *IRPA*, s 25(1); *Vavilov* at para 99).

V. **Conclusion**

[23] This application for judicial review is granted. The Officer's decision lacks justification and intelligibility with respect to the evidence on the record and the legal framework for H&C applications (*Vavilov* at paras 99, 101). The decision is quashed and the matter remitted for re-determination. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-1436-23

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:

Jatin Shory	FOR THE APPLICANT
Maria Green	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shory Law Barrister and Solicitor Calgary, Alberta	FOR THE APPLICANT
Attorney General of Canada Edmonton, Alberta	FOR THE RESPONDENT