Federal Court Cour fédérale

Date: 20200303

Docket: IMM-1822-19

Citation: 2020 FC 327

Ottawa, Ontario, March 3, 2020

PRESENT: Madam Justice McDonald

BETWEEN:

YONG HUANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Yong Huang, seeks judicial review of a decision of the Immigration Appeal Division (IAD) dated October 17, 2018. The IAD affirmed an Officer's determination that the Applicant had failed to comply with the residency requirements for permanent residence in s. 28 of the *Immigration and Refugee Protection Act* (*IRPA*) and that his circumstances did not merit discretionary humanitarian and compassionate (H&C) relief.

[2] For the reasons below, this judicial review is dismissed, as the IAD's decision is reasonable.

Background

[3] The Applicant is a Chinese citizen. He became a Canadian permanent resident in 2001 with his former wife. They had one child and divorced in 2010. The Applicant married his current wife, a Chinese citizen, in 2013.

[4] After the Applicant's permanent resident card expired on March 30, 2017, he applied for a permanent resident travel document. On December 4, 2017, he was advised that his application had been refused, as he failed to meet the residency obligation in s. 28 of the *IRPA*.

[5] The Applicant appealed this decision to the IAD.

IAD Decision

[6] The IAD confirmed that the Applicant did not challenge the validity of the breach of the residency obligation in s. 28 and it upheld the Officer's finding that he had lived in Canada less than 200 days in the relevant five year period (November 30, 2012 to November 29, 2017).

[7] The IAD then considered whether H&C considerations warrant special relief. The IAD considered the following factors:

- his date of immigration to Canada and reasons for doing so;
- his reasons for splitting time between Canada and China until 2011;

- his Canadian child’s current living situation;
- his 2013 marriage and his stated reasons for failing to meet the residency obligation since 2013
- his need to be in China while his new spouse was having fertility treatments; and
- his need to be in China to care for his parents.

[8] The IAD concluded that the Applicant failed to provide satisfactory explanations as to why he could not have spent more time in Canada in the past five years. The IAD instead found “it appears that the [Applicant] chose to live and work in China primarily for economic reasons and he has made important life decisions such as remarriage and fertility treatment and continued to live outside Canada…”

[9] The IAD considered the Applicant’s degree of attachment to Canada but found it was mainly economic, in the form of property and financial assets. Aside from membership in a Canadian church, the Applicant provided limited evidence of other social attachments in Canada.

[10] The IAD also considered the best interests of the Applicant’s daughter. The IAD noted that the Applicant’s ex-wife has custody of his daughter who lives in the United States. The Applicant maintains some contact with his daughter and he paid a lump sum for child support. Based on this evidence, the IAD found there would “not likely be any undue adverse impact” on the best interests of the Applicant’s daughter should he lose his status in Canada.

[11] Finally, the IAD found limited evidence of any undue hardship that the Applicant would face from losing his Canadian status, despite some "emotional impact". The Applicant continues to live and work predominantly in China, has demonstrated he is able to support himself and his family from China, and has assets and close family in China.

Issue

[12] Was the IAD's H&C analysis reasonable?

Standard of Review

[13] The applicable standard of review for the IAD's consideration of humanitarian and compassionate considerations in the application of s. 67(1)(c) of *IRPA* is reasonableness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 53, *Dandachi v Canada (Citizenship and Immigration)*, 2016 FC 952 at para 13).

[14] In order for a decision to be reasonable, the reasoning must be internally coherent and the decision itself must be justified in relation to the relevant facts and law (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at para 105) [*Vavilov*].

Relevant Legislation

[15] Section 67(1)(c) of *IRPA* provides as follows:

67 (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the	67 (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé :

time that the appeal is disposed of,	
…	…
(c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.	c) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

Analysis

Insufficient Reasons Regarding Failing to Fulfil the Residency Obligation

[16] The Applicant submits that the IAD's conclusion that he had not adduced sufficient reasons to explain his failure to meet the residency obligation is unreasonable. The Applicant submits that the IAD "proceeds as if no explanation were given".

[17] This submission has no merit. The decision demonstrates that the IAD considered the Applicant's explanations for not meeting his residency obligation. The IAD noted the Applicant's testimony about his obligation towards his parents, his testimony that his sister could now care for their parents, his wife's miscarriage, and the treatment she was undertaking to conceive a child.

[18] The IAD considered the Applicant's testimony and evidence supporting his stated reasons for not meeting the residency obligation. The IAD interpreted the evidence before it to

conclude that the Applicant instead "made choices to live and work predominately outside Canada over the years and has made no reasonable attempts to return to Canada at the earliest opportunities".

[19] The IAD specifically found "there was limited credible evidence or explanations as to why he could not arrange care for his parents in order to be able to return to Canada to fulfil his residency requirements". The Applicant's evidence was that he was in China to help care for his parents and for his wife's fertility treatments. These were the two central issues the Applicant raised and the IAD addressed these issues but found the reasons provided by the Applicant lacking credibility.

[20] The IAD also considered the Applicant's submissions on his wife's fertility treatments. The IAD notes that the Applicant testifies that after his spouse had a miscarriage that "they have been having treatment to have a child" (emphasis added), noting the Applicant's stake in the treatments.

[21] Justification and transparency "require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties" (*Vavilov* at para 127). Here the IAD decision does not demonstrate that the IAD proceeded as if the Applicant had given no explanation at all, as was the case in *Veres v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 124 at para 11, relied upon by the Applicant.

[22] In any event, a decision-maker is not required to make an explicit finding on each constituent element of its final conclusion, so long as the reviewing court can "develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable" (*Vavilov* at paras 91 and 99). Given that there is a rational chain of analysis, and the decision is justified in relation to the facts and law that constrain the IAD, the IAD's reasons were sufficient (*Vavilov* at para 85).

Insufficient Reasons in the H&C Analysis

[23] The Applicant argues that the IAD did not provide sufficient detail regarding how it analyzed and weighed the factors before it, rendering the decision unintelligible.

[24] A review of the IAD decision demonstrates that the IAD identified the specific factors applicable to the Applicant's circumstances and found as follows:

- While the Applicant may have had good reasons to return to China to care for his parents and be present for his wife's treatments, these reasons do not justify the extent of time the Applicant remained outside of Canada over the relevant five-year period.
- Although the Applicant had property and financial assets in Canada, the IAD was not persuaded on the evidence that he had social attachments to Canada (aside from membership in a church).
- While it is usually in a child's best interest to live with their parents in a family unit, the evidence was that the Applicant's daughter lived in the U.S. with her mother so she would not be subject to any adverse impact by the Applicant's loss of status in Canada.

- Although the Applicant may suffer some emotional impact from his loss of status, there was limited evidence of any undue hardship he would suffer. The evidence demonstrated that he would be continue to be able to support himself and his family from outside Canada should he lose his status.

- His current wife does not have any Canadian status.

- The Applicant would not be barred from returning to Canada either as a visitor or in a new application to re-acquire his PR status.

[25] In my view, the IAD articulated the factors considered and their assessment of these factors with sufficient detail as required by *Vavilov* (*Vavilov* at para 86).

[26] The decision demonstrates that the IAD analysed the relevant factors and engaged with the evidence. This meets the standards required by *Vavilov* for justification, transparency, and intelligibility. The IAD's conclusion is consistent with the internal logic of the decision and is therefore reasonable. The application for judicial review is dismissed.

[27] There is no question for certification.

JUDGMENT IN IMM-1822-19

THIS COURT'S JUDGMENT is that the judicial review is dismissed. There is no question for certification.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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