Federal Court  Cour fédérale

Date: 20200408

Docket: IMM-3483-19

Citation: 2020 FC 503

Ottawa, Ontario, April 8, 2020

PRESENT: Madam Justice McDonald

BETWEEN:

MING ZHANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Zhang, applied for permanent residence on humanitarian and compassionate (H&C) grounds, but his application was denied. For the reasons that follow, this application is dismissed, as the Officer's decision to refuse the H&C application is reasonable and there was no breach of procedural fairness.

Background

[2] The Applicant, Mr. Zhang, is a citizen of China who came to Canada in 2005 on a student visa. He began a relationship with a Canadian citizen, whom he married in May 2015. They submitted a spousal sponsorship application in August 2015. The relationship ended, but the application for spousal sponsorship was refused in September 2017, as his spouse was receiving social assistance and therefore did not qualify as a sponsor.

[3] The Applicant applied for permanent resident status on H&C grounds. The application was rejected on January 17, 2019.

[4] The rejection of the H&C application is the subject of this judicial review.

H&C Decision under Review

[5] The Officer found that although Mr. Zhang had been in Canada for over 12 years, his establishment was not significant enough to warrant an exemption on humanitarian and compassionate grounds.

[6] The Officer was sympathetic to the Applicant's circumstances considering the relationship breakdown and his need for mental health treatment, but found that he had not provided sufficient evidence that he currently has a treatment plan for his condition or than he would not be able to obtain treatment in China.

[7] The Officer acknowledged that Mr. Zhang has made friends in Canada, but found that "there is insufficient objective evidence before me to establish that his personal ties to Canada are characterized by a degree of interdependency and reliance to such an extent that if separation were to occur, it would have a negative impact on the Applicant and his friends in Canada." The Officer noted that there would be some dislocation, but the Applicant could keep in touch with his friends by telephone, letters, email, the internet, and social media.

[8] The Officer also found that there was insufficient evidence of Mr. Zhang's claim that his parents disowned him and there was insufficient evidence to establish that they would not support him if he returned to China. The Officer connected this back to the lack of evidence that the Applicant's parents could not or would not offer him assistance if needed.

[9] The Officer further found that Mr. Zhang is an adaptable individual having established himself in Canada. The Officer found that while there would be a period of adjustment, he would not be returning to an unfamiliar place, language, or culture.

Issues

[10] The Applicant raises the following issues:

1) Did the Officer make a veiled credibility finding?
2) Was the Officer's denial of the H&C application reasonable?

Standard of Review

[11] The standard of review for the first issue, which is a procedural fairness issue, is correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). The presumptive reasonableness standard of review outlined in *Vavilov* excludes questions of natural justice and procedural fairness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*].

[12] The standard of review of reasonableness applies to the merits of the decision under review (*Vavilov* at para 10). "[J]udicial review considers not only the outcome, but also the justification for the result (where reasons are required)" (*Canada Post Corp. v Canada Union of Postal Workers*, 2019 SCC 67, at para 29).

[13] To determine whether a decision is reasonable, the Court must "ask whether the decision bears the hallmarks of reasonableness - justification, transparency and intelligibility - and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). "[W]here reasons are provided but they fail to provide a transparent and intelligible justification…the decision will be unreasonable" (*Vavilov* at para 136).

Analysis

1) *Did the Officer make a veiled credibility finding?*

[14] The Applicant argues that the evidence does not support the Officer's finding that his return to China would be mitigated by his relationship with his family. The Applicant argues that the Officer therefore made a veiled credibility finding against him. The Applicant further argues that the Officer's finding that he had a relationship with his parents and that he could rely on that relationship to reintegrate to life in China was not supported by the evidence. The Applicant submits that the evidence on record was that he had no relationship with his parents, therefore, the Officer's finding that his parents could assist in his transition back to China is unreasonable and not justified by the evidence.

[15] He relies on *Ahmadzai v Canada (Citizenship and Immigration)* 2018 FC 725 at para 16 [*Ahmadzai*]. In *Ahmadzai*, Justice Boswell held that because the Applicant had sworn an affidavit saying his parents would not support him, it was unreasonable for the Officer to find that his parents would support him without giving an explanation why. This was because "[w]hen an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness" (*Ahmadzai* citing *Maldonado v Canada (Minister of Employment & Immigration)*, [1979] FCJ No 248 (Fed. C.A.), at para 5).

[16] There are a number of issues with the Applicant's position. First, unlike *Ahmadzai*, the Applicant here did not file an Affidavit with his H&C application, therefore, the principle of presumed truthfulness does not necessarily apply in the same manner. In *Yang v Canada (Public Safety and Emergency Preparedness),* 2018 FC 496 [*Yang*], Justice Strickland found that letters

from an Applicant's lawyer were not sworn evidence, and that "the presumption of truth is concerned only with sworn evidence, usually of an applicant" (*Yang* at para 20).

[17] In any event, the content of Mr. Zhang's supplemental information does not establish that he has been disowned by his parents. Mr. Zhang's explanation of his relationship with his parents is:

> [t]o make matters worse, the relationship between my parents and I has relinquished. They expressed their disappointment in the split between my wife and I. I did not tell them; they found out through my friend….

[18] Although this statement confirms that his parents were disappointed, it does not state that they have disowned him or that they would not help him if he returned to China. Disappointment does not necessarily rise to the level of disownment. The word relinquish, while suggesting issues with his parents, does not indicate that they have abandoned him entirely. In light of the lack of specificity, the Officer's finding that there was a lack of evidence is not a veiled credibility finding.

[19] In *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at para 34 [*Ferguson*], the Court held that a finding that there is insufficient evidence of a particular fact in issue does not bring an applicant's credibility into question. Instead, it is a finding that the officer neither believes nor disbelieves the applicant on a particular point (*Ferguson* at para 34). Here, Mr. Zhang made a brief statement about the strained relationship with his parents in his H&C application but he does not go into detail about the consequences or the extent of their discord. If he intended to rely on the alleged breakdown of this relationship, he needed to

elaborate further, because the information he provided could reasonably be interpreted to mean a wide range of things.

[20] The Applicant also relies on the psychological report to support his contention that his parents disowned him. This report, however, is based upon the Applicants self-reporting, and would not therefore constitute objective supporting evidence. In *Ferguson,* at para 26, the Court held that "evidence of third parties who have no means of independently verifying the facts to which they testify is likely to be ascribed little weight, whether it is credible or not." Given that Mr. Zhang's personal information was non-specific and the information that was specific came from a source that should be accorded little weight, it was open to the Officer to find that there was insufficient evidence of disownment by his parents.

[21] Overall, there was limited information before the Officer regarding the Applicant's relationship with his parents. The fact that the Applicant says the relationship has broken down is insufficient alone to establish the facts on which the Applicant now attempts to rely. Furthermore, considering the Applicant's age, 34, the relationship with his parents may not be an overriding consideration in any event.

[22] In the circumstances, I do not agree that the Officer made a veiled credibility finding, therefore there was no basis for the Officer to conduct an interview.

2) *Was the Officer's denial of the H&C application reasonable?*

[23] The Applicant argues that the Officer engaged in flawed logic regarding his establishment and he argues that it was unreasonable for the Officer to assume that the establishment factors in Canada are proper to consider in relation to his ability to become established in China.

[24] Generally, with respect to H&C relief, the Supreme Court of Canada stated in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, at paras 23 and 25 [*Kanthasamy*]:

> 23 There will inevitably be some hardship associated with being required to leave Canada. This alone will not generally be sufficient to warrant relief on humanitarian and compassionate grounds under s. 25(1)… Nor was s. 25(1) intended to be an alternative immigration scheme:
>
> ….
>
> 25 What *does* warrant relief will clearly vary depending on the facts and context of the case, but officers making humanitarian and compassionate determinations must substantively consider and weigh *all* the relevant facts and factors before them. (Citations omitted) (emphasis in original)

[25] The hardship associated with being required to leave Canada is alone not generally sufficient to warrant relief on H&C grounds under s. 25(1) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [*IRPA*].

[26] What does warrant relief will clearly vary depending on the facts and context of the case, but officers making H&C determinations must substantively consider and weigh all the relevant facts and factors before them.

[27] On establishment, the Officer noted that Mr. Zhang has been employed in Canada, has taken ESL courses and has taken post-secondary courses at York University. Although the Officer did not specify what level of establishment would have been significant enough to warrant an exemption, the Officer did note the facts relied upon in assessing Mr. Zhang's level of establishment.

[28] The Applicant relies upon *Ndlovu v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 878, at paras 10-15 [*Ndlovu*] where Justice Boswell found that it was unreasonable for an officer "… to discount the Applicant's degree of establishment merely because it was, in the Officer's view, 'not greater than what would be expected of other individuals attempting to adjust to a new country'" (*Ndlovu* at para 14). This was unreasonable because the officer focused on the expected level of establishment without explaining what it was (*Ndlovu* at para 15).

[29] However, in my view, this case is different from *Ndlovu.* Here, the Officer did not compare the Applicant's level of establishment to "what would be expected of other individuals attempting to adjust to a new country" (*Ndlovu* at para 3), but instead listed three factors that weighed in favour of establishment and found they were not sufficient. Although Mr. Zhang has been in Canada for over 14 years and has been working, he did not complete his studies, has no

family connections in Canada, has no business, and there is no evidence he has significant savings or investments.

[30] Further, as Justice Diner noted in *Regalado v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 540, at para 8, "… the Officer cannot be expected to arbitrarily set the degree of establishment required under section 25, as that analysis will necessarily vary depending on the facts of each case …it is not the role of an officer to speculate as to what additional facts or circumstances would have triggered a section 25 exception."

[31] In *Garcia v Canada (Citizenship and Immigration)*, 2014 FC 832, at para 26 [*Garcia*], Justice Annis describes establishment "hardship" as:

> … is much about the suffering caused by adjustment to a removal because of deep, permanent, and inflexible roots put down into the Canadian milieu, often compounded by the restraints of others dependent upon the claimant who will suffer related undue hardship if the applicant is removed. (emphasis in original)

[32] Unlike *Garcia*, the Applicant here is young, unattached and adaptable and he does not have "deep, permanent, inflexible roots".

[33] The Applicant relies upon *Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72, at para 35, to argue that the Officer applied the wrong test to the establishment factors. However, in *Marshall*, Justice Brown concluded that the H&C Officer was assessing establishment factors through a hardship lens after the Supreme Court specifically denounced this approach in *Kanthsamay*. Justice Brown noted that the H&C decision before him had been issued a short time after the *Kanthsamay* decision. The same issues do not arise here; the Officer

looked at the establishment facts independently of any hardship considerations. The Officer noted that the establishment factors were minimal, specifically that the Applicant is a single man with no dependents, no community ties, and he is working as a labourer. The Officer considered the Applicant's ability to adjust to life in China separately from the establishment factors. The Officer then makes a global assessment and concludes that there are no factors supporting an H&C exemption.

[34] The Applicant further argues that the Officer failed to address the effect his removal from Canada on his mental health considering the diagnosis of depression. He refers to the psychological report that states his "… condition will deteriorate with exposure to further threats of harm." However, the report does not detail the nature and cause of the harm. Without more detail, it is difficult to see how the Officer could have addressed this differently. The Officer addressed the effect of moving away from his friends, his relationship to his parents, and the availability of treatment in China.

[35] The Officer came to a reasonable conclusion. The decision was justified as (1) there was no evidence Mr. Zhang's parents would not help him if he returns to China, (2) his friendships are not characterized by the type of "interdependency and reliance" that would cause a negative impact if he left, and (3) he has not presented any evidence that he cannot receive treatment for depression in China, or that he is seeking out treatment in Canada.

[36] Given that the onus was on the Applicant to put forward a reason why the H&C application should have been granted, and the evidence he provided only showed the general hardship associated with relocating, it was open to the Officer to deny the H&C application.

[37] Overall, the Officer's decision is consistent with the requirements set out in *Vavilov*.

[38] Accordingly, the decision is reasonable and this judicial review is dismissed.

[39] There is no question for certification.

JUDGMENT IN IMM-3483-19

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

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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