

Federal Court



Cour fédérale

Date: 20210609

Docket: IMM-2064-20

Citation: 2021 FC 582

Ottawa, Ontario, June 9, 2021

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

MERVIN ROBERT MAJKOWSKI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mervin Robert Majkowski seeks judicial review of a decision by an officer with Immigration, Refugees and Citizenship Canada [Officer] to refuse his request to apply for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds.

[2] Mr. Majkowski was born in 1929 in Hamtramck, Michigan, United States of America. At the time he requested H&C relief, he was 89 years old. He is now 92.

[3] Following his discharge from the regular forces, Mr. Majkowski worked as a civilian mechanical engineer and security officer with the U.S. Army from 1954 until he retired in 1984. He married his wife Helen in 1966. They had one child together, Nancy Marie Majkowski. Mr. Majkowski and his wife also raised Helen's son from a previous relationship.

[4] Nancy moved to Canada in 1994 to be with her spouse. She became a Canadian citizen in 2002. Nancy lives in Gatineau, Quebec with one of her sons. Her daughter and another son live nearby with their father.

[5] Helen died in 1999. Mr. Majkowski's only brother died in 2013, and his stepson in 2014. Mr. Majkowski's remaining family are all in Canada.

[6] For the reasons that follow, the Officer failed to engage in any meaningful way with Mr. Majkowski's advanced age, his level of dependency on his family, his vulnerability, and his potential isolation and hardship if he is required to re-establish himself in the United States. The application for judicial review is therefore allowed, and the matter is remitted to a different immigration officer for redetermination.

II. Background

[7] Mr. Majkowski arrived in Canada as a visitor in January 2018. On August 23, 2018, he asked to apply for permanent residence from within Canada on H&C grounds.

[8] Mr. Majkowski submitted a statutory declaration in which he said he was finding it increasingly difficult to live alone and take care of himself without support. He was struggling to meet his living expenses in the United States, with only his pension for income. He had to sell his house and cash in his bonds in order to sustain himself. He had nowhere to live in the United States, and he could not afford a nursing home. Most of his friends had passed away or moved away to live with their families.

[9] Nancy also submitted a statutory declaration, in which she said the following:

I am the primary caregiver for my father, although my children also share this responsibility. My father tries to do things himself, but we largely have to assist him with daily living tasks. We clean, cook, do errands, buy groceries, and help him with everything he needs.

Due to his advanced age, my father can no longer safely live alone. When my father was living alone in Michigan, I constantly worried about him. If he had an accident or if anything were to happen, he would not have anyone to help him. As he gets close to 90 years-old, this fear is more and more likely to materialize. He does not have any family left in the United States and no one to take care of him there.

It would be very hard to be separated from my father now. My father depends on me for love and emotional support, and I depend on him. We spend every day together and have a very close bond. My father is close with my children in Gatineau and spends a great deal of time with them.

My father is too old to work and has a pension from the government as income, which was not enough to sustain him in the United States or pay for a nursing home. He sold his house prior to coming to Canada so that can he [*sic*] help pay for his living expenses while staying with me here.

We are the only family that my father has left and he deserves to spend his remaining years close to his family, with our daily love and support.

[10] The Officer refused Mr. Majkowski's request for H&C relief on March 5, 2020. The Officer found that Mr. Majkowski had provided insufficient evidence of his establishment in Canada, the hardship he would face if he were to return to the United States, and the extent to which he requires the support of his remaining family.

III. Issue

[11] The sole issue raised by this application for judicial review is whether the Officer's decision was reasonable.

IV. Analysis

[12] There is no dispute that the Officer's decision is subject to review by this Court against the standard of reasonableness. The Court will intervene only if "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 100).

[13] The Officer gave little weight to Mr. Majkowski's establishment in Canada, noting that he had resided in this country for only two years. The Officer found this is to be a short period of time compared to the time Mr. Majkowski had lived in the United States. The Officer observed that if Mr. Majkowski were to return to the United States, he would be returning to the place where he was born, received his education and training, lived for the majority for his life, had a career, and where he understands the language, customs, and traditions.

[14] Mr. Majkowski says that the Officer unreasonably failed to consider his particular circumstances. At the time he submitted his request, he was a man approaching 90 who came to Canada to spend his final years with his only remaining family. He is therefore not a typical H&C applicant, and to require someone in his position to demonstrate that he has achieved the conventional markers of establishment is to ignore the reality of his life (citing *Klein v Canada (Citizenship and Immigration)*, 2015 FC 1004 at para 7).

[15] The Officer gave considerable positive weight to Mr. Majkowski's family ties in Canada, citing excerpts from Nancy's statutory declaration. However, the Officer noted that sponsorship applications may be made for parents and grandparents. It is also possible to apply for a "super visa" to reduce the need for travel. While the Officer appears to have accepted Mr. Majkowski's submission that he could not apply for either sponsorship or a super visa because he no longer has anywhere to live in the United States, the Officer remarked that there was little evidence to suggest he could not return to the United States and rent or buy a house, or look for an assisted living facility while the application was being processed.

[16] Mr. Majkowski says that the Officer improperly raised his potential eligibility under another permanent resident category as a bar to relief, placing an improper fetter on the exercise of discretion (citing *Wardlaw v Canada (Citizenship and Immigration)*, 2019 FC 262 at paras 36-38). Furthermore, the sponsorship program for parents and grandparents is subject to a selection process and a limit on the number of applications each year. Mr. Majkowski's eligibility for a super visa is also uncertain, given that he no longer has family ties in the United States and has previously sought to obtain permanent residence in Canada. A visa officer might therefore be concerned that he may not leave Canada at the end of his authorized period of stay.

[17] The Minister of Citizenship and Immigration says this case is comparable to *Shah v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1153 [*Shah*]. In that case, Justice Catherine Kane upheld a decision of an immigration officer to deny H&C relief to a 78-year-old citizen of India, noting that the supporting evidence was scant, consisting of only the applicant's own narrative and three letters from family members. There was no evidence that Mr. Shah was in frail health, or that he suffered from any physical or mental health condition.

[18] Similarly, in this case the Officer found that Mr. Majkowski had submitted insufficient evidence to demonstrate his dependency on his family in Canada:

I acknowledge that Mr. Majkowski is a 90 year old widower. However, I note that he has been living by himself until he came to Canada. There is little evidence submitted to suggest he no longer have [*sic*] the capability to live on his own anymore. There is little evidence submitted to suggest he would require support in his daily life. There is little evidence provided to suggest that he would not be able to return to [the] United States solely based on his age.

I find Nancy's statement about Mr. Majkowski having an accident to be speculative. There is little evidence submitted to suggest he is more prone to accidents than any other individuals. While I agree that some elderly would be unsafe to live alone, there is little corroborative evidence to suggest that Mr. Majkowski is one of them. As I have previously stated, there is little evidence submitted to suggest Mr. Majkowski suffers from any medical conditions.

[19] It is an inevitable fact of life that health declines as one ages (*Tesoro v Canada (Minister of Citizenship & Immigration)*, 2005 FCA 148 at para 41). Mr. Majkowski, who is more than 10 years older than the applicant in *Shah*, did not cite frail health as the reason he requires his family's support. Rather, he cited a constellation of concerns arising from the normal consequences of advanced age: assistance with daily living, an inability to live alone safely, the need for love and emotional support from his daughter and grandchildren in Canada, and the absence of any remaining family in the United States.

[20] The Officer did not reject the veracity of any statements contained in Mr. Majkowski's or Nancy's statutory declarations. Instead, he found the evidence of Mr. Majkowski's dependence and potential hardship should he return to the United States to be insufficient. Given that Mr. Majkowski was approaching 90 years of age, this conclusion was unreasonable.

[21] The Officer failed to engage in any meaningful way with Mr. Majkowski's advanced age, his level of dependency on his family, his vulnerability, and his potential isolation and hardship if he is required to re-establish himself in the United States (*Le Blanc v Canada (Citizenship and Immigration)*, 2012 FC 1292 at para 31). The Officer's finding that Mr. Majkowski's return to the United States would entail nothing more than "renting/buying a house, or looking for an Assisted Living Facility" does not reflect the evidence as a whole. The Officer failed to grasp the

essential point of the request for H&C relief, and did not properly assess the evidence having regard to Mr. Majkowski's personal circumstances (*Epstein v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1201 at para 11).

[22] The application for judicial review is therefore allowed, and the matter is remitted to a different immigration officer for redetermination. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed,
and the matter is remitted to a different immigration officer for redetermination.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2064-20

STYLE OF CAUSE: MERVIN ROBERT MAJKOWSKI v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE IN OTTAWA,
ONTARIO

DATE OF HEARING: JUNE 7, 2021

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: JUNE 9, 2021

APPEARANCES:

Arghavan Gerami FOR THE APPLICANT

Aman Owais FOR THE RESPONDENT

SOLICITORS OF RECORD:

Gerami Law FOR THE APPLICANT
Barristers and Solicitors
Ottawa, Ontario

Attorney General of Canada FOR THE RESPONDENT
Ottawa, Ontario