Federal Court Cour fédérale

Date: 20210810

Docket: IMM-3007-20

Citation: 2021 FC 833

Ottawa, Ontario, August 10, 2021

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

REYNAUD EVON HARRIS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Reynaud Evon Harris, seeks judicial review of the decision of a senior decision-maker (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC"). In their decision, the Officer refused the Applicant's request for permanent residency on humanitarian and compassionate ("H&C") grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"). The Officer, however,

granted the Applicant a temporary resident permit ("TRP") under subsection 24(1) of the *IRPA*. In doing so, the Officer found they were not required to consider the effects of the Applicant's removal.

[2] The Applicant submits the Officer erred in obviating their assessment of the Applicant's H&C grounds by relying on the Applicant's TRP.

[3] In my view, the Officer's decision is reasonable. The jurisprudence affirms that the approach taken by the Officer is justified absent exceptional circumstances. I therefore dismiss this application for judicial review.

II. **Facts**

A. *The Applicant*

[4] The Applicant was born in Jamaica in 1982. He arrived in Canada in 1992 as a permanent resident and has resided in the country since that time, but never applied for Canadian citizenship. The Applicant is single and has no children.

[5] The Applicant's immediate family, including his mother and siblings, all live in Canada. The Applicant's father now lives in the United Kingdom and they do not maintain contact.

[6] The Applicant and his wife divorced in November 2009. Due to the divorce and a lack of fulfillment at work, the Applicant became depressed. He then resorted to pornography as a source of gratification, ultimately turning to child pornography.

[7] On December 17, 2013, the Applicant was charged with the criminal offence of possession of child pornography. The Applicant pled guilty to that offence and was sentenced to 18-months imprisonment followed by three-years probation.

[8] The Applicant has made significant efforts at rehabilitation since his conviction. While incarcerated, the Applicant maintained good institutional conduct and did not receive any warnings, violations, or institutional charges. In a report dated April 10, 2018, Ms. Jocelyn Monsma, a registered social worker, noted the Applicant had expressed genuine remorse for his actions and found he had a very low probability of reoffending. In 2018, the Applicant began a treatment program for sexual offenders, in which he was an active participant.

[9] The Applicant's conviction resulted in him being inadmissible to Canada, making his removal to Jamaica imminent. On June 21, 2018, the Immigration Division ("ID") of the Immigration and Refugee Board found the Applicant was inadmissible on the ground of serious criminality under subsection 36(1)(a) of the *IRPA*, resulting in the loss of his permanent resident status.

[10] On August 2, 2018, the Applicant submitted his H&C application. The Applicant requested that the Officer, acting as a delegate for the Respondent, exercise their discretion under

subsection 25(1) of the *IRPA* to grant the Applicant permanent resident status notwithstanding his inadmissibility.

[11] The Applicant's H&C application was based on the following grounds:

(a) the Applicant's establishment in Canada;

(b) the Applicant's family ties in Canada and lack thereof in Jamaica;

(c) the Applicant's diagnosed "Compulsive Sexual Disorder" and his active steps in treating it, and the lack of such treatment in Jamaica;

(d) adverse country conditions in Jamaica against returned nationals;

(e) evidence of the Applicant's remorse for his actions; and

(f) the Applicant's steps taken to rehabilitate in Canada.

B. *Decision Under Review*

[12] In a decision dated June 10, 2020, the Officer refused the Applicant's H&C application, but provided the Applicant with a TRP that was valid for three years. The Applicant did not request a TRP in his H&C application.

[13] The stated purpose of the Officer's decision to grant the TRP was to allow the Applicant to remain in Canada to continue his medical treatment under temporary resident status and, if he

complies, to display his efforts at rehabilitation and eventually file a new application for permanent residency.

[14] The Officer found it was unnecessary to consider the effects of the Applicant's removal from Canada, as granting the Applicant a TRP rendered those concerns speculative:

> I concluded that the humanitarian and compassionate grounds in this case do not support an exemption from inadmissibility for serious criminality for the applicant, Reynaud Evon Harris, at this point. This decision is made at the same time that a temporary resident permit is being issued. In fact, this counteracts the effects of the subject's removal to his country of origin from those resulting from the loss of his family members' support in Canada and ending the treatment that he is receiving here, which is meant to control his medical condition. <u>All the factors invoked by the applicant are therefore not assessed in this decision because he is authorized to stay in the country temporarily for a period of three years, which makes the consequences of the subject's departure from Canada speculative.</u>
>
> [emphasis added]

III. <u>Issue and Standard of Review</u>

[15] The determinative issue in this application for judicial review is whether it was reasonable for the Officer not to consider the effects of the Applicant's removal in light of granting the Applicant a TRP.

[16] It is common ground between the parties that reasonableness is the applicable standard of review for the Officer's consideration of H&C grounds under subsection 25(1) of the *IRPA*. I agree (*Rainholz v Canada (Citizenship and Immigration)*, 2021 FC 121 ("*Rainholz*") at para 23, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*")).

[17] 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).

[18] For a decision to be unreasonable, an applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing the evidence that was before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

IV. Statutory Framework

A. *H&C Relief*

[19] Under subsection 25(1) of the *IRPA*, the Minister of Citizenship and Immigration may grant discretionary relief from the requirements of the *IRPA* to certain foreign nationals on H&C grounds:

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d’ordre humanitaire à la demande de l’étranger**

25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

25 (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d’un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c’est en raison d’un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d’un étranger se trouvant hors du Canada — sauf s’il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s’il estime que des considérations d’ordre humanitaire relatives à l’étranger le justifient, compte tenu de l’intérêt supérieur de l’enfant directement touché.

[20] Citing *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, among other cases, Justice Little described the purpose of H&C applications and the relevant considerations in *Rainholz*:

> [14] Humanitarian and compassionate considerations refer to “those facts, established by the evidence, which would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another — so long as these misfortunes ‘warrant the granting of special relief’ from the effect of the provisions of the [*IRPA*]”. The purpose of the H&C provision is provide equitable relief in those circumstances.
>
> [15] Subsection 25(1) has been interpreted to require that the officer assess the hardship that the applicant(s) will experience on leaving Canada. Although not used in the statute itself, appellate case law has confirmed that the words “unusual”, “undeserved” and “disproportionate” describe the hardship contemplated by the provision that will give rise to an exemption. Those words to

> describe hardship are instructive but not determinative, allowing subs. 25(1) to respond flexibly to the equitable goals of the provision.
>
> [16] An applicant may raise a wide variety of factors to show hardship on an application for H&C relief. Commonly raised factors include establishment in Canada; ties to Canada; health considerations; consequences of separation of relatives; and the BIOC. The H&C determination under sub. 25(1) is a global one, and relevant considerations are to be weighed cumulatively as part of the determination of whether relief is justified in the circumstances.
>
> [17] The discretion in subs. 25(1) must be exercised reasonably. Officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them.
>
> [18] The onus of establishing that an H&C exemption is warranted lies with the applicants. Lack of evidence or failure to adduce relevant information in support of an H&C application is at the peril of the applicant.
>
> [citations omitted, emphasis added]

B. *TRP*

[21] Under subsection 24(1) of the *IRPA*, a foreign national may receive a TRP and become a temporary resident despite otherwise not meeting the requirements of the *IRPA*:

Temporary resident permit

24 (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a

Permis de séjour temporaire

24 (1) Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps.

temporary resident permit, which may be cancelled at any time.

[22] The purpose of a TRP is to soften the sometimes harsh consequences of the strict application of the *IRPA*, such as in cases where there are “compelling reasons” to allow a foreign national to enter or remain in Canada despite inadmissibility or non-compliance with the *IRPA* (*Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275 at para 22). The decision to grant a TRP is highly discretionary and therefore afforded a high degree of deference (*Chaudhary v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 128 at para 45).

V. Analysis

[23] In using the Applicant’s TRP to justify not considering the effects of the Applicant’s removal, the Officer relied on *Cardenas v Canada (Citizenship and Immigration)*, 2018 FC 263 (“*Cardenas*”). The decision under review in *Cardenas* was the Officer’s (who is the same decision-maker in the case at hand) refusal of the H&C applications of two parents from Columbia, whose children were successful on their H&C applications.

[24] The Officer in *Cardenas* found the parents were inadmissible under subsection 36(1)(c) of the *IRPA* for using fraudulent identity documents while living in the United States, and that H&C grounds did not warrant exempting the parents from their inadmissibility given the circumstances. However, the Officer granted the parents a TRP that was valid for three years, finding that outcome best served the family’s interests and the integrity of Canada’s immigration program.

[25] Similar to the case at hand, the Officer in *Cardenas* concluded that an assessment of the parents' potential hardship in Columbia was not necessary in light of granting the parents a TRP, as the TRP avoided the possibility of the parents' removal.

[26] Upon judicial review, Justice O'Reilly held that the Officer reasonably concluded the analysis of risk should be carried out closer in time to the applicant's removal from Canada, as the hardship faced by the applicant, if removed, was "inherently speculative and likely pointless" in light of the applicant's TRP (*Cardenas* at paras 7-9).

[27] In light of the above, I find the Officer's decision follows a rational chain of analysis and is justified in relation to the relevant jurisprudence (*Vavilov* at para 85). As in *Cardenas*, the Officer in this case reasonably determined that the effects of the Applicant's removal were speculative in light of the Applicant's TRP. The Officer was not required to analyze all the evidence relevant to the Applicant's H&C grounds, as the Applicant's removal is no longer imminent (*Cardenas* at paras 7-9).

[28] The Applicant asserts his circumstances are distinguishable from *Cardenas*, despite providing minimal submissions on this issue during oral arguments. In particular, the Applicant notes he was a permanent resident for over 25 years at the time of his H&C application, whereas the applicants in *Cardenas* held no status in Canada. The Applicant further notes that the purpose of his TRP is for the Officer to assess his compliance with the law and rehabilitation in Canada, whereas the purpose of the applicant's TRP in *Cardenas* was to maintain the family's unity.

[29] I am not convinced that the distinctions raised by the Applicant render the Officer's decision unreasonable. The Officer in *Cardenas* granted a TRP for a reason similar to the case at hand, to provide the applicant "an opportunity to prove his fidelity to Canadian law" (*Cardenas* at para 9). While *Cardenas* is distinguishable upon details concerning family interests and the length of residency in Canada, I find these concerns speak to the impact of the Applicant's removal in light of his ties to Canada, which the Officer reasonably determined was speculative given the TRP.

[30] The Applicant asserts the case at hand is analogous to *Zazai v Canada (Citizenship and Immigration)*, 2012 FC 162 ("*Zazai*"), as the Applicant's H&C application is the only mechanism by which his establishment and mental health treatment in Canada may be considered.

[31] In *Zazai*, Justice O'Keefe held that a visa officer unreasonably refused the applicant's H&C application in lieu of a TRP. In particular, the officer in *Zazai* erred by failing to adequately consider the best interests of the child ("BIOC") and by finding the applicant could apply for a pre-removal risk assessment ("PRRA") if his TRP was not extended, despite that the BIOC cannot be considered under a PRRA (*Zazai* at paras 59-60).

[32] In *Cardenas*, Justice O'Reilly distinguished *Zazai*:

> [15] Again, the circumstances here are different. Mr Victoria Cardenas has a secure status in Canada for at least three years. The best interests of his children have been fully considered. Any risk to him on removal from Canada can be considered on a future PRRA.

[33] Justice O'Reilly's logic applies equally in this case. There are no BIOC considerations raised by the Applicant that the Officer failed to reasonably assess; the Applicant's status under a TRP is relatively secure; and the effects of the Applicant's removal can be considered in a later H&C application or a PRRA. I therefore find *Zazai* is distinguishable from the case at hand.

[34] The Applicant further asserts the Officer's decision is unreasonable in light of IRCC's policy entitled *IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds* ("*IP 5*"), which states under section 5.22 that "[a] TRP cannot simply be the end result of an H&C application. The H&C application must first be refused and a rationale provided."

[35] In my view, the Officer's decision is justified in light of *IP 5*. The Officer's rationale for refusing the Applicant's H&C application was that the effects of the Applicant's removal were speculative in light of the TRP. While the Applicant disputes the merits of that rationale, the Officer nonetheless acted in accordance with *IP 5* by providing it.

[36] Finally, I am not convinced by the Applicant's argument that the Officer breached their duty of fairness by refusing to consider evidence relevant to the Applicant's H&C grounds. There is no evidence to suggest that the Officer denied the Applicant an opportunity to be heard, thus resulting in a breach of procedural fairness. Rather, the Applicant's argument is that the Officer's reasons are not sufficiently justified in light of the relevant evidence. Where reasons for a decision are provided, such as in the case at hand, any challenge to the reasoning or result of the decision should be reviewed under the reasonableness standard, not as a breach of

procedural fairness under the correctness standard (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 21-22). For the reasons discussed above, I find the Officer's decision is reasonable.

VI. Conclusion

[37] I find the Officer's decision is reasonable, as the Officer reasonably declined to consider the effects of the Applicant's removal by relying on the Applicant's TRP. I therefore dismiss this application for judicial review.

[38] The parties have not proposed a question for certification, and I agree that none arises.

JUDGMENT in IMM-3007-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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