Federal Court  Cour fédérale

Date: 20210831

Docket: IMM-7473-19

Citation: 2021 FC 902

Ottawa, Ontario, August 31, 2021

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

YEONSU KIM
SUNGYI KIM
SANGSU LEE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The principal Applicant, Yeonsu Kim [“Mrs. Kim”], her husband Sangsu Lee [“Mr. Lee”], and her adult daughter Sungyi Kim [“Sungyi”], apply for judicial review of a decision of a Senior Immigration Officer [the “Officer”] to deny them permanent residence [“PR”] on humanitarian and compassionate [“H&C”] grounds. Mrs. Kim and Sungyi are currently under a

removal order that is stayed until this Application is determined. At the time of the original decision, Mr. Lee was in Canada on a work permit. There is no evidence in the Certified Tribunal Record [“CTR”] related to his work permit or of the duration of that work permit just that he has one.

[2] This is a difficult case, as the H&C application does not appear to have much chance of success and the Application is less than transparent concerning Mr. Lee’s situation. However, for the reasons set out below, I grant this Application for judicial review, and remit the matter for a redetermination by a different officer.

II. Background

[3] Mrs. Kim was born in Mundok, North Korea. She escaped in 1999 by crossing into China in the middle of the night. She lived in China for some time, where Mrs. Kim met the father of her daughter (not Mr. Lee) in China. However, she alleges that she suffered abuse at his hands, and accordingly in 2003, she fled alone to South Korea through Hong Kong. Her husband and daughter joined her in South Korea in 2006. They divorced in 2009.

[4] In 2010, both Mrs. Kim and her daughter, Sungyi, entered Canada, and submitted refugee claims on the basis that they would have to return to North Korea. Mrs. Kim claims that she was advised by brokers and a lawyer in Canada to conceal their South Korean citizenship and claim asylum as North Koreans. Their claims were accepted, and Mrs. Kim and Sungyi were granted Permanent Residence [“PR”] status in 2012 based on the successful refugee claim.

[5] In 2015, she married Mr. Lee. They had a son, Isaac, who was born in Canada in 2016.

[6] In 2017, the Minister of Public Safety and Emergency Preparedness made a successful application to vacate Mrs. Kim and Sungyi's refugee protection, because they had not disclosed their South Korean citizenship in their refugee claim. In a decision dated November 15, 2018, the Refugee Protection Division found that they withheld or misrepresented material facts, and allowed the Minister's application to vacate the Convention refugee status of Mrs. Kim and her daughter. As a result, they lost their permanent residency status.

[7] Mr. Lee entered Canada as a temporary worker in 2015, and submitted an application to be sponsored by Mrs. Kim. However, this was not possible after the revocation of her PR status. In the record, there is no evidence related to his work permit but there is evidence of his employment.

[8] On November 28, 2018, the Applicants filed an application for PR under section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ["*IRPA*"].

[9] The parties agree, as do I, that this decision is reviewed on a standard of review of reasonableness.

[10] In my view, the determinative error in this case that renders the decision unreasonable is that the Officer did not consider the possibility that Mr. Lee would not return to South Korea. The decision-maker did not base their decision on the actual evidence and instead assumed that

Mr. Lee would also return to South Korea with the family. I have reviewed the CTR, including the application and affidavits, and nowhere is there evidence indicating he will return to South Korea. There is a reference that, given Mrs. Kim's son's age, he would have no option but to go to South Korea, but nothing further regarding where the son will live if Mrs. Kim is removed and Mr. Lee stays in Canada. The entire family returning together could certainly be the case, but the Officer unreasonably proceeded to make the entire determination on that basis, when there was no evidence it was what was going to happen.

[11] While the jurisprudence (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]) is clear that a judicial review is certainly not a "line-by-line treasure hunt for error" (para 102), and that a decision-maker "must not be assessed against a standard of perfection," there is certainly a point at which a decision-maker's decision becomes unreasonable. When something as fundamental as this is factually wrong, then the decision-maker's analysis is flawed to such a degree that it is no longer reasonable.

[12] There is no analysis of the possibility of Mr. Lee and his Canadian son remaining in Canada, while his wife and stepdaughter return to South Korea. There is also no analysis of Mr. Lee staying in Canada while the rest of the family (including his Canadian son) return to South Korea. The record or the reasons are silent as to when Mr. Lee's work permit expires or if it is being extended. The Officer just made the decision on an assumption. Given that Mr. Lee is not under a removal order, possesses a valid work permit, and has a Canadian son, the Officer should also have considered the impact if he remains in Canada. The Officer's failure to do so affects his reasoning throughout the decision.

[13] This factual finding with no evidentiary basis can be found in multiple instances. First, the Officer made several conclusions on the hardship that would be experienced by the Applicants based on the fact that Mr. Lee, who currently holds a job in construction and provides for the family, would return with them in the event of a negative decision. This was not a minor factor, but went to the financial wellness and emotional health of the entire family. It also went directly to the Best Interest of the Child [“BIOC’] analysis, which, without considering this possibility, is deficient.

[14] Secondly, in the reasons dealing with Sungyi’s establishment, the Officer found that if she was relocated back to South Korea she would have to go through a transition period but this was mitigated by the fact that she would have “the love and support of her mother, **step father and half brother** in South Korea,” as well as extended family. Given that, this is not necessarily the case the analysis is deficient.

[15] The third example is found with regards to Isaac, who was 3 years old at the time of the application. In the reasons it was found that the young age of Isaac would cause some difficulties upon his relocation, but that he would have his **parents’** and sister’s support, so his needs would not go unmet, and resultantly that the evidence did not support that his best interest would be negatively impacted. Further analysis is necessary given that his father may not return with the family to South Korea, and thus he would not have his support in South Korea, further analysis is necessary, and the analysis is deficient.

[16] A reasonable decision must have internally coherent reasoning, and part of that is being able to understand the rationale of the decision-maker (*Vavilov* at paras 102-103). In this case, the "reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point" (*Vavilov* at para 103), because the decision-maker did not consider one serious possibility in their reasons; or if they did, they did not put their reasoning process down on paper. Simply put, conclusions that are not based on a complete picture cannot be logically drawn. In this case, the flaw is so fundamental that the decision is unreasonable.

[17] No question is certified.

JUDGMENT IN IMM-7473-19

THIS COURT'S JUDGMENT is that:

1. I am granting this application;

2. The decision is quashed and the matter is to be redetermined by a different decision-maker;

3. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Marvin Moses	FOR THE APPLICANTS
Kevin Spykerman	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Marvin Moses Barrister and Solicitor Marvin Moses Law Office Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT