

Federal Court



Cour fédérale

Date: 20210923

Docket: IMM-3193-20

Citation: 2021 FC 985

St. John's, Newfoundland and Labrador, September 23, 2021

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

KOZI SULAIMAN BODAGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Kozi Sulaiman Bodagh (the “Applicant”) seeks judicial review of the decision of a Senior Immigration Officer (the “Officer”), refusing her application for permanent residence from within Canada on Humanitarian and Compassionate (“H and C”) grounds, pursuant to section 25 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant is an 81 year old Christian citizen of Iraq. She came to Canada on April 8, 2015 and claimed refugee status. Her claim for refugee protection was denied and an application for leave and judicial review was dismissed. Her appeal to the Refugee Appeal Division was dismissed on jurisdictional grounds.

[3] The Applicant made an H and C application on June 12, 2018. Her application was supported by written submissions dated May 14, 2018. Those submissions addressed the Applicant's establishment in Canada, her ties to Canada including the presence of adult children, the best interests of children including grandchildren, and adverse country conditions in her country of citizenship, that is Iraq.

[4] The Applicant's application was refused by a decision made on June 19, 2020. The Applicant sought reconsideration of that decision and made further submissions. Her H and C application was again refused in a decision made on July 9, 2020.

[5] Further to the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.), the standard of reasonableness presumptively applies to administrative decisions, including decisions made under the Act, except where legislative intent or the rule of law suggests otherwise; see *Vavilov*, *supra* at paragraph 23.

[6] In considering reasonableness, the Court is to ask if the decision under review "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 that decision”; see *Vavilov, supra* at paragraph 99.

[7] The Applicant raises several issues, including the argument that the Officer misunderstood the medical evidence about her mental health.

[8] The Minister of Citizenship and Immigration (the “Respondent”) contends that the Officer made no reviewable error and that the Applicant improperly seeks to have the Court review the evidence.

[9] Upon considering the record, the written and oral submissions of the parties, I agree substantially with the submissions of the Applicant.

[10] The Applicant’s family doctor submitted a report in which she detailed some of the Applicant’s medical conditions, including Depression, Anxiety and Post Traumatic Stress Disorder.

[11] The doctor indicated that based on these and other related mental health issues, the Applicant required the help and support of her family in Canada and could not return to her home country.

[12] In my opinion, the Officer's finding that the medical report did not explain why the Applicant needed to stay in Canada, was unreasonable. The report clearly says that the Applicant needs the assistance and support of her family that lives in Canada to deal with her mental health.

[13] It is not necessary for me to address the other arguments advanced by the Applicant.

[14] In the result, the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to another officer for redetermination. There is no question for certification arising.

JUDGMENT in IMM-3193-20

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Officer is set aside and the matter is remitted to another officer for redetermination. There is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3193-20

STYLE OF CAUSE: KOZI SULAIMAN BODAGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE
BETWEEN TORONTO, ONTARIO AND ST. JOHN'S,
NEWFOUNDLAND AND LABRADOR

DATE OF HEARING: SEPTEMBER 21, 2021

JUDGMENT AND REASONS: HENEGHAN J.

DATED: SEPTEMBER 23, 2021

APPEARANCES:

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