Federal Court  Cour fédérale

Date: 20211018

Docket: IMM-3886-20

Citation: 2021 FC 1087

Ottawa, Ontario, October 18, 2021

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

YRAIMA JOSEFINA CAMACHO VALERA
JUAN JOSE JUNIOR GAMBOA CAMACHO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of an Immigration Officer [the "Officer"], dated August 14, 2020, refusing the Applicants' application for permanent residence from within Canada on humanitarian & compassionate [H&C] grounds [the "Decision"],

pursuant to section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the "*Act*"].

II. Background

[2] The Principal Applicant, Yraima Josefina Camacho Valera and her son, Juan Jose Junior Gamboa Camacho [the "Co-Applicant"], are nationals of Venezuela.

[3] The Principal Applicant arrived in Canada on May 28, 2017. The Co-Applicant had arrived in November of 2016, along with his grandmother (the Applicant's mother). They entered Canada as visitors.

[4] The Applicants filed an H&C Application, seeking an exemption from the requirements of the *Act* to facilitate the processing of their application for permanent residence from within Canada. The Applicants sought H&C relief on the following grounds:

A. Adverse country conditions in Venezuela, including the ongoing political crisis, abuses against civil liberties, failure of medical and educational systems, and high levels of government sanctioned and criminal violence;

B. One of the worst economic hardships in the world resulting in a lack of viable employment opportunities, little or no access to necessities, and rampant poverty and starvation; and

C. The Applicants have close relatives who are established in Airdrie, Alberta and Whitehorse, Yukon. These relatives are willing and able to provide emotional and financial support to the Applicants as they adjust to life in Canada.

[5] Venezuela is currently the subject of an Administrative Deferral of Removal. Therefore, there is a temporary suspension of removals of individuals from Canada to Venezuela, except in certain circumstances, owing to a situation of humanitarian crisis.

[6] The Officer refused the Applicants' H&C Application in the Decision dated August 14, 2020. The Applicants seek an Order quashing the Officer's decision and returning the matter to a different Immigration Officer for reconsideration.

III. Decision Under Review

[7] The Officer described the exceptional nature of granting relief on H&C grounds, pursuant to subsection 25(1) of the *Act*. After considering the Applicants' financial situation and support, community involvement in Canada, ties to Venezuela, the Principal Applicant's medical conditions and the ability of the Applicants to apply for permanent residence from within Canada or abroad, the Officer gave "little weight" to the Applicants' establishment in Canada.

[8] The Officer gave some positive weight to the Applicants' family ties in Canada, but gave more weight to the Applicants' ties in Venezuela, noting that the Applicants have a strong network of support in Venezuela and there is little indication that separation from the Applicants' family in Canada would amount to a significant negative impact. The Officer further found that

there was insufficient evidence to demonstrate that the grandmother relied on the Principal Applicant for daily activities or that the grandmother is unable to live independently.

[9] While the Applicants did not submit any best interest of the child considerations, the Officer nonetheless assessed the interests of the children in the Principal Applicant's extended family in Canada – her nephew's children and the grandmother's great grandchildren living in Canada. The Officer found that there is little objective evidence to support that separation would result in significant adverse effects. This factor was given little weight.

[10] The Officer further examined the adverse country conditions in Venezuela and found that a number of adverse conditions existed, including political instability, high crime rates, a poor economy, ill-designed government policies, disruptions in pharmaceutical/medical drug supplies and barriers to accessing healthcare. The Officer held that:

A. While the Applicants fear political instability and the government's use of force, they have presented little evidence to demonstrate that they are involved in protests or that they are known dissidents of the government;

B. Although country condition documents indicate the poor condition of Venezuela's healthcare system and shortage of medication, there is little evidence presented to demonstrate that the Principal Applicant is receiving any medical treatment or requires treatment for her medical conditions;

C. While giving some weight to the high unemployment rate and economic conditions in Venezuela, there is insufficient evidence to demonstrate that the Principal Applicant has experienced or will experience discrimination in employment based on her age, or that her job prospects will be limited by her resignation from her position in public office;

D. There is insufficient evidence to corroborate the statements made by the Co-Applicant that he was assaulted, robbed and that fights would break out in school;

E. While violence against women has been rising in Venezuela, there is little evidence to suggest that the Principal Applicant has experienced gender-specific violence; and

F. Moderate weight was given to the high crime rate and incidence of violence in Venezuela, but it was speculative to suggest that the Applicants would find themselves to be victims of crime.

[11] The Officer finally considered the Administrative Deferral of Removal:

> It is accepted that the conditions have deteriorated to the point that Canada has issued an administrative deferral of removals (ADR) to Venezuela. The ADR is meant to be a temporary measure when immediate action is needed to temporarily defer removals in situations of humanitarian crisis. Once the situation in a country stabilizes, the ADR is lifted. Only those who are inadmissible to Canada on grounds of criminality, international or human rights violations, organized crime, or security can still be removed despite the ADR. I have little evidence before me to suggest that the applicants meet the aforementioned excluded categories of persons. I also note that at the time of this decision, the applicants

> do not have a removal order against them. Therefore, I have insufficient evidence before me to suggest that a refusal of this H&C application would result in the applicants' removal from Canada. Rather, they may remain in Canada until the ADR is lifted. During their stay, they may be eligible to apply for a work permit or study permit. Given the ADR, I cannot put full weight on the poor security and social conditions in Venezuela at the present time.

IV. Issues

[12] The issue is whether the Officer's Decision was reasonable.

V. Standard of Review

[13] The standard of review is that of reasonableness (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25).

VI. Analysis

[14] The Applicants argue that the Officer's analysis of the H&C factors was not reasonable. The Applicants allege the Officer:

A. Acknowledged a number of adverse country conditions in Venezuela, but unreasonably dismissed their relevance to the Applicants, as the Applicants "have presented little evidence to demonstrate that they are involved in protests or that they are known dissidents of the government";

B. Erroneously concluded that there were no corroborating documents to support the Co-Applicant's version of events and failed to provide any explanation for the failed credibility findings;

C. Failed to appropriately consider Venezuela's economic conditions in considering the Principal Applicant's job prospects in Venezuela;

D. Unreasonably dismissed the risks for women in a climate of crisis, by finding that the Applicant had not "personally experienced gender-specific violence";

E. Failed to consider the adverse country conditions, because of the Administrative Deferral of Removal;

F. Failed to consider the Applicants' establishment within the context of their own unique circumstances; and

G. Failed to appropriately consider the best interests of the children.

[15] It is the Respondent's position that section 25(1) of the *Act* provides an exceptional and discretionary remedy and the Applicants are not entitled to a particular outcome. The Decision means only that the Applicants will have to comply with the usual requirements of the *Act* by applying for permanent residence from outside Canada. The Officer's Decision is transparent, intelligible and justified, having made a global assessment of all relevant H&C considerations.

The Applicants' arguments essentially amount to a mere disagreement with the Officer's assessment and weighing of the evidence.

[16] Subsection 25(1) of the *Act* permits the Minister of Citizenship and Immigration to exercise discretionary authority to exempt foreign nationals from the requirements of the *Act* if such an exemption is justified on the basis of H&C considerations. The Applicants bear the onus of establishing that H&C relief is warranted (*Milad v Canada (Citizenship and Immigration),* 2019 FC 1409 at paras 28, 31 [*Milad*]).

[17] An officer shall consider and weigh all relevant factors in an H&C application – including both hardship and compassionate factors (*Bhalla v Canada (Citizenship and Immigration)*, 2019 FC 1638 at para 17). Although an officer may be guided by a liberal and compassionate approach, section 25(1) was not intended to be an alternative to the immigration scheme (*Milad*, above at para 29, citing *Kanthasamy v Canada (Citizenship and Immigration),* 2015 SCC 61 at para 23 [*Kanthasamy*]).

[18] Absent H&C relief, the Applicants would be required to apply for permanent residence in Canada from Venezuela.

[19] The Applicants assert numerous errors allegedly committed by the Officer. While I do not accept many of the grounds raised by the Applicants, I find that the Decision is unreasonable in that the Officer failed to provide due consideration to the cumulative adverse country

conditions in Venezuela and the impact on the Applicants. While the Officer notes the existence of these conditions, they fail to form part of the Officer's analysis in a reasonable manner.

[20] The Officer recognizes the existence of adverse country conditions in Venezuela, stating:

> …[T]here are a number of adverse conditions in Venezuela, including political instability, high crime rates, poor economy, ill-designed government policies that have resulted in difficulties accessing food, disruption in the pharmaceutical/medical drug supply and barriers to accessing healthcare.

[21] However, the Officer either unduly restricts his consideration of these issues or fails to actually consider the cumulative evidence presented by the Applicants. For example, the Officer states that the Applicants' fear of political instability or use of force is unfounded as the Applicants have failed to demonstrate that they are involved in protests or that they are known dissidents. The Officer failed to consider that the risks, as detailed in the evidence, are not limited to protestors and dissidents.

[22] The Officer further dismisses the Principal Applicant's alleged difficulties in obtaining employment, giving "some weight" to the high unemployment rate and economic conditions in Venezuela. The record rather points to the dire economic circumstances in Venezuela. The Officer fails to reasonably address the substance of this evidence, which contradicts the Officer's findings relating to the Principal Applicant's employment prospects.

[23] The Respondent relies on *Paramanayagam v Canada (Citizenship and Immigration)*, 2015 FC 1417 [*Paramanayagam*] for the proposition that "the onus rests on persons seeking an

H&C exemption to establish that they will experience a direct negative impact or be affected by adverse country conditions". However, this Court in *Paramanayagam* found that:

> [19] However, when applicants rely on country conditions as a basis of their H&C application, they must demonstrate that the "adverse country conditions […] have a direct negative impact" on them (*Caliskan v Canada (Citizenship and Immigration)*, 2012 FC 1190, at para 22, 420 FTR 17; *Kanthasamy* FCA, above at para 76). Put another way, such applicants "must show either that [the adverse country conditions] will probably affect them or, at the very least, that living in [adverse] conditions […] is itself an unusual and undeserved or disproportionate hardship" (*Vuktilaj*, above at para 36). H&C applicants must therefore be able to "show a link between the evidence of hardship and their individual situations. It is not enough just to point to hardship without establishing that link" (*Kanthasamy* FCA, at para 48; see also *Lalane v Canada (Citizenship and Immigration)*, 2009 FC 6, 338 FTR 224 at para 1).

[24] The evidence put forward by the Applicants establishes the link between adverse country conditions and the likelihood that these conditions will impact them personally. The Officer emphasizes the lack of "personal experiences" of the Principal Applicant as it relates to gender-based violence and the speculation involved with "suggest[ing] that the Applicants would find themselves victims of crime". The "link" required between the adverse country conditions and the Applicants need not be based in direct experiences of gender-based violence and crime. It is unclear why the Officer has held the Applicants to this standard, or readily dismissed the Co-Applicant's direct experiences of violence and crime as uncorroborated, if requiring the Applicants to meet this higher threshold.

[25] The Officer also failed to consider the Applicants' "circumstances as a whole" by narrowly assessing the Applicants' assertions in a manner that is not justified by the adverse country conditions described in the record (*Kanthasamy* at para 45).

[26] While an Administrative Deferral of Removal does not preclude the refusal of an H&C Application, it is a relevant consideration in the assessment of hardship (*Milad* at paras 34, 36-37; *Rubayi v Canada (Citizenship and Immigration)*, 2018 FC 74 at paras 22-24; *Bawazir v Canada (Citizenship and Immigration)*, 2019 FC 623 at paras 16-17; *Moore v Canada (Citizenship and Immigration)*, 2019 FC 1662 at paras 59-62). The Officer further failed to globally assess the circumstances of the Applicants finding that "[g]iven the ADR, I cannot put full weight on the poor security and social conditions in Venezuela at the present time". As this Court found in *Bawazir* at paragraph 17:

> … The existence of the ADR demonstrates that Canada views the conditions in Yemen as a result of the civil war to "pose a generalized risk to the entire civilian population." The conditions are so dire there that, with a few exceptions, Canada will not remove nationals to that country. Applying the usual requirements of the law in such circumstances clearly engages the equitable underlying purpose of section 25(1) of the IRPA (cf. *Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 at para 43) yet the officer finds that the conditions prevailing in Yemen and the "extreme hardship" Mr. Bawazir would face there deserve "little weight" in the analysis. This was because Mr. Bawazir is not facing the threat of imminent, involuntary removal. However, the officer did not consider that Mr. Bawazir has no choice but to leave Canada for Yemen if he wishes to apply for permanent residence unless an exception is made for him. The officer erred in effectively dismissing a factor which is clearly relevant to the equitable underlying purpose of section 25(1) of the *IRPA*.

[27] The cases relied on by the Respondent are distinguishable in that the officers in those cases were found to not have restricted the hardship analysis by referring to the Administrative Deferral of Removal or relying unduly upon it. Further, in some instances, the applicants had failed to raise sufficient evidence to meet their burden (*Ndikumana v Canada (Citizenship and Immigration)*, 2017 FC 328 at paras 16-23; *Mubiayi v Canada (Citizenship and Immigration)*,

2017 FC 1010 at paras 10-13; *Nicholas v Canada (Citizenship and Immigration)*, 2014 FC 903 at para 32; *Emhemed v Canada (Citizenship and Immigration)*, 2018 FC 167 at para 11).

VII. Conclusion

[28] For the reasons above, this Application is allowed.

JUDGMENT in IMM-3886-20

THIS COURT'S JUDGMENT is that:

1. The application is allowed and the matter is remitted to a different officer for reconsideration.

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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