Federal Court  Cour fédérale

Date: 20211102

Docket: IMM-1191-20

Citation: 2021 FC 1171

Ottawa, Ontario, November 2, 2021

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

MARITZA ESTHER RAMOS HERNANDEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Maritza Esther Ramos Hernandez, is Cuban citizen. She worked as one of four directors of a Cuban state-owned corporation that partnered with foreign entities in joint ventures so as to operate legally in Cuba. The Applicant encountered legal troubles between 2009 and 2010 when the Chilean investor in their company had a falling out with the Cuban government, eventually resulting in the Applicant being prosecuted and convicted for a

"prioritized economic crime" (essentially, bribery) in 2011. The Applicant served a five-year prison sentence, eventually being released from prison on March 2015, and completing her parole conditions in January 2016.

[2] The Applicant later came to Canada on a grandparent "supervisa" in December 2016, to stay with her daughter and her daughter's spouse, both naturalized Canadian citizens, and their two minor Canadian children. Soon after the Applicant's arrival in Canada, her daughter unsuccessfully sought to sponsor the Applicant as a member of the family class. In April 2017, the Applicant sought refugee protection.

[3] Not persuaded that the Applicant was a Convention refugee or a person in need of protection, the Refugee Protection Division [RPD] refused her claim. The Refugee Appeal Division [RAD] dismissed the Applicant's appeal of the RPD decision, and this Court dismissed the Applicant's application for leave and judicial review of the RAD decision.

[4] The Applicant then applied for permanent residence on humanitarian and compassionate [H&C] grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], and pursued a Pre-removal Risk Assessment [PRRA]. The same senior immigration officer [Officer] refused each of her applications within one day of the other.

[5] The Applicant now seeks judicial review of the H&C decision, raising three errors. First, the Officer misconstrued the evidence and the RPD's findings regarding the Applicant's conviction and 5-year prison sentence, and thus failed to determine whether the Applicant's

circumstances warranted H&C relief. Second, the Officer misstated evidence concerning parental sponsorship and the Applicant's ability to return to Canada if she were removed. Third, the Officer improperly filtered the establishment and best interests of the children [BIOC] factors through a hardship lens. Having considered the record, and the parties' written and oral submissions, I am not persuaded that the Officer's decision was unreasonable.

[6] There is no dispute that the applicable standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10. I find none of the situations that can rebut this presumptive standard is present in the circumstances: *Vavilov,* at para 17.

[7] Bearing in mind that the reviewing court must not assess an administrative decision maker's reasons against a standard of perfection, nor engage in a "line-by-line treasure hunt for error," I further find that the Officer's decision as a whole is transparent, intelligible and justified, having regard to the applicable factual and legal constraints: *Vavilov*, at paras 15, 91, 99, 102. The Applicant has not met her onus of demonstrating that the decision is unreasonable: *Vavilov*, at para 100. For the more detailed reasons below, I therefore dismiss the Applicant's judicial review application.

[8] See Annex "A" below for relevant provisions.

II. Analysis

[9] In my view, the Officer did not misconstrue the RPD's findings regarding the Applicant's conviction and 5-year prison sentence. The Applicant complains, for example, that the Officer imported "political opinion" in the consideration of possible persecution and/or further prosecution were the Applicant to return to Cuba. I disagree. The Officer's reference to "political opinion" in my view was in direct response to the Applicant's allegation that she "continues to suffer psychologically from her politically motivated conviction." The Officer further noted the Applicant's testimony at the hearing of her refugee claim where she indicated that she fears persecution "because of the political nature of the prosecution, **which she asserted was persecution for perceived political opinion**" [emphasis added].

[10] I am satisfied that the Officer's reasons demonstrate that, on the whole, the Officer reasonably understood and assessed the hardship the Applicant alleged she would face if she were forced to return to Cuba. The Officer's conclusion that "there is little hardship to be found" rests on a finding of insufficiency of evidence. I note, for example, that the Officer's assessment included the totality of the Applicant's evidence, including general country condition documentation and documentary evidence regarding desertion. The Officer concluded reasonably, in my view, that the Applicant failed to link to her specific situation to the country condition documentation. The Officer also concluded the Applicant did not demonstrate that adverse country conditions in Cuba, including in respect of deserters, while not as favourable as those in Canada, will impact her directly and negatively to such an extent that an H&C exemption was justified.

[11] Given of the factual overlap between the RPD and H&C submissions, I am satisfied that here, it was not unreasonable for the Officer to refer to the RPD's relevant factual determinations in making a determination as to hardship: *Garcia Garcia v Canada (Citizenship and Immigration)*, 2020 FC 300 at para 34.

[12] The Applicant also complains about the Officer's apparent misstatement to the effect that the Applicant "is in the process of being sponsored by the [grand]children's parents, who inform that they now meet the requirements to sponsor the applicant under a different immigration program." In her letter of support, the Applicant's daughter did not confirm that another sponsorship application was pending. I nonetheless find that the Applicant's complaint is an attempt to hold the Officer to a standard of perfection, when the following H&C submissions are suggestive of a further sponsorship application:

> "In January of 2017, Mabel and Yamil [the Applicant's daughter and son-in-law] applied to sponsor Maritza as a member of the family class, but the application was refused as they made insufficient income to meet the LICO in one of the three years under consideration. They now have met the LICO for the past three years and have signed and submitted an undertaking of support of this application."

[13] The Applicant submitted that, in the circumstances, if the Applicant were removed from Canada she would require authorization to return. I further find, however, it was not entirely incorrect, and hence not unreasonable, for the Officer to state that the Applicant is able to return to Canada to visit her grandchildren and that she may be able to live with them permanently, because, in context, the Officer's comments were premised on the necessary authorization - a (future) successful sponsorship application.

[14] Finally, I am not persuaded that the Officer assessed the establishment and best interests of the children [BIOC] factors exclusively through a hardship lens. Regarding establishment, the Officer noted positively the Applicant's evidence of personal ties created in Canada. The Officer concluded, however, there was insufficient evidence of mutual dependence such that her departure would create difficulties for those involved. The Officer also expressed the view that the Applicant's evidence was insufficient to demonstrate that she too would incur hardship in attempting to maintain her personal ties in Canada. I find the reference to hardship in this context does not demonstrate, as the Applicant argues, that the Officer filtered the Applicant's evidence through a hardship lens: *De Sousa v Canada (Citizenship and Immigration)*, 2019 FC 818 at para 31. Rather, in my view, the Officer was justified in finding that the totality of the Applicant's establishment evidence was insufficient to warrant H&C relief.

[15] I further agree with the Respondent that the Officer did not err in the BIOC assessment. In my view, the Officer did not base the entire BIOC analysis on the Applicant's ability to return to Canada. The Officer acknowledged the close relationship between the Applicant and the children, but found there was not enough evidence to support the claim that her return to Cuba will impact the BIOC in this case adversely "to the extent that her removal ought to be avoided." The Officer also acknowledged that although factors affecting children should be given substantial weight, the BIOC is only one of many important factors and does not outweigh all other factors. In my view, the Applicant has not demonstrated that the Officer's balancing here was unreasonable: *Li v Canada (Citizenship and Immigration)*, 2020 FC 754 at para 46-49.

[16] In *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], the Supreme Court did not eliminate the notion that hardship is a factor to be considered. Rather, it found that weight should be given to "to all relevant humanitarian and compassionate considerations": *Kanthasamy*, at para 33. In my view, this is consistent with the current *IRPA* s 25(1.3).

[17] Here, the Officer considered a number of H&C factors, including the Applicant's personal ties in Canada and her relationship with her grandchildren. The Officer also considered the lack of evidence that the Applicant was receiving ongoing psychological therapy in Canada, and that she would not be able to support herself in Cuba. Further, the Officer was of the view that she would not be considered a deserter. I find that the factors considered by the Officer turned on insufficiency of evidence, to varying degrees. In my view, the Officer's decision overall "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 [Officer]": *Vavilov*, at para 85.

III. Conclusion

[18] I therefore conclude that the Applicant has failed to establish the Officer's decision was unreasonable on the whole.

[19] Neither party proposed a serious question of general importance for certification and I find that none arises in the circumstances.

JUDGMENT in IMM-1191-20

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"
Judge

Annex "A" – Relevant Provisions

***Immigration and Refugee Protection Act*, SC 2001, c 27**
***Loi sur l'immigration et la protection des réfugiés* (L.C. 2001, ch. 27)**

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.
…	…
Non-application of certain factors	**Non-application de certains facteurs**
(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.	**(1.3)** Le ministre, dans l'étude de la demande faite au titre du paragraphe (1) d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Lisa Winter-Card	FOR THE APPLICANT
Brad Gotkin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lisa Winter-Card Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT