Federal Court  Cour fédérale

Date: 20211109

Dockets: IMM-6122-20
IMM-6123-20

Citation: 2021 FC 1207

Ottawa, Ontario, November 9, 2021

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

HUISHANG JI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant applies under s. 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] for review of the Pre-Removal Risk Assessment ("PRRA") Officer's decision. The Officer denied the Applicant's PRRA application. The Officer was not satisfied that the Applicant would face a risk of persecution, torture, risk to life, or risk of cruel and unusual

treatment or punishment upon removal from Canada. The Officer also refused the Applicant's application for permanent residence from within Canada on humanitarian and compassionate ("H&C") grounds.

[2] The Applicant filed two judicial review applications. One contests the Officer's decision to reject her H&C application. The other disputes the Officer's finding that the Applicant would not face a risk of persecution if returned to her home country. These matters were heard together as per Justice Fuhrer's Orders granting leave. I will write one decision for both applications.

II. Background

[3] The Applicant is a 58-year-old Chinese citizen who entered Canada in June 2004 using the services of a smuggler called a "snakehead." At the time, the Applicant was married and had a child in China. The Applicant made a claim for refugee protection in August 2004. This claim was based on the Applicant's status as a Falun Gong practitioner. The Refugee Protection Division rejected this claim in March 2005. The Applicant filed an application for leave and judicial review at the Federal Court, which was denied in June 2005.

[4] The Applicant alleges that she met her second husband around April 2006. The two began cohabiting in December 2006. The Applicant's first marriage was dissolved in March 2007, and the Applicant married her second husband later that month. Her second husband subsequently sponsored the Applicant for permanent residence, with her son as a dependent. These applications were granted in November 2008 and February 2009, respectively.

[5] Shortly thereafter, the Applicant claims the marriage became “a nightmare,” suffering sexual and physical abuse at the hands of her husband. Eventually, the Applicant’s husband claimed that their marriage was a marriage of convenience and that the Applicant had offered him $35,000 to marry her.

[6] The Immigration Division (“ID”) held an investigation and hearing as to this matter, which concluded in January 2012. The ID declined to find that the Applicant’s marriage was fraudulent, but decided that the Applicant was inadmissible for misrepresentation under s. 40(1)(a) of the *IRPA*. The ID found that the Applicant was not a credible witness and could not explain certain aspects of her financial affairs. The ID held that the Applicant and her husband had hidden certain facts from the officials processing her application for permanent residence thus committing misrepresentations. For instance, the Applicant and her husband did not disclose to officials the publically known name of her massage business, or the fact that the business solicited clients for erotic services. The ID made an Exclusion Order against the Applicant.

[7] The Applicant appealed this Order to the Immigration Appeal Division (“IAD”). The IAD upheld the Exclusion Order in September 2014, finding that the Applicant was not “remotely credible.” The Applicant’s application for leave and judicial review was denied by the Federal Court in January 2015.

[8] The Applicant filed her H&C application for permanent residence in December 2017. She initiated her PRRA application in January 2018. She received negative decisions on both of these.

[9] The Applicant's PRRA application was rejected because the Officer determined that the Applicant would not be subject to risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment if returned to China.

[10] Her H&C application was rejected because the Officer found that the H&C considerations submitted by the Applicant were insufficient to justify an exemption from the obligation to apply abroad for permanent residence in Canada as per s. 11 of the *IRPA*. The Officer assessed the Applicant's eligibility under the headings of Establishment in Canada, Adverse Country Conditions and Best Interests of the Child.

III. Issue

[11] The issue in this case is whether the Officer's decision was reasonable.

IV. Standard of Review

[12] The standard of review is that of reasonableness. As set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paragraph 23 [*Vavilov*], "where a court reviews the merits of an administrative decision … the starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness." This is the general presumption, and I am not satisfied that it is rebutted on the facts of this case.

V. Analysis

(1) PRRA Decision

(i) Practicing Christianity in a registered Christian church

[13] The Applicant argues that the Officer erred in adopting an overly restrictive definition of persecution in the PRRA analysis. The Applicant submits that state-registered Christian churches in China and those seeking to register with the state must appease authorities by distorting and deviating from Christian doctrines and practices. Thus, as state-sanctioned churches and their members receive better treatment from the state registered churches than unregistered churches, worshippers must accept these compromises for the sake of personal security. In their submissions, this is tantamount to persecution.

[14] The Applicant also takes the position that the Officer erred in ignoring evidence speaking to different forms of religious persecution. In their view, the Officer's discussion of the increased "sinicization" of religious practices in China since 2018 does not reflect the scope and gravity of the problem.

[15] Furthermore, the Applicant alleges the Officer did not reference these measures in the subsequent analysis of religious persecution. The Officer assumes that the Applicant would join a state-sanctioned church upon her return to China despite the fact that:

i. the Applicant does not currently practice the type of Christianity that is state-sanctioned in China (that is to say, the sort of Christianity that places the state before God),

ii. the Applicant should not be expected to demonstrate that she would not embrace this version of Christianity, and

iii. the Applicant is unlikely to embrace Chinese Communist Party ("CCP")-sanctioned Christianity because the CCP persecuted her ex-husband's father because of his Christian faith.

[16] The Applicant posits that state-registered churches in China deviate from Christianity in order to appease the CCP. I note that the Officer acknowledged this when they wrote that "measures taken by the state in 2018 call for assimilating religious identity within 'China's outstanding traditional culture' and promoting patriotism within these religions". Additionally, the Officer also addressed other documentary evidence that indicated Christians in China are not prohibited from worshipping, studying their religious texts, following traditional practices like baptism and communion, or observing holidays like Christmas and Easter. The evidence cited by the Officer explains that the regulation of registered churches in China generally does not amount to persecution. Furthermore, as noted by the Officer, there are millions of practicing Christians in China. The Applicant's claim that the Officer's mention of the 2018 measures "does not nearly reflect the actual scope and gravity of the issue". But, it is not the role of the Court to reweigh the evidence considered by the Officer (*Vavilov*). Accordingly, it was within the range of reasonable outcomes for the Officer to decide as they did.

[17] I similarly do not find that the Officer erred in deciding that the Applicant would not draw the adverse attention of Chinese authorities for her religion upon return to China. The Applicant argues that, "(t)he fact that the Applicant was not a Christian when she left China is no

answer for the question of whether she would be safe upon return." The Officer did not state that the Applicant would be safe in China because she was not a Christian at the time she left, but merely that the Applicant would likely not draw the attention of authorities upon her return to China because she was not a Christian at the time she left. The Applicant did not provide evidence that her particular religious beliefs would call upon the attention of state authorities. This is a forward-looking risk assessment, and clearly follows a rational chain of analysis that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov*, at para 85). As such, the reasonableness standard requires that a reviewing court defer to such a decision. Thus, I find the decision to be reasonable.

(2) H&C Decision

(i) Domestic abuse

[18] The Applicant submits that Immigration, Refugees and Citizenship Canada Guidelines specifically advise officers to consider domestic abuse in H&C considerations. Furthermore, the Applicant presented that the Court has determined that a failure to mention domestic abuse when that factor is relevant is a reviewable error. Given the substantial evidence that the Applicant submitted regarding the abuse she experienced at the hands of her spouse, the Applicant argues that the Officer's failure to address or analyze this evidence amounted to wilful blindness. Since the Applicant's husband stated that he sought to use the immigration system to harm and "destroy" the Applicant, the immigration system should be particularly careful in this instance so as not to lend itself as an instrument of spousal abuse.

[19] I find that the Officer did not unreasonably fail to account for the Applicant's experience of family violence. As the Applicant states, the H&C Guidelines recommend that officers "be sensitive to situations where the spouse (or other family member) of a Canadian citizen or permanent resident leaves an abusive situation and, as a result, does not have an approved citizenship." However, this Guideline does not apply in this instance. The Applicant did not lose her permanent resident status because of leaving an abusive situation, but rather, as the Respondent points out, due to her own misrepresentations.

[20] The case law cited by the Applicant can be distinguished on the facts. In *Jogia v Canada (Citizenship and Immigration)*, 2009 FC 596, the evidence established that the applicant (who was not a permanent resident) stayed with her abusive husband because an immigration consultant and friend of her husband told her that she would be deported if she left. The officer's failure to acknowledge the domestic violence in that instance, the Court explained, meant that "the decision fail[ed] to knowledge the role the immigration process had in the violence, albeit unintentionally". Similarly, in *Febrillet Lorenzo v Canada (Citizenship and Immigration)*, 2019 FC 925, the Court found the officer's rejection of the H&C application unreasonable because "the reasons showed no direct reference to the sympathetic consideration of the Applicant's circumstances as a result of her leaving an abusive relationship and thus foregoing any prospect of an approved sponsorship by her husband" (emphasis added). *Dayal v Canada (Citizenship and Immigration)*, 2019 FC 1188, is distinguishable because it involves entirely different facts about an applicant seeking to become a sponsor for her family members despite not meeting the mandatory income threshold after leaving her abusive partner.

[21] Here, the Applicant's H&C submissions did not indicate any fear that she would be deported or otherwise punished by the immigration system if she left her partner. In fact, those submissions state that she was "unlikely" to have had this concern when she was trying to reconcile with her husband because she had already attained permanent resident status. The Applicant's misrepresentations about, her finances and her work would have caused the loss of that status if they had come to light by some means other than the statements made by her husband. It was her that made the misrepresentations, and it is rather immaterial how they were discovered as they were her lies, and were challenged in the IAD, and cannot now be challenged in this application. This has already been determined in another application, so the finding of misrepresentation is unassailable in this application. Accordingly, I find it was reasonable for the Officer to refer only briefly to the Applicant's experience with family violence.

(ii) Impermissible reasoning

[22] The Applicant submits that the decision-maker's reasoning is based on stereotype, stigma and discrimination, and the Officer erred by bringing much of the eventual decision by the ID into the H&C decision. The Applicant argues that the Officer impugned the Applicant's character because of her potential engagement with sex work in the past, even though neither the ID nor the IAD made an express finding on the Applicant's character.

[23] During the hearing, the ID explained that it was digging into the Applicant's employment history because "if someone is willing to engage in sexual activity for money, then the inference could be fairly drawn, or at least argued by the Minister, that she'd be willing to engage in an extended sexual relationship with someone in order to gain permanent residence."

[24] The Officer's statement, if it was reflected in the reasoning of the decision, would be an impermissibly discriminatory approach that relies on stereotypes and stigma about sex workers. It is the type of statement that we as a society seek to move past, and it should not be taken in any way to be good law or reasonable. An individual's status as a sex worker is not a basis for concluding that they would be more likely to engage in a relationship to obtain permanent residence status, and reliance on such comments or this type of reasoning would be unreasonable. However, this impermissible comment was not the basis for the Officer's decision. Rather, the Officer – despite making this comment – relied in substance on decisions by the ID and IAD that contradicted the letters provided by the Applicant's acquaintances describing her as honest, respectable and professional. The Officer relied on these decision-maker's findings that the Applicant was "evasive", "not remotely credible", and "not worthy of belief," which despite not being express statements about the Applicant's character, established certain negative traits on the part of the Applicant that conflicted with the submitted letters. The Officer weighed the letters as evidence based on the lower decision-maker's findings, and reasonably concluded that they are to be afforded little weight. Had the Officer engaged in reasoning based on stereotypes and stigma, this would been unacceptable and unreasonable, but that is not the case here beyond the single statement. Reweighing and reassessing evidence considered by the decision-maker is not the role of this Court on judicial review (*Vavilov*, at para 125), and I find that the Officer's decision was based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law (*Vavilov*, at para 87). As such, I find that it was reasonable.

(iii) Establishment in Canada

[25] The Applicant submits that case law prohibits officers from using establishment in Canada as a reason to negate a finding that an applicant would experience hardship upon their return to their home country. Furthermore, the Applicant argues that the Officer focused on an apparent disparity between the Applicant's savings and income in 2008 rather than the Applicant's tax documents that showed years of sound financial management. The Applicant submits that the Officer was overzealous in zeroing in on the 2008 discrepancy.

[26] I disagree with the Applicant that the Officer's reasoning regarding the Applicant's establishment in Canada was erroneous. The Applicant cites *Sebbe v Canada*, 2012 FC 813 [*Sebbe*], for the principle that applicants should be given credit for Canadian establishment and this establishment should not be used as an excuse to deny relief. However, in this instance, the Officer's statement that the Applicant can be expected to re-adjust to life in her home country given her reasonably positive financial situation is a direct response to the Applicant's submissions that she is likely to face unemployment and financial hardship upon return to China. The Court has found that a direct response such as this is not the same as using an Applicant's establishment in Canada against them (*Singh v Canada (Citizenship and Immigration*2016 FC 1350 at para 11 [*Singh*]).

[27] Furthermore, while *Lauture v Canada (Minister of Citizenship and Immigration)*, 2015 FC 336 [*Lauture*], affirms the same principle as *Sebbe*, the fact pattern in that case is unique. The applicants had achieved a level of establishment in Canada that the officer described as

"remarkable," yet the officer dismissed the establishment factor on the basis that the applicants could achieve the same level of establishment in their home country. The Court has declined to follow this case in instances where an applicant's level of establishment is not "remarkable" and where officers have not dismissed the establishment factor (*Ramesh v Canada (Citizenship and Immigration)*, 2019 FC 778 at para 38; see also *Singh* at para 12).

[28] In this instance, the Officer did not dismiss the establishment factor, but rather chose to give it little weight. Furthermore, the Applicant's establishment in Canada is not remarkable in the vein of *Lauture*. The Officer acknowledged that the Applicant is a homeowner, owns a vehicle and has assets and savings. Furthermore, the Officer noted that the Applicant's son is in Canada and that she has some community support. However, the Applicant has spent most of her life in China (including her formative years). She was educated, married and gave birth to her son in China. The Applicant's mother and sibling are in China and she has visited China since coming to Canada. Faced with these factors, it was reasonable for the Officer to give little weight to the Applicant's establishment in Canada.

[29] I do not agree with the Applicant that the Officer's assessment of the Applicant's finances are microscopic or irrelevant. It was reasonable for the Officer to acknowledge an unresolved concern raised by the ID regarding the Applicant's finances. The Officer credited the Applicant with providing eight years of tax documents as evidence of her financial management. The Officer also noted her dedication to making her monthly mortgage payments. The Officer did not act overzealously in analyzing the Applicant's financial situation.

[30] In sum, I find both decisions to not be perfect but to be reasonable and within the spectrum of decisions that are reasonable.

[31] The parties did not present any certified questions.

[32] I will dismiss these applications.

JUDGMENT IN IMM-6122-20 AND IMM-6123-20

THIS COURT'S JUDGMENT is that:

1. The applications are dismissed;

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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