Federal Court  Cour fédérale

Date: 20211203

Docket: IMM-2840-20

Citation: 2021 FC 1351

Ottawa, Ontario, December 3, 2021

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

ABDULLA VOKSHI
ARTA VOKSHI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicants seek judicial review of the decision of an Immigration Officer, dated June 19, 2020, rejecting their application for permanent residence on humanitarian and compassionate (H&C) grounds, pursuant to section 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] As indicated at the close of the hearing, the application is dismissed.

II. **Background**

[3] The applicants are citizens of Albania and Italy. They came to Canada on August 30, 2018, as visitors. Three weeks later, on September 22, 2018, the then 66-year-old male applicant had a stroke while dining at a restaurant. Mr. Vokshi was admitted to a Toronto hospital where he received treatment, including cranial surgery to relieve pressure and medication for hyper-tension. The Hospital's discharge summary, dated October 3, 2018, notes that Mr. Vokshi had experienced a prior stroke, for which he received treatment in Italy, in 2009. The summary describes the treatment provided on this occasion and recommends follow-up in Italy. The hospital staff undertook to identify a neurosurgeon in Italy for that purpose.

[4] The H&C application was received by the respondent on October 17, 2018. The application was accompanied by a letter from counsel which included a few brief paragraphs about the applicants. Attached to the letter were the usual forms required to be filed on H&C applications and the hospital discharge summary. No additional material was provided.

[5] With regard to establishment, counsel's letter stated that during their short period of time in Canada, less than two months, the applicants "have quickly integrated into their community, are involved with the Church and have volunteered at a variety of not for profit organizations." No additional information was provided about the nature of the integration and volunteer activities. Reference was made to the female applicant's brother, who is a Canadian citizen, and to their two sons who reside in Canada and were also engaged in seeking status to remain.

[6] Counsel's letter stated that "it has been suggested by Mr. Vokshi's doctor that he should not be travelling at this time as it could be dangerous for his health." This was not supported by any correspondence from the doctor. Counsel submitted that it was also important for Mr. Vokshi to have his whole family by his side because of his medical difficulties.

[7] No further information appears to have been submitted in support of the application between the filing on October 17, 2018, and the decision on June 19, 2020.

[8] In the reasons for decision, the officer noted that no documents had been provided with respect to the applicants' establishment in Canada. Nor was there any evidence submitted with regard to risk and adverse country conditions in Italy. The officer noted the contents of the hospital discharge summary, as described above.

[9] The officer's concluding remarks referred to the information provided by counsel and the discharge summary. The officer noted that the summary did not indicate that the male applicant should not be travelling and, given the recommendation for follow-up in Italy, concluded that treatment would be available to the applicant in that country. In the result, the officer was not satisfied that the applicants had provided sufficient evidence to establish that a positive exemption was warranted on H&C grounds.

[10] On this application for judicial review, the applicants submitted an affidavit from the male applicant and one from a son made after the grant of leave. The affidavits assert a fear of

persecution and the lack of available medication and treatment in Albania. This information was not before the officer.

III. **Analysis**

[11] The sole issue is whether the decision to deny the H&C application is reasonable.

[12] It is trite to observe that the onus was on the applicants to raise humanitarian and compassionate factors in support of their application and to submit evidence to substantiate those factors. At the hearing of this application, counsel, who had also acted for the applicants in submitting the H&C materials, conceded that they were not strong. It was argued, nonetheless, that the officer erred by failing to consider the hardships the applicants would face upon returning to Italy, by ignoring some evidence, by not giving enough weight to the applicants' ties in Canada and by failing to take a global assessment of the H&C factors put forward by the applicants.

[13] The applicants submit that the officer erred in failing to consider the risk that they will face in Albania. But this argument was not before the officer and no evidence was submitted in support of the claim. The officer could not thus be faulted for failing to consider it: *Efe-Agbonaye v Canada (Minister of Citizenship and Immigration),* 2018 FC 1263 at para 19.

[14] Moreover, there was no evidence before the officer that the applicants would have to return to Albania if their application was refused. The materials submitted on the H&C application clearly indicate that the applicants are citizens of Italy, where they have lived for

many years, and they have passports issued by Italy that remain valid until 2026. There is no evidence in the Certified Tribunal Record that the applicants' status in Italy is in jeopardy. It may be the subject of the applicants' subsequent refugee claim but that proceeding was not before the officer.

[15] The applicants rely on *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, at para 7, for the proposition that evidence from refugee proceedings can be considered for the purpose of determining whether an applicant will face "unusual and undeserved, or disproportionate hardship" if returned to the foreign state.

[16] The onus remains on applicants to provide such evidence to the officer considering an H&C application. It is not the officer's duty to "assist the Applicants in discharging the burden of making their claim": *Nicayenzi v Canada (Citizenship and Immigration)*, 2014 FC 595 at para 16; see also *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 (CanLII) at paras 43-45; *Egwuonwu v Canada (Citizenship and Immigration)*, 2020 FC 231 at paras 68-69; *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 (CanLII) at para 5.

[17] The two factors raised in support of the H&C application were the applicants' establishment in Canada and the hardships they would experience if required to leave Canada. There was little before the officer to consider these factors other than bald statements by counsel about the applicants' ties to family, community and church in the letter accompanying the application forms. It is the officer's responsibility to decide what weight to attribute to the

evidence, such as it is, and the court should not intervene so long as the decision is reasonable: *Jacques v Canada (Citizenship and Immigration)*, 2010 FC 423, at para 12. With scant evidence to support the assertions made by counsel, the officer's decision was reasonable.

[18] As for the male applicant's medical condition, the officer reviewed the hospital discharge report. The statement in counsel's letter that the applicant had been cautioned not to travel was not supported by any medical evidence. The report indicated that the applicant would be referred to a neurosurgeon in Italy for follow up. There was no basis for the officer to determine that the applicant could not travel or to support the present assertion that he is dependent on his sons for day to day care. In the circumstances, it was reasonable for the officer to conclude that treatment would be available to the applicant in his country of citizenship and residence.

IV. **Conclusion**

[19] The onus was on the applicants to establish with sufficient evidence that an exemption should be granted. The applicants failed to satisfy their onus and have raised new arguments on this judicial review application that were not before the officer. The officer's decision dismissing the applicants' request represented a reasonable outcome based on the law and the evidence. The decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. Both the process and the overall outcome fit comfortably with the principles of justification, transparency and intelligibility.

[20] No serious questions of general importance were proposed and none will be certified.

JUDGMENT IN IMM-2840-20

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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