Federal Court  Cour fédérale

Date: 20220126

Docket: IMM-5397-20

Citation: 2022 FC 87

Ottawa, Ontario, January 26, 2022

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

OPAL MAUREEN SEGREE MITCHELL

Applicant

and

THE MINISTER OF CITIZENSHIP & IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Opal Maureen Segree Mitchell, is a citizen of Jamaica. She seeks judicial review of a decision rendered on October 9, 2020, by a Senior Immigration Officer [Officer], refusing to grant her an exemption, based on humanitarian and compassionate [H&C] considerations, from the requirement of having to apply for permanent residence from outside Canada.

[2] The Applicant claims that the Officer : (1) erred in assessing the best interests of the children; (2) unreasonably discounted her medical evidence and affidavit; and (3) applied the wrong standard in assessing her level of establishment in Canada.

[3] The parties agree that the decision to grant or refuse an exemption on H&C considerations is reviewable on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16, 17 [*Vavilov*]; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 10, 44 [*Kanthasamy*]).

[4] When conducting a reasonableness review, the Court's focus is on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). It must ask itself "whether the decision 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 the decision" (*Vavilov* at para 99). The burden is on the party challenging the decision to show that it is unreasonable and the Court "must be satisfied that any shortcomings or flaws relied on [...] are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100).

[5] Upon considering the record and the submissions of the parties, I agree with the Applicant that the Officer's treatment of the medical evidence is unreasonable.

[6] For example, the Officer appears to discount the medical evidence because the mental health assessment was based on information provided by the Applicant. Yet, the Officer made no

adverse credibility findings with respect to the underlying facts of abuse suffered by the Applicant while in Jamaica, which were supported by a sworn affidavit from the Applicant. Nor did the Officer dispute the post-traumatic stress disorder and major depressive disorder diagnoses (*Rainholz v Canada (Citizenship and Immigration)*, 2021 FC 121 at para 65 [*Rainholz*]).

[7] Similarly, the Officer noted, "there is no indication […] why she waited until 2019 to contact a mental health professional". However, the psychiatrist who conducted the assessment reported that the Applicant indicated that she did not seek treatment because she did not want to relive the pain and trauma of her memories, and that since coming to Canada her suicidal thoughts and some of the other symptoms had subsided. The psychiatrist also noted that current research supports the proposition that avoidance of traumatic material is common in individuals who have experienced severe and chronic trauma.

[8] The Officer states that the Applicant did not provide evidence about how her current condition interfered with her daily life. This statement does not appear to consider the information in the medical report that the Applicant continues to have nightmares, has difficulty sustaining focus, experiences memory issues, is continuously sad and has a low energy level.

[9] Finally, I am not persuaded, in the circumstances of this case, that the Officer reasonably considered the impact of the Applicant's removal on her mental health. The psychiatrist concluded that, if forced to return to Jamaica, the Applicant would be at a high risk of feeling suicidal again, noting, among other factors, that the Applicant would not only lose all the support she has in Canada, but would also not have the support she previously had in Jamaica. The

psychiatrist was of the opinion that this lack of support would leave the Applicant "very vulnerable to not only feeling suicidal but to acting on her suicidal thoughts". The Officer's decision does not grapple with the effect of removal on the Applicant's mental health, except for briefly referring to a Jamaican government webpage that mentions the presence of multiple health initiatives, including a suicide prevention helpline, and stating that the care and treatment of persons suffering from major mental disorders are included in national health insurance or reimbursement schemes in Jamaica. By only focusing on the availability of treatment in Jamaica for persons afflicted with mental health problems, the Officer does not meaningfully address the impact of a return to Jamaica on the Applicant's mental health and the hardship it would cause (*Kanthasamy* at para 48; *Montero v Canada (Citizenship and Immigration)*, 2021 FC 776 at paras 27-29; *Rainholz* at paras 40-49, 76).

[10] As the Officer's reasons do not reasonably engage with the medical evidence in the record, I find that the decision is unreasonable because it is not justified in relation to the relevant factual and legal constraints, as required by *Vavilov*. I recognize that by sending the matter back for redetermination, the result may be the same. However, it is not the Court's role to reassess and reweigh the evidence (*Vavilov* at para 125).

[11] It is not necessary for me to address the other issues raised by the Applicant.

[12] As a result, the application for judicial review is allowed. The decision is set aside and the matter is referred back for redetermination by a different officer.

[13] No questions of general importance were proposed for certification, and I agree that none arise.

JUDGMENT in IMM-5397-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;

2. The decision is set aside and the matter is remitted back to a different officer for redetermination; and

3. No question is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Maxwell Musgrove	FOR THE APPLICANT
Alex Kam	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Maxwell Murgrove Barrister & Solicitor North York, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT