Federal Court Cour fédérale

Date: 20220412

Docket: IMM-217-21

Citation: 2022 FC 480

Ottawa, Ontario, April 12, 2022

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

KAMI MICHELLE CHISHOLM

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Kami Michelle Chisholm ("Ms. Chisholm") is a 47-year-old female citizen of the United States of America ("USA"). Ms. Chisholm's mother lives in the USA. Ms. Chisholm has a brother whose whereabouts are unknown. She first arrived in Canada from the USA in 2011 at the age of 36. She has spent the majority of the last 10 years in Canada on work and study

permits. In 2019, Ms. Chisholm brought an application for permanent resident status in Canada based upon Humanitarian and Compassionate ("H&C") considerations pursuant to s. 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ["*IRPA*"]. On January 25 2021, a Senior Immigration Officer (the "Officer") refused her application. Ms. Chisholm now brings an application for judicial review pursuant to s. 72(1) of the *IRPA*, in which she challenges the Officer's decision.

[2] Ms. Chisholm based her application for H&C relief on her establishment in Canada and the purported risk and adverse country conditions in the USA.

[3] For the reasons set out below, I dismiss the application for judicial review.

II. Facts Advanced before the Officer

[4] As it relates to her establishment in Canada, Ms. Chisholm contended before the Officer, among others, that she has resided primarily in Canada since 2011; studied and worked in Canada; delivered presentations and movie screenings in Canada; produced and directed a film as part of her Masters program at York University, which has received wide international acclaim; founded a business in Canada which produces films and employs Canadians; received numerous grants from the municipal, provincial and federal levels of government; started the Toronto Queer Film Festival (the "Festival"); promoted indigenous filmmaking; and established a network of friends and professional colleagues in Canada.

[5] With respect to the issue of risk and adverse country conditions in the USA, Ms. Chisholm contended she would be unable to receive proper medical support if she were required to return to the USA; be isolated without support in the USA because of her sexual orientation and estrangement from her family; have no place to live; and no means of securing employment in the USA. Furthermore, she contended before the Officer that funding for the arts, particularly the LGBTQ+ community, of which she is a member, is very limited in the USA.

III. Decision under review

[6] The Officer rejected Ms. Chisholm's application for H&C relief. The Officer stated that he was not satisfied that the H&C considerations justified granting the exemption.

[7] The Officer accepted most of Ms. Chisholm's submissions with respect to her establishment in Canada, and gave them some weight. The Officer assigned no weight to Ms. Chisholm's assertion that she had founded a business in Canada due to the lack of corroborating evidence. He also assigned no weight to her assertion that she employed seven Canadian crew in producing her films, given the lack of corroboration. Overall, the Officer found that Ms. Chisholm "[was] established in Canada" and "[gave] this factor weight".

[8] With respect to Ms. Chisholm's assertions of risk and adverse country conditions in the USA, the Officer:

- gave no weight to the allegation that she would not be able to receive proper medical support for her medical issues if required to return to the USA;
- found that her lack of familial support in the USA was a "very minor hardship";

- gave little weight to the allegation that she could not obtain housing or employment in the USA, it being in his view, speculative;
- gave little weight to the allegation that funding for the arts, particularly LGBTQ+ arts, is extremely limited in the USA, there being no evidence corroborating Ms. Chisholm's assertion.

[9] The Officer then conducted a "global assessment" of Ms. Chisholm's H&C considerations. The relevant excerpt from the Officer's assessment reads as follows:

> *"My global assessment of this submission addresses the applicant's establishment in Canada and potential hardships involved in returning to the country of origin. These hardships include returning to a country in which the applicant lacks a support network and stated medical concerns. My assessment is that the applicant is established in Canada, having obtained an education and employment in Ontario, and having established friendships and social connections in the Toronto area.*
>
> *I also reviewed the applicant's statements regarding hardship in the country of origin. […] I gave these considerations little weight.*
>
> *I accept that the applicant lacks a social network in the United States and that her remaining family there are unsupportive. I am sympathetic to this challenge. However, I find that the applicant, having moved to another country and established herself there would likely be able to re-establish herself in the United States, a country in which she has spent most of her life.*
>
> *I do find that there will be a challenge inherent in returning to her home country after being in Canada for over nine years. I accept that there will be a period of adjustment for the applicant after returning to the United States. I acknowledge that there may be issues, initially, with obtaining housing and employment. However, I also find that the applicant is familiar with the United States' principal language and customs as she spent most of her life there which will simplify her transition.*

I have completed a global assessment of all the factors presented by the Applicant and I am not satisfied that the humanitarian and compassionate considerations before me justify granting an exemption under section 25(1) of the Immigration and Refugee Protection Act."

IV. Relevant Provision

[10] The relevant provision is s. 25(1) of the *IRPA*:

***Immigration and Refugee Protection Act*, SC 2001, c 27**	***Loi sur l'immigration et la protection des réfugiés*, LC 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	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

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.	à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

V. Issues

[11] Ms. Chisholm frames the questions as follows:

- *Did the Officer unreasonably fail to explain why Ms. Chisholm's establishment in Canada was insufficient to warrant H&C relief?*

- *Did the Officer unreasonably apply a hardship-centered approach by substituting a finding of lack of hardship for an establishment analysis?*

VI. Analysis

A. *Standard of review*

[12] The parties agree that the Officer's decision is subject to review on the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 CSC 65, 441 DLR (4th) 1 ["*Vavilov*"] at para 25). None of the exceptions to the presumption of reasonableness review applies in the circumstances.

[13] "A reasonable decision is one that 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 decision maker"

(*Vavilov* at para 85). To set aside a decision, the reviewing court must be convinced that there are sufficiently serious shortcomings in the decision which are not merely superficial or peripheral (*Vavilov* at para 100). Importantly, the reviewing court must consider the decision as a whole, and must refrain from conducting a line-by-line search for error (*Vavilov* at paras 85 and 102).

B. *Did the Officer unreasonably fail to explain why Ms. Chisholm's establishment in Canada was insufficient to warrant H&C relief?*

[14] Ms. Chisholm contends that the Officer erred when he accepted that she was established in Canada, but failed to explain why her establishment was insufficient to warrant H&C relief. She contends it is evident from the record that she is "extremely established" in Canada. She contends that not only does the Officer not explain why her level of establishment is insufficient to warrant H&C relief, he also fails to indicate what would be considered sufficient to warrant relief in the circumstances. I pause here to state there is no obligation on any officer to explain what he or she might consider sufficient to warrant relief. H&C determinations are highly discretionary. The onus is always on an applicant to convince the decision-maker of his or her position. A decision-maker is not required to provide advance rulings or furnish legal advice.

[15] Ms. Chisholm further contends there is a total absence of a chain of analysis to demonstrate how her establishment was weighed by the Officer in his "global assessment". Ms. Chisholm essentially says that the Officer's analysis, or lack thereof, leaves her in doubt as to the reasons why he rejected her application. She relies upon, *Siddiqui v Canada (Citizenship and Immigration)*, 2008 FC 989, 74 Imm LR (3d) 181 at paras 18-19; *Kandhai v Canada (Citizenship and Immigration)*, 2009 FC 656, 81 Imm LR (3d) 144 at para 36; *Tindale v Canada (Citizenship*

and Immigration) 2012 FC 236, 407 FTR 9 at paras 9 to 11; *Chandidas v Canada (Citizenship and Immigration*), 2013 FC 258, [2014] 3 FCR 639 at para 80; *Baco v Canada (Citizenship and Immigration)*, 2017 FC 694 at para 18; and *Ahmadzai v Canada (Citizenship and Immigration*), 2018 FC 725 at para 14.

[16] Ms. Chisholm also contends that the Officer disregarded evidence in an attempt to diminish her level of establishment in relation to her allegation that she employs people in operating the Festival. She contends that before the Officer were letters from employees of the Festival clearly stating that they worked for the Festival, which contradicts the finding that she provided little evidence to demonstrate that the Festival employs people. This argument is without merit. What amounts to little or sufficient evidence is within the Officer's jurisdiction. A reviewing court should not interfere with such conclusions (*Vavilov* at para 125). I note that the Officer accepts that "numerous individuals are now involved in this event".

[17] The Respondent contends that the degree of establishment in Canada is an important factor, but not determinative. The Respondent says that whether the degree of establishment is sufficient, when considered along with other factors, is properly within an officer's discretion. The Respondent submits that the Officer's decision is consistent with the jurisprudence that requires a balancing and consideration of all factors in deciding a s. 25(1) application and that a s. 25 (1) process is the exception. It is not to become an alternative immigration stream. I agree. The Respondent adds, and I also agree, that while other decision-makers might have afforded greater or lesser weight to Ms. Chisholm's establishment, the weighing of the evidence is within

the Officer's discretion (*Owusu v Canada (Minister of Citizenship and Immigration*), 2004 FCA 38, [2004] 2 FCR 635 ["Owusu"] at para. 12; *Vavilov*, *supra*, at para 125).

[18] An officer examining a request for H&C relief pursuant to s. 25(1) of the *IRPA* must consider all the relevant H&C considerations advanced by an applicant in order to determine whether, assessed globally, these considerations would excite, in a reasonable person in a civilized community, a desire to relieve the misfortunes of another (*Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909 at para 13; *Ahmed v Canada (Citizenship and Immigration*), 2021 FC 1251 at para 13). H&C determinations are fact-driven exercises of discretion, and the weight afforded to different factors by an officer should generally not be revisited by a reviewing Court (*Arshad v Canada (Citizenship and Immigration*), 2018 FC 510 at para 19; *Owusu*, *supra* at para 12, *Vavilov*, *supra* at para 125).

[19] Establishment in Canada is one of the relevant factors to consider when assessing an application on H&C grounds. The Officer assessed Ms. Chisholm's establishment in Canada, concluding that she "is established in Canada" and giving "weight" to this consideration. Ms. Chisholm considers that she is "extremely established" in Canada. With respect, this Court should not be dissecting the reasons of the Officer to determine whether he left out an adverb in his assessment of her establishment. His conclusion that she is established is satisfactory, and, given the evidence accepted by him, determinative of that issue. Whether the Officer should have assigned more weight to some of the evidence is of no moment in the circumstances.

[20] It is well established that an applicant's degree of establishment is insufficient, in itself, to warrant H&C relief (*Singh v Canada (Minister of Citizenship and Immigration*), 2009 FC 11, at paras 51-52; *D'Souza v Canada (Citizenship and Immigration*), 2017 FC 264 at para 13; *Henson v Canada (Immigration, Refugees and Citizenship*), 2018 FC 1218 ["*Henson*"] at para 32.

[21] This is not a case such as that in *Henson,* where there were other positive factors that could have influenced the result (*Henson, supra,* at para 32). Recall that the Officer examined Ms. Chisholm's other submissions and found (1) that there was no evidence to support her medical condition and no evidence that health care in the USA would be inadequate; (2) that Ms. Chisholm's lack of family support in the USA would be a "very minor hardship" on return; (3) that insufficient evidence had been presented to demonstrate that she could not obtain housing or employment; and (4) that there was little evidence to support her statement that funding for the arts in her field would be lacking in the USA. In this context, I see no error in the Officer's establishment analysis or weighing of this factor in his "global assessment". The Officer accepted that Ms. Chisolm was established in Canada, noted that there would be a challenge inherent to returning to her country, but ultimately found that the H&C considerations advanced by her were insufficient to justify an exemption from the requirements of the *IRPA.* In my view, this conclusion is consistent with the well-known principle that while there will inevitably be some hardship associated with being required to leave Canada, this alone will not generally be sufficient to warrant relief on H&C grounds (*Kanthasamy, supra* at para 23).

C. *Did the Officer unreasonably apply a hardship-centered approach by substituting a finding of lack of hardship for an establishment analysis?*

[22] Ms. Chisholm contends that the Officer assessed her application solely through a hardship lens. She contends that it is evident from the Officer's "global assessment" that he substituted a finding of lack of hardship for an establishment analysis, which constitutes a reviewable error (*Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72, 49 Imm LR (4th) 53 at paras 35-36; *Ali v Canada (Citizenship and Immigration*), 2018 FC 824 at para 17). She also submits that the Officer's characterization of her lack of family support in the USA as a "very minor hardship" shows that the Officer lacks understanding of her particular circumstances as a member of the LGBTQ+ community. She also contends that the Officer turned this positive factor into a factor warranting dismissal of the application.

[23] The Respondent submits that the Officer did not err in considering the evidence or lack thereof with regard to the hardship or risks Ms. Chisholm would face if returned to the USA. It further submits that Ms. Chisholm failed to establish a link between the adverse country conditions and her personal circumstances (*Kanthasamy, supra* at paras 51 and 56).

[24] I cannot agree with Ms. Chisholm that the Officer's characterization of her lack of family support in the USA as a "very minor hardship" shows that he lacks understanding of her particular circumstances. Immigration Officers consider hundreds of H&C applications each year. This finding was made by the Officer on the basis of his specialized expertise in immigration matters and his or her knowledge of country conditions. It is not this Court's role to revisit that decision (*Bhatia v Canada (Citizenship and Immigration*), 2017 FC 1000 at para 33). I also reject Ms. Chisholm's assertion that the Officer "used this positive factor and unreasonably turned it into a factor warranting dismissal of the application". Determining what constitutes a positive factor or a factor warranting dismissal is an inherent part of an officer's role in an H&C

application. It is not the role of this Court to reweigh the evidence to determine if this factor constitutes a "positive factor" as Ms. Chisholm suggests (*Vavilov, supra,* at para 125). In any event, it was entirely open to the Officer to determine that Ms. Chisholm's lack of family support in the USA would amount to "very minor hardship", considering the circumstances of this case, which include, but are not limited to, her knowledge of the English language, her international reputation in the arts as advanced by her, her high level of education and work experience and the fact she has spent approximately 75% of her life in the USA.

[25] The Officer did not, with respect, substitute a finding of lack of hardship for an establishment analysis. He analyzed the question of establishment in detail to conclude Ms. Chisholm had demonstrated "establishment". He analyzed the potential hardships in similar fashion and found they were not compelling. He then says that his global assessment considered Ms. Chisholm's establishment in Canada, which had already been thoroughly canvassed, and the potential hardships. Given the Officer's detailed analysis of Ms. Chisholm's position on the various issues, it is not evident to me that he fell into the trap of rendering the establishment factor meaningless, as was the case in *Osun v Canada (Citizenship and Immigration),* 2020 FC 295 (at para 22).

VII. Conclusion

[26] I am of the opinion that the intervention of this Court is not warranted. I believe that whatever flaws may be present in the decision are peripheral to the merits of the decision (*Vavilov, supra* at para 100). While some facts, such as the number of persons employed by Ms.

Chisholm may be inaccurate, the ultimate outcome would remain the same. The Officer reasonably found that Ms. Chisholm's application for H&C relief is not warranted.

[27] I dismiss the within application for judicial review. The parties proposed no question for certification for consideration by the Federal Court of Appeal and none appears from the record.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-217-21
STYLE OF CAUSE:	KAMI MICHELLE CHISHOLM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JANUARY 11, 2022
REASONS FOR JUDGMENT AND JUDGMENT:	BELL J.
DATED:	APRIL 12, 2022

APPEARANCES:

Jean Marie Vecina	FOR THE APPLICANT
Bridget A. O'Leary	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Vecina Law Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT