Federal Court  Cour fédérale

Date: 20220426

Docket: IMM-3286-21

Citation: 2022 FC 612

Ottawa, Ontario, April 26, 2022

PRESENT: Madam Justice Walker

BETWEEN:

MARIAM ANTOUN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ms. Antoun, is a citizen of Lebanon who was born in 1930. She was married and had two children in Lebanon: a son, who is a Canadian citizen living in Canada, and a daughter in Lebanon from whom she is estranged. The Applicant's marriage was dissolved in 2019 and her ex-husband died in 2020. She has travelled to Canada a number of times, always with valid status. Her first temporary resident visa dates from 1999. The Applicant states that she has been living with her son in Canada since 2006, splitting her time among Lebanon, Cyprus and Canada.

[2] The Applicant submitted an application for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds in February 2021. At the date of the application, she was 90 years old. The Applicant based her H&C application on two factors: (1) establishment in Canada and health considerations; and (2) adverse conditions in Lebanon.

[3] A senior immigration officer refused the H&C application in a decision (Decision) dated May 7, 2021. The Applicant now seeks judicial review of the Decision.

[4] For the reasons that follow, the application will be allowed. The officer failed to consider the affidavit and medical evidence filed by the Applicant. The officer also erred in assessing the adverse conditions in Lebanon solely against the Applicant's past experience living in the country, much of which is many decades old**.** These errors result in a Decision that does not substantively engage with the Applicant's current personal circumstances and evidence, and does not justify the officer's conclusion that she had provided insufficient evidence warranting the extension of relief on the principles embodied in subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (IRPA).

I. The H&C Decision

[5] The Officer reviewed the Applicant's family-related establishment in Canada, acknowledging her desire to obtain permanent residence in Canada due to her advanced age and the onset of degenerative issues in her spine and hip. The officer noted that her son had submitted banking information demonstrating his financial stability and acknowledged the Applicant's reliance on her son but stated that her evidence in this regard was minimal. Further,

the officer found that the Applicant had demonstrated no inability to achieve her desire to stay in Canada using other existing immigration programs. In light of these considerations, the officer gave low consideration to the Applicant's establishment in Canada.

[6] Turning to the evidence of adverse country conditions in Lebanon, the officer noted that, despite the Applicant's sense of vulnerability in the country due to her advanced age, she owns an apartment in Beirut with "high monetary value" despite damage by the 2020 harbour explosion. The officer also noted that the Applicant had provided no information regarding her alleged estrangement from her daughter. The officer discounted the Applicant's statement that she suffered from discrimination in Lebanon as a Greek Orthodox Christian and as a woman with Western values, observing that she had successfully pursued post-secondary education and a career in Lebanon. The officer stated that Applicant had provided insufficient information to describe how the conditions in Lebanon would negatively impact her life now and that there was no reason to believe she would be unable to find support in Lebanon given her familiarity with the country and her financial resources. The officer gave this factor mild consideration.

[7] In summary, the officer gave neutral consideration to establishment and limited weight to adverse country condition factors, and concluded that the Applicant's circumstances and evidence did not justify a visa exemption under subsection 25(1) of the IRPA. As part of their concluding comments, the officer emphasized the Applicant's good immigration record in Canada and the availability of other programs through which she could achieve permanent residence.

II. Analysis

[8] The Applicant challenges most aspects of the officer's findings but focusses on her inherent vulnerability as a woman in her nineties, the omission from the Decision of any reference to the medical evidence in the record and the impact of the 2020 Beirut explosion on the Applicant's ability to live safely in Lebanon.

[9] The merits of the Decision are subject to review for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Patel v Canada (Citizenship and Immigration)*, 2021 FC 1178 at para 11).

[10] The Applicant submits that the officer failed to meaningfully engage with the implications of her advanced age or with the medical evidence regarding the degeneration in her spine and hip due to aging. She also submits that the officer did not consider the effects of her age on her ability to return and re-establish her life in Lebanon.

[11] I agree with the Applicant that the officer's assessment of her personal circumstances was cursory and failed to address material information and evidence in the record (see, *Majkowski v Canada (Citizenship and Immigration)*, 2021 FC 582 at para 21). The officer considered the Applicant's age in the course of their review of her establishment in Canada, including a brief reference to her spinal and hip issues, and acknowledged her reliance on her son. However, there is no reference in the officer's reasons to the medical evidence from two doctors attesting to the Applicant's physical limitations or to the affidavit filed by her son setting out details of her physical limitations and her substantial reliance on him. In fact, the officer stated only that there

was minimal evidence in the record in this latter regard. This finding is made without regard to the record or to the uncontroverted information set out in affidavits from both the Applicant and her son. I find that these omissions or gaps in the Decision are errors that significantly undermine the officer's justification for giving low consideration to the Applicant's establishment in Canada (*Vavilov* at para 96). The officer's failure to engage with the Applicant's evidence in itself requires reconsideration of her H&C application.

[12] I also agree with the Applicant that the officer failed to assess her current profile and the actual or practical implications to her of a return to Lebanon. The officer limited their observations to references to the Applicant's apartment in Beirut and to her education and career in Lebanon. The officer acknowledged the damage to the apartment in the 2020 explosion but stated that it nevertheless maintained substantial monetary value. The officer offered no basis for this conclusion which, as a result, is purely speculative. Further, the officer did not consider the Applicant's ability to organize the repair of the apartment at her age in a country and city experiencing significant political and economic upheaval. No doubt, the Applicant is familiar with Lebanon, its government institutions, commercial industries and patterns of life. However, this familiarity and her long life in the country must be assessed in light of her advanced age, absence of familial or other support in the country, and current country conditions. I find that the officer erred in focusing their review on the Applicant's past experiences and abilities and failing to intelligibly assess her present circumstances and arguments regarding hardship in Lebanon.

[13] Finally, the Applicant argues that the officer fettered their discretion by focusing on alternative immigration pathways for her to remain in Canada rather than on the H&C

application before them. I do not agree that the Decision reflects a fettering of discretion but the officer's repeated reliance on possible immigration processes available to the Applicant without resort to a subsection 25(1) H&C exemption contributes to the lack of analysis, cohesion and transparency in the Decision.

[14] For the foregoing reasons, I will allow the application. The Decision does not provide adequate justification for the refusal of the Applicant's H&C application in relation to the facts and law before the officer (*Vavilov* at para 85). No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-3286-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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