Federal Court  Cour fédérale

Date: 20220602

Docket: IMM-404-21

Citation: 2022 FC 803

Ottawa, Ontario, June 2, 2022

PRESENT: Madam Justice McDonald

BETWEEN:

RASMIYA SHAMEEL SARHAN AL-KHAMEES

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] This is an application for judicial review of a decision of an Immigration Officer (Officer), dated January 2, 2021, denying the Applicant's application for permanent residence on humanitarian and compassionate (H&C) grounds.

[2] The Applicant is a 65-year-old citizen of Iraq. In support of her H&C application, she relied upon her establishment in Canada, adverse country conditions in Iraq, and the best interests of the children (BIOC) affected – being her great-nephew, great-niece, and grandson.

[3] On the establishment factor, the Officer accepted the Applicant had resided in Canada for over 3 years, and has some family members living in Canada. However, the Officer found this was not sufficient to grant an H&C exemption.

[4] With respect to adverse country conditions, the Officer considered the Applicant's submissions that she would face hardship because of her Christian Mandaean faith. While the Officer noted the country conditions in Iraq "are presently less than ideal", the Officer also noted there was a temporary stay of removals (TSR) to Iraq in force and found that the hardship of removal to Iraq was mitigated by this.

[5] The Officer also considered the Applicant's health conditions, including osteoporosis, depression, and anxiety, and the medical evidence in support of this. However, the Officer held that the Applicant had access to government services in Canada, and was currently supported by the Ontario Disability Support Program.

[6] Finally, with respect to the BIOC, the Officer considered that the Applicant provides childcare to her great-niece and nephew in Canada. The Officer also considered her 17-year-old grandson who visits occasionally from Michigan. However, the Officer held the Applicant could maintain these relationships while the TSR is in place, and if the TSR is lifted, she could

maintain contact through email, phone, or other means. The Officer further held the children's mothers would be able to care for them.

[7] After considering the application, the Officer found that the Applicant had failed to establish the existence of sufficient H&C grounds to warrant the granting of permanent resident status.

II. Preliminary Issue: Style of Cause

[8] The Applicant initially listed the Respondent as the Minister of Immigration, Refugees and Citizenship. Some of their materials also note the Minister of Citizenship and Immigration.

[9] The proper Respondent is the Minister of Citizenship and Immigration, as this is the Minister responsible for the administration of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] in respect for which judicial review is sought (*Sala Del Rosario v Canada (Citizenship and Immigration)*, 2019 FC 705 at para 18; *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2)(b); IRPA, s 4(1)).

[10] The style of cause is therefore amended with immediate effect.

III. Issue and Standard of Review

[11] The sole issue is whether the Officer's decision is reasonable.

[12] In reviewing a decision on a reasonableness standard, the Court asks "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" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]).

IV. Analysis

[13] The Applicant argues the Officer treated the TSR as being determinative on every issue, and did not fully assess the other factors. The Applicant states the TSR has been in effect since 2003, and is effectively a permanent suspension.

[14] Although the Applicant argues the Officer also did not assess the factors independently of the TSR, the decision discloses that the Officer considered the establishment and hardship factors raised by the Applicant. With respect to establishment, the Officer noted that the Applicant has been in Canada for 3 years and has a close relationship to family members. However, this factor alone was insufficient to support the request for an exemption from the legislative requirements.

[15] The Applicant claims that she would suffer hardship on return to Iraq because of her faith. On this issue, the Officer noted that, while in Canada, the Applicant is free to practice her faith and when, and if, the TSR to Iraq is lifted the Applicant's risk would be assessed prior to her removal. The Officer considered the health issues raised by the Applicant as well as the medical evidence provided. The Officer was satisfied that she receives the necessary medical care and has access to social services in Canada.

[16] The Officer considered the BIOC submissions made by the Applicant and assessed both a scenario where the TSR continues, and a scenario where the TSR is lifted. This is a reasonable approach.

[17] Both the Applicant and the Respondent rely upon *Ndikumana v Canada (Citizenship and Immigration)*, 2017 FC 328 where, in relation to the TSR considerations, Justice Diner held:

> As in *Likale*, the applicant failed to demonstrate that remaining in Canada without status indefinitely because of the TSR would cause her unusual hardship. Such a finding is therefore reasonable (*Likale* at para. 13).
>
> The Officer did in fact review this argument with respect to Ms. Ndikumana. He found that, while remaining in Canada without status may cause inconvenience, it is a normal consequence of the decision to remain in Canada without status… (at paras 22-23).

[18] The Officer properly assessed the H&C factors and weighed the factors raised by the Applicant. As part of this, it was reasonable and proper for the Officer to also consider the fact that there was a TSR in place.

V. Conclusion

[19] On judicial review it is not the role of this Court to reweigh the evidence that was properly considered by the Officer (*Vavilov* at para 125).

[20] In conclusion, the Officer considered the evidence and reached a decision that is reasonable. This judicial review is therefore dismissed.

JUDGMENT IN IMM-404-21

THIS COURT'S JUDGMENT is that:

1. This judicial review is dismissed;

2. The style of cause is amended herewith to name the Minister of Citizenship and Immigration as the Respondent; and

3. There is no question for certification.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-404-21
STYLE OF CAUSE:	RASMIYA SHAMEEL SARHAN AL-KHAMEES v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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