Federal Court Cour fédérale

Date: 20220718

Docket: IMM-3055-21

Citation: 2022 FC 1063

Ottawa, Ontario, July 18, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

XIAOLING HUANG
HAIBIN CHEN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Before the Court is an application for judicial review of a decision of a Senior Immigration Officer [the Officer] refusing the Applicants' request to apply for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds pursuant to the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the reasons that follow, this application will be dismissed.

Background

[3] The Applicants are citizens of China. They entered Canada in 2012 and filed for refugee protection. The Refugee Protection Division rejected their claims in August 2014.

[4] The Applicants have two children. Their 14-year-old son is a Chinese citizen who resides in China and their eight-year-old daughter is a Canadian citizen who lives with the Applicants in Canada.

[5] The Applicants submitted an application for permanent residence from within Canada on H&C grounds in June 2020. They asked the Officer to consider their establishment, the best interests of their children [BIOC], and adverse country conditions.

[6] The Officer gave the Applicants' establishment some positive weight. The Officer noted the Applicants had been in Canada for nearly nine years, had some work experience, and submitted support letters from their friends and landlords.

[7] However, the Officer noted some negative factors. The Applicants are still unable to speak English or French. Both Applicants were eligible to apply for work permits in 2012, but neither applied until 2013. Their permits issued in 2013 and 2014, but the Applicants remained unemployed until 2017 and 2018. The Officer acknowledged the female Applicant gave birth to her daughter during this period but found this did not explain the male Applicant's unemployment. Furthermore, the male Applicant's employment has not been stable.

[8] The Officer found the Applicants spent most of their lives in China, are likely still familiar with its culture and society, and would be able to re-establish themselves. Their parents and one of their children live in China, and the Officer found it reasonable to believe their family would assist in their re-establishment.

[9] The Officer gave the BIOC factor little positive weight. The Officer considered the Applicants' claim that their daughter would undergo hardship in China because she is a Canadian citizen and is not registered under the *hukou* system. The Officer found the Applicants failed to establish their daughter would be unable to gain Chinese citizenship, obtain a *hukou*, and in turn access public school. In the Officer's view, the Applicants also failed to establish their daughter would be required to renounce her Canadian citizenship or that this would be against her best interests.

[10] The Officer noted the best interests of the Applicants' daughter are served by remaining with her parents. The Officer found the daughter is established in Canada but that children of her age are "quite adaptable." Because the Applicants should be able to re-establish themselves in China, the Officer explained, they should also be able to help their daughter establish herself there.

[11] The Officer found the best interests of the Applicants' son are served by the Applicants' return to China. The Officer noted the son has lived his whole life in China and it is reasonable to conclude that he is established there. The Officer determined the son is of an age where

stability becomes increasingly important and found he would not undergo hardship should the H&C application be refused. Indeed, the opposite was true.

[12] In the examination of country conditions, the Officer acknowledged house churches face harassment in China but noted the Applicants converted to Christianity after arriving in Canada and are not associated with a house church in China. The Officer noted Christianity is legal in China and the state approves of some religious institutions. The Officer was not convinced the state's involvement in religion would lead to discrimination against the Applicants.

[13] The Officer found the Applicants failed to establish they would experience ageism in China. The Applicants' documentary evidence consisted of two news articles that are dated and do not relate to the Applicants' profiles. One document provided by the Applicants indicates the male Applicant will continue to have job opportunities as an older man.

[14] The Officer acknowledged gender discrimination occurs in China and it intersects with an ageist element but found this is less prominent in the garment industry, where the female Applicant previously worked.

[15] Finally, the Officer found the Applicants did not establish they would be discriminated against as failed refugee claimants. The documentary evidence they provided did not support this claim.

[16] Their H&C application was dismissed.

Issues and Standard of Review

[17] Two issues have been raised by the Applicants:

1. Whether the Officer erred in assessing the best interests of the children, particularly by failing to take an empathetic approach to the application; and
2. Whether the Officer erred in assessing the risk of religious persecution, particularly by failing to take an empathetic approach.

[18] The standard of review for these issues is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]).

Analysis

The BIOC Assessment

[19] The Applicants submit that the Officer engaged in unsupported speculation by finding their daughter can obtain Chinese citizenship, obtain a *hukou*, and access public education. The Officer acknowledged the Applicants' daughter has Canadian citizenship and China prohibits dual nationality but neglected to consider a Canadian cannot renounce their citizenship as a minor pursuant to paragraph 9(1)(c) of the *Citizenship Act*, RSC 1985, c C-29. Because the Applicants' daughter is a minor and will not be able to renounce her Canadian citizenship, she will not be able to obtain a *hukou* and register for public school. The Applicants rely on *Yu v Canada (Minister of Citizenship and Immigration)*, 2022 FC 271 [*Yu*], in which Justice Little concluded at paragraphs 35 and 38 that an officer erred by failing to consider the possible

hardship the children would face without a *hukou* in China due to their dual nationality and that the Canadian statutory provisions prohibiting a minor's citizenship renunciation should be brought to the next officer's attention on redetermination.

[20] The Applicants claim the Officer erred by assessing the best interests of the children separately and this analysis should have taken a holistic view of the children's circumstances. The Applicants rely on Justice Campbell's decision in *Ferrer v Canada (Minister of Citizenship and Immigration)*, 2009 FC 356 [*Ferrer*].

[21] The Applicants submit that the Officer's reasoning is not empathetic. In *Damte v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1212, Justice Campbell explained at paragraph 34 that an empathetic approach is compulsory.

[22] The passage of the Officer's assessment disputed by the Applicants reads:

> The applicants have stated that [their daughter] will undergo hardship in China because she is a citizen of Canada and not part of the hokou [*sic* throughout] system. The applicants have stated that to join a hokou [their daughter] would need to become a Chinese citizen and renounce her citizenship. I acknowledge that China does not recognize dual nationality however, the applicants have not sufficiently supported their statement that [their daughter] would be unable to gain Chinese citizenship and denied a hokou. If she can gain citizenship it seems that she could join a hokou and so access public school. This nullifies the concerns of the applicants of [their daughter] needing to go to unregulated schools. The applicants have not sufficiently supported the statement that [their daughter] would need to renounce her Canadian citizenship or that this is against her best interests. I recognize that the applicants would prefer their daughter to retain her Canadian citizenship, however it is up to the parents to decide on their child's best interests and whether or not this means renouncing her Canadian citizenship.

[23] The Applicants' submission is that the Officer erred in failing to consider that the *Citizenship Act* makes it impossible for their daughter, a minor, to renounce her Canadian citizenship. However, that submission was not put to the Officer. The Applicants' submissions to the Officer repeatedly emphasize their daughter will be unable to obtain Chinese citizenship until she relinquishes her Canadian citizenship. Never do they state that it is impossible for her to do so. The Officer cannot be faulted for failing to observe a statutory impediment that was not brought to the Officer's attention by the Applicants or their counsel.

[24] Moreover, it is far from clear that China requires an official renunciation of Canadian citizenship under the *Citizenship Act*. Perhaps China will recognize the Applicants' "unofficial" renunciation on their daughter's behalf.

[25] The Applicants' reliance on *Yu* may be misplaced on the facts of this case. Justice Little allowed the application in *Yu* because the Officer neglected to address the claimants' explicit submission that their children would experience hardship because they could not register with a *hukou* and access schooling and healthcare until they renounced their citizenship. Here, the Applicants did not make a similar submission about the hardship imposed by this interim period but instead made the broader argument that their daughter will not be able to obtain a *hukou* because of her Canadian citizenship. The Officer was entitled to find the Applicants failed to provide sufficient evidence to ground this argument.

[26] The Officer reviewed the evidence provided and reasonably found the Applicant's daughter will be able to obtain a *hukou* once she is granted Chinese citizenship, which the

Applicants do not suggest is not available to her. The Officer acknowledged China does not recognize dual nationality and accepted the daughter's acquisition of Chinese citizenship is a condition precedent to obtaining a *hukou*. The Officer did not dismiss the possibility that the Applicant's daughter may be required to relinquish her Canadian citizenship and, unlike in *Yu*, did not suggest she could easily resume her citizenship in the future after doing so. Despite these considerations, the Officer concluded the Applicants failed to establish that their daughter would have to renounce her Canadian citizenship, that she would be unable to gain Chinese citizenship, or that a renunciation of her Canadian citizenship would be against her best interests. This conclusion reflects a meaningful evaluation of the Applicants' submissions and an internally coherent and rational chain of analysis as required by *Vavilov*.

[27] The Officer reasonably assessed the best interests of both children. The Officer concluded the older child's interests would be best served by remaining in his home in China, where he is established, along with his parents. The Officer explained that the older child is at an age where he is beginning to develop his identity and stability is increasingly important. The Officer acknowledged that the younger child is established in Canada and she attends elementary school, has friends, and enjoys swimming. However, the Officer concluded her interests would be best served by remaining with her parents in any country, as she is at an adaptable age. The Applicants cite *Ferrer*, wherein at paragraph 5 Justice Campbell found the decision maker "failed to appreciate that the Applicant's children could have the best of both worlds by being united with him in Canada." It is evident that the Officer in this instance was inclined to find the opposite; the Applicants' children would have the best of both worlds by being united with them

in China. Accordingly, the Officer found the BIOC factor provided little positive value that would justify granting the H&C application. This finding was open to the Officer.

[28] The Applicants suggest the Officer failed to undertake the BIOC analysis with empathy but do not identify what aspect of this assessment indicates a lack of compassion. The Officer described the traits of the children and details of their establishment to the best of the Officer's knowledge based on the information contained in the Applicants' submissions. The Officer then evaluated the best interests of the children with regard to their circumstances. I am unable to discern any element of this analysis that reflects an absence of empathy or compassion.

The Religious Persecution Assessment

[29] The Applicants submit that the Officer erred by failing to consider that requiring them to practice their faith through state-sanctioned churches denies a core human right. Neglecting to account for this fact, they say, suggests that the Officer did not assess the H&C application with compassion and empathy.

[30] The Respondent submits, and I agree, that the Officer reasonably assessed the risk to the Applicants of religious persecution and noted salient facts such as the legality of Christianity in China, the Applicants' recent conversion to Christianity, and their lack of affiliation with a home church. The Applicants failed to establish their religious beliefs would draw the attention of authorities upon their return to China.

[31] The Applicants' submissions to the Officer state that they will not have the freedom to attend a church "comparable" to their Canadian church in China. However, the Applicants fail to specify how the state-sanctioned Christian churches in China differ in form or theology from their Canadian church and how they will fail to meet the Applicants' spiritual needs such that the Applicants will be compelled to join a house church.

[32] The Applicants state that house church attendees face consequences like beatings or imprisonment, but the Applicants are not connected to any house church and do not allege it is their intention to join an underground congregation. In light of the paucity of evidence regarding details of the Applicants' faith, it was reasonable for the Officer to acknowledge house church members face harassment, note the Applicants have recently converted to Christianity and are not associated with any house church, and conclude their Christian faith alone is insufficient to establish a risk of discrimination.

[33] The submission that the Officer failed to assess the risk of religious persecution with compassion and empathy is not accepted. The Applicants submit that it is clear the Officer did not take an empathetic approach to their application because a reasonable and empathetic person would understand that being forced to practice Christianity through state-approved churches is both discriminatory and a denial of a core human right. On the facts before the Court, this is really a disguised attack on the Officer's reasonable determination that the Applicants are unlikely to face religious persecution in China.

[34] No question was posed for certification.

JUDGMENT in IMM-3055-21

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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