Federal Court  Cour fédérale

Date: 20221206

Docket: IMM-41-20

Citation: 2022 FC 1683

Ottawa, Ontario, December 6, 2022

PRESENT: Madam Justice Pallotta

BETWEEN:

DAVID ZEPHANIAH MORRISON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, David Zephaniah Morrison, is a citizen of Jamaica who came to Canada in July 2015 as a temporary farm worker, married a Canadian citizen in April 2016, and remained in Canada after his work permit expired. He applied for permanent resident status from within Canada, seeking a humanitarian and compassionate (H&C) exemption from the usual requirement to apply from outside of Canada: section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. In support of his H&C application, Mr. Morrison argued he would face undue, undeserved and disproportionate hardship from having to apply for

permanent residence from outside of Canada due to his establishment, including a job that allows him to provide for family members in Jamaica who depend on him, and his vulnerability as a result of an emotionally abusive marriage. This application for judicial review challenges an immigration officer's (Officer) decision that concluded Mr. Morrison's circumstances did not warrant an exemption.

[2] Mr. Morrison alleges that the Officer's decision was unreasonable. He submits the Officer did not adequately engage with his submissions or weigh the H&C factors holistically. Furthermore, Mr. Morrison states the Officer imposed an excessive burden and made findings that were contrary to the evidence or constituted veiled credibility findings. Specifically, he submits that:

i. the Officer found Mr. Morrison's argument that he would be unable to secure employment in Jamaica to support his family to be "speculative, without merit, and not supported by sufficient evidence"; the finding was made without regard to the evidence that Mr. Morrison struggled with poverty and hardship when he was in Jamaica, and the objective country evidence that showed unemployment rates of 14% to 30%;

ii. rather than weighing the hardship from losing his employment in Canada, the Officer unreasonably found this would not result in any hardship to Mr. Morrison or his employer; furthermore, the statement "there is no evidence before me to indicate that [Mr. Morrison] possesses skills that are critically integral that would make him difficult to replace" shows that the Officer imposed an excessively high burden;

iii. rather than weighing how removal would adversely affect the friendships he has formed in Canada, the Officer discounted this factor on the basis that he would not have to sever the relationships, again imposing an excessive burden;

iv. the Officer's finding that they were "not satisfied there is no other financial means of support" for Mr. Morrison's family members was contrary to the evidence that he is solely responsible for their support and has been sending money to Jamaica;

v. with respect to his marriage, the Officer's analysis was unreasonably tied to whether he and his wife had separated, and the Officer failed to consider trauma and emotional abuse as an H&C factor, stating "[Mr. Morrison] has not indicated how his relationship with his wife is a factor and/or his submissions that he is a victim of emotional abuse supports his application";

vi. the Officer imposed an excessive burden by effectively requiring him to establish that his situation was "unforeseen", and effectively requiring him to demonstrate a reasonable expectation that he would be allowed to remain in Canada permanently.

[3] The respondent disputes these allegations and states Mr. Morrison's arguments amount to a request to reweigh the evidence, which is not the Court's role on judicial review.

[4] The parties agree that the Officer's decision to refuse an H&C exemption 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*]. The reasonableness standard of

review is a deferential but robust form of review: *Vavilov* at paras 12-13, 75 and 85. The reviewing court does not ask what decision it would have made, attempt to ascertain the range of possible conclusions, conduct a new analysis, or seek to determine the correct solution to the problem: *Vavilov* at para 83. Instead, the reviewing court must focus on the decision actually made, including the reasoning process and the outcome, and consider whether the decision as a whole is transparent, intelligible, and justified in relation to the relevant factual and legal constraints that bear on the decision: *Vavilov* at paras 15, 83, 99. The party challenging the decision bears the burden of establishing sufficiently central or significant flaws to render the decision unreasonable: *Vavilov* at para 100.

[5] For the reasons below, I find Mr. Morrison has not established that the Officer's decision was unreasonable.

[6] The Officer's reasons must be read holistically and in context, which includes the evidence that was before them and the submissions made: *Vavilov* at paras 94 and 97. I am not persuaded that the Officer imposed an excessive burden, or made findings that were contrary to the evidence or constituted veiled credibility findings. Rather, the Officer's decision turned on the sufficiency of the evidence.

[7] The Officer found Mr. Morrison had not presented sufficient evidence that he would be unable to secure employment to support his family in Jamaica. I am not persuaded that this finding was unreasonable in light of the record. The evidence that had been presented consisted of Mr. Morrison's statements that he struggled through poverty and hardship when he was in

Jamaica, and it is difficult to find work there. The submissions included an excerpt from an article stating that the male unemployment rate in Jamaica in January 2015 (three years prior to the date of the submissions) was 10.7%, with higher rates of unemployment (29%) for young men aged 20-24. Mr. Morrison was 37 years old at the time of the H&C decision.

[8] I do not accept Mr. Morrison's submission that the Officer failed to weigh the hardship from losing employment at the farm, or that the Officer imposed a burden that required Mr. Morrison to establish "critically integral" job skills or that he would be difficult to replace. Mr. Morrison had temporary status upon arrival in Canada, based on a 2-year work permit. His H&C application provided no evidence or submissions to explain why he would suffer hardship if he ceased to be employed at the farm. In the absence of such evidence or submissions, I see no error in the Officer's finding that discontinuing employment at the farm would not result in hardship to Mr. Morrison or to his employer.

[9] Similarly, Mr. Morrison did not provide evidence or submissions explaining why he would suffer hardship as a result of being separated from the friends he has made in Canada, or how removal would adversely affect those relationships. It was open to the Officer to find Mr. Morrison had not established that severing these ties would have a significant negative impact. The Officer was not satisfied Mr. Morrison could not establish similar relationships in Jamaica, or that he did not already have similar relationships that had been maintained while in Canada or could be resumed upon his return.

[10] In support of his H&C application, Mr. Morrison stated, “I am now the sole provider for my relations in Jamaica. I have to provide for my father’s medical bills and provide the daily needs for him, my siblings and my cousins.” The Officer acknowledged that Mr. Morrison provides for his family, but found there was nothing to indicate how the father, siblings, and cousins were financially supported before he came to Canada. The Officer was not satisfied there are no other financial means of support for these family members, other than income from Mr. Morrison’s employment in Canada. These findings turned on the sufficiency of the evidence.

[11] I disagree with Mr. Morrison that the Officer’s analysis of the hardship occasioned by his marriage was unreasonably tied to whether he and his wife had separated, or that the Officer erred by stating, “[Mr. Morrison] has not indicated how his relationship with his wife is a factor and/or his submission that he is a victim of emotional abuse supports his application”. Mr. Morrison’s application described a serious breakdown in the relationship shortly after Mr. Morrison and his wife were married, without indicating whether they had separated. The Officer found that if they were in a relationship, Mr. Morrison’s wife could file a sponsorship application, and if the relationship had ended, the H&C application failed to explain how this factor supported Mr. Morrison’s request. Mr. Morrison has not pointed to an explanation that the Officer overlooked.

[12] The Officer did not impose an excessive burden by requiring Mr. Morrison to establish that his situation was unforeseen. The Officer stated that the purpose of section 25 is to allow flexibility to deal with situations that are unforeseen by the *IRPA*. In my view, this is simply

another way of stating that section 25 allows for an exemption from the requirements of the *IRPA*. The Officer's use of the word "unforeseen" in this way does not indicate that the Officer imposed an excessive burden.

[13] The Officer's statement, "I am not satisfied that the applicant had a reasonable expectation that he would be allowed to remain in Canada permanently" must be read in context. The Officer found that the degree of establishment Mr. Morrison has achieved during his time in Canada is not so significant that a departure from Canada would cause hardship. Leading to that finding, the Officer noted, among other things, that Mr. Morrison's status was temporary, and he did not reasonably expect to remain in Canada.

[14] Finally, Mr. Morrison alleges the Officer did not weigh the H&C factors holistically. He contends the Officer made the same error described in *Kanthasamy*, taking an unduly narrow and segmented approach that assessed each factor individually, and then discounted them because they did not satisfy the threshold: *Kanthasamy* at para 45. I disagree. The Officer stated that they cumulatively assessed the evidence and conducted a global assessment of the relevant factors. Having reviewed the reasons in light of the record that was before the Officer, I find the Officer did so.

[15] In conclusion, Mr. Morrison has not established that the decision refusing his H&C application was unreasonable. Accordingly, this application for judicial review is dismissed. The parties did not propose a serious question of general importance for certification. I find this case does not involve such a question.

JUDGMENT in IMM-41-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-41-20
STYLE OF CAUSE:	DAVID ZEPHANIAH MORRISON v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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